

# **Constitutionalism in an insurgent state: plurality and the rule of law in Bolivia**

*Author:* John-Andrew McNeish (Christian Michelsen Institute/University of Bergen) [john.mcneish@cmi.no](mailto:john.mcneish@cmi.no)

## **Abstract**

In this paper, I aim to question the significance of recent efforts to create a new constitution in Bolivia for anthropological ideas about legal pluralism. The paper focuses specifically on the significance of recent constitutional processes for Bolivia's largely indigent and previously politically marginalised majority indigenous population. As such, the paper considers the manner in which the country's legal plurality has become a part of the national political identity and an integral part of the constitutional process now completed in the country's legal capital. Whilst highlighting the causes and dangers of continued contestation, the paper argues that important lessons about the possibilities for the empowerment of the poor and acceptance of a place for plurality in law can be learned from Bolivia. With its empirical background of insurgency and constitutionalism, but also of indigenous cultures, the case of Bolivia tests the limits of standardised rights based approaches to development and legal empowerment. In this paper attention is drawn to the cultural pliability of ideas about modernity and democracy and the importance of an inter-legal rapprochement between formalized legal norms and alternative legal systems. The paper further highlights the validity of anthropological approaches to the state that highlight the social construction of institutions and structures. Drawing from its empirical base the paper finally aims to critically contribute to recent discussions in "pro-poor" theory, highlighting the problems and possibilities of multi-culturalism and questioning the relevance and applicability of recently proposed ideas of inter-legality.

## **INTRODUCTION**

With the world record in coup d'états<sup>1</sup> and a modern history of revolution and repeated uprisings it can also too easy to dismiss Bolivia not only as a recent state in crisis, but an insurgent state in terms of its long history of political unrest. Earlier writing on the country even goes as far as suggesting that rebellion is embedded, cyclical and perhaps even embodied, in the 'veins' of the country's political history, culture and society. Over the last five years international news coverage of the country has focused on nationwide protests, blockades and the militant ousting of two national presidents. Recent academic work on the country from across the social sciences highlight cycles of protest, 'jammed democracy' and enduring processes of 'forced negotiation' as symptomatic of Bolivia's hyper-active civil society. However, whereas there can be little doubt to the insurgent nature of Bolivia's politics, recent events and processes in the country also highlight that whilst enduring, this nature is not static or entirely representative of the country's political culture. Following years of protest, national elections in 2005 resulted in the election of a representative of the country's previously marginalised indigenous population as President, and a broadly approved legal and liberal democratic process introduced to reform the Bolivian state and constitution. In a country, renowned for rebellion, there are thus consistent signs of respect for a democratic rule of law, a liberal constitution and a desire in a

period of post-crisis to press through reform, rather than revolt against the structures of the nation-state.

In this chapter, I study the background to this apparent contradiction and trace and discuss the opportunities and constraints produced by recent efforts to create a new constitution in a state of enduring insurgency. I will focus specifically on the significance of recent constitutional processes for Bolivia's largely indigent<sup>2</sup> and previously politically marginalised majority indigenous population. These are processes of reform that have created as much division as they have inclusion, and as such the essay attempts to respond to the question: What value does constitutionalism have for legal empowerment in a persisting context of 'insurgency'? I describe and consider the manner in which the country's plurality has become a part of the national political identity and an integral part of the constitutional process. Whilst far from free from controversy or opposition, I argue that important lessons – about the possibilities for the empowerment of the poor and acceptance of a place for plurality in law – can be learned from this important case study. With its history of insurgency and constitutionalism, but also of indigenous cultures, the case of Bolivia tests the limits of standardised approaches to development and legal empowerment. I also draw attention to the cultural pliability of ideas about democracy and the inevitability in Bolivia of a *rapprochement* between formalized legal norms and alternative legal systems. The paper further highlights the validity of academic insights that highlight the social construction of state institutions and structures and the need to redraw definitions of a social pact. Drawing from an empirical base of anthropological study and historical reflection the paper aims to contribute to recent discussions about pro-poor policy, highlighting the contradictions and possibilities of multi-culturalism and questioning the relevance and applicability of ideas of good governance.

## **AN EXPERIMENT IN LEGAL EMPOWERMENT**

On 6 March 2006, the Bolivian Congress approved a law creating the legal basis for a new constitutional assembly. The Law of Convocation was passed by the Congress in response to the demands of Bolivian civil society groups and renewed popular interest in the country regarding a new constitution, an interest that had been growing for over a decade. Towards the end of the 1980s, a political platform for constitutional change, as a route to increased political participation in governmental decision-making and an end to economic marginalisation, gained increasing support from organisations representing indigenous groups in the lowlands and highlands of the country. According to the Andean Information Network, indigenous organisations advocating a *constituyente* (constitutional assembly) 'sought greater participation in the political decisions regarding the use and distribution of land and natural resources, the allocation of state resources, and national development policies'.<sup>3</sup> In the early 1990s proposals had been made by indigenous communities for the formation of an "assembly of nations", an institutional entity they claimed would allow for the better representation of their interests. Reforms were also made to the national constitution and efforts made to

decentralise funds and powers for local development and political decision-making. However, whereas participation increasingly became a part of the official political rhetoric of the Bolivian government in the course of the 1990s, the general perceptions of Bolivians, and most centrally the country's majority indigenous population, was that in practice the government was overly managing the new legal spaces created at different levels within the state.

These frustrations combined with the real possibilities created by the popular participation and decentralisation reforms created new political possibilities. Most importantly it provided the conditions for the transformation of indigenous and peasant unions, most notably the coca-growers union led by Evo Morales Ayma, into political parties aimed at removing the racist limitations of national elites and transforming popular participation in government. The Movement for Socialism (MAS) rapidly became the main opposition party in Congress. Following the violence inflicted upon protesters by the Gonzalo Sanchez de Lozada government and the ensuing crisis of governance in the country, Morales united the Left and other opposition parties and won the elections with 54 percent of the vote. With the Morales win, the project of a new constitutional assembly became a political reality.

The constituent assembly launched in 2006 was conceived of as 'by and for the people' and MAS was careful to present it that way throughout the presidential campaign. Whilst given little public discussion, the new government's cooperated with lawyers and legal scholars based at the National Electoral Court (CNE) and the National Project for the Constitutional Assembly. In this work considerable inspiration and influence was drawn from radical legal scholarship rooted in Kantian "cosmopolitan" philosophic ideas that emphasise the empowered role of the citizen. The Law of Convocation<sup>4</sup> which created the assembly process, asserts that the government itself cannot intervene in the process and that when the constitution is rewritten by the assembly, it must be approved by a 2/3<sup>rd</sup> majority in a nationwide referendum. And in case this new constitution (created by the assembly) is rejected in the referendum, the old one will continue to be used instead. The date set for the election of *asambleístas* (representatives chosen to re-write the constitution) was 2 July of the same year and gave the assembly the power to write the new constitution. It stipulated that the assembly's activities be known to the public and set the tenure of the assembly to a maximum of one year (Dangl 2007: 203).

According to the Law for the Constitutional Assembly, at least 30 percent of those elected to the assembly were to be women. The Assembly was furthermore to be created out of the participation of representatives, 70 of whom were to be elected through uninominal registration (two by the first majority vote, one by the second), followed by five representatives from each of the departments in the country. The rules set for the assembly also stipulated that the eventual approval of the articles of the constitutions would require a 2/3 vote of support. Following the design of the make-up and voting procedure of the assembly, with the election of the *asambleístas* it was decided that a total of 21 commissions be created to discuss the different elements to be included in the final version of the Constitution. These commissions can be categorised into four basic groups. The

first set of commissions were aimed at reforming the basic formation of the government – its theoretical foundations, the structure of the State, the division of power between the branches of government and between the federal, departmental, and local governments. The second set of commissions focused on the identity of the Bolivian people and their rights – i.e. criteria for Bolivian citizenship and rights and responsibilities of citizens, including education (as a right of all citizens), and social development. The third set dealt with development and natural resources– gas and oil, mining and metallurgy, water and energy resources, coca, land and territory, as well as rural and lowland development and economic development and finances of the State. The final set of commissions were aimed at forming agreements on international relations – including borders, security, and questions of national defence.

