Indigenous Rights as a Field of Sociological Research

Thornhill, Christopher

DOI:
10.31338/2544-3135.si.2023-96.18

Document Version
Publisher's PDF, also known as Version of record

Citation for published version (Harvard):
Thornhill, C 2023, 'Indigenous Rights as a Field of Sociological Research', *Studia Iuridica*, vol. 96, pp. 374-404. https://doi.org/10.31338/2544-3135.si.2023-96.18

Studia Iuridica 96
ISSN 0137-4346; e-ISSN 2544-3135

DOI: https://doi.org/10.31338/2544-3135.si.2023-96.18

Chris Thornhill
University of Manchester, United Kingdom
e-mail: chris.thornhill@manchester.ac.uk
ORCID: 0000-0002-2286-5967

INDIGENOUS RIGHTS AS A FIELD OF SOCIOLOGICAL RESEARCH

Abstract

This paper sets out a new reconstruction of indigenous rights as a field of sociological research. Questioning the dominant pluralist paradigm in such inquiry, it claims that indigenous rights are primarily the results, not of socially embedded customs, but of interactions between international law and national law. It then proceeds to explain that, to capture such rights, a focus on social integration and national citizenship is required. It uses this framework to explain indigenous rights as elements of a global legal order that facilitates the construction of citizenship, especially in societies in which citizenship has been subject to deep strain.

KEYWORDS

indigenous rights, international law, integration and national citizenship, ethnicity, global legal system

SŁOWA KLUCZOWE

prawa tubylcze, prawo międzynarodowe, integracja i obywatelstwo krajowe, etniczność, globalny system prawny

1. INTRODUCTION: THE THREE-LEVEL CONSOLIDATION OF INDIGENOUS RIGHTS

The construction of rights for designated indigenous groups is a relatively new legal process. The protection of indigenous rights first became a question of broad concern in the decades following 1945, and it gained increased momentum in the 1970s. This was triggered, in part, by long-term processes of decolonization in Africa, Latin America, and later – to a lesser degree – in the regions formerly belonging to the Soviet Union. Rights for indigenous peoples are now strongly consolidated at three separate levels of legal formation.

Firstly, at the global level, indigenous rights are protected in several legal agreements and conventions, especially in documents promulgated by the International Labour Organization (ILO) and the United Nations (UN).[1] In 1957, initially, the ILO adopted Convention No. 107, whose purpose was to protect indigenous and other tribal or semi-tribal populations. Later, in 1989, the ILO adopted Convention No. 169 (ILO C169). This Convention promotes the principle of solidarity as a guiding norm for interaction between government bodies and indigenous communities, and it was conceived as a set of norms to be applied to a large range of communities claiming *pre-colonial* or *pre-national status*.[2] The rights accorded to such communities by ILO C169 include rights to cultural integrity and to some participation in decision-making processes affecting their well-being, to land occupancy, to territory and resources, and to non-discrimination in social and economic matters.[3] The rights of indigenous peoples have been addressed by different organs of the UN since the 1970s. Initially, the UN considered indigenous rights through its human rights treaty bodies. More recently, three organs with specific responsibility for indigenous matters have been created: the Permanent Forum on Indigenous Issues (2000), the Expert Mechanism on the Rights of Indigenous Peoples (2007), and the Special Rapporteur on the

[1] Some sections on pages 375–383 of this paper reproduce in a condensed form some parts of the analysis already set out in Ch. Thornhill, C. Calabria, R. Cespedes, D. Dagbanja, E. O'Loughlin, *Legal Pluralism? Indigenous Rights as Legal Constructs*, 'University of Toronto Law Journal' 2018, Vol. 68(3). I am very grateful to Carina Calabria for the research that is included here on the UN and the Inter-American Human Rights System.

[2] See Indigenous and Tribal Peoples Convention (No. 169), International Labour Organization, 27 June 1989, 28 ILM 1382 (1989) (ILO C169). For the coverage of ILO C169, see note 49 below.

[3] On the significance of such categories of collective rights, see A. Buchanan, *The Role of Collective Rights in the Theory of Indigenous Peoples' Rights*, 'Transnational Law and Contemporary Problems' 1993, Vol. 3, p. 91.

Rights of Indigenous Peoples (2001). In addition, in 2007, the UN issued the Declaration on the Rights of Indigenous Peoples.[4]

Secondly, indigenous rights are protected under human rights conventions and by courts and commissions enforcing human rights law at the regional international level, especially in South America and Africa. Illustratively, in 1997, the Inter-American Commission on Human Rights (IACHR) approved a draft version of the American Declaration on the Rights of Indigenous Peoples. In 2016, the final version of this Declaration was adopted by the General Assembly of the Organization of American States.[5] In this same period, the Inter-American Court of Human Rights (IACtHR) began to issue rulings in cases concerning indigenous rights, being the first international tribunal to do this.[6] In developing its case law, the IACtHR has produced a unique line of jurisprudence regarding rights for indigenous communities, especially, although not solely, concerning questions related to land ownership. In *Awas Tingni* (2001),[7] the Court became the first international tribunal to recognize the right of an indigenous community to communal property. In *Saramaka People v Suriname* (2007) and *Kaliña and Lokono Peoples v Suriname* (2015), the Court ruled that States have an obligation to show recognition of the legal personality of indigenous peoples. Concretely, such recognition entails recognition of their collective right to property and their right to an effective remedy in cases where this right is violated.[8] In such rulings, the Court has declared that its policy is to pursue an 'evolutionary interpretation of international instruments for the protection of human rights', by which means it aims to establish normative principles that revise and widen more classical property rights.[9] To this end, in particular, the IACtHR has established protections for indigenous land rights by arguing that such rights are linked to, and flow from, the right to life, and especially the right to *vida digna*: *life with dignity*.[10] The concept of the right to *vida digna* plays a central role in underscoring the

[4] The General Assembly Resolution 61/295, concerning the Declaration, was adopted a year after its draft submission by the United Nations Human Rights Council. See United Nations Declaration on the Rights of Indigenous Peoples, United Nations GA Resolution A/RES/61/295, 61st session, 13 September 2007.

[5] See information on the adoption of the American Declaration on the Rights of Indigenous Peoples at: http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-075/16 (accessed 25.04.2023).

[6] See Inter-American Court of Human Rights (IACtHR), *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001) Series C No. 79. See comment in L. Burgorgue-Larsen, A. Úbeda de Torres, *The Inter-American Court of Human Rights: Case Law and Commentary*, Oxford 2013, p. 501.

[7] See IACtHR, *Awas Tingni*, (2001) Series C No. 79.

[8] See IACtHR, *Saramaka People v Suriname* (2017) Series C No. 172.

[9] See IACtHR, *Awas Tingni*, (2001) Series C No. 79, para. 148.

[10] See J. Pasqualucci, *The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System*, 'Hastings International and Comparative Law Review' 2008, Vol. 31(1); S. R. Keener,

system of indigenous rights in Latin America. In essence, this concept indicates that the general right to life, universally protected in international law, contains, by inference, the secondary right for people to live in material conditions that support, not only bare life itself, but life conducted as *dignified existence*.[11] This concept is now commonly interpreted to indicate that indigenous persons have a right to own, or at least not to be coercively removed from, their ancestral lands. The ground for this principle is that such lands create vital preconditions for the essential well-being of their inhabitants, enabling them to live their lives in dignified fashion.[12]

Alongside this, the African regional human rights instrument, the African Charter on Human and Peoples' Rights, expressly provides recognition for collective rights, and it gives clear protection to cultural rights, which can be interpreted as incorporating indigenous rights.[13] The African Charter has not been systematically employed as a basis for establishing specific indigenous rights, and regional recognition of rights attached to indigeneity is not as widespread in Africa as in Latin America.[14] Indeed, the question of indigeneity has sensitive connotations in many African states, especially those without large European communities, as it is susceptible to being interpreted in terms that imply that one ethnic group may have stronger property rights than potentially rival groups. In recent years, nonetheless, the balance of opinion in Africa has moved towards a position that accepts some rights based in indigeneity. The African Commission on Human and Peoples' Rights has promoted a particular line of reasoning regarding indigenous rights. Amongst other sources, this is reflected in a Report produced by a Working Group of Experts on Indigenous Populations/Communities in Africa, established by the African Commission. This Report stated that the rights arising from indigeneity can be assumed by groups claiming 'a special attachment to and use of their traditional land'.[15] In parallel, the concept of indigeneity has been cautiously recognized in judicial pronouncements of the African Commission.[16] The

---

J. Vasquez, *A Life Worth Living: Enforcement of the Right to Health through the Right to Life in the Inter-American Court of Human Rights*, 'Columbia Human Rights Law Review' 2008, Vol. 40.

[11] J. Pasqualucci, *The Evolution of International Indigenous Rights in the Inter-American Human Rights System*, 'Human Rights Law Review' 2006, Vol. 6(2), p. 299.

[12] For application of the concept of *vida digna* in indigenous property cases, see for example IACtHR, *Yakye Axa Indigenous Community v Paraguay* (2005) **S**eries C No. 125, para. 161. For comment, see T. Antkowiak, *Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court*, 'University of Pennsylvania Journal of International Law' 2013, Vol. 35(1).

[13] See B. Saul, *Indigenous Peoples and Human Rights. International and Regional Jurisprudence*, Oxford 2016, p. 204.

[14] See F. Viljoen, *International Human Rights Law in Africa*, 2nd edn, Oxford 2012, p. 230.

