

The Indigenous Concept of *Vivir Bien* in the Bolivian Legal Field: A Decolonial Proposal

Special issue: South-South Dialogues: Global Approaches to Decolonial Pedagogies

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This article discusses the concept of *Vivir Bien* (Living Well) (VB) and its role as a decolonising project in connection with the *Political Constitution of the Plurinational State of Bolivia* (2009) (BC) and subordinated legislation. This subordinated legislation was enacted to implement in a more specific manner the general legal principles contained within the BC. The paper uses these legal texts within the framework of decolonial thinking to prove that the adoption of the concept of VB represents a legal and an epistemological shift that radically contests the dominant Western paradigm of modernity/coloniality. This shift has many facets; however, this article concentrates on two of them in order to characterise its radicalism: (a) the constitutional acknowledgment of the colonial difference, which is understood here as the pervading and living legacy of European colonialism in social organisations and the production of knowledge, and (b) the constitutional and legislative requirement of engaging in an ongoing intercultural dialogue as a vehicle for the achievement of a society based on the concept of VB. This article concludes that the confluence of these two facets marks the epistemological shift and is important in the advancement of the intercultural and decolonising project represented by the concept of VB.

■ **Keywords:** *Vivir Bien*, Bolivia, colonial difference, intercultural dialogue, Mother Earth, modern liberal constitution

Fostering South–South Dialogues

The South–South Dialogue conference of 2015 facilitated the visibility, interaction and exploration of ideas and proposals that are not common in Westernised academia (Grosfoguel, 2013). This paper contributes to the South–South Dialogue through promoting awareness within the Australian context of events that are occurring on the other side of the world in a different language that may, regardless of geographical and linguistic barriers, contribute to the current Australian debate on constitutional recognition (or not) of indigenous people, nations and groups. We note that it is implausible to expect to completely address these issues in one article; thus, this contribution can be the beginning of a fruitful period of exchange and dialogue with other academics, indigenous groups and politicians involved in the conversation.

The Concept of Modern Liberal Constitution

At the beginning of the 21st century, the historical and political circumstances of the former Spanish colonies in the Andean region of South America can be characterised by the prevalence of nation states regulated under the tenets of modern liberal constitutions (Clavero, 2009). Although it is arguable that the establishment of a representative and republican system of government signifies a step forward from colonial administration, it is also debated by Latin American decolonial theorists that this represents another chapter in the modernity/coloniality saga (Castro Gomez & Grosfoguel, 2007).

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Along those lines, we argue that while legal systems ruled by modern liberal constitutions continue to evolve and improve (particularly in the areas of fundamental rights and guarantees, such as civil and political rights, and collective rights to environment, water and food), the mere local application of the latest trend in modern liberal constitutionalism did not further the decolonising process or foster critical intercultural dialogues between the different social groups comprising these postcolonial societies.

In contrast, it assisted in reproducing several colonial features. This is because the balance of power and the underlying view of the former colonial territories, even by the elite groups within these territories, as a land of the inferior, primitive or undeveloped did not change postindependence (Clavero, 2010). The dominant elites, who were comprised of the white male Catholic landholders and descendants of the Spanish colonisers, sought to mould the new nation states into European republics at first and later into the United States of America (Avila Santamaria, 2011). They ensured this through importing and reproducing to their benefit, the main features of a system that was born in the 18th century from the demands of the white male European burgesses for increased political and civil rights. The same system did not perceive any inconsistencies in the co-existence of a system of freedom, equality and fraternity with a system that legally protected slave trade, colonial possessions and the systematic elimination of indigenous populations in the colonised territories.

Borrowing de Sousa Santos' (2014) dichotomy of the Global South/Global North, we state that in the Global South, elite groups managed to mimic and replicate the institutions of the Global North for almost two hundred years, thereby creating small 'pockets' of the Global North within the Global South. The nation states ruled by modern liberal constitutions provided the legal framework and secured the monopoly of legal coercion required in order to achieve their objectives.

In summary, modern liberal constitutionalism originated in Europe in the aftermath of the 18th and 19th centuries' liberal revolutions, but it

swept up the rest of the humanity, which was portrayed as being at lower stages of historical development and in need of Western aid, and gradually made the world over in accord with modern constitutional democracy (in its various iterations over time). (Tully, 2008, p. 478)

Modern liberal constitutions were portrayed as modern and postcolonial legal frameworks to be adopted by the former colonial territories postindependence. Then, the enactment of these modern liberal constitutions would allow the newly formed republics to replicate the 'superior' legal systems that were already adopted by their former colonial masters. Bolivia was not an exception to this process.

Bolivia's Historical and Legal Background

Bolivia is located in the Andean region of South America. It is one of the countries with the highest number of indigenous population in the region (over 40% according to recent census, Instituto Nacional de Estadística, 2012). It was colonised by Spain in the 16th century and remained a colony until its independence in the 19th century. Shortly after independence in the early 19th century, Bolivia enacted its first modern liberal constitution as the supreme and founding law of the newly formed republic. However, the legal system implemented in Bolivia postindependence replicated the dominant Western legal paradigm, which is also known as modern liberal constitutionalism (Clavero, 2009). Hence, at a national level, written modern liberal constitutions were enacted to 'protect the privileges of European minorities and to preserve the colonial status quo' (Clavero, 2009, p. 1). However, this has not been met without resistance. As Tully (2007) argued:

[T]he consequence of national and liberal constitutions, which have been dominant forms over the last three hundred years, is precisely the contemporary resistance and demand for recognition of the members whose cultures have been excluded, assimilated or exterminated (pp. 7–8).