The work of each of these popular assembly commissions was exhaustive in trying to bring together different ideas, visions and arguments for change. The Economic Development Commission alone reported that it had received 369 proposed articles from all over the country. Most proposed articles were a few lines to a paragraph or two in length. Each commission, composed of up to three dozen representatives, had to review, debate, and decide on every proposed article. At the end of its one year mandate over 7000 proposals had been made, bringing together the perspectives of government supporters, opposition and *asambleístas* that claimed not to be aligned with any political party. Although, as I will shortly explain its outcomes continue to be debated, the demanding design of the constitutional assembly generated positive democratic approval across the country's political spectrum. Indeed, in 2007 a United Nation's study found that 74 per cent of the public would approve the constitution if the government, civic groups, prefects, and social movement leaders managed to cooperate.<sup>5</sup>

## **THE 'PROPOSAL' FOR A NEW POLITICAL CONSTITUTION**

As a result of the heated engagement of the *asambleístas* and disagreements within and between MAS and the opposition, led by the PODEMOS party, the results of the constitutional assembly were delayed by four months until September 2007. However, despite delays and continued controversy they arrived at a consensus (on 250 articles plus the 517 other articles on which majority and minority proposals were delivered) which has subsequently allowed the Morales administration to assemble the necessary mandate with which to draft a proposal for a new Political Constitution of the State of Bolivia (CPE 2007). While the circumstances of the launch of this proposal from an army base is telling of the sensitive and still contested nature of agreements, on December 15, 2007 the legislative assembly of Bolivia ratified a draft of a new National Constitution (Constitución Política del Estado, CPE) proposed by President Morales Ayma and delegates belonging to his governing political party, the Movement for Socialism (MAS). Following its passage through the legislative assembly and the judiciary, the future and eventual approval of the draft Constitution will now be determined by its submission to a national referendum in late 2008. If it survives this lengthy

process of evaluation and approval, the text of the proposed constitution promises to deliver the legal basis for the formation and identity of a new Bolivian state.

Flamboyantly the opening pages of the new constitution claim to this effect the aim of establishing ‘a state based on respect and equality between all, with the principles of sovereignty, complementarity, solidarity, harmony and equity in the distribution and redistribution of the social product (*producto social*), where the main aim is to live well (*vivir bien*); with respect to the economic, social, judicial, political and cultural plurality of inhabitants; in collective co-existence with access to water, work, education, health and housing for all’. As such, the CPE claims to leave behind the colonial, republican and neoliberal states and assumes the ‘historic right to collectively construct a singular social state based on communitarian pluri-nationalism, which integrates and articulates the proposition of advancing towards a democratic, productive State that assists and inspires a peace committed to integrated development and the free determination of all peoples’. In the following pages of the CPE the expressions of initial idealism are given legal basis through 411 articles reforming the commitments of the earlier constitution of 1967. Aimed at breaking with the established model of government in the country and the formation of a pluri-national state (*estado pluri-nacional*)<sup>6</sup>, its supporters within the government claim that the new Constitution is the key to ending the historic marginalisation of the country’s majority indigenous population (62 per cent of the population according to the last census, INE 2006) and the formation of a more inclusive pact between the Bolivian state and Bolivian civil society.

With regards to the country’s historically marginalised indigenous majority, of particular note are the articles in the CPE explicitly aimed at strengthening the legal recognition and position of indigenous peoples within the Bolivian state. For example, Article 180 recognises that whilst forming a part of a unitary national judicial system, indigenous leaders have legal jurisdiction over their own population and at an equal level to other organs in the country’s judicial hierarchy. This is further supported by Article 191 which states that ‘indigenous nations and peoples exercise their own judicial functions and competence via their own authorities and the application of their principles, cultural values, norms and procedures’. Whilst granting this new legal recognition, the same article importantly further stipulates that ‘indigenous aboriginal peasant jurisdiction must respect the right to life and the rights established in the new Constitution’. In addition, article 290 states that ‘the autonomy of indigenous aboriginal peasant peoples is the expression of the right to self-government and the expression of self-determination of indigenous nations and peoples and peasant communities, the population of which shares territory, culture, history, language, organisation and their own judicial political, social and economic mechanisms’.

Further efforts to reform the existing conditions of the indigenous and wider marginalised peasant communities are made by the inclusion of several articles stating intentions of redistributing government revenues from the newly nationalised hydrocarbon industry, the specified strengthening of gender rights, the direct redistribution of land, the limitation of land ownership, the public ownership of non-renewable natural resources (most importantly hydrocarbons)

and redrawing the political map of the nation through the recognition of political and cultural autonomies (regional, departmental, municipal and indigenous).

### **A LABORATORY FOR LEGAL EMPOWERMENT?**

Reflecting on the processes described above, it is not difficult to see Bolivia as a real-time laboratory in legal and constitutional innovation. However, given the current conditions of continuing violent opposition and contestation in the country it is more difficult to conclude that these legal innovations represent a *de jure* or sustainable legal empowerment of the poor, an expressed goal of the constitutional process. Indeed, with these remaining doubts in mind it is important to further consider to what extent these can have any sustained value in Bolivia's enduring context of political protest and contestation.

Whilst there was cross-party and popular support for the formation of the Constitutional Assembly, the actual process and decision-making of the constitutional assembly was disrupted by persistent scepticism and opposition from sectors of the population threatened by its reformist agenda. In a country with an indigenous majority is 63 per cent, the Constitutional process directly challenges the power and wealth of the country's business elites, centred in the four lowland departments of the *media luna* (half moon) i.e. Trinidad, Santa Cruz, Cochabamba and Tarija, home to the country's wealthiest and whitest population. Reflecting elite interests, the residents in these lowland states where the country's modern agri-business and hydrocarbon reserves are located, have been increasingly militant in response to what they see as the removal of their historic property rights and economic freedoms. Together with conservative business interests in La Paz, the *media luna* have formed a common regional campaign against the constitutional proposals re-designing the identity and nature of the state, against nationalisation and land distribution. In their campaign they demand control over two-thirds of the revenue generated by their regional economies combined with increased political and fiscal autonomy. Bolivian natural gas, all of it located in the country's eastern lowlands, generates millions of dollars of annual revenue that are now disputed in a tug of war between national, regional and local governments. Eastern agrarian and forestry lands constitutes the extractive frontier of an export-oriented economy, and with mineral prices rising in recent years, private cooperatives allied with transnational capital have clashed with the government over its plans to rebuild and nationalise the state-run mining company. Massive deposits of iron-ore in the far-eastern Mutún field (department of Santa Cruz) will soon be exploited by India's Jindal Steel. The new markets in Asia promise a flood of income and the region's resources and territorial power have mobilised expectation and interest amongst local elites into a dangerous frenzy.

With so much at stake the temperatures in the departments of the *media luna* have run to the point where expressions of racism and political loyalties have become ever more extreme. The self-proclaimed 'Camba Nation' of lowland Bolivia now threatens secession from the Andean portion of the country and utilizes the rhetoric of historical disadvantage, multi-culturalism, ethnic difference

and cultural self determination to defend regional interests in benefiting from the exploitation of local hydrocarbon resources and fostering a booming economy in the region (Lowrey 2006). Extremist voices have grown in strength and are becoming increasingly intolerant of ethnic difference – differences that also express contrasting political loyalties. These intolerances have been made evident in the public statements of local authorities as well as violence against government supporters. In its 19 December 2007 issue, Brazil's left-of-centre news weekly, *CartaCapital* reports that the mayor of Santa Cruz de la Sierra, Percy Fernández, as saying: '... from the look of things, we'll have to paint our faces and use feathered arrows to be able to exist in this country'. While fistfights have been started by the opposition in Congress, the constitution assembly has witnessed disruptive violence. The most notorious example of political violence expressed by the right is, however, the Cruceñist Youth Union (Unión Juvenil Cruceñista, or UJC) attack on peasants and pro-MAS marches<sup>1</sup>. The tactics of violence have been spreading to other urban centres in the *media luna* and connections are being made between wealthy youth, rural paramilitarism, the remnants of the far-right Falange party and the civic committees and 'self-defence committees' of local elite and business leaders.

In an early attempt to respond to opposition and secessionist voices, the MAS government introduced the idea of a referendum on the question of regional autonomies parallel to the referendum responsible for the formation of the constitutional assembly. The referendum, coupled with the assembly election to pacify conservative factions in the eastern departments, asked citizens to vote yes or no on "autonomy", the transfer of power to their departmental government rather than central government. MAS won 135 seats in the assembly while the right-wing PODEMOS won 60, and Unidad Nacional won 11. However, the MAS did not get all they had hoped for- 2/3 of the seats (170 out of the 255) were needed to control the assembly. In the referendum on autonomy for the provinces, the NO to autonomy won 54 per cent and the YES won 46 per cent nationally. This close run race left the Bolivian population and the *media luna* with the impression that there was sufficient support for both their proposals of autonomy. However, whilst the referendum results on autonomy granted greater authority to departmental governments through existing decentralisation measures, the vague wording of the referendum left the further redesign of regional powers to the constitutional assembly. The MAS proposal to the assembly includes four levels of autonomy (departmental, regional, municipal, and indigenous) with equal status and subject to national laws. This was, however, opposed directly by the opposition in the *media luna* who reject the idea of parallel autonomies, and in the interest of continued regional economic control advocate only the idea of departmental autonomy. Blocked in their definition of autonomy by the government proposal and the constitutional assembly's conclusions the regional opposition decided to demonstrate its disgust with the constitutional process through a series of quarrels and protests designed to simply disrupt wider discussion. The constituent assembly entered gridlock in arguments over voting

---

<sup>1</sup> See [http://www.la-razon.com/versiones/20070829\\_006013/nota\\_245\\_472727.htm](http://www.la-razon.com/versiones/20070829_006013/nota_245_472727.htm)

procedures. Violent and circular debates over the revived issue of the location of the nation's capital were also used to block the progress of the *asambleístas*. The small colonial city of Sucre, the judicial and historic capital of Bolivia, with the backing of eastern elites proposed to the assembly that the political capital of the country should be moved from La Paz. In refusing to take no for an answer tensions throughout the period of the constitutional assembly remained high, and some sectors demand the transfer of the Assembly to another city, or even its dissolution.