[15] *African Commission's Working Group of Experts on Indigenous Populations/Communities*, *Report* (2005) 93, http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf (accessed 25.04.2023).

[16] See e.g. African Commission on Human and Peoples' Rights, *Katangese Peoples' Congress v Zaire*, Communication No. 75/92 (1995).

first such case was *Katangese Peoples' Congress v Zaire* (1995), although in this case the Commission did not decide in favour of the community in question.[17] Specific group rights for indigenous communities have been established in later cases brought to the Commission, notably *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* (2001) and *Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya* (2009). More recently, the African Court of Human and Peoples' Rights recognized that a minority population group in Kenya, the Ogiek, had legitimate claim to be classified as indigenous, and that certain rights flow from this classification. The Court established the indigeneity of the Ogiek on grounds of their strong attachment to traditional land, and of their cultural distinctiveness.[18]

Thirdly, many national institutions have constructed a specific set of constitutional norms, either through statutory legislation or through judicial rulings, which incorporate and expand international provisions for indigenous rights. This is seen most extensively in Latin America, but it can also be observed as a constitutional feature in some African states. In Colombia and Bolivia, a body of jurisprudence has been established that grants protection for the cultural autonomy of groups identified as indigenous.[19] The Constitutional Court of Colombia has adopted a policy of *maximization* in addressing indigenous judicial rights, stating that the 'maximization of the autonomy of indigenous communities' is a judicial goal.[20] In Bolivia, this recognition has been expanded to grant autonomous status to some communities, allowing them partial rights of administrative autonomy. As discussed below, some national courts in Africa have also created protective legal orders for indigenous communities.[21]

2. A NEW OBJECT FOR SOCIOLOGICAL INQUIRY

In parallel to the emergence of this three-level legal corpus, a body of legal-sociological research has developed regarding indigenous rights, which addresses such rights within the framework of legal pluralism. In fact, indigenous rights have become a favoured object of legal-sociological inquiry, as such rights rein-

[17] See discussion in S. A. Dersso, *The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights*, 'African Human Rights Law Journal' 2006, Vol. 6(2), p. 366.

[18] African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v the Republic of Kenya*, Application No. 006/2012 (2013), Judgment of 26 May 2017, para. 107.

[19] See below p. 381–382.

[20] See Constitutional Court of Colombia, T-349/96.

[21] See below p. 397–400.

vigorate the concern with pluralistic legal orders lying at the origins of legal sociology.[22] From the pluralistic perspective, the protection of indigenous rights is viewed as entailing the protection of rights that are informally embedded in the shared life practices of collective subjects, existing outside the limits of formal law, which is frequently associated with *the laws of colonizers*. The assumption that indigenous rights reflect the existing pluralistic structure of societies inhabited by indigenous populations has become the dominant view in legal-sociological research concerning questions of indigeneity.[23]

Despite its broad acceptance, the pluralistic approach to indigenous rights is in some respects sociologically questionable, and it adopts a rather narrow focus on the social forces that underlie legal protections for indigenous communities. It is possible to observe three broad tendencies in the construction of indigenous rights that have little to do with pluralistic legal structures or subjects in national societies, and which require alternative sociological interpretation. Three points are commonly salient in legal orders protecting indigenous groups, forming a convergent matrix in most contexts where such rights are acknowledged, and these points cannot easily be explained by pluralistic analysis.

Firstly, owing to its three-level structure, the body of law covering indigenous rights is largely formed *transnationally*, typically through cross-jurisdictional interactions between national legislators and courts and/or norm setters located outside national societies. Much protection for indigenous rights originates in UN directives and ILO conventions, and, on this basis, it takes effect through national laws through which international principles are incorporated domestically. Notably, indigenous rights typically became subject to entrenchment at the same time that human rights law, in general terms, acquired increased global prominence and transnational efficacy.[24] The promulgation of protections for indigenous rights cannot easily be separated from the wider transformation of international law in

[22] See the original version of this argument in E. Ehrlich, *Grundlegung der Soziologie des Rechts*, 4th edn, Berlin: Duncker und Humblot 1989 (1913).

[23] See for some well-known examples in: R. P. Alcoreza, *Estado plurinacional comunitario autonómico y pluralismo jurídico*, (in:) B. de Sousa Santos, J. L. Exeni Rodríguez (eds), *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia*, Quito 2012, p. 410; B. de Sousa Santos, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, 'Law and Society Review' 1977, Vol. 12(1); S. Yampara Huarachi, *Cosmo-convivencia, Derecho y Justicia de los Pueblos Qullana* (2005), Address at the Seminar on Law and Communitary Justice organized by the APPNOI-TARI-Community Pacha[kuti], available at: http://www.katari.org/pdf/justicia%20Qullana.pdf (accessed 25.04.2023); E. Sánchez Botero, *Aproximación desde la antropología jurídica a la justicia de los pueblos indígenas*, (in:) B. de Sousa Santos, M. García Vilegas (eds), *El caleidoscopo de las justicias en Colombia*, Vol. II, Bogotá 2001, p. 186.

[24] The mid-1970s and earlier 1980s can be seen as the period in which human rights law, already existent in its basic structure from the years after 1945, acquired new force. This was reflected inter alia in the Helsinki Accords (1975), the entry into force of the international covenants, the founding of the IACtHR, the growing international criticism of human rights abuses through the UN, and the adoption of the African Charter on Human and Peoples' Rights.

the 1980s and 1990s, in which the emphasis on individual human rights acquired increased general force. The construction of pluralistic rights-holding subjects in national societies is not easily separable from such wider tendencies in inter- or transnational law, and it reflects a broader focus on the protection of distinctive subjective rights, within national societies, in the international arena. As a result, the primary motive for such construction cannot simply be identified in pluralistic patterns of agency within national societies, and it does not directly reflect the actions of groups or collective subjects demanding recognition for simply given legal norms. In most cases, definitions of indigenous rights resulted from legal opportunities created in the global arena, which made it possible for actors in domestic environments to consolidate new legal rights and legal subjects. At the centre of the body of indigenous rights is thus a very generalized propensity in global law, and indigenous groups usually acquired enhanced legal subjectivity at the same time that other groups were able to mobilize around global legal norms in order to solidify their position in society.[25] Overall, the construction of indigenous rights is relatively independent of national governments and of particular groups within national societies, and it reflects the penetration of globally expressed norms into national societies.

Secondly, the relative indifference of the guarantees provided for indigenous rights to existing social subjects is reflected, quite clearly, in the fact that, in laws protecting indigenous rights, the actual personality of indigenous groups claiming rights is frequently defined in very generic terms. Indeed, provisions for indigenous rights usually avoid offering a specific definition of the groups entitled to such rights, often qualifying the basic categorization of 'indigeneity', in order to avoid inducing conflict between groups claiming authority to assume indigeneity. As a result of this, groups that are accorded protections flowing from indigenous rights are often groups whose claim to indigeneity, if strictly defined as a quality of original or pre-national identity, is not strong. Indigenous rights, in other words, do not necessarily presuppose indigeneity among the subjects that claim them.

This non-specific construction of indigenous groups is reflected in primary international instruments regarding indigenous rights. Indicatively, ILO C169 attempts to circumvent precise definitions of the subjects entitled to claim indigenous rights. It states in Article 1(2) that: 'Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.' In the UN's draft criteria for defining indigenous people, the 'desirability of developing a definition of indigenous peoples' is admitted, but the possibility of establishing such a definition is questioned. Importantly, it is recognized in the UN that indigenous rights have been successfully defined and protected despite the fact that the UN has not 'adopted any formal defi-

[25] See below p. 396.

nition of indigenous peoples'.[26] In Africa, as mentioned, most social groups have some claim to indigeneity, and the title of indigeneity is typically avoided because of the risk that claims to this title may trigger violent conflict over land. In this context, the African Commission has observed that 'a strict definition of indigenous peoples is neither necessary nor desirable'.[27] In ruling on cases regarding indigenous rights, the African Court has noted 'that the concept of indigenous population is not defined in the Charter', and that 'there is no universally accepted definition of "indigenous population" in other international human rights instruments'.[28] In Latin America, the IACtHR has issued a number of rulings in which the status of indigenous people, with all attendant protections, has been broadened to provide coverage for groups without manifest claim, in strict definition, to indigeneity. In fact, the IACtHR has established that other marginal communities, with no strict claim to indigeneity, are entitled to rights akin to those ascribed to more clearly indigenous communities. Some such rulings even refer to population groups of African descent, whose position is not uncontroversially classifiable as *pre-colonial*. One example of a community construed as a holder of rights parallel to those granted on grounds of indigeneity is the Maroons. The Maroons are a tribal group comprising descendants of Africans, who were taken to the region of Suriname in the seventeenth century to work as slaves on plantations.[29] In a case concerning the Moiwana community in Suriname, the Court decided that, although 'the Moiwana community members are not indigenous to the region', communal rights to property accorded to indigenous groups should be extended to include the Moiwana community members. This was justified on grounds that the Moiwana possess a 'profound and all-encompassing relationship to their ancestral lands'.[30]

To avoid strict definition of indigeneity, national courts in many countries have replicated international guidelines in emphasizing the significance of *self-identification* as the basic determinant of indigeneity. In Colombia, the Constitutional Court followed ILO C169 in declaring 'self-identification' the main standard for determining indigeneity.[31] In one Bolivian case, it was decided that the self-identification of legal claimants as indigenous is the 'essential element and the point

[26] *Note by the Chairperson-Rapporteur of Working Troup on Indigenous Populations on criteria which might be applied when considering the concept of indigenous peoples*, U.N. Doc E/CN.4/Sub.2/AC.4/1995/3 (21 June 1995), paras 3, 6, 9, 65.