The incorporation of the concept of *VB* into the Bolivian Constitution (BC) symbolises this resistance and represents a successful attempt by subalternised indigenous epistemologies to 'change the terms of the conversation and not only its contents' (Mignolo, 2011, p. 274). This article focuses on the indigenous concept of *VB* and its introduction to the legal arena in order to claim that *VB* represents a legal and epistemological shift that radically contests the dominant Western paradigm of modernity/coloniality as embodied in Bolivia's previous modern liberal constitutions. In the following sections, a succinct explanation of the concept of *VB* and the main tenets of Latin American decolonial theory are included in order to explain this key concept and the theoretical background of this work, respectively. The last section analyses the Bolivian Constitution and relevant legislation to demonstrate how *VB* is inserted and how this represents an epistemological and legal shift.

The Concept of *VB*

The concept of *VB* is a Spanish extrapolation of the Aymara concept of *Suma Qamana* in Bolivia and the Quechua concept of *Sumak Kawsay* in Ecuador. However, the concept is not unique to these two indigenous peoples as similar notions are shared by other indigenous groups in the Andean region of South America: Guarani (*Nandereko*), Ashuar (*Shiir waras*) and Mapuche (*Kyme Mogen*) (Mamani, 2010). For this reason, Albo (2011) speaks of *VB* in plural as *Buenos Convivires*. The concept of *VB* portrays a 'culture of life' (Mamani, 2010), 'a complementary co-existence' (Oviedo Freire, 2013) and 'a paradigm of life' (Huarachi, 2011) centred on the community rather than

the individual. It rejects the dominant Western concept of aiming to live better than others, and it seeks a way of life grounded in everyday practices and ethical principles that interact in a reciprocal, respectful, harmonious and balanced way with all communities of living things, such as human beings, nature and ancestors/spirits (Mamani, 2010). Similarly, the concept of *VB* opposes the idea of ‘infinite progress understood as individual competition for the incessant material accumulation at a high social and environmental cost’ (Acosta, 2013, p. 61).

This holistic world-view negates the Western anthropocentric view of Mother Earth as an inert machine to be controlled and exploited primarily for the profit and benefit of a few ‘at the expense of the environment and local communities worldwide’ (Capra & Mattei, 2015, p. 2). Furthermore, it rejects the dominant Western perspective of knowledge based on the complete separation of society and nature as predicated by Cartesian thought, whereby nature is perceived as a lifeless object of study (e.g., the body, in the mind/body dichotomy) and the source of raw material to fuel the development of capitalism (Lakoff & Johnson, 1999). Moreover, through adopting a biocentric position, community is understood as including the human community as well as the community of nature and ancestors/spirits. This position displaces human beings from the central and dominant position that they have traditionally been given in predominately anthropocentric Western societies and incorporates Mother Earth within the social equation.

If Mother Earth, as a living and dynamic system, has inherent value and is interconnected, interdependent and interrelated, then the fulfilment of nonmaterial and material needs can only be achieved through everyday practices and ethical principles that seek to co-exist in a harmonious and balanced way with the community of nature and all other communities of the world. It is worth noting that, while the origins of the concept of *VB* can be traced to a myriad of indigenous groups in the Andean region of South America, it has also incorporated intellectual contributions from Western counterhegemonic thought including ecologist, socialist and decolonial theories such as Deep Ecology and the Gaia hypothesis as a model for planetary and cellular dynamics (Lovelock, 1987). *VB* is an inherently pluralistic concept (Friant & Langmore, 2015); hence, it represents a theoretical and practical view in constant construction and evolution (Vanhulst & Beling, 2013). In that sense, *VB* can be understood as an opportunity to build a society based upon a ‘way of doing things and living that is community-centric, ecologically-balanced and culturally-sensitive’ (Baldin, 2015, p. 11).

Latin American Decolonial Theory

An important premise of Latin American decolonial theory is that coloniality cannot exist without modernity, and vice versa. Hence, addressing the issue of coloniality

requires consideration of the predominance of the dominant Western paradigm of modernity as a social and cultural project that continues to perpetuate legal and epistemological relationships of domination and subordination. We have explained how the modern liberal constitutions that were enacted in the newly formed republic of Bolivia helped to perpetuate these forms of subordination and domination within the legal system. This section discusses the main concepts that support our approach as proposed by Latin American decolonial theorists.

