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Good Living as a Living Law

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

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In 2008, Ecuador reformed its Constitution after a prolonged period of economic, social and political crises. The momentary rupturing of power structures, that had limited political participation to small clusters of elites, opened participatory spaces for historically marginalised social groups to engage in the process of constitutional drafting. As a result of this unprecedented political shift in participation and inclusiveness, alternative notions of cultural, social and economic rights surfaced. This progressive constitutionalism is thus a novel attempt at overcoming legal formalism in favour of a *Living Law*, a law that embraces the contextual settings where it will be applied by scrutinising the historic power structures that have moulded it. *Good Living* as a legal principle underlines the enactment of a *Living Law*.

■ **Keywords:** Ecuador, Inter-American Constitutionalism, Living Law, Good Living

Introduction

Novel forms of discussing the political emerged in Latin America at the end of the 20th century, as new actors entered the national and supra-national political arena, demands for social, economic and political reform sought to revert historic patterns of inequality and racism. The advent of such an era was made possible due to the unexpected shattering of centuries of legal tradition and the conformation of the nation-state that supported its disciplining logics. By replacing existing institutional arrangements, and installing novel social conditions favouring the market economy and agent competition, the sudden opening of spaces and places, allowed new forms of the political to emerge (González & Vázquez, 2015, p. 2; Radcliffe, 2015, p. 858; Yates & Bakker, 2013, p. 81).

In 2008, Ecuador approved a new constitution that incorporated novel legal principles that emerged from decades of civil society mobilisation. Amongst such principles was Good Living (GL), a wide-arching legal concept scattered throughout the constitutional text. This article will explore the origins of GL by reconstructing the various processes that led to it. In doing so the reader will explore how Latin American constitutionalism spouted a regional push towards constructivist legal reasoning.

Section two explores GL's inclusion into Ecuador's 2008 Constitution. Section three discusses Latin America's constitutional history and the main changes that occurred regionally since the 1980s. Section four analyses the socio-economic conditions that allowed new political and social actors in Ecuador to levy demands against elite interests. Section five discusses GL's origins from civil society mobilisation and in particular the role of Ecuador's indigenous movement in shaping its content. Section six presents the links between domestic legal reforms and overarching human rights instruments, as well as the jurisdictional capabilities of the Inter-American Court of Human Rights (IACtHR) and its constructivist jurisprudence. The last section will reinstate the central points covered throughout the article.

GL in Ecuador's 2008 Constitution

GL– or *Sumak Kawsay* in its Kichwa language form, was incorporated as a legal principle in Ecuador's 2008 Constitution. Since its approval through referendum, Ecuador's Constitution has prompted debates surrounding the novel principles it incorporated regarding collective rights, economic solidarity, the rights of nature and the creation of a plurinational state. Debates around the conceptual significance of GL have fuelled contradictory and

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contested interpretations; Bretón for example, has argued that GL has been transformed into a 'one size fits all' motif, summoned by politicians, academics and civil society in general to justify ethereal, contradictory and at times unsubstantiated interpretations (et al. 2014). This criticism finds its justification in the hyper-media usage of GL to justify fiscal spending of surplus oil export revenues by the Ecuadorian Government (Dávalos & Albuja, 2013, p. 144).

Whilst some have praised its incorporation into Ecuador's Constitution, others have been quick to dismiss GL's conceptual validity, significance or relevance to legal practice. Mansilla (2011) for example has stated that GL represents a return to archaic knowledge, meanwhile Stefanoni (2012) equates GL to an exaltation of empty new-age rhetoric that amounts to little more than naïve 'wishful thinking'. Amongst those who have emphasised its significance, Escobar (2010, p. 2) highlights how GL relates to questions of plurinationality, direct democracy, endogenous development, cultural autonomy and a decolonial project that seeks to consolidate a post-liberal society. Oviedo Freire (2014, p. 142) on the other hand presents an essentialist and idealised understanding of GL by linking its origins to a pre-Columbian indigenous epistemological cosmo-livelihood practiced throughout the Americas. Similarly, Gudynas and Acosta (2011) have defined GL as a philosophy that stems from indigenous peoples conception of material, spiritual and community links to nature. This last interpretation validates the conceptual principles of the deep ecology movement and its quest to secure decontextualized forms of environmental protection (Radcliffe, 2012, p. 245).

Ruttenberg (2013), however, articulates GL as a form of 'wellbeing economics' that is the conceptual bedrock of a new development agenda. More recently Monni and Pallottino (2016) enhanced Ruttenberg's claims by positioning GL as a new agenda for international development. All of these disparate and at times loosely substantiated perspectives share a common theme of equating GL to (1) a theoretical construction that aims to enact a post-capitalist development model (Acosta, 2010; Ruttenberg, 2013; Séverine, 2012) or (2) present an idealised and essentialist configuration of life, community, and nature within indigenous communities of the Ecuadorean Andes (Oviedo Freire, 2014).

There is, however, a more enticing conceptual and theoretical avenue to pursue if the above-mentioned interpretations are set aside. Doing so, allows new conceptual avenues to be explored, as one diverts from ideologically charged economic development discourses or the idealised interpretations of indigenous life in the rural Andes engulfing current academic scholarship surrounding GL. One such avenue is to situate GL as the end result of a political process that sought to transform legal practice by opening 'up places and spaces' to criticism, thereby exposing the inequalities and illegitimate practices embedded in the contexts from which it emerged (González & Vázquez, 2015, p. 2).

As I show below, this opening of places and spaces, allowed *critical thinking* put forward by indigenous, African Ecuadorians, social movements and academics to take centre stage (Walsh, 2013, p. 86). Its enactment as a constitutional principle emerges from such critical thinking, allowing the reader to position GL as a conceptual crystallisation of the systemic shifts that occurred in Ecuador and Latin America in the last thirty years, as well as the underlying social, economic and cultural events that nurtured it prior to this epoch. Rather than taking on the 'naïve and analytically misdirected' notion of GL as an archetypical, decontextualized and mystical notion, we must position ourselves within the legal, political and economic crises that led to its acceptance as an alternative expression of political possibilities (González & Vázquez, 2015, p. 4). Doing so, allows us to overcome the ontological reclamations surrounding GL, which have until now, occupied academics, politicians and Indigenous peoples alike (González & Vázquez, 2015, p. 8). Overcoming these ontological disputes allows for GL to be viewed as a result of social actors, political processes and legal transformations that spawn an alternate political and legal model.