Opposition to the process of the Constitutional Assembly has also come from other sectors of the Bolivian population. Here the principal question and concern with MAS's efforts to ensure its continuing political hegemony over political process in the country. As the election date for the constitutional assembly approached, criticisms emerged about the organisation of the electoral race and the formation of the assembly. Though MAS policies and candidates for the assembly had support, many Bolivians complained that the way in which the elections and assembly were organised excluded the country's social movements. As Jim Shultz, Director of the Democracy Centre in Cochabamba commented in order to qualify to run a candidate in the election, 'Unions, indigenous groups and other social movements had to hit the streets and gather 15,000 signatures each – complete with fingerprints and identification card numbers – in a few weeks' (Dangl 2007: 204). As a result many powerful social and labour organisations outside of political parties were blocked from participating in the election. However, MAS militants were quick to point out that many social and labour groups are operating within the party: of the 50 MAS *asambleístas* from La Paz, 18 are leaders of labour and social organisations. Many of the MAS politicians belong to unions, indigenous groups, and neighbourhood councils, and some are leaders of coca farmer, miner and student organisations (Ibid, 204).

With the eventual release of the text of the proposed new constitution in December 2007, the violence of the opposition has continued to grow. Disputes over the content of the text have aggravated political conflict and led to the deaths of three people. Opposition and conservative sectors including the *media luna*, who boycotted the Senate's vote on the Constitution, have continued their claims for autonomy, and denounced the text claiming the procedure of its passage was illegal, passed with only a third of constituent delegates absent. Despite inclusive wording of the text, opponents have claimed the new document only represents indigenous peoples, discriminating against mixed (*mestizo*) and white (European) populations. Supporters of the constitution and its reforms claim that it makes progress on religious freedoms, the fight against corruption and gender equality, with guarantees that more women will run for Congress and have cabinet jobs. However, critics oppose Morales' attempt to create a communal justice system and a complex web of regional and indigenous autonomies. They also baulk at a requirement that all public officials speak at least two languages -- Spanish and one of 36 indigenous tongues. As Victor Hugo Cardenas, who served as the country's first Indian vice president in the 1990s, critically noted, 'This constitution proposes the creation of two Bolivias: one for indigenous people and another for non-indigenous people, with separate and parallel judicial systems and

languages'. He went on to claim that in this new constitutional reality 'only the indigenous people are first-class citizens'<sup>2</sup>. Another sticking point is the incorporation of indigenous communal justice into the judicial system on an equal footing with the national judicial system. In stating that communal justice is decided collectively, critics argue that the constitution disrespects individual rights and in instances where communal justice includes physical punishment will furthermore break accepted conventions on human rights. As a result of the growing levels of tension in the country a number of foreign and national analysts now fear that Bolivia is not only on the verge of further political crisis, but a possible civil war.

## **REBELLION IN THEIR VEINS**

The stability and sustainability of Bolivia's recent legal experiments in relation to the empowerment of the poor would, from the perspective of these ongoing pressures, seem to be in doubt. Indeed, further doubts about the sustained significance of recent constitutional processes and reforms also stem from Bolivia's much longer history of political turmoil and conflict. Bolivia has and remains a country where revolt and contestation, violent and peaceful, have taken on record-breaking proportions. Whereas conflicts of various kinds are a common part of state formation processes elsewhere, a quick glance back at Bolivia's 'formative' history and those events that are celebrated in the country today gives a 'tip of the iceberg' impression of what some have called the country's tradition for cycles of rebellion from imposed norms and governance.

The political history of Bolivia represents an apparent historical paradox. For close to six hundred years Bolivia has been subjected to control by a succession of rulers stemming from the territory's invasion and annexation by the Incan Empire, the Spanish Conquest, to a series of national and regional elites who in the years after independence coveted and exploited the natural riches of the Republic (Rasnake 1988). However, while in the course of its national history Bolivia has learned to accept the imposition of various state forms, it is clear that none of the 'symbolic universes' (i.e. systems of values and common conceptions) supported by these systems have ever fully taken hold. Thus, despite being the site of over 600 years of cultural and political domination and acculturation, Bolivia's national identity and limits have remained deeply in question. Although there is no room here to recount all these events we can highlight events such as the mass rebellions in the 18<sup>th</sup> century, Bolivia's involvement in the Wars of Independence, the civil war of 1899, the National Revolution of 1952, the creation of the indigenous Katarista movement and protest in the 1970s and 1980s, the mass mobilisations and marches of the highland and lowland indigenous movements in the 1990s, and the last five years of protest focused on questions of sovereignty and ownership of natural resources in the country (e.g. water, land, oil and gas).

In recent writing referring to the recent context of protest in the country a series of authors have highlighted in their reading of events the continuing

---

<sup>2</sup> See <http://www.javno.com/en/world/clanak.php?id=118849>

salience of earlier interpretations of Bolivia as a political culture where rebellion remains embodied in the veins of its people (Dunkerley 1984). Among some of these authors, the question has also been raised whether the thesis of a 'fragile' or 'failed' state needs to be raised. Policy documents produced by the World Bank and the British Department for Overseas Development (World Bank/Dfid 2005), although listing Colombia as the only country in the region as 'failed', also list Bolivia as one of the countries that is in danger of crossing a limit of acceptable stability. The concepts of fragile, failed or collapsed states in policy circles have been applied to states where the principles of territorial unity, legitimate monopoly over the use of force and constitutional law are seen to not apply. Although originally formed as a means of drawing up a list of countries that because of institutional weakness needed assistance, the generalisations born by these concepts fail to take account of different state forms and have been all too easily manipulated by politicised efforts to discredit and therefore exclude countries undergoing regime change (Tadesco 2007). In Bolivia and elsewhere in Latin America accusations of failed and fragile states continue to be used by the political right to discredit what they have over simplistically interpreted as a dangerous wave of rejuvenated socialism sweeping across the region.<sup>7</sup>

Although sceptical to the terminology of fragile and failed states, recent academic work produced both within and outside the country has nonetheless retained some of the sense of enduring ailments to democratic stability and sought to place recent protest within historically founded arguments about the cyclical nature of rebellion in the country. Laserna (2002) has argued for an interpretation of events in Bolivia as belonging to a political tradition of 'forced negotiation' where as a result of differing forms and expressions of national identity, modernity and political organisation being joined together, the Bolivian state has been forced to retain legitimacy through the continued renewal of social pacts. This is reminiscent of Tristan Platt's earlier arguments (1982) about the political and economic necessity of a series of social pacts in the course of the colonial and liberal period of Bolivia history. Lazar (2006, 185) has also argued that the Bolivian 'uprising' was not a spontaneous upsurge of popular anger with government, but rather an event that built upon well-established patterns of political behaviour, 'where corporate groupings – the social sectors – have become used to direct negotiations with the government'. This formed a 'normal' (at least for Bolivia) democratic cycle of protest (negotiation-agreement-government renegeing on its promises-renewed protest) that only broke down when the army started to kill protesters.

With a focus on a more recent rooting of the conditions for instability Ton Salman (2006) has argued that consideration must be taken of the troubled modern historical development of Bolivia's democracy. Salman points at the convergence of factors i.e. the high expectations after the return of democracy, the introduction of a neoliberal economic model that pushed people into the informal sector, the rise in unemployment and the inability and unwillingness of the government to open real dialogue with these sectors in the formation of policy. Drawing on Diamond (1996; 1999) and his efforts to tease out the mutual dynamic that would enable the consolidation of a country's democratic system,

Salman highlights how these factors created an impasse, or ‘jamming of democracy’ between the interests of the population and the political elites in Bolivia. Salman supports therefore Diamond’s (1996, 237) scenario in which ‘[a] hyperactive, confrontational and relentlessly rent-seeking civil society can overwhelm a weak, penetrated state with the diversity and magnitude of its demands, leaving little in the way of a truly ‘public’ sector concerned with the overall welfare of society’ as an appropriate explanation for the road towards recent political crisis in Bolivia. Here the hyperactive and unfocused or fragmented nature of the political agenda of civil society is considered equally responsible for crisis as the unresponsive state. In his interpretation of the recent protests, Salman (2006, 232) notes that ‘most actions and manifestations do not reveal a coordinated or event cognate cluster of views and proposals...Many incidents are ad hoc and isolated, triggered contingencies’.