The Concepts of Modernity–Coloniality

Proponents of Latin American decolonial theory state that, from a Western philosophical perspective, modernity began in Europe in the 17th century with the works of Rene Descartes, Galileo Galilei and Francis Bacon (Soto, 2007). Descartes, who is considered to be the founder of modern Western philosophy, inaugurated a new movement in the history of Western thought: he replaced God as the foundation of knowledge in the theo-politics of knowledge in the European Middle Ages with (Western) Man as the foundation of knowledge in European Modern times (Grosfoguel, 2006, 2011, p. 5). Accordingly, only the knowledge produced by the scientific and philosophic European elite was considered to be true, objective and valid. This ‘epistemic strategy was crucial for Western global designs’ (Grosfoguel, 2011, p. 6). Through presenting its knowledge as the only one capable of universality and truth, ‘European/Euro-American colonial expansion and domination was able to construct a hierarchy of superior and inferior knowledge and, thus superior and inferior people around the world’ (Grosfoguel, 2011, p. 6).

Dussel (1993) was the first to dispute the idea that modernity began in Europe in the 17th century. Instead, he asserted that the date of the birth of modernity was in the 15th century with the beginning of European colonial expansion and the ‘discovery’ of America by the Spanish (Dussel, 1994, p. 8). It was this first wave of territorial expansion that provided the foundation for the production of European knowledge about the ‘new world’. Consequently,

[the] social, economic, political and historical conditions of a subject assuming the arrogance of becoming God-like and putting himself forward as the foundation of all Truthful knowledge was the Imperial Being, that is, the subjectivity of those who are at the centre of the world because they have already conquered. (Grosfoguel, 2011, p. 6)

According to this author, the epistemological dominance over the colonised territories by the superior ‘modern’ imperial being was a subproduct of the territorial and political conquest of the ‘inferior’ colonial beings.

Another related central postulate of Latin American decolonial theory is that coloniality is ‘constitutive not derivative of modernity’ (Mignolo, 2007c); that is, they represent two sides of the same phenomenon. The concept

of modernity epitomises a Western narrative that hides the fact that it cannot be ‘modernity’ without its darker side ‘coloniality’ (Mignolo, 2007b). Thus, ‘hidden behind the rhetoric of modernity [and its promises of progress and development], human lives became expendable to the benefit of increasing wealth and such expendability was justified by the naturalisation of the racial ranking of human beings’ (Mignolo, 2007a, p. 157).

Latin American decolonial theorists note that although coloniality and colonialism are related concepts, they signify different things. Colonialism refers to a political and economic relationship of domination and exploitation where the coloniser exercises economic–political and judiciary–administrative control over the colonised territories and its people. However, coloniality ‘allows us to understand the continuity of colonial forms of domination after the end of colonial administrations, produced by colonial cultures and structures in the modern/colonial capitalist world-system’ (Grosfoguel, 2011, p. 14). This underlying logic denotes a colonial power matrix where the notions of race and racism transcend colonialism in order to establish themselves as a fundamental part of Westernised systems (Grosfoguel, 2011; Quijano, 2000). Furthermore, this racial hierarchy determined the international division of labour between intellectual and paid work in the North and manual and unpaid work in the South, which facilitated the exploitation of lands and resources in the colonised territories to fund capitalist accumulation on a world scale (Grosfoguel, 2006, 2011). This inferior–superior categorisation extended to the classification of territories and resources, and it determined the degree of legal protection granted to them. Subsequently, the ‘superior’ territories, resources and inhabitants of the colonisers’ countries were afforded an increasing degree of legal protection by modern liberal constitutions based on the principles of the protection of individual rights, private property, representative democracy and limitation and control of state power. In contrast, the ‘inferior’ territories, resources and inhabitants of the colonised territories were subject to privatisation, colonisation and plunder.

The end of the independence wars and the formation of newly independent republics in the Andean region of South America did not alter these circumstances. Following the steps of canonical authors such as Fanon, du Bois and Freire, Latin American decolonial theorists reject the assumption that colonialism ended with the withdrawal of colonial powers and the formation of nation states in the former colonies. Grosfoguel (2011, p. 14) argues that ‘the mythology of the “decolonization of the world” obscures the continuities between the colonial past and current global colonial/racial hierarchies and contributes to the invisibility of “Coloniality” today. In response to this proposition, Latin American decolonial theorists have developed the category of analysis of decoloniality as a set of theoretical and practical tools to address

the pervading influence of the modernity/coloniality paradigm.

Decoloniality

According to Latin American decolonial theorists, decoloniality represents theoretical and practical methods to engage with the tangled web of racial, ethnic, sexual, epistemic, spiritual, economic, legal and gender relationships and structures that the juridical–political decolonisation left intact (Castro Gomez & Grosfoguel, 2007). These methods attempt to create an awareness of the need to empower and liberate people from oppression. The central argument of this paper is that the concept of VB, as incorporated within the legal system, exemplifies one of these decolonial theoretical and practical options that has produced a shift in the legal and political arena in Bolivia. VB is an intercultural and decolonial project that epitomises the notion of border thinking, as follows:

... from the people’s anti-imperial responses to the “colonial difference” - the difference that hegemonic discourse endowed to “other” people, classifying them as inferior and at the same time asserting its geo-historical and body-social configurations as superior and the models to be followed. These people refuse to be geographically caged, subjectively humiliated and denigrated, and epistemically disregarded (Mignolo & Tlostanova, 2006, p. 208).