GL thus becomes the heir to social processes that sought the realisation of an alternative political project by those who have historically been subject to domination and dispossession. Fanon (1963) and Mignolo (2013) might label such a conquest as a political triumph of the damnés; or a victory of those who are racially defamed and politically, economically and spiritually dispossessed. The political processes of GL were thus consolidated by the efforts of 'transgressive political subjects' who by, contesting the thrusts of modernity, defied the technocratic governmentalities utilised throughout Latin America (Sawyer, 2004, p. 14–15).

Modernity here is understood as the ephemeral developmental progress that has attempted to 'breed in modernity' throughout Latin America (Cueva, 2008, p. 248; Escobar, 2010, p. 24). The rhetoric and policy of modernity is thus cemented on infinite increments to economic output, techno-rational modernisation and the principles of liberal democracy (Mignolo, 2013, p. 304). This *modernising* rhetoric, positions modernity as salvation — albeit through imposition — within a hegemonic rationality that in turn is founded on the radical absenting of the other (Mignolo, 2013, p. 317; Quijano, 2013, p. 27). This dominant project, and the grammar of governance that underlines it, has its roots in a *civilising* project that began with the systematic ousting of indigenous perspectives on questions of equality, identity, territory or autonomy (Dussel, 2009, p. 505; Escobar, 2012, p. xi; Harris, 2013, p. 154).

Latin American constitutionalism has mirrored this dominant perspective by importing competing models

of Euro-American modernity in an attempt to position itself at the avant-garde of theoretical popularity; i.e. the United States Constitution or the ideals of the First French Republic (Whitehead, 2012, p. 129). Conceptual importations devoid of any contextual necessity, evidence a desperate attempt at *civilising* the American continent (Grovogui, 2014, p. 55). An effort that sought to conciliate the principles of liberal democracy with the disciplines of coloniality inherited from Spanish colonial rule.

GL as a constitutional principle may therefore rattle the foundations of modernity and its ensuing political project, by consolidating a wider systemic shift throughout Latin America (Séverine, 2012, p. 16). Shifting the theoretical foundations of modernity, became the political project of social movements pressuring political actors to distance themselves from the baroque legal formalism that has been in place since the colonial era; an epistemic coloniality that perpetuates racial and economic oppression. Since the 1990s, an ever-growing constructivist interpretation of law and society has fought epistemic coloniality and the structural absenting of the other (Rodriguez-Garavito, 2011, p. 1678). Such developments allowed new interpretations of law to focus on the historic intragroup inequalities which underline race and class relations in Ecuador and Latin America (Abertyn, 2013, p. 164).

This shifting of gears within Latin America's legal practice, and Ecuador's in particular, has engendered the creation of what has been termed a 'Living Law'. This new form of legal reasoning becomes responsive to cultural and socioeconomic conditions, and in so doing, generates a transformative jurisprudence that addresses cultural and customary issues by taking into 'account the contexts were cultural diversity is prevented or realized' (Abertyn, 2013, p. 173). Hence normative principles, inspired and influenced by the experiences and realities people actually face, enable an understanding of law that includes sensibilities to multicultural, pluralistic and local interpretations, simultaneously reinterpreting the structural conditions which sustain unequal relations (Abertyn, 2013, p. 180). Such an expansive and contextual interpretation opens up the possibility of progressive social struggles to be formally recognised (Abertyn, 2013, p. 181).

I develop my argument through a critical reconstruction of the transformative changes that led to GL's enactment as a legal principle. Firstly, I will present the particularities of Latin American Constitutionalism, as doing so will allow me to present the general traits of constitutional reform in Latin America. As we will see, this is a process that has historically been plagued by internal tensions, which are evidence of the inherent contradictions that came from importing the principles of liberal democracy into contexts where systemic and historic inequalities were rampant. This importation of concepts created an atrophied legal reality that engendered and perpetuated the disciplines of domination (Foucault, 1995, p. 137).

Latin American Constitutionalism

Latin America has historically been a place where entrenched power structures, based on class and race, created structural conditions that perpetuated inequality (Fischer and O'Hara, 2009, p. 2). To this day, and even after a prolonged commodity boom throughout the region, Latin America remains deeply unequal according to 2013 World Bank estimates, an analysis which is confirmed by the World Economic Forum's 2016 categorisation of the subcontinent as 'the most unequal region on earth'. Racial and class differentiators have played an important part in perpetuating this situation, as Indigenous, peoples of African descent and the poor have systemically and historically been excluded from political life through constitutional prohibitions that limited political rights (Mijeski and Beck, 2011, p. 23). Limitation of rights, through constitutional provisions, reveals the *unconstitutional constitutionalism* perpetuated through baroque legal formalism. Formalist readings have thus exiled hermeneutics from legal reasoning. This historical trajectory has led to an archaic and out-dated legal praxis which compounds inequality by perpetuating colonial power structures.

The deep-rooted inequality that engulfs Latin America has been a prevalent feature in the regions legal systems since the first half of the 19th century, when the newly formed states drafted their first constitutional texts. In addition to the inherited structural inequalities that Spanish colonial rule had left behind, the importation of liberal democracy from the United States and the principles of the First French Republic, created an ensemble that mismatched constitutional liberal democracy with the most nefarious aspects of the *ancien régime*. Such importations were subsequently deployed within a highly stratified social setting, where interweaved racial and class differentiators, completed the conceptual dehumanisation of the Other; a process which has historically legitimised empire within Ecuador, Latin America and the Global South in general.

The frenzy to import political structures underlined the epistemological narrowness of a time when any form of local knowledge or practice was dismissed in favour of Euro-American rationality. Argentinian jurist Juan Bautista Alberdi best outlined such a stance when he defended that such imports were necessary, as they represented 'the true example of human logic' (Quoted in Gargarella, 2013, p. 62). Latin America thus entered the 20th century with a constitutional outlay that mirrored the liberal/conservative doctrines of the West, whilst simultaneously ignoring the social and political reality encircling it. Regional constitutional systems would thus come to favour state neutrality, a hyper-concentrated executive authority and the subjugation of indigenous and

African descendants to constitutionally binding servitude (Gargarella, 2013, p. 84). Two poignant examples of this servitude were the serfdom system of *Huasipungo* in the Ecuadorian Andes, which bonded Indigenous people to landowning elites, and the constitutional justification of slavery for the exploitation of mines and sugar cane (Sawyer, 2004, p. 46; Ecuadorian Constitution, 1830).