### **AN INSURGENT STATE**

Taking this series of analyses together with the short characterisation of Bolivian history above, a well-founded argument about the unruly and recalcitrant nature of Bolivian society can be made. From this historical reflection it would appear that because of the embedded nature of prejudice and social divisions no political project in Bolivia, past or present, has any sustained value or sustained impact as the basis of a lasting social pact between state and population. Nonetheless, we should be further aware that many of the authors involved in the study of Bolivian political history would be rightly unhappy with this overly simplistic and one-dimensional characterisation of Bolivian political reality. Indeed, while Bolivian history is troubled, this does not present the entire picture. As the historian Steve Stern correctly argues with regard to the nature of peasant resistance in Andean society:

Whilst most illustrative through in moments of disjuncture, resistance should not only be reduced to spectacular moments of crisis leading to rebellion. Peasant political action tends to be reduced to its most dramatic and abnormal moments of rupture, defensive mobilisation against harmful change or of collective violence against authority... Although the literature recognises that peasants have placed their own stamp on the political histories of their regions and countries, it shrinks such impact to moments of crisis leading to rebellion. During “normal” times, peasants recede from the political picture. (Stern 1987, 9)

Stern highlights here the necessity to consider other ways of thinking about the troubled history of Bolivia, and I argue that this can be extended to think about the significance of recent constitutional politics in the country. Here we need to fill the gaps between the dates of rebellion, revolution and protest with recognition of the manifold ways in which the population of this country, rich and poor have and continue to engage with their political worlds. Bolivians across the divided social

sectors are involved in the shaping of their society, not just as reactors, but sometimes in the role of political innovators and in checking the power and influence of political leaders. The sense then given is that when trouble occurs it is with purpose. Although perhaps over stretching a regional comparison, it is for this very reason I have borrowed, and baked into the title of this chapter, the idea of ‘insurgent citizenship’ from work by Dennis Rodgers) on the *mara*, youth gangs of Nicaragua (2007). Rodgers (2007, 10) nuances the picture of the *mara* created by earlier writers by arguing that the gangs provide ‘micro-regimes of order as well as communal forms of belonging to definite, albeit bounded, collective entities, in a wider context of chronic insecurity and social breakdown’. Drawing on the earlier work of Holsten (1999, 158), Rodgers argues that the *mara* correspond to a form of ‘insurgent citizenship attempting to violently construct new spaces for “possible alternative futures”’. For me a fitting parallel can be made here to Bolivian militancy. The idea of insurgency captures both conflict and reflection, and also draws attention to the overriding goal of most Bolivians excluded from the political process to use rebellion, revolution and protest as a catalyst for political reflection, and as a means to go beyond opposition by engaging with and entering into the state.

## **A LEGAL STATE**

As much as Bolivia is striking for its history of political unrest it is equally notable for its exceptional history and culture of law. This should be obvious for anyone spending any length of time in Bolivia’s cities, towns and villages where ethnographically everyday life and commerce has an obsession with legal documents, stamps of office, public notaries, courts and lawyers. In the course of carrying out anthropological research in the country it has been impossible to ignore the queues, fees, arguments, bribes and piles of weathered historical documents stacked in public offices both local and national. And this has produced -- just as it has in many parts of the world – an institutionalised legal culture.

Throughout the colonial and republican periods Bolivians not only contested the legal validity of their state, but took a clear interest in the formation and change of law-making within their territory. The national archive in Sucre as well as the local historical archives found in Bolivian cities and towns bear witness to the constant engagement of not only the elite, but also of local peasant and indigenous communities in the changing process of local and national governance. Throughout this history a constant flood of petitions about the injustices of corrupt government, taxation, crime and the limits of property and political territory were exchanged between subjects, citizens and their leaders (Abercrombie 1998). Such documents not only give an indication of the respect that Bolivians had for law, but the desire to integrate local ways of understanding and organisation within the formal *de facto* functioning of colonial and republican jurisprudence. This necessitated the formation of an elaborate system of law and movement over time towards a legal system in Bolivia that demonstrated a clearly separate character to that defined by the territory’s colonial masters in Spain.

By the 18<sup>th</sup> century, Bolivia, as part of Alto Peru, had amongst other territories in the Americas developed a system of law and a constitution that manifested its own particular regional characteristics. In the 19<sup>th</sup> century, military insurgency and the decisions made by the strong-arm leaders (*caudillos*) inheriting the republican state were made in connection and correlation with deliberations with the legislature and legal system (Luis Roca 2005). Indeed, even before the liberal republican constitution of 1826 was formulated by Simón Bolívar, after whom the country takes its name, another fourteen attempts had already been made to form constituent assemblies. This was the start of a constitutional history in the country that reflected Bolivia's origin as a federation of states and a struggle between forces for centralisation and decentralisation similar to that seen today (Van Cott 2000).

Roughly speaking the long history of constitutional 'engineering' – carried out by Bolivian leaders to legitimate and institutionalise powers that were often taken by force rather than ballot – fall into two forms, or 'republics' (Molina and Arias 1996: 11). In the first of these republics, the Constitution of 1826 designed by the liberator Simón Bolívar established a centrist and largely liberal tradition based on a separation of political powers. In the 1826 Constitution, electoral rights were granted to all citizens, but initially citizenship was only legally acknowledged as pertaining literate and property owning individuals. Further, although bicameralism was introduced into the constitutional reforms of 1880s and suffrage expanded to all following the 1852 Revolution, little of the essentially state centrist structure and spirit of the 1826 constitution were changed until the Constitution of 1994. As a result of restrictions for reform written into the 1826 and 1967 constitutions, it was not until the 1990s that proposals for a change to the country's decision-making powers could be pushed through. Thus, for example, Article 4 of the 1967 Constitution had stated that the people deliberate and govern only through their representatives, effectively proscribing direct participation (Lee Van Cott 2000).

In the mid-1990s, this centralist tradition was, however, left behind by a series of political and legal reforms that pushed for more direct forms of citizen participation and the legal possibility of public consultation through referendum. The causes and character of these reforms are of particular importance here as they not only indicate the start of a new era, or 'second republic'; but as the direct progenitor of the current constitutional process, their explanation and setting in time helps to define the more lasting importance and value of these processes. In the late 1980s and early 1990s, Bolivian intellectuals, including educated representatives from indigenous communities, argued that the political regime in the country although now democratic in name, lacked a genuine pact between society and the state. In contrast to earlier efforts at pact-making, political elites began to propose a move towards constitutional reform that would 'respond to the severe crisis of governability and economic stability that accompanied the transition from a military regime to democratic administration' (Van Cott 2000, 133). Drawing experience from Colombia and Rousseauian and Sieyésian arguments, a proposal was mooted highlighting the need to reflect the constituent power of the people, and not the state, as omnipotent. In the years leading up to

the 1994 constitutional reform, this argument found its way into powerful political circles and was supported by the president of the Supreme Court.

Although these elite efforts were largely ignored by the now established indigenous and peasant movements in the country, their influence on reform processes ran parallel and were expanded by concurrent and not unrelated efforts to push for and design a multi-cultural state. Despite the fact that a majority of Bolivia's population has an indigenous background, until the 1990s 'multi-culturalism' had had no basis in earlier policy or legislation. The 1967 Constitution made no reference to indigenous peoples or ethnic minorities in the country, referring only to community lands and *campesino* (peasant) unions. Ordinary legislation referring to Indians in force since the 1980s pertained primarily to the lowland indigenous population; it recognised the existence of customary law, but declared the Indian populations as not fully responsible for their actions because of their primitive state, and placed them under the protection of the Bolivian state (Van Cott 2000, 135). In the late 1980s and early 1990s, this legal positioning of ethnic diversity of the country became increasingly unacceptable as a convergence of new pressures and political expressions came to the fore. In this period, the confluence of growing indigenous movements and ideology and the expansion of rights discourses and commitments coupled with elite desire to demonstrate the stability of Bolivia's investment climate through further democratisation and the ratification of international agreements opened the door to a rich debate on decentralisation and multi-culturalism. The political left, social movements, anthropologists and intellectuals (including well-educated indigenous activists) debated alternative conceptions of a 'pluri-cultural' Bolivian society and state, which might be achieved in the future through comprehensive constitutional reform.