After more than five centuries of political struggles, the representatives of indigenous groups in Bolivia have demanded to be able to imagine a future of their own invention and to be allowed to practice their own ways of life, modes of thinking and ethical principles in search of VB. Decoloniality cannot be achieved without eradicating the remnants of coloniality, which cannot be eliminated without also contesting some of the tenets of the Western paradigm of modernity. This indicates that the social inequalities created by the colonial difference and the eradication of other forms of oppression that remain prevalent in a society that is institutionally oppressive must be addressed (Medici, 2010).

Incorporation of the VB Concept in the Legal Field: a Decolonial Task

The relevant pieces of legislation in relation to the concept of VB are the *Political Constitution of the Plurinational State of Bolivia* (2009), Act No. 071 – *Law of the rights of Mother Earth* (2010) and Act No. 300 – *Framework Law of Mother Earth and Integral Development for Living Well* (2012). These documents are important because not only do they address VB, but they also have considerable power in a State organisation. The constitution is the founding law of a country that records clear rules about the basic structures of government regarding the acquisition and maintenance of political power. The basic functions of a constitution include the creation and binding of new citizenry, structuring government institutions, regulating

conflicts and limiting the power of rulers (Bresling, 2009). Furthermore, the constitution has become a prototypical example of the paradigm of modernity because in most countries it maintains the modern/colonial status quo. An Act is a decree of parliament proclaiming the law and following the procedure described in the constitutional text for the enactment of parliamentary legislation. The two Acts listed above are important in their own right because it is a novel concept in any part of the world to acknowledge the negative impact of colonialism and the rights of nature in legislative forms at this level.

The BC contains several references to the decolonial task underlying the constitutional incorporation of the concept of *VB*. This is also the case with the subordinated legislation, which has been enacted in order to incorporate and recognise the legal rights of Mother Earth. It is worth noting that the BC did not incorporate Mother Earth as the subject of specific constitutional rights. Instead, later, subordinated legislation was enacted by the Plurinational Legislative Assembly to regulate the rights of Mother Earth and the duties and obligations of the Plurinational State of Bolivia and the Bolivian people for the protection and implementation of the rights of Mother Earth. This political decision not to give constitutional rank to the rights of Mother Earth might be related to the practical difficulties experienced by the Bolivian government in implementing a real departure from economic policies based upon intensive extraction of natural resources, in particular, as many of its social policies are funded by the revenue accrued through the commercialisation of those resources.

The following section identifies how these legal documents have incorporated the concept of *VB* and discusses the content of the most relevant provisions using the categories of analysis, modernity/coloniality and decoloniality.

The Political Constitution of the Plurinational State of Bolivia (2009)

From the outset, the title of the Bolivian Constitution (2009) announces that it is different from all other constitutions. This is stated in the word ‘plurinational’, which is a neologism that resulted in the name of the country being changed from the ‘Republic of Bolivia’ to the ‘Plurinational State of Bolivia’. This neologism was adopted in order to recognise and emphasise the importance of the myriad of nations that constitute the State of Bolivia, which on its turn is the first step to Interculturalism (see Discussion below). The new term uncovers a reality that was not acknowledged in the Western paradigm (as a word did not exist for it) and contrasts it with the standard definition of nation, which emphasises a world-view aiming at and valuing uniformity: ‘A set of people of the same origin who generally speak the same language and share a common tradition’ (DRAE, 2017, online, our translation). This invokes the decolonial call to acknowledge the ‘multiverse’ or ‘pluriverse’ (Mignolo, 2012) in opposition to the ‘uni-

verse’, which has significant value to Western cosmology and their claim of knowing (and owning) this universal thought: ‘Uni-verity [sic] is always imperial and war-driven. Pluri and multi-verses are convivial, dialogical or plurilogical’ (Mignolo, 2013, para. 9). Decolonial thought claims that, in the case of dominant epistemes, not recognising the multiverse leads to ‘epistemicide’, which is a term coined by de Sousa Santos (2014) to refer to the colonial and modern practices of exterminating knowledge and ways of knowing produced by the ‘others’ (Dussel, 1993).

Coining the term ‘plurinational’ is not only a language change but also a change of thought because the heart of *VB* acknowledges and celebrates diversity. The concrete composition of this plurinational state is clarified in Article 3 of the Constitution, which declares that ‘[t]he Bolivian nation is formed by all Bolivians, the native indigenous nations and peoples, and the inter-cultural and Afro-Bolivian communities that, together, constitute the Bolivian people’ (2009, p. 6). The original Spanish language of Article 3 contains another linguistic innovation (and epistemic implication) that is lost in this Oxford translation. The Constitution does not use the standard masculine plural form that grammatically includes male and female cultural genders, since it has been claimed that this language rule is discriminatory by rendering the female as invisible. The BC addresses this issue through specifying in Spanish ‘the totality of male and female Bolivians’, which can be likened to the neutral pronoun ‘they’ in English. This way of referring to people is being increasingly adopted in the press and academic writing, but it is not common in official documents, which makes this mention of the female salient in Constitutional discourse.