Wholeheartedly adopting foreign constitutional models obliterated any possibility of attending the historic issues concerning racial or class inequalities inherited from colonial rule. Epistemic coloniality, stimulated by the pressing need to justify the disciplines of domination, led the regions intellectuals, political authorities and economic elites to construct constitutional systems that unsurprisingly were littered with insurmountable contradictions. This clashing constitutional makeup was not unique to Ecuador but prevalent across the continent. Similar tensions and contradictions would become a cauldron of social tensions in Central America. Discontent that was eventually unleashed by way of the Mexican Revolution of 1917, a boiling point that highlighted the contradictions, inequality and engrained privileges of Mexico and the entire region; a costly and vicious ordeal that decimated a quarter of the country's population in 1918 (Womack, 1968, p. 311).

Ecuador's constitutional process of 2008 must be viewed within this historical context as well as the regional constitutional changes of the last hundred years. Such retrospection is necessary to scrutinise if GL is indeed a disruptive constitutional principle, one that contests and reinterprets the baroque legal formalism that has legitimised the disciplines of domination, or if it is merely an embroidered conceptual novelty to please and ease the masses. As will be underscored further on, GL belongs to a history of progressive developments in constitutional drafting in Latin America, a process that began with the Haitian Constitution of 1805 and continued through incremental reforms first galvanised by the Mexican Revolution of 1917 (Gargarella, 2013, p. 85; Grovogui, 2014, p. 54). These disruptive and violent processes, introduced the first social and economic rights in the region, constructing the embryonary scaffolding of a welfare state that predated the efforts of the Weimar Republic by almost two years.

Nevertheless, the violent tensions that erupted in 1917 would ultimately lead the way to a series of constitutional changes throughout the region, first in Mexico followed by Brazil 1937, Bolivia 1938, Cuba 1940, Uruguay 1942, Ecuador 1945, Guatemala 1945, Argentina and Costa Rica 1949. Legal scholars have depicted this first wave of change as a moment of social constitutionalism that pursued the securement of minimal social rights for a population that had been historically dispossessed of any form of social safety nets (Gargarella, 2013, p. 91).

By the 1980s, and after decades of military governments, the region had mostly returned to democratic rule. However, this period would unfortunately compound historically entrenched inequalities with the continuous macro-economic 'shocks' that followed the regional debt crisis of 1982 (IMF, 2001). The economic, political and social shockwaves that exploded during this time would lead to a second wave of profound constitutional reforms that reshaped the region as a whole. The combination of market-orientated Structural Adjustment Programs (SAP) with neoliberal economic policy brought about by the so-called Washington Consensus, exacerbated the already precarious and inhumane living conditions experienced by large segments of the population (Gargarella, 2013, p. 85; CID, 2003).

In addition to the crippling economic conditions that engulfed the region, widespread human rights abuses perpetrated by de-facto military rule during the 60s and 70s led constitutional reforms to have a strong focus on securing and guaranteeing human rights on a domestic and regional level (Gargarella, 2013, pp. 109, 154). This contextual setting explains the constitutional need to either expand or reverse economic policies and correct decades of human rights abuses.

Latin America thus entered the following continuum of constitutional reforms: Brazil 1988, Colombia 1991, Argentina 1994, Venezuela 1999, Ecuador 1998 and 2008, Bolivia 2009 and Mexico 2011. The new constitutional texts created expansive protections towards human rights and instituted responses to the SAP of the International Monetary Fund (IMF) by either limiting or expanding their reach (Gargarella, 2013, p. 87). One such example, is a Transitory Disposition in Ecuador's 1998 Constitution which provided the public funds necessary to cover private bank loses resulting from financial liberalisation policies demanded by the IMF (North, 2004, p. 201). Furthermore, these domestic constitutional changes were cemented on a multilateral level, by creating judicial recourse to the Inter-American Human Rights System (IAHRS), in an effort to overcome jurisdictional limitations imposed by domestic legal operators. Expansive supra-national jurisdictional protections resulted from civil society demands for the prosecution of crimes against humanity committed by the once all-powerful *caudillos*.

In addition to the constitutional reforms that took place, Ecuador also faced macro-economic collapse, continuous political instability and the recurrence of international armed conflict with Peru in 1995. Between 1979 and 2008, three constitutional texts would be approved in Ecuador, the first in 1979 ushered the return to democratic rule. The 1998 Constitution became an orchestrated piece of legislation that serviced the demands of international lenders and catered to the desires of the country's financial elites. This toxic mix of crony domestic capitalism and imposed economic policy instituted the legal mechanisms that would lead the country on a downward spiral that ended with a calamitous macro-economic meltdown in 2000 (Grijalva, 2008,

p. 259; Paz & Miño 2008). The third text approved in 2008, and still in force, was the result of widespread civil society mobilisations against the political establishments mismanagement of the economy and the continuous imposition of draconian neoliberal policy (Llasag, 2012, p. 146; North, 2004, p. 205).

GL in the 2008 Constitution materialises at least three decades of social, economic and political crises; as well as the historic struggles of ethnic minorities, peasants and the urban poor. The constitutional endeavour was thus a response to the systemic collapse of the country's political, social and economic domains. It emerged in the context of a breakdown of historic power structures, which simultaneously opened spaces and places for alternate political projects to emerge. The inherent contradictions of Latin America and Ecuador's legal system, which first erupted in the Mexican Revolution, showcase the difficulties of importing the principles of liberal democracy to serve the interests of a minuscule landowning export-banking elite (Larrea et al., 1987, p. 98).

More often than not, liberal rights nominally granted through constitutional reform, were rarely exercised as quasi-legal limitations truncated any such possibility. This internal contradiction between constitutional rights and legal reality has deep-rooted connotations, as it highlights the racial and class differentiators that construct life in Latin America since the colony; a system where the few control the many. Furthermore, these internal contradictions have made the hegemonic paradigm of constitutional liberal democracy unmanageable throughout the region, as atrophied legal systems perpetuate the class and racial sub-structures that defined life under Spanish colonial rule (Santos, 2002, p. 64). This mismatch of Euro-American democratic ideals, with the differentiators of colonial social engineering, engrained longstanding contradictions that periodically erupted in major systemic reforms.

Contradictions between constitutional principles and legal reality, showcase the prevalence of colonial social structures that service elite interests. GL as a constitutional principle is a conceptual undertaking that contests such dysfunctions, by positioning the political projects and social imaginaries of the silenced many. GL is thus an innovative conceptual construction within an otherwise traditional Euro-American legal instrument — the Constitution. Its inclusion whilst humble at first glance is the result of a national and regional push towards including the critical thinking of social movements.