### **THE FIGHT FOR MORE THAN A PLACE AT THE TABLE**

Bolivia's history of insurgent citizenship hangs very closely together with a history of law and constitution making. Indeed, from the above discussion it is clear that the history of insurgent citizenship hangs very closely together with a sustained politics and the desire of the marginalised majority, indigenous and peasant communities, for direct participation in Bolivian state affairs. The history of insurgency and history of constitutionalism above also makes very clear the consistent efforts of the poor, broadly defined, to push first for recognition, then for inclusion and more recently for 'more than a place at the table' (Rivera Cusicanqui 2006), i.e. to have a direct role in political decision-making. Whilst threatened by the opposition of elites and by its own internal contradictions and inconsistencies, it is perhaps this politics of participation that is the lasting legacy, or at least lasting contribution towards emancipation, of the recent constitutional assembly. Given the tensions in the country it is uncertain whether the text of the proposed new constitution will ever have legal authority, or indeed if the country will maintain its democratic rule of law. However, while possibly the Bolivian political culture of 'insurgency' is likely to continue, it is the ever growing recognition and role of Bolivia's marginalised indigenous and peasant populations

that is the irreversible and lasting significance of recent legal processes. Even if threatening civil war, these sections of the population are determined not be excluded from a process that will determine their own political and development futures. In this sense, although the rule of law in Bolivia remains in question, the sustained value of the recent constitutional assembly as an experiment and source of legal empowerment for poor Bolivians should not be in question.

Indeed, and in addition to the context of international market economics where high oil, gas and mineral prices help to create favourable conditions for a country with vast untapped resources, there are also some political signs that the international community and neighbouring countries understand the democratic and economic importance of the internal processes of changing citizenship in Bolivia. Despite the radical and controversial nature of recent Bolivian reforms and political processes, Bolivia has not become the international pariah that right-wing and conservative analysts in Europe and the US expected it to become. And while the US government has expressed its concern over the dangers of the current Bolivian government's socialist and populist orientation, other governments have looked upon the transformation of Bolivian political culture as positive democratic development. As a result, a series of bilateral trade and development assistance agreements have also been signed with the EU, a number of European countries and other Southern powers such as India, China, Japan and Iran, in addition to the multilateral economic exchange agreements with Venezuela and Cuba. Although the international media reported that international companies with interests and investment in Bolivia's hydrocarbon resources were caught unaware by the Morales' government's decision to nationalise, recent research and investigation reveals that because of pre-negotiations and the lack of true expropriation these interests were well-prepared and willing to renegotiate the terms of their contracts in the country. Indeed, neighbouring countries with similar left-wing reformist tendencies to those of the Morales government, such as Brazil and Argentina, have signalled their intent to accept these changes as part of their intent to demonstrate solidarity and assist necessary democratic change.

On the day after the Congress ratified the text of the newly proposed constitution, the Bolivian government received an official visit of the Chilean and Brazilian governments in La Paz, accompanied by the CEO of Petrobras.<sup>8</sup> In a public address given on the last day of his visit in La Paz, Brazil's President Lula da Silva begged both sides for 'patience, patience and more patience' to deal with internal 'political disturbances'. Lula and Chile's Prime Minister Michelle Bachelet's wider message was also made clear. There would be no support from neighbouring governments for regional separation and an undermining of Bolivia's national federation.

## **REFLECTIONS ON WIDER THEORY AND PRACTICE OF LEGAL EMPOWERMENT**

Although the persisting nature of contestation and political instability in Bolivia cannot be avoided, recognition of the historical balance of respect of law with insurgency and of the recent character of constitutional processes in Bolivia to

address this balance highlights the country as an important case for more general reflection on questions of legal empowerment. Because of its sustained history on a knife edge between rule of law and collapse, of exclusion and a sustained drive by the marginalised for inclusion and empowerment, Bolivia is a source of innovative ideas and of reflection about the wider theoretical and practical possibilities and limitations for legal empowerment in a multi-cultural society. I will highlight a number of issues related to the legal empowerment of the poor where the Bolivian case as described above gives serious reasons for pause.

The global context of neoliberal governance and economic liberalization has meant that development policy has common impacts and applies common tenets around the world. Of these tenets one of the most widespread has been the drive, since the end of the 1980s -- first by non-governmental organizations and then by governments -- to encourage citizens' participation in economic development and political life. This idea was supported by the growing influence of international human rights frameworks and the increasing popularity of participatory development methodologies and rights-based development projects. Recognizing the social cost of structural adjustment policies, the World Bank and Latin American governments gave further currency to these ideas in an attempt to put a more 'human' face on the pro-market economic policies. In the 1990s the growing emphasis on participation in development was further boosted by international drives to recognize ethnic diversity and bring previously marginalized groups, and specifically indigenous peoples, under the umbrella of state and international institutions. The other element in the development of a new 'politics of difference' during the 1990s was the impulse to promote indigenous rights at the international level. The native 'peoples' were firmly established as subjects of rights in the international legal order, and by the end of the decade the United Nations had set up a permanent Forum on Indigenous Peoples with offices throughout the world. As a consequence, individuals and groups were significantly empowered to raise claims against the state. Responding to these changing conditions and the need to have access to international development assistance, many Latin American countries added policy packages modernizing the national infrastructure, and targeting marginalised indigenous populations. In Bolivia, this took the form of reforms aimed at popular participation and administrative decentralisation (McNeish 2001; 2005; 2006).

As a result of multi-cultural reforms, there was a genuine increase in the numbers of indigenous peoples taking part in local politics and decision-making. Furthermore, the introduction of these reforms created avenues for the incorporation of increasing numbers of indigenous people as state employees, not only at the local level but, to some extent, also at the national level. The opening of spaces within the state has also been used by indigenous groups to try to gain a foothold in processes of decision-making that affect their communities and the country. However, as we have already seen with regards to Bolivia, it soon became clear that the spaces opened by the politics of multiculturalism and participation were narrow and fraught with limitations. It is with these limitations in mind that, in the separate contexts of Guatemala and Bolivia, Hale and Milliman (2004) and Rivera Cusicanqui (2006) have used the phrase *indio*

*permitido* to refer to situations in which, while indigenous culture is now permitted, the interests and demands of the native populations remain subordinate to those of the *mestizo/ladino* (mixed race) society, the dominant national identity, and the wider international community. Multicultural reforms have produced novel spaces for conquering rights, stimulating the development of new skills that often give indigenous struggles a sophisticated allure. However, as Hale (2002) argues, we must become aware that a menace resides in the accompanying, unspoken parameters of these spaces: the reforms have pre-determined limits; benefits to a few indigenous actors are predicated on the exclusion of the rest; certain rights are to be enjoyed on the implicit condition that others will not be raised.

Evidence from the recent years of protest and even more so from the recent years of the Morales government in Bolivia demonstrate, however, that there are limitations to the arguments above.<sup>9</sup> Although the minimal changes to national economic models appear to support arguments claiming the capture of identity politics by neoliberalism, the push in recent years by indigenous peoples and previously excluded peasant communities to enter into and transform the central decision-making apparatus demonstrates at least a partial failure of efforts at control. Indeed, we can see in these more widespread efforts and in the constitutional processes above, the ability of indigenous peoples and other marginalised sectors to generate their own critique of both development processes and the state. Moreover, the constitutional processes and longer history of a drive for participation described above point towards a re-definition of the concept of democracy and with it the basis of a rule of law and of the requirements for ‘a good life’. For example, the proposed constitution of Bolivia states that it guarantees a condition of ‘living well’. There is thus confirmation of an interest not only in basic needs, but also in the ‘desire’ (Fischer and Benson 2006) for both greater individual economic opportunities and a better share of the national wealth.

Interestingly, to some extent this demonstration of agency is in keeping with movement in academic and development theory that have shifted understanding and emphasis from static to active, from limited to expansive and from consensual to confrontational, e.g. from social capital (Putnam, Leonardi and Nanetti 1993) to the multitude (Hardt and Negri 2004). Renewed after relevant critiques and now more clearly stated, support has also been given in recent years by development scholars to more active ideas of participation. For example, Amartya Sen stresses, in a recent article, the need for participatory decision-making ‘based on open discussion, with adequate opportunity for the expression of minority positions’ (Sen 2004, 53). Indeed, while examples of the failure of participatory development abound (McNeish 2001; 2005; Cooke and Kothari 2001), there are now well-acclaimed examples of empowered participation from Brazil, the US and India in which participatory budgeting and planning have apparently succeeded in addressing the diverse needs of the poor (Fung and Olin Wright 2003). These examples demonstrate that participation can lead to a process of local democratisation that is very different from the now recognised harmful results and limitations of neoliberal-inspired policy regimes. Linked to these

academic discussions there has also been a growing interest within the international development policy debates in development ethics and ‘deliberative’ democracy. Drawing on the work of John Rawls, Gargarella (2003) argues that democracy should be seen as a deliberative forum where we all have the opportunity to re-evaluate, clarify and/or change our established views. Further support for a ‘deliberative’ approach has also been forcefully made by Pogge (1994) who critiques Rawls’ ideas of deliberative justice by questioning his loyalty to liberal ideals premised only on the individual citizen and the failure to account for the impact of international structures. Pogge (1994, 216) thereafter makes a clear case for a deliberative democracy which rests on tolerance and recognition that other communities may autonomously and reasonably decide not to follow some of our most fundamental recommendations. This is a proposal that would appear to accommodate the goals of recent constitutional processes in Bolivia.

