



ALTERNAUTAS

(Re)Searching Development: The Abya Yala Chapter
Vol.1 - Issue 1 [December 2014]

Roger Merino Acuña

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Alternautas is a peer reviewed academic journal that publishes content related to Latin American Critical Development Thinking.

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How to cite:

Merino Acuña, R. (2014), Minorities or Nations? Discourses and Policies of Recognition of Indigenous Peoples' Rights, *Alternautas*, 1(1), 41-47. URL : <http://www.alternautas.net/blog/2014/7/8/minorities-or-nations-discourses-and-policies-of-recognition-of-indigenous-peoples-rights>

Editor : Alternautas
<http://www.alternautas.net>
London, UK.
ISSN - 2057-4924

ISSN - 2057-4924

ROGER MERINO ACUÑA*

Minorities or Nations? Discourses and Policies of Recognition of Indigenous Peoples' Rights¹

The definition of Indigenous peoples as either “minorities” or as “nations” has a profound impact on public policies. After the tragedy of the so-called Baguazo, the Peruvian ex-president Alan García, stated the following:

Those people do not have a crown, they are not first class citizens. 400.000 natives cannot tell 28 million Peruvians: you don't have the right to come here [...] Whoever thinks that way wants to take us toward irrationality and primitive backwardness. (Interview, June 5th 2009).

Besides the question of a supposed “primitivism” and “irrationality” (which would require another analysis), García expresses in this interview a perspective shared by many politicians, technocrats and analysts with regard to the definition of Indigenous peoples. Indigenous people are seen as ethnic minorities and, despite enjoying special juridical protection, they cannot expect to be treated in a different way, for example as the Right to Previous Consultation suggests. As Montes has put it:

This government and its officials do not understand that the ILO Convention No. 169 is an efficient political instrument to promote Indigenous rights to create spaces of agreements, but not to create categories of people with distinctive rights, different to the rest of Peruvians. (Montes 2014)

* ROGER MERINO ACUÑA is a PhD Candidate in Social and Political Sciences at the University of Bath, United Kingdom.

¹ Originally Published in: Merino, Roger. “¿Minorías o naciones? Discursos y políticas de reconocimiento de los derechos de los pueblos indígenas”. En Revista Argumentos, año 8, n° 2. Julio 2014. ISSN 2076-7722 - Translated by Johannes Waldmüller it was published in Alternautas blog on July 8th, 2014. Available in: <http://www.alternautas.net/blog/2014/7/8/minorities-or-nations-discourses-and-policies-of-recognition-of-indigenous-peoples-rights>

In a similar way, and with regards to applying previous consultation mechanisms for Andean peoples, Santillana (2013) indicates that “the search for a different treatment stems from political interest”, while peoples of the Amazon would have to “integrate themselves to the institutional political life – just as any other citizen.”

In summary, the perspectives presented here put forward the idea that if special rights are granted to Indigenous peoples it is to integrate them into Peruvian society - not to grant them different treatment, which would affect the formal equality that the law grants to every citizen. These discourses stem from understanding Indigenous rights as ethnic minority rights, to ensure their inclusion within the political and economic framework of the state, 'tolerating' their cultural diversity.

Liberal Multiculturalism and the Assimilation of Indigenous Peoples

The problem with the above comments is the understanding of Indigenous peoples as minorities and not as peoples. For example, Montes (2013) states that the ILO Convention No. 169 had been designed “on the basis of recognizing protection rights of ethnic minorities.”

The first problem of this understanding is the non-recognition of international law. The ILO Convention No. 169 recognizes Indigenous peoples as collectives with rights as “peoples”; an understanding which was also reinforced by the United Nations Declaration on Indigenous Peoples of 2007. This document explicitly mentions “Indigenous nations” (Art. 9). Suffice it to point out that this Declaration has been discussed for more than 20 years, and that one of the demands by Indigenous organizations has precisely been their recognition as nations (Barsh 2001, Oldham and Frank 2008, Stamatopoulou 1994, Gilbert 2007). In addition, International Law prescribes other specific juridical mechanisms for the protection of ethnic minorities, such as the United Nations Declaration on Minorities (UN Resolution 47/135 of 1992).

The problem of understanding Indigenous Rights as minority rights stems from placing the former in context of multiculturalism, without taking into account the context of the latter’s production and reception. The minorities to which authors on multiculturalism refer to belong to the European and US-American context - where numerous immigrants dwell - seeking to maintain their customs and habits, while exhibiting respect and tolerance. These authors do not refer to contexts, such as in Latin America, where Indigenous nations precede existing states and demand

their recognition as those who have survived despite constant exclusion and violent inclusion into the colonial and post-colonial processes.

However, multiculturalism remains key for recognizing Indigenous rights. According to Kymlicka (1995), multiculturalism implies a sort of specific protection of “cultural minorities”. Given that human rights have general scope, for Kymlicka it is necessary to establish minority rights which should be limited by individual rights and democracy, since otherwise abuses of individual rights could occur within minority groups.

In general debates within political philosophy regarding multiculturalism have been intense. One of the most interesting perspectives is provided by Parekh (2004) for the European and US-American contexts. He argues that multiculturalism would not be a question of minorities, but of adequate “negotiating” terms between different cultural communities. But the problem remains with both forms of recognition, in the case of Kymlicka's special rights and Parekh's cultural communities, that the result would simply “accommodate” Indigenous peoples within a dominant juridical, political and social system. However, the notion of “accommodation”, frequently employed by authors of multiculturalism, is evocative of the ILO Convention No. 107 of 1957, in which similar terms had been used to describe the relationship between Western society and Indigenous peoples as one of integration and assimilation: Indigenous peoples should be assimilated to the logic of the state. For this reason they could be displaced from their lands in name of “national development”.