This brief recapping of Latin America and Ecuador's constitutional history displays three important facts. First, that although shaped under the premise of a liberal constitutional democracy that mirrors Euro-American traditions, Latin America's constitutional history is plagued by the colonial and epistemological power structures of race and class. Second, that the dismissal of local knowledge from constitutional design has led to moments of abrupt constitutional re-design. Finally, that between 1998 and 2008, two disparate constitutional models emerged in Ecuador. Dismissing the intricacies of the 1998 text allows us to concentrate on the 2008 Constitution and consequently review the social, economic and political chaos that preceded it. The following section will briefly deal with the various events that led to Ecuador's current constitutional text in an effort to contextualise regional developments with the local events that gave way to GL.

Social, Political and Economic Meltdown: Ecuador at the Turn of the 20th Century

Race and class have fuelled social conflict in Ecuador through conquest, colonialism and the emergence of the Republic (Távarez, 2009, p. 81). Race in the colonial and republican setting was a central feature of societal interaction, either awarding or restraining citizenship (Larrea & North, 1997, p. 925; Torre, 2006, p. 254; Yashar, 2005).

In recent times, the creation of a homogenous national discourse, constructed upon an alleged shared identity as Ecuadorians, 'sought to erase differences' that have historically emerged from class, race and ethnic relationships (Sawyer, 2004, p. 124). GL as a Living Law, allows for the various and complex relationships that emerge from class and ethnicity to be discussed and reinterpreted. By paving the way for the inclusion of alternate epistemic constructions within a traditionally Western institution like the Constitution, those who have been historically silenced may engage with the construction of new political and social realities. This shift is evidence of a considerable epistemic turn as it integrates a vast majority of the population that for centuries had their political rights subverted. The inclusion of an alternate political project in 2008 stems from a specific concatenation of events that allowed, social mobilisation to gain political leverage in the face of a social, economic and political breakdown.

Central in this forging of an alternate political project is Ecuador's indigenous political party *Pachakutik* and its actions in the early 1990s (Collins, 2004, p. 41). Through the consolidation of nationwide indigenous mobilisation under its parent organisation, the Confederation of Indigenous Nationalities of Ecuador (CONAIE), the 1980s and 1990s witnessed the consolidation of a nationwide front against oil exploration in the Amazon (Sawyer, 2004, p. 43). Protests demanding collective rights and denouncing oil exploration were paired with reclamations against the dire poverty suffered by a majority of the population. This merging of social discontent would be integrated into a larger nationwide mobilisation against the draconian policy measures ushered in by SAP (Grijalva, 2008, p. 264). Nationwide fronts against SAP slowly began to consolidate, leading to the convergence of diverse domestic civil society organisations and international environmental protection networks, a process that in time

became the intellectual bedrock of GL (Altmann, 2015, p. 164; Sawyer, 2004, p. 126, 145).

Consolidating a nationwide front against historically prevalent race and class inequalities was aided by the draconian measures forwarded by the SAP of the 1980s and 1990s (Llasag, 2012, p. 120). This period entailed a series of macroeconomic and legal reforms that liberalised Ecuador's economy, forcing an abrupt retrocession of social policies enacted in the 1970s; a period marked by a prolonged oil export boom and a considerable increase in social spending (Gerlach, 2003, p. 37; Larrea & North, 1997, p. 925). Continuous regression of social services in the 1980s, coupled with fierce economic liberalisation in the 1990s, left 67% of Latin America's population facing abject poverty by the end of 20th century and 10% of the population controlling 47% of regional income according to World Bank estimates of the time (Quoted in Gerlach, 2003, p. 45, 46).

As social welfare collapsed, a larger macroeconomic meltdown gripped Ecuador in 1999, a year that ended with a total loss of 17% of GDP (Grijalva, 2008, p. 269). Such were the staggering socio-economic conditions during this period that the 1980s are considered a 'lost decade for Latin America' by the Economic Commission for Latin America and the Caribbean (CELAC), as 75% of the region's population was unable to access a basic food basket (Quoted in de la Torre and Striffler, 2009, p. 245).

The overall breakdown of social welfare conditions through SAP exacerbated longstanding structural conditions that had made poverty, racism and social marginalisation rampant (Larrea & North, 1997, p. 913). An exacerbation that also affected the already precarious power of Ecuador's political elites, as they struggled to enact policy measures that could in some way remedy ever-worsening domestic and international macro-economic conditions (Mijeski & Beck, 2011, p. 16). Incompetent economic management, uncontrolled financial liberalisation and spurious legal oversight paved the way for Ecuador's already inchoate political party system to lose any claims to representation, ultimately imploding and leaving in its wake a power vacuum that obliterated longstanding political and economic elites (Burt & Mauceri, 2004, p. 275; Levitsky & Loxton, 2013, p. 112). This opening of political spaces through the collapse of economic places, allowed civil society organisations formed by the urban poor, indigenous, Afro-Ecuadorians, feminists and peasants to come together in the construction of an alternate political, social and economic project (Escobar, 2010, p. 17).

Political turmoil mixed with socio-economic meltdowns led to a crumbling presidential system, which faced consecutive *coup d'états*. One particular instance was a civil society uprising in 2000 where indigenous leaders, military personal and a former Supreme Court Judge seized executive power for a brief 24 hours (Gerlach, 2003, p. 67; Torre, 2006, p. 248). Continuous economic, institutional and political crisis harboured the necessary conditions for a new Constitutional Assembly to take place (Levitsky & Loxton, 2013, p. 108). Increased political leverage by civil society organisations, the strengthening of Ecuador's indigenous movement and the overall demise of political and economic elites created the necessary chain of events that would ultimately usher in a new constitution in 2008.

Once in place, the Constitutional Assembly would echo popular discontent at worsening socio-economic conditions, environmental degradation caused by oil exploration and the historic reclamations of ethnic and cultural minorities (Grijalva, 2008, p. 269). GL as a constitutional precept is central to this echoing, as it highlights an attempt at addressing the overall social, economic and cultural tensions that have historically imbedded the countries constitutional system. An echoing that falls in line with the regions overall constitutional reforms, where moments of severe crises are met with attempts of addressing structural failings by granting rights that have historically been denied.

GL is thus a result of strategic social and political mobilisation against the shocks and crises that compounded the already prevalent conditions of structural discrimination and entrenched immiseration. Heightened civil society mobilisation, crystallized demands for social, economic and cultural rights by grafting them into Ecuador's 2008 Constitution; a process Habermas coined as 'juridification' or the transformation of social reality into abstract form (Johnson, 2009, p. 43; Quoted in Baxter, 2011, p. 55). GL is to be conceived as the juridification of unmet political, social, economic and cultural demands. But it is also more than this. The following section will analyse how GL interacts with the various articles that were included in Ecuador's 2008 Constitution. This analysis positions GL as a legal principal that assembles the unmet reclamations that fuelled political mobilisations in Ecuador during the 1980s, 1990s and 2000s.