[27] International Labour Organization and African Commission on Human and People's Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries*, Geneva 2009, p. 15.

[28] African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v the Republic of Kenya*, Application No. 006/2012 (2013), Judgment of 26 May 2017, para. 105.

[29] See IACtHR, *Aloeboetoe et al. v Suriname* (1991) Series C No. 11.

[30] See IACtHR, *Moiwana Community v Suriname* (2005) Series C No. 124, paras 131–133.

[31] Constitutional Court of Colombia, T-792/12.

of departure for such peoples', and the right of self-identification has allowed a range of groups to claim indigenous status.[32] Importantly, in many national contexts, rights ascribed to self-identified indigenous groups do not differ manifestly from rights with more general application that are allocated to other vulnerable or imperilled groups. For instance, the Constitutional Court of Colombia has frequently emphasized that indigenous groups should be treated as 'subjects of especial constitutional protection',[33] and it has set out heightened guarantees for their rights on that basis. However, in doing this, the Court has established the rights of indigenous peoples in terms not clearly distinguishable from rights granted to similar vulnerable subjects and groups. Notably, it has described mechanisms for ensuring indigenous rights as 'analogous to those conferred by the legal order' on persons pertaining to other disadvantaged social milieux.[34] As stated above, therefore, the rise in the importance of legal protections for indigenous people is part of a broader process of legal consolidation, in which protection for single subjects is generally intensified. The emergence of indigenous legal subjects is one aspect of a global pattern of subject construction, and it does not specifically result from the mobilization of indigenous subjects.

Thirdly, one globally unifying principle in the construction of indigenous rights is that such rights are typically established and recognized on a legal foundation defined through reference to principles of *proportionate autonomy*. That is to say, in most cases, indigenous groups are able to claim distinctive rights regarding – for instance – land use, education and cultural practices if, and to the extent that, the exercise of such rights does not disproportionately contravene broader legal norms, set out in human rights law and in criminal law, determining the limits of legitimate social action. In most cases, judges evaluating whether, in certain circumstances, indigenous rights should be acknowledged and protected have assessed whether such rights conflict with or unsettle the status of other high-ranking rights. Accordingly, in such assessments, judges have used standards of proportionality – of 'rational evaluation' – to determine which of the (potentially) conflicting rights should 'enjoy greater weight'.[35] Indigenous rights have thus been acknowledged where they do not disproportionately conflict with other rights, with potentially higher status. The application of proportionality reasoning underlies the terms in which indigenous law is constructed, reflecting a broad tendency towards the use of proportionality in international and national jurisprudence in recent decades.[36] This

[32] Constitutional Court of Bolivia, 0645/2012.

[33] Constitutional Court of Colombia, T-766/15.

[34] Constitutional Court of Colombia, C-175/09.

[35] Constitutional Court of Colombia, T-254/94.

[36] M. Cohen-Eliya, I. Porat, *Proportionality and Constitutional Culture*, Cambridge 2013; A. Stone Sweet, J. Mathews, *Proportionality Balancing and Global Constitutionalism*, 'Columbia Journal of Transnational Law' 2008, Vol. 47.

implies, again, that indigenous rights are not brought into being by distinct subjects in society. The recognition of indigenous rights does not involve the pluralistic walling off of indigenous subjects as social actors and it does not imply the recognition of indigenous practices as located in a unique and inviolable legal space. To the contrary, these rights presuppose an internationally implied meta-constitution, and they are usually determined by their proportional relation to a higher system of norms. The consequence of this, in many cases, is that the rights that can be claimed by indigenous groups do not differ very substantially from the rights that are allotted to other groups of citizens with specific interests, and they are typically not substantially distinct from primary norms of rights-based citizenship. Arguably, the establishment of strong protections for indigenous groups has become possible precisely because of the rising global force of human rights law, which means that a strict and robust order of higher norms has been established, within which proportionate deviations may, exceptionally, be permitted.

All of this suggests that, if we wish to explain the formation of indigenous rights, sociological analyses based simply in legal pluralism, focused on the concrete expectations of social groups existing at the margins of formal (colonial) law, do not always provide the most adequate pathway. The pluralistic approach to indigenous rights is called into question by the fact, as outlined, that the growing force of indigenous rights has been underpinned by the emergence of a solidified corpus of global human norms. In many cases, indigenous rights are pre-defined by global legal norms, and they do not have a direct foundation in the actions of existing subjects. It is difficult to examine either the definition or the exercise of indigenous rights without observing them in conjunction with the formation of a broader, and increasingly formalized system of global legal rights, entailing distinct patterns of construction for a wide range of new legal subjects.

3. CONSTRUCTING INDIGENOUS RIGHTS AS A SOCIOLOGICAL QUESTION

On this basis, it is contended in this paper that the construction of indigenous rights as a field of sociological research has become excessively focused on the pluralist paradigm. This focus may be attributed to the fact that the recognition of indigenous rights, especially at the international level, is relatively new, and analysis of such rights concentrates on societies with a clearly identifiable colonial history, often reflected in manifest ethnic heterogeneity. For this reason, sociological inquiry discovered indigenous rights relatively late, and it tended to take at face value the assumption that, in claiming rights, indigenous groups (and

their advocates) were seeking protection for socially embedded subjectivities. This paper challenges common pluralistic approaches to the social construction of indigenous rights in two ways. Based on the above analysis, firstly, it is argued that rights require sociological explanation, primarily, as elements of an emerging global legal system – it is impossible to explain such rights without explanatory consideration of this system. In addition, secondly, it is argued that the formation of such rights is also part of a much wider process, not solely focused on selected societies with acknowledged indigenous communities: it is necessary to observe how the growth of such rights is connected to more universal social dynamics, and to perceive how the rights now granted to indigenous groups describe lines of social formation not exclusive to societies in which such rights have recently been claimed. It is argued here, thus, that the key to a sociological examination of indigenous rights is to adopt an emphasis, not on *social or ethnic pluralism*, but on *patterns of integration*. Patterns of integration are linked to the establishment of national citizenship regimes, which underpin the construction of national societies at a more universal level. If examined in a lens focused on integration and citizenship formation, the expansion of indigenous rights in recent years can be assessed in a perspective that accounts for the broad social premises of such rights, and the forces shaping indigenous rights can be more reliably identified, isolated, and explained. Moreover, the focus on integration allows us to comprehend the role played by globally defined norms in the formation of indigenous rights. Through this altered focus, sociological reconstruction of the ways in which contemporary states define and protect indigenous rights can throw light on some of the deepest sociological problems and the most vital formative trajectories at the core of modern states and modern societies. Analysis of the processes through which rights of pre-national populations are protected in contemporary society enables us to interpret, in broad terms: (i) changes in primary patterns of social integration underlying national societies; (ii) changes in the basic structure of national citizenship; (iii) changes in the formation of normative systems implemented to integrate national communities.

To understand indigenous rights as a general sociological phenomenon, however, current sociological perspectives on such rights require a twofold revision.

Firstly, it is necessary to revise slightly the way in which we understand indigenous communities, and to relativize the distinction typically posited between such groups and other ethnic minorities. As discussed, the increasing emphasis placed on the protection of indigenous rights is a product, at least implicitly, of a wider transformation in the understanding of legal subjectivity and the foundations of legal subjectivity. This process is strongly connected to a trajectory in which the legal personality of agents in national societies is construed around global norms. For this reason, it is important to observe that the expansion of legal protections for population groups identified as indigenous is not strictly detached from broader alterations to concepts of national citizenship, which are

also increasingly configured around global norms. Analysis of indigenous rights needs to form part of a broader analysis of global tendencies in the construction of citizenship.

On this basis, secondly, it is necessary to adopt a revised approach to the social and political occurrences typically associated with the concept of colonization, in relation to which the discussion of indigenous rights is normally framed. The concept of colonization is usually applied to explain the overseas expansion of European polities at different historical junctures, and it is commonly seen as a process that gave rise to subsequent long-term experiences of decolonization, especially in Latin America and Africa. In such contexts, colonization appears as a process involving the large-scale displacement of population groups from economically stronger to economically weaker global regions, enabling stronger groups to reinforce their already solid hegemonic position. More specifically, it is seen as involving the transplantation of large numbers of European persons to other parts of the world, who then typically acquired dominant societal or official positions in the geographical areas that they came to inhabit. It is also seen as involving, in colonized regions, the enforced internal migration of pre-colonial population groups, through which the (usually informal) partitions between colonized communities were altered. In most cases, colonization is associated with coercive and frequently violent assertions of superiority by the invasive group over one other group or a range of other groups, with longer histories of territorial occupancy. Such assertions of superiority are normally observed in the formation of tiered citizenship regimes.[37] Such regimes may entail, for example, patterns of citizenship founded in indirect rule, in which colonial domination is consolidated through collaboration between the colonizing power and existing societal elites. Such regimes may include the stationing of military units by external occupying forces to ensure that colonized peoples are subject to unequal authority. But such regimes also include – in the most extreme cases – the imposition of slavery or de facto legal dominion by one person over others. It is against the background of such contexts that indigenous rights are usually examined. In contemporary discussions, as mentioned, such rights are habitually seen as expressions of normative habits and customs that have not been eradicated by the coercive legal regimes imposed through colonialism.