The ILO Convention No. 169, which regulates mechanisms such as previous consultations, should shift this approach of “assimilation” toward “self-determination”. On this line of thinking, this convention has contributed to the powerful emergence of the UN Declaration of Indigenous Peoples of 2007, which explicitly enshrines the right to self-determination of Indigenous peoples as well as the right to provide previous consent to the approbation of means and norms that would affect them, among other collective rights (Oldham and Frank 2008, Gilbert 2007, Fromherz 2008).

While the legal-normative framework for Indigenous peoples has been altered, the conceptual framework of multiculturalism continues to be incorporated in these debates without a sign of criticism. Multiculturalism assumes that there exists only one nation and within, various cultural communities to be recognized and tolerated. These communities do not have self-determination as other nations, but should only be “accommodated” by the state. For this reason, their relationship

with the state is not one of complementarity, but of subordination. Seen in this way, the idea of accommodation presupposes hierarchy and the execution of power; its fundamentals are not too far from mechanisms of integration, assimilation or incorporation developed by states in the first half of the past century.

Multiculturalism, in addition, has been criticized not only by conservatives but also by more progressive forces. The first criticize the power enacted within cultural communities which could affect individual rights in the name of culture (Beckett and Macey 2001). The second criticize the emphasis on cultural questions, while disregarding socioeconomic injustices, which would reduce all political issues to problems of cultural recognition, and not of economic redistribution (Žižek 2008).

Kymlicka responded to these critiques by indicating that multiculturalism would be integrated with liberal democracy and thus includes important re-distributional aspects, for example, recognition of the Indigenous rights to their lands. However, he has here selected an unfortunate example with which to defend multiculturalism, since it is precisely the rights of Indigenous people to their territory which have been, and still continue to be, the most violated rights by states.

Although territorial rights of Indigenous peoples are nowadays universally recognized, they are far to be universally respected (Barsh 2001). Their legal recognition has been accompanied by new forms of accumulation through aggressive means of extracting both natural resources from lands and ancestral knowledge (Sieder 2011). In this context, those rights to participation and cultural recognition, deriving from multiculturalism, which were celebrated at the moment of adoption by various Latin American constitutions in the 1990s (Van Cott 2006), seem to accommodate only a few of the claims raised by Indigenous peoples to the neoliberal institutional framework. In effect, it converts them into “indios permitidos” (permitted Indians) (Hale 2005) with the aim of renouncing their more profound demands regarding self-determination and territories.

In consequence, it is clear that legal advances in the field of Indigenous rights at the international level show that mere participation and its political-philosophical foundation, multiculturalism, is not enough to recognize the principles of self-determination and further rights deriving from it, such as the right to territory and to prior, free and informed consent.

Indigenous Peoples and Formal Equality

The critiques of the supposed privileges or special rights to be granted to Indigenous peoples ignore that Indigenous legality corresponds in itself to a proper political and juridical framework, grounded in self-determination as peoples or nations. It has juridical justification, in accordance with the international legal framework mentioned here, but primarily through historical justification.

For this reason, the argument that Indigenous rights contradict the formal equality guaranteed through the liberal democratic system (Kuper 2003) has been largely criticized by pointing out the historical factor of (non-)recognition. In effect, such an affirmation does not take into account the violent dispossession and discrimination Indigenous peoples have suffered from (Kenrick and Lewis 2004). In fact, the premise of such a position is flawed: all are seen as being equal and sharing the same history. This is not the case. In countries with a colonial past there exist different trajectories of exclusion and violent inclusion and those who maintain or claim essential characteristics as Indigenous should have the right to be recognized as such, also beyond different labels which have historically been imposed on them (Indigenous, Indios, peasants, natives, etc.).

Finally, the definition of “Indigeneity” should be relational, rather than essentializing. This way, the focus should be on questions of power and dispossession imposed on those who claim to be Indigenous and who find themselves in the position of reclaiming justice on the basis of negative impacts they have suffered through historical processes (Canessa 2012, Kenrick y Lewis 2004, Bonfil 1977).

Indigenous nationalities, therefore, correspond to a distinct logic of the idea of ethnic minorities. Minority rights imply the respect to be showed toward individuals belonging to minority groups within the majority of the society. Indigenous rights, in contrast, are based on the premise that Indigenous people have the right to preserve their societies outside the dominant society (Åhrén 2009). This does not imply the absence of interaction with other cultural groups or a rupture with national sovereignty, but simply respecting different political and social Indigenous organizations. An example for that are the institutional and constitutional frameworks of plurinationality in Ecuador and Bolivia. Likewise, the concept of interculturality, understood not merely as intercultural dialog, but also as an effective mechanism for the recognition of rights, is grounded in a conception of Indigenous peoples as nations who interrelate with the State in a dynamic process, one that is indeed respectful of diversity.

International law and Indigenous organizations have reaffirmed such a tendency everywhere in the world, and day by day, it is consolidating in more and more state policies. Therefore, the UN Declaration as well as the concepts of plurinationality and interculturality, explain much better than multiculturalism and its discourse of “tolerating minorities” the rights and aspirations of several Indigenous peoples in Latin America.

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