The Constitution of 2008: GL as a Vindication of Social Mobilisation

GL appears in Ecuador's Constitution 99 times; continuously addressing the need for public policy to be redirected towards the materialisation of GL. As a novel constitutional principal it echoes the demands forwarded by the strategic social mobilisation that took place in Ecuador between the 1980s and 1990s, mobilisations that sought comprehensive reform in the fields of social, economic and cultural rights. Through its mobilised assertiveness an alternate political project was constructed, one that contested the country's longstanding power structures but also attempted to overcome the parochial interpretations of law wielded by self-serving elites. It is a rattling of an antiquated system that seeks to overcome the colonial legacy of yester years (Go, 2007, p. 92).

However, GL as a legal principle is far more than a novel conceptual exercise. Its concatenation with various articles of the Constitution reaffirms its power in positioning the political agendas of galvanised social movements. One such example, is GL's relationship with the newly minted rights of nature found in articles 71 to 74 of the Ecuadorian Constitution. Conjoining article 14 of the Constitution, which guarantees the right to access a healthy environment as a form of GL, with article 71 which recognises *Pachamama* or Mother Earth as the place where all life cycles take place, is a clear example of the political agendas forwarded by *Pachakutik* and other civil society organisation in the 1990s against environmental degradation and expansive oil exploration (Gerlach, 2003, p. 59). Such a conceptual framing, reinstates the struggles of indigenous communities in Ecuador's Amazon and their efforts to denounce the disruptive social effects of oil exploration. This endogenous construction of a civil society environmental consciousness, transcends the Western divorce of politics from the environment (Sawyer, 2004, p. 146).

Furthermore, GL as a constitutional guarantee, secures diverse identities and cultural traditions through article 57 of the Constitution which recognises indigenous people's collective rights in relation to international human rights instruments like the *International Labour Organization's Indigenous and Tribal Peoples Convention No. 169* or the *United Nations Declaration on the Rights of Indigenous Peoples*. An expansive umbrella of constitutional protection, that once again echoes the reclamations of ethnic minorities to secure collective rights over territory, identity and culture. This affirmation of cultural diversity and the recognition of the country's pluricultural history were chiselled in article 1 of the 2008 Constitution, that declares Ecuador as an 'intercultural and plurinational' state.

The ominous memory of social and economic turmoil of the 20th century also led Ecuador's Constitutional Assembly to incorporate various articles that deal with socioeconomic rights. One such example, is article 217 of the Constitution, which defines GL as the ultimate goal of 'organized, sustainable and dynamic group of economic, political, socio-cultural and environmental systems'. Moreover, the creation of a popular and solidarity oriented economy in article 283, appears to be a clear contestation to the market based ideology that was enacted through economic liberalisation in the 1998 Constitution, whose wording favoured the interests of transnational capital (Llasag, 2012, p. 134). In a clear distinction, article 1 of the Organic Law on Popular and Solidarity Economy of 28 April 2011, erects an economic frame based on 'popular socio-economic units which are themselves composed by individual, family, community, micro productive units, traders and artisanal shops' dedicated to the generation of subsistence revenues.

The oppositional and alternate discourse exemplified by GL marks a turning point in Ecuador's history, where the oppressed have begun wielding the borrowed weapons — of concepts and language — of modernity to safeguard identity and culture (Santos, 2014, p. 14). Wielding of new found weapons and the creation of an alternate political project, recognises 'five hundred years of indigenous resistance to imperial power' (Quoted in Sawyer, 2004, 145). Moreover, the new epistemologies that have been included in the Constitution break with Euro-American legal tradition. Such an example is the constructon of *Pachamama* or Mother Earth, as a bearer of rights. An epistemic shift that contests anthropocentric Judeo–Christian understandings of nature as a creation of human-like divinity that is subjected to the 'will of God and man'; or the reasoning of liberal democracy which entices a social understanding of nature through commodity fetishism (*Genesis* 1:26; Lazarus, 2011, p. 167; Marx, 1990, p. 163). Including *Pachamama* as a bearer of rights transcends the legal domain, as it incorporates the epistemologies of Ecuador's indigenous peoples.

Grafting an oppositional language into the Constitution of 2008 may very well be a contestation to the failed promises of modernity regarding liberty, equality, peace and the domination of nature (Santos, 2002, p. 13). Shortcomings that may never be expunged or overcome, whilst the racial and class conflicts that have prevailed in Ecuador are not confronted. This opening of legal places through new epistemological spaces, has not only occurred on a domestic level but has also been replicated through the IACtHR, a regional judicial entity that has, through a constructivist interpretation of law and society, slowly created a jurisprudence that is preoccupied with the social, economic and cultural demands that contribute to the formation of a regional Living Law.

The Role of the Inter-American Court of Human Rights as a Guarantor of GL

The IACtHR is a supra national judicial entity created by the American Convention on Human Rights (ACHR). It has an expansive jurisdiction that focuses on reviewing and interpreting the application of the ACHR by member states such as Chile, Ecuador, Colombia, Guatemala, Nicaragua and Paraguay. This regional push towards securing human rights has been explained by Elkins as an inherent part of globalisation, a process where constitutional convergence occurs through treaty ratification (et al. 2013, p. 68). The particularities of the system have led to an Inter-American constitutionality block to slowly come together (Burgorgue-Larsen, 2014, p. 17). What this means is that on a region-wide basis there is an increasing uniform interpretation of social, economic and cultural rights. This unitary interpretation of law has brought social, economic and cultural rights to slowly receive similar judicial treatment across Latin America.

The IACtHR enjoys enhanced jurisdictional capacities in Ecuador. This in large part is due to the fact that international human rights instruments — such as ILO

Convention 169 or the UN Declaration on Indigenous Peoples — have direct applicability within Ecuadorian courts. An open clause provision nestled in article 417 of the 2008 Ecuadorian Constitution, allows domestic judicial operators to summon international human rights instruments to secure adequate enforcement of social, economic and cultural rights from the state and its subsequent policies. This coming together of national and international legal provisions is further qualified by article 424 which orders human rights instruments, which grant more favourable rights, to prevail over any other domestic norm or public policy. Such a conditioning would once again seem to be an effort to create limitations to policy measures that impinge on human rights. Safeguards that were set in place to acknowledge the social, economic and political demands that were formed through transgressive political mobilisations during 'the lost decade'.