Arguably, this concept of colonization is too narrow, and it needs to be widened if we are to understand both the deep roots and the contemporary importance of indigenous rights. This concept needs to incorporate a broader comprehension

[37] See M. Mamdani, *Historicizing Power and Responses to Power: Indirect Rule and its Reform*, 'Social Research' 1999, Vol. 66(3). For more specific discussion, see D. W. Throup, *Economic and Social Origins of Mau Mau 1945–1953*, London 1988, p. 144; H. Bienen, *Tanzania: Party Transformation and Economic Development*, expanded edition, Princeton 1970, p. 38. See the analysis of indirect rule in Central Asia in G. Mirsky, *On Ruins of Empire: Ethnicity and Nationalism in the Former Soviet Union*, Westport, CT 1997, p. 3.

of colonization and its impact on social and legal formation, acknowledging the almost universal nature of colonization as the substructure of national society. Indicatively, contemporary international law recognizes the existence of only one indigenous group in Europe with potential claims to rights under ILO C169: that is, the Sámi people, residing in northern Scandinavia and northern parts of the Russian Federation.[38] However, questions relating to the integration of prior or pre-national population groups had assumed marked importance in Europe, through the long period of nation-state formation, long before formal definitions of indigenous rights appeared. Many legal questions of central importance in the formation of national democracies in Europe posed dilemmas not strictly distinct from those addressed through the recent promotion of indigenous rights. Indeed, many legal questions that preoccupied lawyers and politicians through the course of modern European history resulted from the fact that European nation states were created, effectively, through processes of de facto colonization, which entailed the gradual or violent subsumption of existing population groups beneath the structure of national states. Moreover, many such questions resulted from the fact that, in different contexts, national legal and governmental systems were constructed through formally ordered processes of population displacement.

To illustrate this observation, in Great Britain, national governmental structures were created through the longer-term solidification of central institutions across the territorial order of society. The same of course applies to France, in which cultural groups with some claim to the title of a prior population still exist at the frontiers of the nation state. Particular problems in this regard arise in the cases of Germany and Austria, whose institutional foundations were expressly constructed through formal processes of colonization. After 1918, the territorial boundaries of Austria were redrawn in such a manner that the Austrian polity acquired a reasonably homogenous ethnic and territorial form, thus side-stepping immediate legal exposure to the legacy of tensions existing within its pre-1918 multi-centric population. However, the development of the legal political system in Germany has been abidingly determined by exposure to the legal claims of minority groups able to project themselves, with some justification, as ethnically distinctive and – in principle – as indigenous. The initial emergence of the political entity that became modern Germany began through a process of Prussian territorial annexation. This was initially concentrated, in the 1740s, on regions (then largely German-speaking) in Silesia, currently belonging to Poland, and it later extended into Poznań and much of Pomerania in the last decades of the eighteenth century and after 1815. In these earlier stages in the formation of modern Germany, government officials acted as sponsored colonizers, complying with

[38] T. Joona, *ILO Convention No. 169 and the Governance of Indigenous Identity in Finland: Recent Developments*, 'The International Journal of Human Rights' 2020, Vol. 24.

royal edicts dictating colonization as a sanctioned state policy.[39] This process of expansion quite manifestly involved the attempted suppression of the autonomous practices, usually of a cultural, religious and educational nature, that were central to the lives of social groups resident in these areas, which would, using contemporary legal criteria, be expressly defined as *pre-colonial populations*. In this process, German colonizers often found themselves confronted with ethnic groups primarily working in agriculture. Amongst these groups, colonizers allowed the residues of servitude that were prevalent in social relations within existing communities to persist after the completion of colonization.[40] However, they ensured that formal interactions between pre-colonial groups and persons linked to German institutions were conducted in prescribed cultural and linguistic procedures. In this respect, German policies of colonization to the East of the Prussian borders after 1740 were close to forming a template for later patterns of European expansion in Africa, in which pre-existing kinship structures were solidified to cement indirect rule by a colonizing power. Russian westward and eastward colonization in the eighteenth and nineteenth centuries showed certain parallels to the Prussian colonization model. Eventually, of course, the Soviet Union adopted provisions for giving legal recognition to pre-colonial ethnic groups, which in some ways anticipated more contemporary approaches to societies with multi-centric population groups.[41] In the eighteenth and nineteenth centuries, however, the Tsarist regime created a governmental system in which colonization was designed to suppress the traditional expressions of autonomy, eradicating practices that could today easily be covered by concepts of indigenous rights. In such processes, the line between nation building and colonization was always uncertain, and many modern nations have their origins in colonial acts.

Notable in such nation-building patterns in Europe is that, in different ways, the legal status of groups absorbed through colonization was eventually translated into a question addressed through definitions of citizenship. Through the later nineteenth and earlier twentieth centuries, different European polities began to transform the patterns of obligation that attached government institutions to individual persons inside their territorial frontiers. Through this process, governments slowly redefined the legal categories, in which they addressed persons in society, and they began to stabilize their social foundations by attaching uniform legal titles to the persons, at different points in society, with whom they interacted. The relation between government and society was structured around basic

[39] See K. P. Woźniak, *Niemieckie osadnictwo wiejskie między Prosną a Pilicą i Wisłą od lat 70. XVIII wieku do 1866 roku. Proces i jego interpretacja*, Łódź 2013, pp. 78, 83.

[40] On the continuation of serfdom in Poznań during the process of German colonization, see J. Kozłowski, *Wielkopolska pod zaborem pruskim w latach 1815–1918*, Poznań 2004, pp. 23, 27.

[41] Y. Slezkine, *The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism*, 'Slavic Review' 1994, Vol. 53(2); T. Martin, *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923–1939*, Ithaca, NY 2001.

legal and political rights, embodying both enshrined liberties and objective obligations, associated with citizenship. One outstanding analysis of early citizenship regimes claims, simply, that modern political systems obtained their basic societal substructure in this process.[42] A different account has explained how the construction of citizenship underpinned the essential legal form of the nation state, acting as the cornerstone for the entire 'development of modern statehood'.[43] Accordingly, the emergence of modern national polities in Europe presupposed that the institutional actors within such polities addressed persons in society as citizens, and that national governments framed their responsibilities, their legitimacy and their integrational force in relation to expectations (both rights and duties) embedded in citizenship.

In many European contexts, the process of citizenship construction was not categorically separate from colonization, and it involved the imposition of strong ethnic distinctions on society. In many settings, the early construction of national citizenship entailed both, at the legal-legitimational level, the integration of individual actors within the governmental order, and, at the everyday social level, the differentiation of groups with access to full legal/political rights from groups not allowed complete access to such rights. Importantly, the first stage in the development of modern citizenship regimes in Europe frequently led to the creation of systems of *partial citizenship*, in which some ethnic groups were not admitted to the full exercise of citizenship rights. This can again be observed in continental empires in Europe. In the major empires in northern Europe, the expansion of citizenship rights in the later nineteenth century was often calibrated on ethnic grounds, leading to acute experiences of minority exclusion.[44] Especially noteworthy in the later decades of intra-European imperialism is that military service played a central role in defining the reciprocities between government and society expressed in citizenship, and increased access to legal and political rights amongst minority groups often depended on their willingness to serve as soldiers. In some cases, in fact, the basic legal form of the citizen was made contingent on the discharge of military service.[45] By consequence, military organizations acquired responsibility for the integration of minority groups in emerging modern states, at times conferring citizenship upon soldiers attached to minority groups in return for their willingness to provide lethal force to state organizations. In such pro-

[42] J. N. Shklar, *American Citizenship: The Quest for Inclusion*, Cambridge, MA 1991, p. 1.

[43] D. Gosewinkel, *Schutz und Freiheit? Staatsbürgerschaft in Europa im 20. und 21. Jahrhundert*, Frankfurt 2016, p. 39.

[44] On Germany, see J. Kozłowski, 2004, *op. cit.*, p. 200; L. Trzeciakowski, *Pod pruskim zaborem 1850–1918*, Rzeszów 1973, pp. 196–197; H.-E. Volkmann, *Die Polenpolitik des Kaiserreichs. Prolog zum Zeitalter der Weltkriege*, Paderborn 2016, p. 153.

[45] Access to citizenship rights depended directly on military service in legislation passed in Austria in 1867, in Russia in 1874, and in Germany in 1913.

cesses, the formation of national citizenship regimes did not obviously separate nation states from an imperial government.

Equally noteworthy in these processes is that the eventual collapse of continental empires in Europe at the end of World War I did not give rise to citizenship regimes that completely transformed the position of minority population groups. On the contrary, the period of European decolonization beginning in 1918 tended to reinforce aspects of the convergence between nation building and imperialism that characterized pre-existing processes of state formation. Of the new states that emerged on the ruins of empires around 1918, some possessed extraordinarily complex ethnic structures, rivalling in such complexity the most multi-centric polities in contemporary global society. One example of this was Czechoslovakia, marked by a deep primary inter-group split. One alternative example was Poland, which during the Second Republic can, with qualifications, be observed as a primary precursor of contemporary societies marked by obdurate ethnic fissures.