The preambles in a constitution are short texts of less than one page that establish the goals of the constitution and the government. Each of these key ideas contributes to providing understanding and insight into the principles that guide the enactment of that particular constitution. As Baldin (2015) states, ‘preambles are prologues [which] incorporate historical-political aspects as well as future-oriented statements’ (p. 11). The preamble of the BC contains seven paragraphs. The opening paragraph states what and who are the important elements that constitute the history and political views of the Bolivian State. This is significant in terms of topicality. That is, what is written first is what is relevant and what needs to be remembered in order to understand the remainder of the document. The first paragraph of the BC’s preamble (2009, p. 6) declares that

In ancient times mountains arouse, rivers moved, and lakes were formed. [...] We populated this sacred Mother Earth with different faces, and since that time we have understood the plurality that exists in all things and in our diversity as human beings and cultures. Thus, our peoples were formed, and we never knew racism until we were subjected to it during the terrible times of colonialism.

In this paragraph, several elements from *VB* are outlined. The first sentences acknowledge that Bolivian thinking (translated here as ‘we have understood’, however, in Spanish the verb *comprender* means to understand at a deeper level and it includes the notions of ‘realising and adopting’) was proposed and practiced since ‘ancient times’. This indicates that it is a local epistemology and not a notion that came from another place and/or time. A key element of this thinking is the recognition of diversity in human and non-human beings, which emerged from observing and accepting wisdom in nature (which remind us of Bateson’s famous quote: ‘[t]he major problems in the world are the result of the difference between how nature works and the way people think’ (in Bateson, 2011)). This biocentric view is present in these first lines because diversity is mentioned as a key component not only in peoples but also in ‘things’. Mother Earth has a sacred status, which places her in a position that is not of subordination to anthropocentric thought. The paragraph ends with a direct mention of racism, which contrasts with the metaphoric language used at the beginning (e.g. in expressions such as ‘different faces’). This lack of ambiguity when referring to racism and its direct association with colonialism is what decolonial thought emphasises.

In its second paragraph, the preamble highlights how the Bolivian people of plural composition and from ‘the depths of history’ found inspiration in past indigenous anticolonial struggles (listing eight historical struggles in different social areas) to establish a new Bolivian State. This paragraph not only makes reference to indigenous anticolonial struggles, but it also reinforces the constitutional acknowledgment of their place as the original inhabitants of Bolivia. In the same manner, the use of the expression ‘from the depths of history’ also alludes to their subordinated, silenced and invisible place at the bottom of the history ‘written by the winner’ while simultaneously paying tribute to their political activism, struggles and pivotal role in building the Plurinational State of Bolivia.

The third paragraph (2009, p. 6) describes what the Bolivian State is and should be, and includes the first mention of *VB* in the constitution:

A State based on respect and equality for all, on principles of sovereignty, dignity, interdependence, solidarity, harmony, and equity in the distribution and redistribution of the social wealth, where the search for a good life [*vivir bien*] predominates; based on respect for the economic, social, juridical, political and cultural pluralism of the inhabitants of this land; and on collective coexistence with access to water, work, education, health and housing for all.

Again, the idea of diversity (‘pluralism’) is emphasised and also specified in the form of ‘economic, social, juridical, political and cultural pluralism’. This contests the Western notion of inclusion and multiculturalism that reduces diversity to tradition and does not recognise

diversity in the epistemological front. In Western thought, inclusion is conceptualised as ‘including’ the other into one’s system, not sharing, consulting or questioning the way in which that system is run or thought about. Thus, connecting with Zapatista decolonial thought summarised in the expression ‘we are equal because we are different’ (Ceceña, 2008), *VB* conceptualises democracy as a system in which equality cannot be assumed if difference is ignored and it begins by recognising epistemological differences.

After describing the aspirations for the country, the fourth paragraph clearly specifies what must be abandoned in order to attain the new Plurinational State (2009, p. 6): ‘[w]e have left the colonial, republican and neo-liberal State in the past’. This listing is important as it explains that the transformation of the state involves the elimination of not only one but three connected systems: the colonial, republican and neo-liberal systems. The last two are traditionally (from a Western perspective) associated with the notion of democracy, which again marks a radical change in political thought. Democracy is also mentioned in the preamble, in paragraph four, but it is clearly not the same traditional idea of representative democracy that began with the French revolution and continued with the *Constitution of the United States of America*. In that sense, Article 11 (p. 9) provides that ‘the Republic of Bolivia adopts a participatory, democratic, representative and communal form of government, with equal conditions for men and women’. The novelty of this approach consists in incorporating, with equal constitutional rank, forms of direct and participative democracy based upon communal indigenous uses and customs, together with more traditional forms of representative democracy already present in prior constitutional texts (Cordero Carraffa, 2010).