Beyond demonstrating an expansion of the meaning of multi-cultural reform, the experiences of Bolivian constitutionalism can also be considered as giving a completely new spin to the ‘De Soto agenda’ (2006) – where the marginalised themselves dictate the terms of capital transference and of judicial titles. Indeed, we see that the definition of legal empowerment here goes well beyond the limited sense of economic reliance on the bottom end of the market expressed in de Soto’s thesis of transferring ‘dead capital to live capital’ through land titling (De Soto 2006). Although from a Northern perspective there might appear to be a series of inconsistencies in devising a mixed system where private and communal property rights can co-exist, in the discussions of the constitutional assembly and draft constitution in Bolivia, it is possible to see a mode of thinking that whilst not completely avoiding capitalist definitions of ownership and commoditisation (clearly Bolivia’s long history of globalisation and inclusion in international markets has left its mark), does reintroduce the possibility of public co-determination and the social meaning of natural resources. And while there is no sign in the constitution of an anti-globalisation stance per se, there is a clear desire in recent Bolivian constitutionalism to reform the terms of globalisation and to create a legal platform from which to secure public sovereignty over national resources and their economic value. However, in this new legal definition, Bolivian indigenous communities are seen as the responsible intermediaries between these resources and the state. It is this that gives sense to the constitution’s proposal of mixed definitions of property ownership, of political autonomies, of the nationalisation of non-renewable natural resources. It furthermore fits with Bolivian indigenous cosmologies general acceptance of nature not as commodity, but as agency. In Bolivia, national significance is now added to the anthropological recognition of the ‘social life of things’ (Appadurai 1988).

Although highly debated and volatile in the current context of debates on Bolivia, the linkages between Bolivia’s history of political instability with structures of exclusion explained above demonstrate quite clearly the self-evident necessity of at least considering legal pluralism as a means to resolve conflict. Indeed, the histories laid out above demonstrate why human and indigenous rights

or notions of individual and communal rights are necessary in the context of Bolivia. As a multi-ethnic society Bolivia contains ethnicities that are not only dependent on, but are defined by contrasting individual and/or communal notions of political, economic, social and political rights. However, the mixed system of rights that appears to be adopted in Bolivia does not solve the remaining tensions between these different and at times competing ideas of inclusion and citizenship. The conflict over resources and political autonomies (most often about territory) in the country is connected to this tension, and the rumours of coming conflict perhaps indicate that whereas solved in law the practical limits of the relationship between individual and communal economic rights are being tested to their limits.

The relationship of customary law with the national judicial system also raises a series of important questions about possible status, conflict and practicality. In recent Bolivian press editorials questions have been raised about the new constitution's granting of equal status to customary forms of law which are seen as threatening the overall authority of the national judiciary and the Supreme Court.<sup>10</sup> As a result of connections being made between customary law and extra-judicial punishments stretching from whippings to hangings, harsh questions have also been raised in these editorials about its threat to the protection and promotion of basic human rights. However, it must also be recognised that in general these fears are either driven by equally threatening prejudices, or a lack of analyses and knowledge. As has been pointed out in responses to these editorials, the proposed constitution whilst recognising the equal status of customary law also states that the entire judicial system of the country will have to respect the basic rights expressed in the constitution. The association of customary law with severe forms of corporal punishment has also been shown to be baseless. And although the incidence of various forms of corporal and violent punishment have grown in recent years, research demonstrates this to be connected with a growth of vigilantism in urban and rural communities stemming not from customary laws, but rather a breakdown in the legitimacy of state law enforcement and security (Goldstein 2004). In the highlands of the country indigenous leaders do carry whips and batons, but the silver inlay of these items is designed to indicate their significance as symbols of power, sanction and lineage rather than crude brutality. Added to this is also crucial to highlight that what is so special about the Bolivian example is that thinking on the introduction of legal pluralism into the state system has not been limited to the fundamentalist preservation of cultural forms.

Inspiration for discussion and inclusion of legal pluralism within the newly proposed constitution was not only derived from demands by indigenous organisations for an acceptance of their customary legal norms, but importantly from a combination of these demands with the thinking of legal and political scholars also interested in a legal revolution in the country. As mentioned earlier, my interviews with representatives of the National Electoral Court responsible for guiding and constructing the process of constitutional assembly showed that they had gained important inspiration from radical legal and social philosophy. Added to this, academic elites in the country had also been taking part in a long debate about the integration of customary forms of law that dated back to the start of the

1980s. And in the 1990s the World Bank had financed a research project (led by a well-known Bolivian anthropologist) which considered the integration of customary law as an issue crucial to Bolivian national development and stability, and from which a number of national publications were produced (interview with Ramiro Molina Rivera, Bergen 24/09/2004). Out of these processes of debate and discussion on legal reform and the growing acceptance of the need to create the basis of greater social inclusion, ideas developed that increasingly looked for ways to merge customary legal norms with more radical notions of legal empowerment and inclusion. Here ideas such as Beckmann and Beckman's (2008) mapping of legal-diversity, Moore's 'semi-autonomous fields' (1978) describing the interaction and overlap of legal norms, and Boaventura de Sousa Santos' (1995) important sociological thesis of 'inter-legality' (*inter-legalidad*) i.e. a way of describing the multiplicity of legal orders and the relationships that exist between them,<sup>11</sup> have been transformed from abstract notions to forming the basis for a practical experiment in rapprochement between contrasting legal norms, now enshrined and given official validity in constitutional debates and proposals.

Finally, reflection on the Bolivian case along with the country's history invites further important reconsideration of established ideas of governance and state. In Bolivia, ideas of good governance that rely only on formal arrangements of economy and politics and established institutions, has little significance or possibility for practical implementation. Defined as an insurgent state, as I have argued above, conclusions of state fragility and failure have little significance for determining the condition and value of democracy in the country. The modern, republican and colonial histories of territory that is Bolivia demonstrates that the state of insurgency exists because of a majority desire for democratic participation and rule of law. In thinking about the Bolivian state and its governance we need to therefore move from the rigidity of Hobbesian conceptualisation that still has purchase in the international good governance agenda to a more fluid and anthropological understanding. As Hobbes saw it, the sovereignty of the state is established in the accepted representation of the *volanté generale* producing citizens as well as subjects; as a source of social order and stability; and as an agency capable of creating a definite and authorized nation-space materialized in boundaries, infrastructure, monuments and authoritative institutions (Blom Hansen and Stepputat 2001). Although acknowledged as a 'myth of the state' that persists in everyday experiences and in common understandings of what a functioning society is, in recent anthropological work on the state this abstracted, isolated and hegemonic conception of the state is increasingly being questioned. Following Corrigan and Sayer's (1985) work on the state in Britain, a growing body of work has begun to chart the historical trajectories and often contingent nature of state formation (Blom Hansen and Stepputat 2001; Sharma & Gupta 2006; Krohn-Hansen & Nustad). Inspired by Gramscian notions of class power these studies examine the way in which ideas of state are articulated in practice through fragile and contested hegemonies. In this manner states are seen to be both illusory and concrete. These studies also demonstrate that modern forms of state are not simply created according to a recipe of formality such as expressed in

the good governance agenda, but are rather in a continuous process of construction, and such constructions take place through invocation of a bundle of widespread and globalised registers of governance and authority – referred by some anthropologists as ‘languages of stateness’ (Blom Hansen and Stepputat 2001, 5; Bourdieu 1998, 55).

In adopting the idea of ‘languages of stateness’, there is acceptance of the fact that there are other languages or expressions of stateness than those invented in Europe (Geertz 1980). Moreover, it has opened the way for studies to be made of the co-existence and clash of competing languages of stateness with particular contexts, and recognition of the ability and agency of non-elite, marginalised, peasant communities in the formation of their own languages of state. Nugent (1993) for example has, through an anthropological/historical study of state relations and the legacy of the Mexican Revolution in Namiquipa, Mexico, argued against common contentions that peasants lack a politically structured ideology. Looking simply at the state obscures an understanding of alternative forms of power and identity, of movement and action which create ‘oppositional cultures’ and alternative spaces of power. Nugent goes on to argue that in this context community and state were formed through a mutual dialectic of cultural struggle.