Striking in this context is that, after acquiring independence in 1918, the process of nation building in Poland was marked by the tendency to reproduce patterns of social integration and citizenship formation that had typified the imperialist policies imposed by the partitioning powers. At one level, this policy reproduction was linked to the fact that the territorial frontiers of Poland were consolidated step-by-step. The marking out of Polish national territory after 1918 was conducted, simultaneously, through intra-societal and international conflicts. Indeed, as in many post-imperial contexts, the territorial borders of Poland required confirmation by international treaty agreements, so that international law played a key role in defining the legal order and territorial structure of post-1918 Poland. Owing to such circumstances, military factors became pivotal to the definition of Polish citizenship, and military service laws served as key parameters for administering access to citizenship.[46] As the territorial boundaries of the state were fixed, all population groups in Poland were subject to military service laws, such that, as before 1918, recruitment in the army became a vital precondition and expression of citizenship. This was formalized in Article 91 of the 1921 Constitution. This link between citizenship and military service had the outcome that the army acted as the primary organ of national integration and citizenship building.[47] Indeed, the army acquired functions extending well beyond military expectations, and military units often assumed

[46] On the role of military bodies in defining Polish citizenship, see L. Kania, *Wyroki bez apelacji. Sądy polowe w Wojsku Polskim w czasie wojny z Rosją Sowiecką 1919–1921*, Zielona Góra 2019, pp. 292–294.

[47] See M. Wrzosek, *Wojny o granice Polski Odrodzonej 1918–1921*, Warszawa 1992, p. 37.

educational and cultural roles as institutions that facilitated the penetration of national consciousness in society.[48]

In this rapid nation-building process, the map of Poland was progressively redrawn in a form that absorbed many regions containing substantial minority population groups. For example, after 1918, Poland incorporated large numbers of Ukrainians and Belarusians along its Eastern frontiers, and these communities, defined by clear linguistic, religious and cultural particularities, were not entitled to citizenship in an existing external state.[49] In some cases, the eastern borderlands and their populations were drawn into the realm of national citizenship by means of state-sponsored settlement programmes, which obviously challenged ownership patterns in these areas. These programmes were not very obviously dissimilar to analogous programmes used earlier by external colonizing forces; they involved strategic population transfers into regions with large minority groups, and they were designed to link marginal regions more fully to national government and to the majority culture.[50] In this process, military considerations and organizations also played a vital role. Regional settlement policies were designed, in part, to recompense ex-soldiers for their service and to ensure the presence of patriots in national borderlands.[51]

On these separate counts, the first formation of Poland as a modern nation state reflected a complex interplay between decolonization and colonization. This

---

[48] J. Kęsik, *Naród pod bronią. Społeczeństwo w programie polskiej polityki wojskowej 1918–1939*, Wrocław 1998, p. 185; Z. Waszkiewicz, *Duszpasterstwo w siłach zbrojnych Drugiej Rzeczypospolitej (1918–1939)*, Toruń 2002, p. 79.

[49] To clarify this claim, the coverage of ILO C169 is defined in Article 1(a) and (b) in very general terms. It is conceived as an instrument that applies to 'tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations'. It also applies to 'peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.' In the circumstances of the 1920s, these provisions would clearly not have extended to many minority populations in Europe, most particularly because some (although not all) groups had clear secessionist ambitions. However, given the flexibility of the construction of indigeneity in contemporary international and domestic law, it is perfectly conceivable that many European minorities existing in the 1920s would now, on the proviso that they renounce separatist strategies, be incorporated in such definitions. As mentioned, with the exception of the Stalinist period, the Soviet Union created a system of minority population management that was very close to contemporary international provisions.

[50] See Z. Landau, J. Tomaszewski, *Gospodarka Polski Międzywojennej (1918–1939)*, Vol. I: W *dobie inflacji 1918–1923*, Warszawa 1967, p. 164.

[51] M. Kacprzak, *Ziemia dla żołnierzy. Problem pozyskania i rozdysponowania gruntów na cele osadnictwa wojskowego na kresach wschodnich 1920–1939*, Łódź 2009, pp. 45, 53; J. Stobniak-Smogorzewska, *Kresowe osadnictwo wojskowe 1920–1945*, Warszawa 2003, p. 58.

was reflected, not lastly, in the fact that Polish national society contained large minorities which possessed *pre-national*, if not strictly *indigenous* status, and whose cultural dispositions and claims to occupancy of land manifestly predated the construction of the nation state. This was also reflected in the fact that the military organizations played a key role in weakening horizontal affiliations in society and in tying different ethnic groups more immediately to the state as citizens.

These nation-building processes varied over time, from 1918 onwards. It is undoubtedly the case that interwar Poland saw progressive endeavours to establish inter-group balance within society, making provisions for the use of minority languages and sanctioning distinct religious, linguistic, and educational rights for pre-national communities.[52] This was formalized at the level of constitutional law, in Articles 109, 110 and 115 of the 1921 Constitution. As in contemporary societies with substantial minority groupings, these provisions were largely dictated by international law: that is, by the Small Versailles Treaty of June 1919, the Treaty of Riga of March 1921, and the Geneva Convention of May 1922.[53] However, the overlying pattern of integration in Poland at this time was designed, in part, to separate pre-national minority groups from customary practices, and to instil uniform citizenship norms into all population groups in society. In some cases, minority groups were subject to repression by military actors, so that, by the latter years of the Republic, the wider militarization of society impacted visibly on attitudes to minority groups.[54] More generally, the propensities for centrifugalism created by the persistence of pre-national groups with distinct interests and identities remained highly destabilizing for the polity and for society as a whole, and a fully national model of citizenship did not prevail.

The implications of this analysis are multiple and complex.

This analysis indicates, firstly, that many seemingly national societies have been structured through processes of colonization. This analysis suggests, secondly, that there is nothing categorically specific or distinctive about the endeavour, visible in contemporary global society, to construct legal orders to establish specific rights or specific cultural freedoms for minority, pre-national population groups. Many European societies have been structurally defined by their expo-

---

[52] A. Chojnowski, *Koncepcje polityki narodowościowej rządów polskich w latach 1921–1939*, Wrocław 1979, p. 41

[53] See S. Mauersberg, *Szkolnictwo powszechne dla mniejszości narodowych w Polsce w latach 1918–1939*, Wrocław 1968, p. 16. See critical discussion in P. K. Marszałek, *Problem suwerenności II Rzeczypospolitej w świetle postanowień mniejszościowego traktatu wersalskiego z 1919 roku*, 'Historia i Polityka' 2020, No. 31(38).

[54] See A. Chojnowski, 1979, *op. cit.*, p. 234; Z. Zaporowski, *Sejm Rzeczypospolitej Polskiej 1919–1939. Działalność posłów, parlamentarne koncepcje Józefa Piłsudskiego, mniejszości narodowe*, Lublin 1992, pp. 42–44, 140; M. Nowak, *Narodowcy i Ukraińcy. Narodowa Demokracja wobec mniejszości ukraińskiej w Polsce 1922–1939*, Gdańsk 2007, pp. 139, 230; A. Kotowski, *Polska polityka narodowościowa wobec mniejszości niemieckiej w latach 1919–1939*, Toruń 2004, p. 114.

sure to problems of integration linked to this process, and these problems are reflected in the formation of many national citizenship regimes. However, this analysis suggests, thirdly, that, in the creation of most European states, national citizenship regimes were promoted in a form that, in many respects, merely re-imposed patterns of colonization on national territories, often in acutely intensified fashion. One common pattern that underpins many lines of European nation formation is a two-stage process of colonization – entailing, initially, colonization through external expansion, and, subsequently, at least partial replication of such colonization patterns by a national government, via the imposition of national citizenship laws.

Fourthly, the most vital implication of this discussion is that, in most societies, original constructions of national citizenship failed to establish a solid basis for national integration, and nation-building processes conducted through the imposition of citizenship laws were enduringly afflicted by acute instabilities. We can in fact identify – in quite general terms – a crisis of classical citizenship at the core of most national societies in Europe. Almost universally, national citizenship was only effectively consolidated in societies that were already marked by a high degree of homogeneity before the establishment of modern citizenship regimes, which began in the later nineteenth century (examples are France, the Netherlands, Sweden, Denmark, perhaps the UK). Where this was the case, such homogeneity was usually the result of the fact that territorial integrity had been established and solidified before the modern principle of citizenship existed: that is, societies in this category had already been consolidated through forcible integration. In most settings, the principles of citizenship that developed as the premise for nation building were unable to sustain their basic function: that is, to provide an integrational basis and a uniform set of obligations to support a national government. Most classical constructions of citizenship specifically did not succeed in connecting agents in different parts of national society to the state, and they established very uneven, irregular principles of inclusion in society. In many societies, pre-national groups abidingly challenged the form of national citizenship, typically with catastrophic results. In a mild form, this was evident in interwar Poland. However, the failure of national citizenship, linked to the deep and integral relation between imperialism and nation building, acquired most catastrophic expression in Germany after 1933, where fragmented, tiered citizenship regimes were promoted, first, within and – later – outside German society.

On this basis, this analysis contains the claim, fifthly, that we need to observe contemporary processes of legal engagement with pre-national groups in a long historical perspective. We need to analyse such processes both as an extension of, and as a reaction against, earlier models of citizenship formation and earlier processes of nation building. Until recently, most national integration systems established a system of citizenship rights by attempting to cement authority in monopolistic national institutions. The normative attachments linking single per-

sons to government bodies were designed to intensify the nexus between citizen and nation state, and this single and immediate nexus was the primary focus of the norms that sustain citizenship. The long-term result of this was, frequently, that national societies were not able to integrate their populations, and national governments often experienced the presence of minority populations as a source of extreme destabilization. By consequence, what we observe in the establishment of protections for indigenous rights in contemporary society is a new pattern of citizenship formation, based in distinct processes of nation building and national integration, in which the basic state-citizenship nexus is reconfigured. As in earlier patterns of citizenship construction, however, the promotion of indigenous rights remains oriented not towards pluralism but towards effective national integration.