Following the tone set by the preamble, Title I of the Constitution enunciates the ‘Fundamental bases of the State’ (p. 6), and Article 9 of Title I (p. 8) lists the essential purposes and objectives of the Bolivian State towards the fulfilment of the moral–ethical principles of the concept of *VB* (enunciated in Article 8 of the BC). Thus, the State must constitute a fair and equitable society focused on decolonisation and the elimination of all forms of discrimination and exploitation. This fair and equitable society of *VB* revolves around the notion of constantly seeking a balanced and harmonious co-existence with all communities of the world, which is referred to here as ‘equitable development’, a concept that opposes the capitalist view of development based on competition and continuous/unlimited/unrestricted ‘progress’. In order to address the arguably unbalanced and inharmonious state of affairs fostered by the paradigm of modernity/coloniality, the Constitution and legislation resorts to fostering a critical intercultural dialogue aimed at closing the gap between the experiences and expectations of the West and the experiences and expectations of the rest. In that respect, Article

10 (I, p. 8) of the Constitution declares that the Bolivian State promotes ‘cooperation among the peoples of the region and the World, for the purpose of contributing to mutual understanding [*conocimiento* = knowledge], equitable development, and the promotion of an intercultural character [*interculturalidad*], with full respect for the sovereignty of states.’ Finally, Article 9 (2, p. 8) lists ‘[t]o guarantee the welfare, development, security and protection, and equal dignity of individuals, nations, peoples, and communities, and to promote mutual respect and intra-cultural, inter-cultural and plural language dialogue’ as part of the essential functions and purposes of the Bolivian State.

Act No. 071 – Law of the Rights of Mother Earth (2010)

Another important piece of legislation that illustrates the decolonial presence of *VB* in the Bolivian legal field is *Act 071 – Law of the rights of Mother Earth* (2010). This short Act is dedicated to enunciating the fundamental rights of Mother Earth and the obligations and duties imposed upon the Plurinational State of Bolivia and the Bolivian society in terms of protecting and implementing the rights granted to her. Mother Earth is defined as ‘the dynamic living system formed by the indivisible community of all life systems and living creatures, interrelated, interdependent and complemented, sharing a common destiny’ (Article 3, p. 7). This is one of the first times in world history (another example is the Ecuadorian Constitution of 2008) that the right and value of life is recognised in the law beyond the human component, which ideologically implies that human life does not have more value than and cannot exist separated from nature. This is expressed in Article 5 (p. 8), which places humans as one of the constituents of Mother Earth when it provides that ‘Mother Earth and all its components, including human communities, are the titleholders of all the inherent rights recognized in this Law’.

In Article 2 (p. 6) of this Act, the principles applicable to interactions between Mother Earth, the Plurinational State of Bolivia and the Bolivian society are listed. Among them, Article 2 (6, p. 7) defines interculturalism as a principle of compulsory compliance. In that sense, it provides that exercising the rights of Mother Earth ‘requires the recognition, recovery, respect, protection, and dialogue of the diversity of feelings, values, knowledge, expertise, practices, capabilities, significances, transformations, sciences, technologies and norms, of every world culture seeking to live in harmony with nature’. This article contests the dominant Western modern approach to knowledge through giving relevance to other forms of knowledge/expertise more attuned with the indigenous world-views as proposed by the concept of *VB*, and that depart from Western ‘Cartesian notions of scientific descriptions, independent of the observer’ (Capra & Mattei, 2015, p. 25). *VB* is knowledge that is situated and that does not separate mind from matter as expressed through

the inclusion of feelings, sensing, transcendence and transformation as part of the process that will lead to balance.

Moreover, the wording of Article 2 (p. 6) provides for the ‘recovery/visibility of the epistemological otherness’ (Castro Gomez & Grosfoguel, 2007, p. 20 our translation), the ‘respect’ and ‘protection’ of the silenced, omitted, subordinated knowledges and practices. Thus, the Article seeks out a dialogue between cultures and searches for harmonisation which is understood as ‘seeking the articulation of different positions within a framework of synergies and symbiosis to achieve a real change of the system’ (Oviedo Freire, 2013, p. 64 our translation), and therefore to accomplish a more harmonious co-existence with other communities and with Mother Earth. The goal is not an ideal society or a return to the past: the challenge is ‘not to be or to have more, but to seek balance between the different parts of the Earth’s community’ (Baldin, 2015, p. 12).

Act No. 300 – Framework Law of Mother Earth and Integral Development for Living Well (2012)

This Act (2012) complements the 2010 Act sealing Bolivia’s dedication to environmental protection through holistic/integral development to achieve the *Vivir Bien* (Article 3, pp. 17–18). While Act 071 declares the legal rights granted to Mother Earth in a general manner, Act 300 provides a more specific legal framework to regulate the interaction between Mother Earth as a new subject of legal rights and the other ‘human’ subjects of legal rights such as indigenous, Afro-Bolivian and Bolivian people (Article 1, p.17). The Act provides in Article 2 (p.17) that it will be applied jointly with Act 071 and, more importantly, it specifically establishes the equal hierarchies of all rights granted to these legal subjects. Furthermore, it provides that the materialisation of the rights granted to them depends on the interdependent and mutually supportive implementation of these rights (Article 4, pp. 18–19). The foundational purpose of the Act is to achieve a harmonious and dynamic balance between the needs of the Bolivian people and the capacity of regeneration of the components and systems that comprise Mother Earth. This is the only one of the three pieces of legislation discussed that provides a clear definition of *VB*. This delineation establishes several decolonial defining points: (a) that *VB* is a line of thought coming from the ‘border’, (b) that it is an alternative to other Western, already known and tried, proposals, (c) that it works through considering different world-views, particularly non-human needs and (d) that it does not separate mind from matter through including the interaction of the material, spiritual and affective. These points are contained in Article 5 (2, pp. 24–29) titled ‘definitions’ that lists the different names given to these concepts in three indigenous views and states that *Vivir Bien* (Sumaj Kamana, Sumaj Kausay, Yaiko Kavi Pave) is