Nugent’s and the work by others on languages of stateness and of the mutual dialectics of cultural struggle would again in reflection help in drawing out the significance of the Bolivian case. It draws attention to the fact that although constantly threatened by rebellion and opposition, this very insurgency is a needed ingredient of democracy in Bolivia. Bolivia demonstrates what might be called a ‘high-intensity democracy’, that stands in strong contrast to ‘low-intensity democracies’ (Racamora, Gills and Wilson 1999), favoured by neoliberals and where democratic institutions function, but where active representation and inclusion are kept to a minimum. In a sense Bolivia’s hyper-active civil society is both a curse and a blessing, making long term political stability untenable, but ensuring that democratic commitment, fervour and innovation continue. Governments continue to rise and fall in Bolivia, but from crisis new understandings of the state and of the social pact are also being given form. This has sustained value for the country and contains important lessons for social processes elsewhere. Although written as philosophical sociology, the recent publication of Boaventura de Sousa Santos’s *Conocer desde el Sur: Para un a cultura política emancipatoria* (Knowing from the South: Towards a Political Culture of Emancipation, 2008) makes a series of interesting parallels. Published by CLACSO together with the Public University in La Paz, it was written with specific reference in mind, to the recent Bolivian constitutional process. The book although perhaps overly enthusiastic in its idealism, is interesting because it suggests, just as is happening in constitutional processes in Bolivia, a break with established liberal democratic notions of the social pact that is incapable of escaping the result of exclusion, at the same time as it aims at the goal of inclusion. Social pacts often supported by the mechanism of constitutional reform are aimed at creating a socio-political paradigm that produces through normality, constancy and consistency four public goods: legitimacy of government, economic and social welfare, security and collective identity. However, because

of the impossibility of comprehensive inclusion, the formation of social pacts always results in a fight between social sectors with alternative and contrasting visions of constitution and distribution of these public goods. Sousa Santos (2008) proposes therefore that an alternative to the modern social pact must be formed that accepts conflict as necessary element of the contract itself. As such he proposes that the:

...final objective is the construction of a new social contract, different to that of modernity. This (contract) needs to be much more inclusive so that it brings in not only individuals and social groups, but nature. In the second place, it will be a more conflictive contract because the inclusion will need to be done according to the criteria of equality and difference. In the third place, although the final objective if the contract will be the reconstruction of the deliberative space-time of democracy, in contrast with the modern social contract, this contract will not limit itself to national and state space-time, but should include the local, national and global. In conclusion, the new contract will not be based on a clear distinction between State and civil society, between economy, politics and culture or between public and private; deliberative democracy, in terms of its cosmopolitan requirements, does not have a specific site or institutional specifics. (Sousa Santos 2008, 322)

To achieve the formation and ensure the democratic function of this new contract Sousa Santos argues that a rediscovery of the significance, redistribution and polymorphism of work must be made. Of great interest to the empirical reality of Bolivia and in analogy to anthropological thinking above, he also observes that the state will need to be transformed into a social movement -- transformed from being isolated space to being a renewed public space. Here Sousa Santos proposes that the monopolies of the state (economy, identity, security) need to be democratised and opened up for experimentation. As an illustrative example, he cites the practice of participatory budgeting in Brazil, and in the lecture accompanying the book launch in La Paz in February 2008, asserted that these ideas were 'pro-Bolivian' in the sense of supporting the processes of political reform and experimentation taking place in the country.

## **CONCLUSION**

In the pages above I have outlined the recent processes of constitutional reform in Bolivia and discussed their significance at mechanisms for the legal empowerment for the poor in the country. The paper outlines the radical nature of the reforms and demonstrates that the proposed constitution in the country aims at creating the basis for empowerment that stretches well-beyond standard approaches of rights-based development. Proposals for reform, themselves the product of inclusive processes of participatory democracy, form an agenda

through which the previously marginalised and largely indigent indigenous and peasant communities not only receive recognition and assistance in joining economic market mechanisms, but also become the backbone of an experimental state where liberal democratic structures are merged with indigenous understandings of law, ownership and public responsibility and where resources are returned through various mechanisms of state redistribution to public ownership and benefit.

The paper has discussed the sustainability of these proposed reforms in a context of persisting conflict and opposition from elite sections of the population threatened by the radical restructuring of power and economic rights in the country. I have also shown how recent protests and current opposition are placed within a longer and more tumultuous history of rebellion and contestation. Indeed, Bolivia has a culture of rebellion and political turmoil that continues to threaten the existence of political stability in the country and to divide the nation. However, we also see that the reduction of the history of Bolivian politics to rebellion, and therefore the state to fragile and anti-democratic is misleading. Bolivian society has experienced cycles of rebellion and protest precisely because of the democratic desires of its largely marginalised populations to put an end to exclusion through various forms of insurgency i.e. efforts not to destroy the state, but to enter into the state. We furthermore observe that whereas Bolivia has a history of political instability, it also has a history of obsession with the formation of rule of law and constitutionalism. This might be summed up as a history of inconclusive efforts to form a social pact between the Bolivian state and recognised civil society.

With recognition of the complex and dual nature of Bolivian society, i.e. insurgency/rule of law, a more nuanced reading of the current political situation can be formed. Accordingly, it is possible to conclude that constitutionalism can indeed co-exist with a persisting insurgency. Indeed, we can conclude that whilst painful and constantly under threat of further violence, there are sustainable results for the legal empowerment of the poor from this relationship. It is possible therefore to arrive at perhaps the surprising conclusion that to a large extent the democratic alternative for Bolivia is connected to the hyper-activity and volatility of its highly politicised population. Of particular value for a multi-cultural society such as Bolivia are the recent moves to secure for the previously marginalised indigenous and peasant majority real participation and equal partnership with political elites in key decision-making processes in the country. Although criticisms abound about the over-expectations that it would produce, the participatory process of the constitutional assembly has without doubt delivered in this manner an important result of legal empowerment. And while other elements of the reformed Bolivia are under question, the process of the assembly has formed a general and irreversible acceptance of the need to accept plurality as a part of the national identity. Through the discussions and deliberations of the constitutional assembly, political decisions and practical mechanisms have been designed for the transfer of funds and assistance to marginalised and vulnerable communities. More controversially, these transfers and assistance are projected to not only take on the form of projected development assistance, but to stretch well

beyond a De Soto agenda. They do so through their reclaiming of communal as well as individual rights, the socialisation of resources and the transformation of the scale and nature of the excluded in the economy through ideas of public ownership of natural resources. These are issues that are closely tied to questions of property and political autonomy, and as such to questions of power in the country. With so much at stake, the four lowland regions' threats of separation and of possible violence must be taken seriously. However, the open and generally 'socialised' nature of discussion and the remaining space for change to the proposed constitution through referendum suggests that whilst clearly painful, the possibility of progress towards further agreements remains.

Finally, in this paper, I have drawn attention to the limitations of ideas accepted into international development discourse about governance and the state. In the context of Bolivia, as in many other contexts, formal requirements and standard conceptualisations have little sense or value. I have argued that to understand the context of state and governance in Bolivia there is a need to adopt anthropological understandings of languages of stateness and governance. These are ideas that require us to look beyond the formal trappings of functioning democratic institutions and the economy, to the relationships that exist between these structures and the population. In this process we discover differing, and often contrasting languages of stateness that compete over long periods of time to define the state through dialectics of cultural struggle. It is from this dialectic, often militant and sometimes violent, that the nature of states and the nature of governance are defined. Where the possibility for negotiation, legal empowerment and the formation of a social pact (however defined) exist, there is the possibility of democratic agreement and sometimes consensus. From this perspective the details and nature of social relationships and interaction are supremely important. It is possible to conclude that while Bolivia faces stark choices and possibly further insurgency, recent processes of constitutionalism in the country are of great importance for internal and sustainable possibilities of change for the previously marginalised population. Moreover, the Bolivian population's demonstration of sustained politicisation and willingness to experiment should be highlighted as an example for legal empowerment that helps us (as de Sousa Santos argues) to think and argue beyond the limitations of existing practices and ideas aimed at emancipation of all peoples, not least the poor.

## REFERENCES

- Abercrombie, T. (1998), *Pathways of Memory and Power: Ethnography and History Among an Andean People* (Madison: Wisconsin University Press).
- Appadurai, A. (1988), *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge: Cambridge University Press).
- Beckmann, F. and Beckmann, K. (eds.) (2008), *Dynamics of Plural Legal Orders: Journal of Legal Pluralism and Unofficial Law, Vol 53* (Berlin: Lit Verlag).
- Blom Hansen, T. and Stepputat, F. (eds.) (2001), *States of Imagination: Ethnographic Explorations of the Postcolonial State* (Durham, N.C.: Duke University Press).
- Bourdieu, P (1998) *Practical Reason: On the Theory of Action*, Stanford University Press.
- Cheneval, F & De Soto, H. (1996), *Realizing Property Rights*. Ruffer and Rubb Publishing
- Cooke, B. and Kothari, U. (2001), *Participation: The New Tyranny?* (London and New York: Zed Books).
- Corrigan, P. and Sayer, D. (1985), *The Great Arch: English State Formation as Cultural Revolution* (Oxford: Basil Blackwell).
- Dangl, B. (2007), *The Price of Fire: Resource Wars and Social Movements in Bolivia* (Oakland and Edinburgh: AK Press).
- Diamond, L. (1996), 'Toward Democratic Consolidation', in L. Diamond and M. F. Plattner (eds.), *The Global Resurgence of Democracy*, 2<sup>nd</sup> edition (Baltimore: Johns Hopkins University Press).
- Diamond, L. (1999), *Developing Democracy: Towards Consolidation* (Baltimore and London: Johns Hopkins University Press).
- Dunkerley, J. (1984), *Rebellion in the Veins: Political Struggle in Bolivia 1952-1982* (London: Verso Editions).
- Fischer, E. and Benson, P. (2006), *Broccoli and Desire: Global Connections and Maya Struggles in Post War Guatemala* (Stanford, Calif.: Stanford University Press).
- Fung, A. and Olin Wright, E. (eds.) (2003), *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance* (London: Verso).