4. INDIGENOUS RIGHTS AND THE REDIRECTION OF INTEGRATION PROCESSES

The value of approaching indigenous rights from a perspective based on analysis of social integration and citizenship formation can be exemplified through description of contemporary societies in which indigenous rights have acquired an important role. In many societies in which the expansion of indigenous rights has become prominent, the promotion of such rights expresses a response to weaknesses in national integration processes that have been caused, in part, by the legacies of imperialism, by the duplication of colonial patterns of integration, and by the inability of classical citizenship models to perform required integration functions. For this reason, in many cases, the formation of indigenous rights allows us to observe a model of citizenship formation in contexts where classical patterns of citizenship historically had a weak purchase. Such rights bring to visibility new figures of citizenship, radically separate in normative design from models of citizenship that originally underpinned processes of nation building. However, such rights still serve the same integrational function as earlier models of citizenship.

Two national examples can be singled out to explain this.

4.1. COLOMBIA

Colombia can be identified as a society in which the legal reaction to indigenous groups located inside the boundaries of the nation state has a paradigmatic quality. Paradigmatic in Colombia is the fact that indigenous rights have been constructed to promote new processes of social integration, and to address problems inherent in the historical formation of national citizenship.

In key respects Colombia forms a classical example of a society whose structure is marked by the ingrained residues of imperialism. For example, Colombia was originally transformed into a national society through patterns of elite consolidation, in which groups privileged by colonial attachment acquired dominant social roles and determined the course of institution building.[55] Further, in its initial formation, Colombia was defined by very weak institutional articulations between centre and periphery. Throughout its emergence, it was a state that displayed a partial and informal citizenship regime, in which citizenship rights were often preferentially allocated and privileged rights holders assumed high levels of political authority, especially in remote regions and localities.[56] As a result, Colombia developed a very fragile state structure, in which local patronage was a core source of authority and inter-regional coordination, and formal citizenship roles did not strongly connect actors across society to central government.[57] The primary characteristic of state institutions in twentieth-century Colombia was that their reach into society was very limited, and actors with formally defined political roles did not successfully exercise control of society. In this context, rural areas were often situated outside the reach of state institutions, and populations in such regions occupied lawless spaces, often experiencing very high levels of violence. Intermittently, notably in the early 1950s and again in the 1980s and 1990s, such violence reached the intensity of civil war, as insurgent groups imposed their own institutions in remote regions.[58] This naturally meant that many minority (indigenous) groups, surviving from the pre-national era and typically working in peripheral agricultural economies, were exposed to deprivation and violence. Such groups clearly operated at the most outward margins of a generally very patchy citizenship regime.

The legal status granted to indigenous groups in Colombia is very closely connected to such problems in the forming of national citizenship and in consolidating national integration more broadly. Indeed, the position of indigenous peoples is not easily understandable without reference to broader questions about the social penetration of national institutions. Recent attempts to enhance protection for indigenous rights have been strongly linked to endeavours to strengthen the structures of citizenship. Indicatively, the status of indigenous populations first became legally prominent in the period beginning in the mid-1980s, in

[55] J. C. Calderón, *Buscando la Nación. Ciudadanía, clase y tensión racial en el Caribe colombiano, 1821–1855*, Medellín 2009, p. 271; J. W. Márquez Estrada, *La Infancia de la nación. Estrategias políticas y culturales en el proceso de formación de la ciudadanía en Colombia: 1810–1860*, 'Clío América' 2011, Vol. 5(9).

[56] M. T. Uribe de Hincapié, *Proceso histórico de la configuración de la ciudadanía en Colombia*, 'Estudios Políticos' 1996, Vol. 9, p. 75.

[57] M. T. Uribe de Hincapié, *Órdenes complejos y ciudadanías mestizas: una mirada al caso colombiano*, 'Estudios Políticos' 1998, Vol. 12.

[58] M. Aguilera Peña, *Guerrilla y población civil. Trayectoria de las FARC 1949–2013*, 3rd edn, Bogotá 2014, p. 377.

which escalating civil violence in Colombia was observed as the outcome of fragile institutional integration, and new steps were taken to rectify this condition. The mid-1980s witnessed the beginning of an attempt at legal-political reorientation in Colombia, centred, firstly, on the drafting of the new Constitution that entered force in 1991 and, secondly, on the processes of demilitarization, beginning around 2000. Generally, both the new Constitution as a whole and the institutions that it created were conceived, instrumentally, as mechanisms serving the reinforcement of the state structure and national citizenship. Indicatively, the constitution-making process was initiated on the basis of the Presidential Decree (1926/1990), which declared that far-reaching constitutional reforms were required to reinforce state institutions. More systematically, the decision-making strategies of the Constitutional Court that was created under the Constitution in 1991 were driven by deliberately 'Weberian' considerations, and its jurisprudence was immediately conceived as part of a plan to elevate the state's monopoly of force vis-à-vis other actors and organizations.[59]

In this institutional context, indigenous groups acquired notable visibility, and the broader reconstruction of the legal-political order of society assumed distinct relevance for these groups. Indigenous groups were represented in the writing of the 1991 Constitution. Then, the period after 1991 saw the incorporation of ILO C169 and the widespread application of other international norms regarding indigenous groups in domestic constitutional law. Over a longer period, further, the Constitutional Court created in 1991 handed down a series of rulings regarding the position of indigenous groups, establishing, as mentioned, clear sets of cultural rights for these groups. Importantly, one impetus of these rulings was to ensure that, with some other designated groups, indigenous communities obtained enhanced legal protection – that is, differential legal status – in settings that were created or enduringly marked by civil violence.[60] In many rulings, heightened legal obligations were imposed on state actors and public agents operating in contexts shaped by violence, and these obligations entailed duties to protect the rights of indigenous groups in such settings. The Constitutional Court often invoked international humanitarian law to generate legal norms with this purpose.[61] In this respect, the promulgation of indigenous rights in Colombia can clearly be associated with the overarching historical experience of depleted national statehood and weak citizenship. The establishment of indigenous rights formed one part of a broader attempt to expand the force of the state in society, beyond its historical limits. Questions regarding indigenous rights were addressed in a functionalist-instrumental approach, and the conferring of such rights on groups at the margins of the state was seen as a vital precondition for hardening the obligations of state officials and for extending the force of state institutions. The rights of

[59] Constitutional Court of Colombia, SU-1150/00.

[60] Constitutional Court of Colombia, T-235/11.

[61] See, for example, Constitutional Court of Colombia, A-004/09.

such groups were consolidated with a specific view to rebuilding state capacity and solidifying a new system of citizenship, imposing a legal order on precarious and previously unregulated social domains.

Notable in this respect is that the elaboration of indigenous rights was intended to create a protective order for indigenous citizens at the same time that enhanced rights were created for other collective actors and for persons in other functional domains in Colombian society. Indicatively, the promotion of indigenous rights coincided with the establishment of new healthcare rights, new educational rights, new environmental rights, new sexual rights, all of which were conceived as means to protect vulnerable or marginal subjects in society.[62] Provisions handed down by the court to realize such rights were conceived as instruments for expanding institutional capacity in spheres of life covered by the rights in question. In most such cases, these new rights were consolidated through reference to international norms.[63] As a result, the construction of the indigenous person as a citizen with newly protected rights can be seen as a process of legal formation running parallel to, and not clearly separable from, the construction of persons in all social spheres as citizens with newly protected rights. Through this process, legal persons began to appear as citizens of healthcare, as citizens of the environment, as citizens of education, etc. In many cases, indigenous rights have been established as secondary outcomes of protection given to other rights, so that indigenous groups have obtained special protection under rulings primarily focused on health, education or environmental rights.[64] For example, indigenous population groups have acquired a distinct personality in education law, and they are recognized as possessing a right to a 'special system' of education, tailored to their cultural needs, flowing from the right to identity.[65] In this respect, in general, indigenous rights have been clearly designed as part of a strategy to intensify links between state institutions and individual actors in society as a whole, positioning all actors more fully in the realm of formally defined obligations.

In the case of Colombia, overall, we can observe a national environment, in which the formation of indigenous rights was closely focused on wider questions of citizenship, addressing the status of groups with marginal positions vis-à-vis formal state institutions. In this context, the formation of such rights was designed to craft new citizenship roles, in which subjects exercising new rights were more closely linked to the state. In particular, the consolidation of new rights was con-

[62] See Ch. Thornhill, C. Calabria, *Global Constitutionalism and Democracy: The Case of Colombia*, 'Jus Cogens' 2020, Vol. 2.

[63] For use of international law in determining environmental rights, see Constitutional Court of Colombia, T-608/11; and in establishing health rights, see Constitutional Court of Colombia, T-062/06.

[64] See the famous decision of the Constitutional Court of Colombia, T-622/16, in which judges used environmental law to grant protective rights to a river, in doing which they also bolstered the rights of indigenous communities dependent on the river.

[65] Constitutional Court of Colombia, T-907/11.

ceived as a way of producing a multi-centric constitution, designed to cement inclusionary connections between social actors and the state in all parts of society. Indigenous rights were produced as attributes of citizens within a multi-focal constitution, whose essential function was to offer an alternative to existing models of citizenship, and, through this, to remedy traditional weaknesses in the institutional structure. The sociological paradigm for observing this process is provided by analysis not of legal pluralism but of the transformation of citizenship.

4.2. KENYA

Kenya can be observed in a parallel fashion, as a society in which indigenous rights have been constructed to address traditional problems of patchy institutional integration.