These constitutional guarantees exemplify an attempt at securing collective and individual human rights that have historically been denied. In addition to the domestic constitutional frame, the attributions of the IACtHR allows revision of Ecuador's, securement or violation, of social, economic and cultural rights in accordance with the wording of the ACHR. If GL is indeed the conceptual materialisation of the reclamations that fuelled civil society mobilisation then the IAHRS appears to be particularly well equipped to complement their judicial enforcement.

Amongst the IACtHR's legal arsenal resides the jurisdictional capability to review draft legislation within domestic legal systems, thereby demanding member states to reverse, modify or annul any such measure which acts in detriment of the social, economic and cultural rights expounded by the ACHR (Burgorgue-Larsen, 2014, p. 5). Such attributions are, however, limited to each state derogating whichever law is found to be inconsistent with the IAHRS. Notwithstanding, the fact that such judicial oversight exists is in itself an interesting avenue for GL, as its interconnectedness with economic, social and cultural rights may be further enhanced through strategic litigation before supranational bodies like the IACtHR.

If and when Ecuadorian authorities refuse to implement the mandates of the IACtHR, its pronouncements on matters of economic, social and cultural rights would nonetheless bequeath domestic judges with the necessary legal interpretation, arguments and case law to order the domestic judiciary to comply with said mandates. These powers have been utilised on repeated occasions by the Colombian Constitutional Court through strategic doctrine building on the back of the IAHRS (Bonilla, 2013, p. 278). Consolidating this constitutionality block — or the uniform interpretation of human rights law — is perhaps one of the greatest triumphs of the second wave of constitutional reform experienced by Latin America between 1979 and 2009.

The IACtHR has repeatedly dealt with subject matter that correlates to the attainment of GL as a form of cultural rights. One such case was the *Mayagna (Sumo) Awas Tingni v Nicaragua* presented before it, a case that would ultimately lead the Court to feature the collective right to identity as an intrinsic human right, stating that communal property secures the necessary cultural, social and economic rights of indigenous peoples (Burgorgue-Larsen, 2014, p. 15). Communal property over territory, understood as the ancestral space of indigenous sociality and where cultural integrity is sustained and nurtured, creates a differentiated interpretation from the concept of land, which is better equated to the liberal conception of private property (Sawyer, 2004, p. 48).

In *Sarayaku v Ecuador,* the IACtHR found that lack of synchronicity between domestic legislation and the mandates of the ACHR inevitably lead to an unlawful limitation of human rights and the subsequent international responsibility of the Ecuadorian State (*Sarayaku v Ecuador* [125]). In its sentencing, the IACtHR connected a plethora of indigenous rights to the right to property, which is recognised in article 21 of ACHR, building a legal doctrine that interweaves traditional territories with a collective right to property (Antkowiak, 2014, p. 113). This historic ruling obliged Ecuadorian authorities to submit to international legal obligations regarding communal territories and to implement comprehensive policy reforms that adhered to constitutional mandates, the ACHR and international human rights instruments in general.

Conclusion

Under the IAHRS GL appears to be much more than an ontological exercise. Furthermore, when GL is positioned in the contextual events that led to it, a new story line emerges, one that is shaped by the entrenched racial and class conflicts that predate capitalism, development and globalisation in the Americas. Such a contextual setting, where unmet political, economic, social and cultural demands have continuously led to a systemic shock, demanded new constitutional arrangements that could appease public outcry. When reviewing the expansive plethora of human rights that have been incorporated into Ecuador's legal system one may not overlook their correlation with GL. In this sense, GL becomes an overarching constitutional principle that was forged to secure political, civil, cultural, social and economic rights. Hence, GL underlines that there can be no political freedom without the basic entitlements of food, water or shelter. However, it also highlights that any civil liberty is dependent on the securement of cultural rights as a basic tenet of individual or collective identity.

Under the IAHRS, GL is further galvanised by a regional protection of human rights, be these individual or collective in nature, and the convergence of regional constitutionalism. Moreover, the supranational, regional and domestic convergence of human rights seems to reflect the demands made by civil society mobilisations in Ecuador — and other parts of Latin America — during the 1980s, 1990s and early 2000s. Strategic forms of social mobilisation that sought to create minimum guarantees for economic, social and cultural rights that had been denied, violated or simply never recognised. GL is thus far more than an attempt at crafting a legal novelty, and it certainly contests the ethereal connotations attributed by authors like Oviedo or Gudynas, who seem to intentionally or inadvertently, overlook the political realities that forged GL.

By positioning GL within the social, political and historic processes that led to it, a new storyline emerges, one of civil society mobilisation by transgressive political subjects. GL thus contests hegemonic political and economic discourses, by crafting new approaches to social, economic and cultural rights, ultimately consolidating into a Living Law; one that reflects the various unmet reclamations of the majority of Ecuador's *polity*. Far from being an idealised meta-physical Indigenous cosmo-livelihood, an extension of the principles of deep ecology, or the basis for a new economic development agenda, GL showcases the projects for emancipation of those who have historically been forced absentees from Ecuador's political processes. GL is thus the materialisation of a Living Law responsive to the socio-economic dynamics were it will be applied. As a constitutional principle, GL is the abstract form of these reclamations and an attempt at reversing the historic structural inequalities that have curtailed social, economic and cultural rights.

GL was forged in the shockwaves that shattered Latin America in the late 20th century but which also opened the necessary places and spaces that limited the power of reigning elites. GL thus holds within it the promise of realising an alternative political project that contests coloniality by forging a Living Law, a law that relates to the historic paths, contextual problems and local experiences endured by citizens, individuals and ethnic minorities. New legal understandings that seek to overcome the maimed legal fictions, or conceptual imports, brought by the hegemonic project of modernity that has historically favoured the few over the many. As Latin America embarks on the path of reinterpreting its legal systems through constructivist approaches, GL materialises the social, economic and cultural rights that in the present, and undoubtedly the future, will be at the forefront of such an endeavour.

References

Abertyn, C. (2013). Cultural diversity, 'Living Law', and Women's Rights in South Africa. In D. Bonilla Maldonado (Ed.), *Constitutionalism of the Global South: The activist tribunals of India, South Africa, and Colombia* (pp. 163–210). Cambridge, UK: Cambridge University Press.

Acosta, A. (2010). El Buen Vivir En El Camino del Post-Desarrollo: Una Lectura Desde La Constitución de Montecristi. Unpublished Policy Paper 9 by the Fundación Friedrich Ebert FES-IDLIS, Quito.

Alonso González, P., & Macías Vázquez, A. (2015). An ontological turn in the debate on Buen Vivir – Sumak Kawsay in Ecuador: Ideology, knowledge, and the common. *Latin American and Caribbean Ethnic Studies*, *10* (3), 315–334.