Gargarella, R. (2003), 'Poverty and Human Rights', Unpublished manuscript, CROP, University of Bergen, Norway.

Geertz, C (1980) *Negara: The theatre state in 19<sup>th</sup> century Bali*. Princeton. NJ: Princeton University Press.

Goldstein, D. (2004), *The Spectacular City: Violence and Performance in Urban Bolivia* (Durham: Duke University Press).

Hale, C. (2002), 'Does Multiculturalism Menace? Governance, Cultural rights and the Politics of Identity in Guatemala', *Journal of Latin American Studies*, 34, 485–524.

Hale, C. and Millima'n, R. (2004), 'Rethinking Indigenous Politics in the Era of the Indio Permitido', *NACLA Report on the Americas*, 38:2, 16–21.

Hardt, M. and Negri, A. (2004), *Multitud: guerra y democracia en la era del imperio* (Barcelona: Debate).

Holston, J. (1999), 'Spaces of Insurgent Citizenship', in J. Holston (ed.) *Cities and Citizenship* (Durham, NC and London: Duke University Press).

Instituto Nacional de Estadísticas, Bolivia (2006), *Características Sociodemográficas de la Población*, INE, La Paz.

Krohn-Hansen, C & Nustad, K (2005) *State Formation: Anthropological Perspectives* (Anthropology, Culture and Society) Pluto Press.

Laserna, R. (2002), 'Conflictos sociales y movimientos políticos en Bolivia', in *Las Piedras en el Camino*, Ministerio de Desarrollo Sostenible y Planificación, La Paz, Bolivia.

Lazar, S. (2006), 'El Alto, ciudad rebelde: Organizational bases for revolt', *Bulletin of Latin American Research*, 25:2, 183–199.

Lee van Cott, D. (2000), *The Friendly Liquidation of the Past: The Politics of Diversity in Latin America* (Durham: Duke University Press).

Lowrey, K. (2006), 'Bolivia multiétnico y pluricultural, ten years later: White separatism in the Bolivian lowlands', *Latin American and Caribbean Ethnic Studies*, 1:1, 63–84.

Luis Roca. J. (2005), *Bolivia después de la capitalización* (La Paz).

McNeish, J. (2001), *Pueblo Chico, Infierno Grande: Globalization and the Politics of Participation in Highland Bolivia*, Unpublished Thesis (PhD), University of London.

McNeish, J. (2005), 'Poverty, Participation and Sleight of Hand', in D. Siquera and J. Cimadamore (eds.), *The Poverty of the State: The Role of the State in the Fight Against Poverty* (Buenos Aires: CLACSO).

McNeish, J. (2006), 'Stones on the Road: The Politics of Participation and the Generation of Crisis in Bolivia', *Bulletin of Latin American Research*, 25:2, 220-240.

Ministerio de Gobierno, Bolivia (2007) *Constitución Política de Estado Boliviano* (Oruro: Bolivia).

Moore, S. F. (1978), 'Law as a Semi-autonomous Social Field', in *Law as Process* (Boston: International Africa Institute/ James Currey).

Molina, Sergio & Arias, I (1996) *De la nación clandestina a la participación popular*. Informe especial: CEDOIN.

Nugent, D. (1993), *Spent Cartridges of Revolution: An Anthropological History of Namiqipa*, Chihuahua (Chicago: University of Chicago Press).

Pogge, T. (1994), 'An Egalitarian Law of Peoples', *Philosophy and Public Affairs*, 23:3, 195-224.

Platt, T. (1982), *Estado boliviano y ayllu andino: tierra y tributo en el Norte de Potosí*, Instituto de Estudios Peruanos, Lima.

Putnam, R., Leonardi, R. and Nanetti, R. (1993), *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, NJ.: Princeton University Press).

Rasnake, N. (1988), *Domination and Cultural Resistance: Authority and Power amongst an Andean People* (Durham: Duke University Press).

Rivera Cusicanqui, S. (2006), 'The Roots of the Rebellion: Reclaiming the Nation', in Prashad.V & Baly.T (ed) *Dispatches from Latin America: On the Frontlines Against Neoliberalism*, South End Press,

Rocamorra, J., Gills, B. and Wilson, R. (eds.) (1999), *Low Intensity Democracy: Political Power in the New World Order* (London: Pluto Press).

Rodgers, D. (2007), 'Slum Wars of the 21<sup>st</sup> Century: The New Geography of Conflict in Central America', Working Paper 10 (Series 2) Crisis States Research Centre, London School of Economics.

Salman, T. (2006) 'Jammed Democracy: Bolivia's Troubled Political Learning Process', *Bulletin of Latin American Research*, 25:2, 163-182.

Santos, B. de Sousa (1995), *Towards a New Common Sense: Law, Science and Politics in Paradigmatic Transition* (New York: Routledge).

Santos, B. de Sousa (2008), *Conocer desde el Sur: Para una cultura emancipatoria*, CLACSO Publications. Buenos Aires.

Sen, A. (2004), 'How Does Culture Matter?', in V. Rao and M. Walton (eds.) *Culture and Public Action* (Stanford: Stanford University Press).

Sharma, A & Gupta, A (2006) *Anthropology of the State: A Reader*. Wiley-Blackwell.

Stern, S. (1988), *Resistance, Rebellion and Consciousness in the Andean Peasant World, 18<sup>th</sup> to 20<sup>th</sup> Centuries* (Madison: University of Wisconsin Press).

Tadesco, L. (2007) '*The Latin American State: "Failed" or Evolving?*', *Working Paper Series, No 37, Fríde Foundation. Madrid and UK*.

World Bank/DFID (2005) '*Engaging with Fragile States*'. In *Why we need to work more effectively in fragile states*. Washington.

---

## Notes

<sup>1</sup> There were 157 coups between 1825 and 1982.

<sup>2</sup> According to the UNDP (2006), Bolivia is the most unequal society in Latin America. The median income of 90 per cent of the population is now 15 times larger than the poorest 10 per cent. Around 63 per cent of the population are indigenous and a 1/3<sup>rd</sup> of the population lives below the poverty line.

<sup>3</sup> 'A New Constitution for Bolivia: The History and Structure of the Constitutional Assembly', The Andean Information Network (June 28, 2006).

[http://ainbolivia.org/index.php?option=com\\_content&task=view&id&Itemid=32](http://ainbolivia.org/index.php?option=com_content&task=view&id&Itemid=32)

<sup>4</sup> *Ley de Convocatoria*

<sup>5</sup> Los Tiempos, 'Encuesta: bolivianos optimistas con la Asamblea piden consenso', July 29, 2007.

<sup>6</sup> i.e. encompassing the 32 ethnic groups that make up the country's population of 8 million.

<sup>7</sup> A series of statements by the US and European governments as well as leading Latin American academics and politicians have raised these concerns. See for example Mario Vargas Llosa's comments about the protests in the Ecuadorian daily newspaper *El Universo*, 11 November 2003. These comments were reproduced in the editorial and debate columns of many Latin American national papers.

<sup>8</sup> The result of this meeting was that Petrobras committed itself to investments amounting to \$1 billion in energy-based industry. This marked the official return to Bolivia of Brazil's giant conglomerate after the Morales-led nationalization of the gas industry in 2006. A year was to pass before Argentina brought Venezuela's sole support of Bolivia against a blockade of oil-industry corporations to an end. On October 19, former President Nestor Kirchner of Argentina signed an

---

agreement with Bolivia for a supply of 27 million cubic-meters of gas per day, at five dollars per million BTUs, and re-adjustable over time. For Bolivia, the deal was extremely favourable. The Chilean President Michelle Bachelet has furthermore offered to develop a corridor to the Pacific, which would facilitate direct international trade for landlocked Bolivia.

<sup>9</sup> This is something that I have also further developed in a forthcoming article studying the comparative experiences of recent politics in Bolivia and Guatemala. See 'Beyond the Permitted Indian? Bolivia and Guatemala in an Era of Neo-liberal Developmentalism', *Latin American and Caribbean Ethnic Studies* 3:1, March 2008, 33-59.

<sup>10</sup> See, 'Justicia plural para una Bolivia diversa', Rolanda Miranda, *La Razon* 14 February 2008. Also Response 'Dos Justicias para dos Bolivias', Jorge Lazarte, *La Razon* 15 February 2008.

<sup>11</sup> Santos (1995, 473) argues that *interlegality* is a dominant characteristic of our times: 'We live in a time of porous legality or legal porosity, multiple networks of legal orders forcing us to constant transitions and trespassing. Our legal life is constituted by the intersection of different legal orders, that is by **interlegality**'.