Like Colombia, Kenya pertains to the category of the paradigmatic post-imperial society, with many consonant political-institutional features. Although viewed as a relatively strong state in the African context, Kenyan institutions were defined from the period of decolonization onwards by their relatively limited, or at least selective, penetration into society.[66] In particular, the reduced purchase of state institutions in Kenya was reflected in the fact that legislative and judicial bodies struggled to apply legal norms equally for all groups in society. With variations over time, different ethnic groups were able to gain an internal hold on state institutions, guaranteeing heightened legal protection for their own memberships.[67] This meant, on the one hand, that the efficacy of public institutions was often weakened by attachment to a defined set of group interests, reflected in corruption and insider brokering of offices. This meant, on the other hand, that different ethnic groups in society could isolate themselves from the full force of the law, and certain ethnicities created entitlements either to partial legal immunity or to para-legal authority and influence.[68] Whereas ethnic pluralism was reflected at the limits of the state in Colombia, in Kenya ethnic pluralism weakened the state at its core, and the ability of state bodies to extend uniform protections to all ethnic groups was restricted.

---

[66] M. S. Grindle, *Challenging the State: Crisis and Innovation in Latin America and Africa*, Cambridge 1993, p. 79; D. Himbara, *Kenyan Capitalists, the State and Development*, Nairobi 1994, p. 120; A. Bannon, *Designing a Constitution-Drafting Process: Lessons from Kenya*, 'The Yale Law Journal' 2007, Vol. 116(8), p. 1831.

[67] L. Juma, *Ethnic Politics and the Constitutional Review Process in Kenya*, 'Tulsa Journal of Comparative and International Law' 2001, Vol. 9(2), p. 491. S. Ndegwa, *Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics*, 'The American Political Science Review' 1997, Vol. 91(3).

[68] S. D. Ross, *The Rule of Law and Lawyers in Kenya* 'The Journal of Modern African Studies' 1992, Vol. 30(3).

This prominence of ethnic bias in the state impacted deleteriously on the formation of national citizenship in Kenya. Obviously, ethnic bias in the governmental order meant that a tiered citizenship regime persisted through society, so that, depending on the ethnic attachments of the ruling group, selective inclusion levels were applied to different communities. Moreover, such bias meant that collective identities linked to particular groups could prevail over national constructions of citizenship, and group interests protected at the systemic level were mirrored in the consolidation of group interests at the societal level.[69] Most crucially, the fact that public bodies could be monopolized by distinct ethnic groups created harsh rivalries between groups within society, such that processes of political engagement and transformation were often overshadowed by the threat of extreme violence. This was reflected in the period after the 2007 elections, in which Kenya moved close to ethnically motivated civil war. As in Colombia, the low inclusionary force of public institutions was directly implicated in the intensification of violence in society at that time, and the fragmentation of citizenship around ethnic identities meant that access to privileged citizenship positions was violently contested. At different junctures, procedures for enacting citizenship, such as governmental elections, were prohibited by sittings of governments, in order, by way of pretext, to avert ethnic violence.

In Kenyan law, separate legal protections have been created for non-dominant social groups. Kenyan courts have recognized that indigenous groups have distinctive claims to rights, especially to land rights, which are justified by their 'historical ties to a particular territory'.[70] On this basis, the courts have ruled that persons belonging to an 'indigenous and distinct community' can claim a collective personality, giving rise to 'attendant rights and protections'.[71] Although such rights do not have the same prominence as in Colombia, protections for indigenous rights in Kenya have been constructed, as in Colombia, as instruments that serve both to generate protection for collective subjects and to rectify structural-integrational weaknesses in the political system. This functional purpose is evident, most obviously, in the fact that, in the above cases, indigenous rights have been extended without regard for the specific ethnicity of the group in question. Such allocation of rights attached to indigeneity creates enhanced rights for smaller groups in society, traditionally marginalized from central patterns of inter-ethnic competition, and, to some degree, it counterbalances tendencies to ethnic privileging. This purpose is also perceptible in the fact that indigenous rights have been crafted as one part of a wider endeavour to extend the system of citizenship rights across society. In ways outlined above, indigenous rights granted in Kenya are not easily separable from rights allocated to other marginal communities. The

[69] S. Ndegwa, 1997, *op. cit*., p. 612.

[70] See *Joseph Letuya and 21 Others v Attorney General and 5 Others*, 2014 (H.C.K.) (Kenya).

[71] See *Rangal Lemeiguran and Others v Attorney General and Others*, 2006 (H.C.K.) (Kenya).

creation of rights for indigenous communities has been flanked by the establishment of similar rights for non-indigenous groups, subject to analogous challenges, such as damage caused by land deprivation, commonly affecting indigenous peoples.[72] Indigenous rights are thus extended as part of a broad policy to thicken social integration.

Perhaps most importantly, indigenous rights in Kenya have been constructed through the use of international and comparative law. In fact, the protection of indigenous rights emerged as part of a wider decisive strategy amongst leading jurists in Kenya, in which they aimed to convert the national legal system into a fully monist legal order. The establishment of rights through international law has been promoted as a means to introduce a new stratum of law into Kenyan society, able to consolidate legal principles with shared valence amongst all social groups, regardless of ethnicity and social position.[73] In effect, through this process, international norms have been used to consolidate a general legal order, robust and encompassing enough to incorporate and establish objective rights for all people, as an alternative to the selective or privileged legal order originally created in Kenya itself. In other words, international law has been integrated in the Kenyan legal system as a corrective system of citizenship, designed to supplant and override the factual models of citizenship, which tended to sanction group rights and to prioritize certain collectives over others. In each case, the construction of indigenous rights is not easily separable from a broad pattern of citizenship formation, designed to cement a uniform legal order in society.

In both these settings, the practice of defining and protecting indigenous rights is a practice that extends beyond the substance of these rights themselves, and it cannot be reduced to the recognition of plural subjects in society. In both cases, this practice is focused on the endeavour to remedy historical weaknesses in the institutional order of society. Equally, it is intended to generate an integrational structure for national society, able to extend citizenship rights across different social groups and to link historically diffuse subjects into one normative environment. The purpose of this process, strictly observed, is not to consolidate a pluralistic system of rights, but to embed a flexibly unified legal structure in society. Notably, in both cases, the use of international law is deliberately promoted as the foundation for a normative order strong enough to underwrite, and to maintain cohesion within, a shared system of citizenship. In both cases, vitally, the definition of indigenous rights is linked to the promotion of citizenship norms, in which

[72] See *Satrose Ayuma and 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 3 Others*, 2010 (H.C.K.) (Kenya).

[73] Senior figures in the Kenyan judiciary became increasingly resolute in arguing that the legal system needed to be construed in monist categories, and that international law should be used as an immediate source of authority for legal rulings. See the analysis set out by the Former Chief Justice in W. Mutunga, *The 2010 Constitution of Kenya and its Interpretation: Reflections from the Supreme Court's Decisions*, 'Speculum Juris' 2015, Vol. 1, p. 8.

assertions of citizenship do not result in violence, and in which state institutions can construct connections with citizens without provoking simple and aggravated contexts over the terms of national inclusion and exclusion. Such rights are clearly attached to a wider longer-term process of social pacification. Above all, such rights reflect an attempt to re-define and rectify classical models of citizenship.

5. CONCLUSION: THE TRANSFORMATION OF CITIZENSHIP

The overall claim in this paper is that indigenous rights now have great importance for legal and sociological research. Indeed, the intuition in some legal-sociological inquiry that the rise of indigenous rights marks a new period in the history of global legal formation is accurate. However, this paper also indicates that the sociological importance of this process has been misidentified, and in fact slightly understated, in established lines of analysis. Rather than observing indigenous rights as articulations of normative practices of a pluralist nature, reflecting emphases of existing collective subjects, we need to see such rights as manifestations of changing patterns of citizenship construction, which are not specific or limited to indigenous groups. Viewed in this way, it becomes apparent that indigenous rights have frequently taken shape in societies in which, historically, more classical patterns of integration were unsuccessful, and pre-national groups obdurately withstood typical integration processes linked to national citizenship. As such, the construction of indigenous rights appears as part of a new, adaptive form of citizenship, in the promotion of which state institutions have been able to develop distinct channels of inclusion and integration, constructing a basic structure of shared norms in national society. In this regard, the rise of indigenous rights has helped to countervail problems inherent in the structure of most national societies, caused by the deep parallels between nation building, citizenship formation and colonization.

The sociologically salient point in the protection of indigenous rights is not the pluralistic character of the agents able to acquire and exercise rights but the fact that the premises of national integration are now created, in part, through the penetration of international law into domestic patterns of legal subject formation. As mentioned, the coalescence of indigenous rights and international human rights law can be interpreted to reveal that such rights create solutions to traditional problems of nation building, in which pure national definitions of citizenship were ineffective in promoting social integration. Indigenous rights allow us to see that states now conduct their integration process within a global normative landscape with a complex multi-level structure, in which they construct national citizenship by assimilating norms that are strongly promoted at the international level within national society. In many cases, it is this coalescence of national

and international norms that makes national citizenship possible, allowing states to integrate citizens through multiple channels and multiple norms and multiple processes of legitimation. However, the key to interpreting this phenomenon is to examine the links between indigenous rights and global law as a new way of galvanizing national citizenship. Indeed, seen in the longer historical-sociological perspective outlined above, the construction of indigenous rights allows us to speculate that national citizenship and national integration necessarily possess a global foundation.

