LIMITS AND OPPORTUNITIES OF LIBERAL CAPITALISM: LESSONS FROM THE IMPLEMENTATION OF FPIC IN INDIGENOUS TERRITORIES IN PERU

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Indigenous (Latin) America: Territories, Knowledge, Resistance and Voices

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Outline

- Peru: Land Reform, Liberalism and indigenous territories
- Citizen Participation and State Reform in Latin America
- The ILO Convention and its initial implementation
- The Baguazo conjuncture
- Limitations and opportunities of the Ley de Consulta
Peru: Land Reform, Liberalism and Indigenous Territories

- Titling and registration of “communal” lands as recognition of (territorial) rights? – Differences between Andean and Amazonian landscapes

- The constitutional history of the three ‘i’’s: inalienability, inembargable (immune from seizure), and imprescriptible (?)

- Fight for expanding land titling and registration: Communal Reserves (as part of the National System of Protected Ares) and Territorial Reserves (for initial contact and voluntary isolated peoples)
Citizen Participation and State Reform

- 1996: Public Hearing to review an EIS of a Mobil Exploration in the Amazon: “The document is public in the moment is approved’ (plop!)

- The “second generation of reforms” of the Washington Consensus: citizen participation, accountability, decentralization

- Slow and lasting learning process:
  - Developing of new National Environmental Management System (EIAs System, EQSs + MAPs) [Talleres Informativos & Audiencias Públicas]
  - Decentralization (Presupuesto Participativo and local & land use planning tools)

- Universal citizenship or Multicultural liberalism?
The ILO Convention and its initial implementation

- 1990’s: a contractual issue (the case of hydrocarbon projects)
- Change of civil society participation rules / but lack of enforcement of the ILO Convention 169 (mining projects: Tambogrande in 1999, Majaz in 2004, and most recently Tia Maria in 2015).
- Who qualifies as “pueblo originario” and who governs the Consulta?
The *Baguazo* conjuncture

- Two facts prior to the events (2009): expansion of extractive industries’ projects in the Northern Peruvian Amazon, and, in the context of the USA – Peru FTA, the approval of new Natural Resources legislation (Land, Water, Forest, and Environment). Neither with a single community participation activity.

- The pushing of the ‘*perro del hortelano*’ (the dog in the manger) paradigm: forestry, biofuels, extractive industries, energy, infrastructure (*local communities as a barrier to foster large scale investment*)
The *Baguazo* conjuncture II

- The growing importance of the Ombudsman Reports on Social and Environmental Conflicts (2005-2017)
- From the stubborn rejection of the new Consultation Law to the dilemmas of the regulation of the recently approved Act (2011-2017)
Limitations and opportunities of the *Ley de Consulta*

- *Ley de Consulta* as part of multicultural policies for social inclusion: but it is not fully embedded into general state policies for indigenous peoples.

- Difficulties to implement FPIC in Andean and Coastal Peasant Communities: the definition of the data base --“*el padrón*”-- of indigenous peoples.
Limitations and opportunities of the *Ley de Consulta* II

- Two criteria for the definition of who is who is not in the Data Base: language and land. Not clearly defined rules for Andean communities.

- First cases of FPIC implementation: health and education sectors, medium size mining projects in the Altiplano, regional conservation units, and two emblematic cases of large infrastructure: the Hidrovía, and the Block 192 (both in the Northern Amazon)
Key issues in the implementation of the Ley de Consulta

- **Territorial scope**: beyond the identification dilemma. The private sector culture of defining an “area of influence” (impact approach) and the lack of public policies with a territorial approach.

- **Approval mechanism**: how to formally achieve consensus? Local traditions or formal mechanisms? The Ministry of Culture has not clearly defined the answer.

- **Veto right**: interpretation of ILO 169

- **Representation dilemmas**: weak social capital of indigenous peoples at the national and subnational levels