The civilizing and cultural horizon alternative to capitalism and modernity which stems from the cosmovisions of the indigenous originary farmer nations and people and the intercultural and Afro-Bolivian communities, and which is conceived within the context of interculturality. The same is achieved in a collective, complementary and solidary manner integrating within its practical realization, among other dimensions, social, cultural, political, economic, ecologic, and affective aspects, to allow for the harmonious encounter between all of the creatures, components and resources of Mother Earth. It means to live in complementarity, harmony and equilibrium with Mother Earth and the societies, in equality and solidarity and eliminating the inequalities and the mechanisms of domination. It means Living Well among us, Living Well with those around us, and Living Well with oneself. (Article 5(2), pp. 24–25) (Valle Velasco, 2013)

The Act expresses unambiguously that the concept of *VB* is ‘an alternative to capitalism and modernity’ (Article 5(2), p. 24), again presenting the world-views of indigenous groups and Afro-Bolivian communities as local, epistemic and political alternatives to the universality that grounds modern thinking (Mignolo, 2011; Mignolo & Tlostanova, 2006). As an example of this, Article 1 describes as an objective and aim of the Act the ‘recovery and strengthening of local and ancestral knowledges’ (p.17). Thus, it can be argued that the recovery, strengthening and resignification of the geo-historical location and of sensing/knowing/perceiving as experienced by these local communities might provide a stepping stone in the collective, complementary and solidary search for *VB*. This search will be informed by interculturalism, which is defined as a principle that requires compulsory compliance by the Bolivian State and society in order to guarantee respect for the rights of Mother Earth (Act 071, Article 2, p. 7). The decolonial thinker Walsh (2006; 2008) notes that a critical intercultural dialogue requires not only the recognition and protection of indigenous and Afro-Bolivian culture, traditions and spiritual practices but also the recognition of the subordinate or invisible role that their ways of life, modes of thinking and ethical principles have been relegated for the last 500 years. Furthermore, Walsh (2010) observes that while functional interculturalism presupposes the existence of cultural diversity and targets its recognition and inclusion within society and the State, critical interculturalism departs from a questioning of the structure of the powers built on the concept of race and the continuity of colonial difference. This is not expressed in Act 300, but it is provided in Article 2 (6, p. 7) of Act 071. However, it is worth noting that Article 4 of Act 300 specifically makes this principle applicable with other principles enumerated in this Act through stating that these are ‘the principles that govern the Law herein’, in addition to those established in Article 2 of the Act 071–*Law of the rights of Mother Earth* (p. 18).

Act 300 (and the BC) articulates that *VB* will not be achieved until and unless local knowledges, histories

and subjectivities ‘break free of the spell and enchantment of imperial modernity’ (Mignolo & Tlostanova, 2006, p. 219). It is also clear that this aim will not be accomplished by indigenous people in isolation, but that it will require the involvement of all communities that inhabit Mother Earth. Article 3(17) specifically provides ‘the Plurinational State of Bolivia assumes the complementarity between traditional expertise and knowledge and sciences’ (p. 24). According to its ordinary meaning, a complementary interaction presupposes a relationship or situation in which two or more different things improve or emphasise each other’s quality. Inasmuch as the paradigm of modernity/coloniality is based upon ‘the domination of others through social/racial taxonomies, with the simultaneous devaluation of their knowledge systems and cultures’ (Aman, 2014, p. 42), the concept of *VB* is built on entirely different premises. *VB* denounces and seeks to eradicate social hierarchies that have been founded on ideas of race or class, and it embraces other knowledges, systems and cultures as fundamental elements in the constant process of construction of the paradigm of *VB*. This correlates with Article 6 (p. 30) of Act 300 that enumerates the values informing the concept of *Vivir Bien* for the construction of a society based on fairness, equity and solidarity. Among those values, Article 6 (p. 30) states ‘that Living Well means to communicate and to know how to speak. To feel and think well to be able to speak, which implies to talk to construct, to support, to contribute’ (Article 6(5), p. 31). The next subsection lists as another value: ‘knowing how to listen as a way to acknowledge, recognise and respect each other’ (Article 6(7), p. 31). In contrast with rationalistic modern thought, this subsection highlights the importance of listening, using all our senses, our conscience and our spirit in order that we can not only reply to but also truly understand the other. Article 6(8) also signals a departure from Western rationalistic thinking because it proposes ‘knowing how to think and reflect’ (p.31) not just from our reason but also from our senses. The aim is to establish collective and communitarian processes and dynamics that contribute to create a fair, equitable and harmonious society as expressed in Article 5(15) of the BC.