Altmann, P. (2015). Studying discourse innovations: The case of the indigenous movement in Ecuador. *Historical Social Research*, *40*(3) 161–84.

Antkowiak, T.M. (2014). Rights, resources, and rhetoric: Indigenous peoples and the Inter-American Court. *University of Pennsylvania Journal of International Law*, *35*, 113–187.

Baxter, H. (2011). *Habermas: The discourse theory of law and democracy*. Palo Alto, CA: Stanford Law Books.

Bonilla Maldonado, D. (2013). Self-government and cultural identity: The Colombian Constitutional Court and the right of cultural minorities to prior consultation. In D. Bonilla Maldonado (Ed.), *Constitutionalism of the global South: The activist tribunals of India, South Africa, and Colombia* (pp. 243–90). New York, NY: Cambridge University Press.

Breton, V., Cortez, D., & Garcia, F. (2014). In search of sumak kawsay: Introduction to the dossier. *Revista de Ciencias Sociales, FLACSO-Ecuador*, *18* (1), 9–24.

Burgorgue-Larsen, L. (2014). La Corte Interamericana de Los Derechos Humanos Como Tribunal Constitucional. Vol. 22. Working Papers on European Law and Regional Integration, Madrid.

Burt, J.-M., & Mauceri, P. (2004). Conclusion. In J.-M. Burt & P. Mauceri (Eds.), *Politics in the Andes: Identity, conflict and reform* (pp. 269–279). Pittsburgh, Pennsylvania: University of Pittsburgh Press.

Collins, J. (2004). Ecuador's indigenous movement and the rise of Pachakutik. In J.-M. Burt & P. Mauceri (Eds.), *Politics in the Andes: Identity, conflict reform* (pp. 38–58). Pittsburgh, Pennsylvania: University of Pittsburgh Press.

Constitution of the State of Ecuador, 23 September 1830.

Political Constitution of the Republic of Ecuador, Legislative Decree 000, Official Registry 1, 11 August 1998.

Constitution of the Republic of Ecuador, Legislative Decree 0, Official Registry 449, 20 October 2008.

Cueva, A. (2008). *Entre la Ira y la Esperanza y Otros Ensayos de Crítica Latinoamericana*. Buenos Aires, Argentina: CLACSO.

Dávalos, P., & Albuja, V. (2013). Ecuador: Extractivist dynamics, politics and discourse. In H. Veltmeyer & J. Petras (Eds.), *The new extractivism: A post-neoliberal development model or imperialism* (pp. 144–171). London, UK: Zed Books.

De La Torre, C., & Striffler, S. (Eds.). (2009). *The Ecuador reader: History, culture and politics*. Durham, UK: Duke University Press.

De La Torre, C. (2006). Ethnic movements and citizenship in Ecuador. *Latin American Research Review*, *41* (2), 247–259.

Dussel, E. (2009). A new age in the history of philosophy: The world dialogue between philosophical traditions. *Philosophy & Social Criticism*, *35* (5), 499–516.

Elkins, Z., Ginsburg, T., & Simmons, B. (2013). *Getting to rights: Treaty ratification, constitutional convergence, and human rights practice*. Unpublished Public Law and Legal Theory Working Paper No. 434, 54 (1), by the University of Chicago, Chicago.

Escobar, A. (2012). *Encountering Development: The Making and Unmaking of the Third World*. Princeton, NJ: Princeton University Press.

Escobar, A. (2010). Latin America at a crossroads. *Cultural Studies*, 24 (1), 1–65.

Fanon, F. (1963). *The Wretched of the Earth*. New York, NY: Grove Press.

Fischer, A., & O'Hara, M.D. (2009). Racial Identities and their Interpreters in Colonial Latin America. In A. Fischer & M. O'Hara (Eds.), *Imperial subjects: Race and identity in Colonial Latin America* (pp. 1–38). Durham, UK: Duke University Press.

Foucault, M. (1995). *Discipline and punish: The birth of the prison*. New York, NY: Vintage Books.

Gargarella, R. (2013). *Latin American constitutionalism, 1810–2010: The engine room of the constitution*. New York, NY: Oxford University Press.

Gerlach, A. (2003). *Indians, oil, and politics: A recent history of Ecuador*. Wilmington, DE: Scholarly Resources Inc.

Go, J. (2007). A Globalizing Constitutionalism? Views from the Post Colony, 1945–2000. In S. A. Arjomand (Ed.), *International comparative social studies: constitutionalism and political reconstruction* (pp. 89–114). the Netherlands: Brill Academic Publishers.

Grijalva, W. (2008). *Breve historia bancaria del Ecuador*. Quito, Ecuador: Corporacion Editora Nacional.

Grovogui, S. N. (2014). To the Orphaned, Dispossessed and Illegitimate Children: Human Rights Beyond Republican and Liberal Traditions. *Indigenous Journal Global Legal Studies*, 18 (14), 41–63.

Gudynas, E., & Acosta, A. (2011). La renovación de la crítica al desarrollo y el buen vivir como alternativa. *Utopía y Praxis Latinoamericana*, *16* (53), 71–83.

Harris, A. P. (2013). Critical race theory. In R. Banakar & Max Travers (Eds.), *Law and Social Theory* (pp. 147–161). Oxford, UK: Hart Publishing.

Harvard Center for International Development. (2003). Washington Consensus. Retrieved June, 2016 from http://www.cid.harvard.edu/cidtrade/issues/washington.html.

Inter-American Court of Human Rights, case of "The Mayagna (Sumo) Awas Tigni Community v. Nicaragua." Merits, Reparations, and Costs, August 31, 2001.

Inter-American Court of Human Rights, case of the "Kichwa Indigenous People of Sarayaku v. Ecuador." Judgment, June 27, 2012.

International Monetary Fund. (2001). The Mexican Crisis: No Mountain Too High? Retrieved June, 2016 from https://www.imf.org/external/pubs/ft/history/2001/ch07.pdf.

Johnson, P. (2009). *Habermas rescuing the public sphere*. London: Routledge.

Larrea, C., Espinosa, M., & Charvet, P.S. (1987). *El Banano en el Ecuador: Transnacionales, modernización y subdesarrollo*. Carlos Larrea (Ed.) Quito, Ecuador: Corporacion Editora Nacional.

Larrea, C. & North, L. (1997). Ecuador: Adjustment policy impacts on truncated development and democratisation. *Third World Quarterly*, *18* (5), 913–934.