Discussion and Conclusion

The incorporation of the concept of *VB* into the BC and subordinate legislation has resulted in a paradigm shift in the debate of how to incorporate and recognise indigenous views and rights in legislation. Traditionally, this issue has been discussed and is often decided within the limits of the legal framework delimited by modern liberal constitutions. As discussed earlier, modern liberal constitutions have assisted in perpetuating the dominant Western paradigm of modernity/coloniality. We have argued that the constitutional incorporation of the concept of *VB* signifies the introduction of alternative legal rules

based on non-Western epistemologies. Furthermore, it heralds a pivotal change in the conversation: a legal and epistemological shift that radically contests the fundamental rules of this debate.

Inasmuch as the concept of *VB* seeks to advance the legal and political agendas of indigenous peoples, groups and nations in Bolivia, its ultimate objectives transcend this legal and political agenda, and spread to all communities that inhabit Mother Earth. The concept of *VB* departs from the notion that the dominant Western paradigm of modernity/coloniality constitutes an indivisible duality, a civilising project that was able 'through the expansion of capitalism and a racial matrix, to impose a devaluation of ways of knowing, representing and conceptualising that did not fit parameters established by modern knowledge, science and law' (Aman, 2014, p. 43). It was through the creation of this colonial difference between superior and inferior peoples, epistemologies and territories that modernity/coloniality could preserve the hierarchical system of knowledge that forms and sustains the intersubjective relationships of domination and subordination. Postcolonial legal systems have contributed to maintain this status quo. Thus, since independence, modern liberal constitutions enacted by predominantly white minority elites have represented a legal and postcolonial project based on dominant Western epistemologies that perpetuate the colonial difference.

The concept of *VB* predicates the need to decolonise modern liberal constitutions as the first step towards engaging in a critical intercultural dialogue that attempts to redefine society, the state and the market. This article discusses some of the manners in which the concept has addressed this decolonising task. First, within the constitution, it has incorporated a narrative of colonial and postcolonial experiences from the perspective of indigenous groups. This seeks to readdress the 'history written by the winners' approach and brings to light, at a constitutional level, the power dynamics underlying the ways that the subordinated and silenced 'inferior' groups have been portrayed within the legal system.

Second, it has acknowledged the pervading and living legacy of European colonialism and proclaims, as constitutional principle and fundamental aim of the Bolivian State and society, the eradication of this colonial difference created by this legacy. Third, the concept of *VB* interprets this continuity of colonial forms of domination and subordination as an indication of a state of imbalance and a lack of harmony between the communities of Mother Earth that must be addressed. The incorporation of the concept of *VB* into the constitution and subordinated legislation transforms this issue into a legal constitutional principle of compulsory compliance, the breach of which becomes an illegal act within the legal system. Therefore, it seeks to reconfigure the dominant model of a modern liberal constitution into something new, and it purports to use it as a more inclusive and equitable legal vehicle of

interaction and encounters between different world-views within the Bolivian legal system.

Fourth, in accordance with its pursuit of a balanced and harmonious co-existence, the constitution and subordinated legislation require the abandonment of an anthropocentric view, the adoption of a biocentric one and engagement in a critical intercultural dialogue with every community inhabiting Mother Earth. Attempting intercultural dialogue is an ambitious decolonising project. To be successful in this endeavour, the concept of *VB* as an indigenous social and cultural project must engage in an intercultural dialogue with a dominant Western social and cultural project based on the belief of its superiority over the 'Other' and with a long history of unwillingness to engage outside the parameters of its own rules. Furthermore, the concept of *VB* incorporates Mother Earth as a subject of rights and as a participant in this dialogue while Western modernity has always viewed nature as merely resources to be exploited to benefit certain groups. Historically, Western legal systems have granted some rights to the economic reparation available to human beings affected by the exploitation of nature. However, they have never considered nature to be a sacred and living system, nor as a constitutional and/or legislative subject of rights on itself. Thus, any potentially successful intercultural dialogue must move away from the traditional 'them versus us' Western approach to engagement with non-Western social and cultural projects.

The constitutional enshrining of the concept of *VB* based on indigenous epistemologies and demands radically redefines the parameters of the 'them versus us' debate. Hence, in accordance with the concept of *VB*, 'them versus us' does not exist, only 'all of us' exists. Furthermore, it also radically redefines 'all of us' to include nonhumans through defining Mother Earth as 'the home which contains, sustains and reproduces all living creatures, the ecosystems, the biodiversity, the organic societies and the individuals comprising it' (Act 300, Article 5(1), p. 24). One of the largest challenges to this intercultural dialogue is to establish as starting point that all human beings are indivisibly linked to each other and also to Mother Earth as a dynamic living system (Act 071, Article 3, p. 7), and as a subject of legal rights (Act 071, Article 5, p. 8).

This article analysed examples of the textual incorporation of the concept of *VB* within the BC and related Acts in order to deepen its understanding and to demonstrate how it is considered to be an example of decolonial thought. Although the constitutional incorporation of the concept of *VB* and the subordinated legislation was enacted as a result of an ambitious decolonial and legal task, these are new legal changes, and more time and further analysis of the case laws and social policies are necessary in order to ascertain its impact on the Bolivian State and society. Only time will provide more evidence of how successfully the concept of *VB* is navigating the perils and challenges

surrounding any encounter between the West and the rest.

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