Lazarus, R.J. (2011). Recuperando lo que es ambiental acerca del derecho ambiental. In C. E. Gallegos-Anda & Camilo Perez (Eds.), *Los derechos de La naturaleza y la naturaleza de sus derechos* (pp. 169–208). Quito, Ecuador: Ministerio de Justicia y Derechos Humanos.

Levitsky, S., & Loxton, J. (2013). Populism and Competitive Authoritarianism in the Andes. *Democratization*, *20* (1), 107–36.

Llásag Fernández, R. (2012). Movimiento Indígena del Ecuador a Partir Del Siglo XX: Visibilizando el Resurgir, Sus Avances Y Retrocesos. In B. Sousa Santos and A. Grijalva (Ed.), *Justicia Indígena, Plurinacionalidad e Interculturalidad en Ecuador*, (83–156). Quito, Ecuador: Abya Yala and Fundación Rosa Luxemburg, 2012.

Mansilla, H.C.F. (2011). Ideologias oficiales sobre el medio ambiente en Bolivia y sus aspectos problematicos, *Ecuador Debate*, *84*, 89–106.

Marx, K. (1990). *Capital: A critique of Political Economy (Vol. I)*. London, UK: Penguin Books.

Mignolo, W. D. (2013). Delinking: The rhetoric of modernity, the logic of coloniality and the grammar of de-coloniality. In W.D. Mignolo & A. Escobar (Eds.), *Globalization and the decolonial option* (pp. 303–368). New York, NY: Routledge.

Mijeski, K. J., & Beck, S.H., (2011). *Pachakutik and the rise and decline of the ecuadorian indigenous movement*. Athens, OH: Ohio University Press.

Monni, S., & Pallottino, M. (2016). A new agenda for international development cooperation: Lessons learnt from the buen vivir experience. *Development*, *58* (1), 49–57.

North, L.L. (2004). State Building, State Dismantling and Financial Crisis in Ecuador. In J.-M. Burt & P. Mauceri (Eds.), *Politics in the Andes: Identity, conflict reform* (pp. 187–206). Pittsburgh, Pennsylvania: University of Pittsburgh Press.

Organic Law on Popular and Solidarity Economy, Official Registry 444, 10 May 2011.

Oviedo Freire, A. (2014). Ruptura de dos paradigmas. In A. Freire Oviedo (Ed.) *Bifurcación del buen vivir y El sumak kawsay* (pp. 139–224). Quito, Ecuador: Sumak.

Paz & Miño, J. J. (2008). Visión histórica de las constituciones de 1998 y 2008. Instituto de Investigacion y Debate Sobre la Gobernanza. Retrieved 16 July, 2016 from http://www.institut-gouvernance.org/es/analyse/fiche-analyse-449.html.

Quijano, A. (2013). Coloniality and modernity/rationality. In W.D. Mignolo & A. Escobar (Eds.), *Globalization and the decolonial option* (pp. 22–33). New York, NY: Routledge.

Radcliffe, S. A. (2012). Development for a postneoliberal era? *Sumak kawsay*, living well and the limits to decolonisation in Ecuador. *Geoforum*, *43* (2), 240–249.

Radcliffe, S.A. (2015). Development Alternatives. *Development and Change*, *46*, 4, 855–74.

Rodriguez-Garavito, C. (2011). Beyond the courtroom: The impact of judicial activism on socioeconomic rights in Latin America. *Texas Law Review*, *89* (1669), 1669–1698.

Ruttenberg, T. (2013). Wellbeing economics and Buen Vivir: Development alternatives for inclusive human security. *PRAXIS The Fletcher Journal of Human Security*, *XXVIII*, 68–93.

Santos, B.d.S. (2002). *Toward a new legal common sense: Law, globalization, and emancipation.* Cambridge, UK: Cambridge University Press.

Santos, B.d.S. (2014). *Epistemologies of the south: Justice against epistemicide.* London, UK: Paradigm Publishers.

Sawyer, S. (2004). *Crude chronicles: Indigenous politics, multinational oil, and neoliberalism in Ecuador.* Durham, UK: Duke University Press.

Séverine, D. (2012). Justice and deliberation about the good life: The contribution of Latin American buen vivir social movements to the idea of justice. Working Paper No. 17 June 2012, Bath Papers in International Development and Wellbeing. Retrieved 30 September, 2015 http://opus.bath.ac.uk/31884/.

Stefanoni, P. (2012). ¿Y quién no querría vivir bien? Encrucijadas del proceso de cambio boliviano" en Cuadernos del Pensamiento Crítico Latinoamericano (53). CLACSO. Retrieved 20 July, 2016 from http://biblioteca.clacso.edu.ar/clacso/se/20120530115053/53-Stefanoni-Encrucijada.pdf.

Távarez, D. (2009). Legally Indian: Inquisitorial readings of indigenous identity in New Spain. In A.B. Fischer & M.D. O'Hara (Eds.), *Imperial subjects: Race and identity in colonial Latin America* (pp. 81–100). Durham, UK: Duke University Press.

The Bible. (1997). *Authorized King James version with Apocrypha*, Oxford, UK: Oxford University Press.

Walsh, C. (2013). Shifting the geopolitics of critical knowledge: Decolonial thought and cultural studies 'Others' in the Andes. In W. D. Mignolo & A. Escobar (Eds.), *Globalization and the Decolonial Option*, (pp. 303–368). New York: Routledge.

Whitehead, L. (2012). Latin American constitutionalism: Historical development and distinctive traits. In D. Nolte & A. Schilling-Vacaflor (Eds.), *New Constitutionalism in Latin America: Promises and Practices* (pp. 123–160). Oxon, UK: Ashgate Publishing Group.

Womak, J. (1968). *Zapata and the Mexican Revolution.* New York, NY: Vintage Books.

World Bank. (2013). Inequality in Latin America falls, but challenges to achieve shared prosperity remain. Retrieved 20 July, 2016 from http://www.worldbank.org/en/news/feature/2013/06/14/latin-america-inequality-shared-prosperity.

World Economic Forum. (2016). Latin America is the World's most unequal region. Here's how to fix it. Retrieved 17 June, 2016 from https://www.weforum.org/agenda/2016/01/inequality-is-getting-worse-in-latin-america-here-s-how-to-fix-it/.

Yashar, D.J. (2005). *Contesting citizenship in Latin America: The rise of indigenous movements and the postliberal challenge.* Cambridge, UK: Cambridge University Press.

Yates, J.S., & Bakker, K. (2013). Debating the 'post-neoliberal turn' in Latin America. *Progress in Human Geography*, *38*, 1, 62–90.

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