REFERENCES

African Commission on Human and Peoples' Rights (ACHPR), *Katangese Peoples' Congress v Zaire*, Communication No. 75/92 (1995)

African Commission's Working Group of Experts on Indigenous Populations/Communities, *Report* (2005) 93, http://www.iwgia.org/iwgia_files_publications_files/African_Commission_book.pdf (accessed 25.04.2023)

African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v the Republic of Kenya*, Application No. 006/2012 (2013), Judgment of 26 May 2017

Aguilera Peña M., *Guerrilla y población civil. Trayectoria de las FARC 1949–2013*, Bogotá 2014

Alcoreza R. P., *Estado plurinacional comunitario autonómico y pluralismo jurídico*, (in:) B. de Sousa Santos, J. L. Exeni Rodríguez (eds), *Justicia indígena, plurinacionalidad e interculturalidad en Bolivia*, Quito 2012

American Declaration on the Rights of Indigenous Peoples, Organization of American States, 15 June 2016, http://www.oas.org/en/media_center/press_release.asp?sCodigo=E-075/16 (accessed 25.04.2023).

Antkowiak T., *Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court*, 'University of Pennsylvania Journal of International Law' 2013, Vol. 35(1)

Bannon A., *Designing a Constitution-Drafting Process: Lessons from Kenya*, 'The Yale Law Journal' 2007, Vol. 116(8)

Bienen H., *Tanzania: Party Transformation and Economic Development*, expanded edition, Princeton 1970

Buchanan A., *The Role of Collective Rights in the Theory of Indigenous Peoples' Rights*, 'Transnational Law and Contemporary Problems' 1993, Vol. 3

Burgorgue-Larsen L., Úbeda de Torres A., *The Inter-American Court of Human Rights: Case Law and Commentary*, Oxford 2013

Calderón J. C., *Buscando la Nación. Ciudadanía, clase y tensión racial en el Caribe colombiano, 1821–1855*, Medellín 2009

Chojnowski A., *Koncepcje polityki narodowościowej rządów polskich w latach 1921–1939*, Wrocław 1979

Cohen-Eliya M., Porat I., *Proportionality and Constitutional Culture*, Cambridge 2013

Constitution of the Republic of Poland of 1921 (March Constitution), 17 March 1921
Constitutional Court of Bolivia, 0645/2012
Constitutional Court of Colombia, A-004/09
Constitutional Court of Colombia, C-175/09
Constitutional Court of Colombia, SU-1150/00
Constitutional Court of Colombia, T-062/06
Constitutional Court of Colombia, T-235/11
Constitutional Court of Colombia, T-254/94
Constitutional Court of Colombia, T-349/96
Constitutional Court of Colombia, T-608/11
Constitutional Court of Colombia, T-622/16
Constitutional Court of Colombia, T-766/15
Constitutional Court of Colombia, T-792/12
Constitutional Court of Colombia, T-907/11
Dersso S. A., *The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights*, 'African Human Rights Law Journal' 2006, Vol. 6(2)
Ehrlich E., *Grundlegung der Soziologie des Rechts*, 4th edn, Berlin 1989 (1913)
Gosewinkel D., *Schutz und Freiheit? Staatsbürgerschaft in Europa im 20. und 21. Jahrhundert*, Frankfurt 2016
Grindle M. S., *Challenging the State: Crisis and Innovation in Latin America and Africa*, Cambridge 1993
Himbara D., *Kenyan Capitalists, the State and Development*, Nairobi 1994
IACtHR, *Aloeboetoe et al. v Suriname* (1991) Series C No. 11
IACtHR, *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (2001) Series C No. 79
IACtHR, *Moiwana Community v Suriname* (2005) Series C No. 124
IACtHR, *Saramaka People v Suriname* (2017) Series C No. 172
IACtHR, *Yakye Axa Indigenous Community v Paraguay* (2005) Series C No. 125
Indigenous and Tribal Peoples Convention (No. 169), International Labour Organization, 27 June 1989 (ILO C169)
International Labour Organization and African Commission on Human and People's Rights, *Overview Report of the Research Project by the International Labour Organization and the African Commission on Human and Peoples' Rights on the Constitutional and Legislative Protection of the Rights of Indigenous Peoples in 24 African Countries*, Geneva 2009
Joona T., *ILO Convention No. 169 and the Governance of Indigenous Identity in Finland: Recent Developments*, 'The International Journal of Human Rights' 2020, Vol. 24
Joseph Letuya and 21 Others v Attorney General and 5 Others, 2014 (H.C.K.) (Kenya)
Juma L., *Ethnic Politics and the Constitutional Review Process in Kenya*, 'Tulsa Journal of Comparative and International Law' 2001, Vol. 9(2)
Kacprzak M., *Ziemia dla żołnierzy. Problem pozyskania i rozdysponowania gruntów na cele osadnictwa wojskowego na kresach wschodnich 1920–1939*, Łódź 2009
Kania L., *Wyroki bez apelacji. Sądy polowe w Wojsku Polskim w czasie wojny z Rosją Sowiecką 1919–1921*, Zielona Góra 2019

Keener S. R., Vasquez J., *A Life Worth Living: Enforcement of the Right to Health through the Right to Life in the Inter-American Court of Human Rights*, 'Columbia Human Rights Law Review' 2008, Vol. 40

Kęsik J., *Naród pod bronią. Społeczeństwo w programie polskiej polityki wojskowej 1918–1939*, Wrocław 1998

Kotowski A., *Polska polityka narodowościowa wobec mniejszości niemieckiej w latach 1919–1939*, Toruń 2004

Kozłowski J., *Wielkopolska pod zaborem pruskim w latach 1815–1918*, Poznań 2004

Landau Z., Tomaszewski J., *Gospodarka Polski Międzywojennej (1918–1939)*, Vol. I: *W dobie inflacji 1918–1923*, Warszawa 1967

Mamdani M., *Historicizing Power and Responses to Power: Indirect Rule and its Reform*, 'Social Research' 1999, Vol. 66(3)

Márquez Estrada J. W., *La Infancia de la nación. Estrategias políticas y culturales en el proceso de formación de la ciudadanía en Colombia: 1810–1860*, 'Clío América' 2011, Vol. 5(9)

Marszałek P. K., *Problem suwerenności II Rzeczypospolitej w świetle postanowień mniejszościowego traktatu wersalskiego z 1919 roku*, 'Historia i Polityka' 2020, No. 31(38)

Martin T., *The Affirmative Action Empire: Nations and Nationalism in the Soviet Union, 1923–1939*, Ithaca, NY 2001

Mauersberg S., *Szkolnictwo powszechne dla mniejszości narodowych w Polsce w latach 1918–1939*, Wrocław 1968

Mirsky G., *On Ruins of Empire: Ethnicity and Nationalism in the Former Soviet Union*, Westport, CT 1997

Mutunga W., *The 2010 Constitution of Kenya and its Interpretation: Reflections from the Supreme Court's Decisions*, 'Speculum Juris' 2015, Vol. 1

Ndegwa S., *Citizenship and Ethnicity: An Examination of Two Transition Moments in Kenyan Politics*, 'The American Political Science Review' 1997, Vol. 91(3)

Nowak M., *Narodowcy i Ukraińcy. Narodowa Demokracja wobec mniejszości ukraińskiej w Polsce 1922–1939*, Gdańsk 2007

Pasqualucci J., *The Evolution of International Indigenous Rights in the Inter-American Human Rights System*, 'Human Rights Law Review' 2006, Vol. 6(2)

Pasqualucci J., *The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System*, 'Hastings International and Comparative Law Review' 2008, Vol. 31(1)

Political Constitution of Colombia of 1991, 4 July 1991

Rangal Lemeiguran and Others v Attorney General and Others, 2006 (H.C.K.) (Kenya)

Ross S. D., *The Rule of Law and Lawyers in Kenya*, 'The Journal of Modern African Studies' 1992, Vol. 30(3)

Sánchez Botero E., *Aproximación desde la antropología jurídica a la justicia de los pueblos indígenas*, (in:) B. de Sousa Santos, M. García Vilegas (eds), *El caleidoscopo de las justicias en Colombia*, Vol. II, Bogotá 2001

Satrose Ayuma and 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme and 3 Others, 2010 (H.C.K.) (Kenya)

Saul B., *Indigenous Peoples and Human Rights. International and Regional Jurisprudence*, Oxford 2016

Shklar J. N., *American Citizenship: The Quest for Inclusion*, Cambridge, MA 1991
Slezkine Y., *The USSR as a Communal Apartment, or How a Socialist State Promoted Ethnic Particularism*, 'Slavic Review' 1994, Vol. 53(2)
Sousa Santos B. de, *The Law of the Oppressed: The Construction and Reproduction of Legality in Pasargada*, 'Law and Society Review' 1977, Vol. 12(1)
Stobniak-Smogorzewska J., *Kresowe osadnictwo wojskowe 1920–1945*, Warszawa 2003
Stone Sweet A., Mathews J., *Proportionality Balancing and Global Constitutionalism*, 'Columbia Journal of Transnational Law' 2008, Vol. 47
Thornhill Ch., Calabria C., *Global Constitutionalism and Democracy: The Case of Colombia*, 'Jus Cogens' 2020, Vol. 2
Thornhill Ch., Calabria C., Cespedes R., Dagbanja D., O'Loughlin E., *Legal Pluralism? Indigenous Rights as Legal Constructs*, 'University of Toronto Law Journal' 2018, Vol. 68(3)
Throup D. W., *Economic and Social Origins of Mau Mau 1945–1953*, London 1988
Trzeciakowski L., *Pod pruskim zaborem 1850–1918*, Rzeszów 1973
United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), GA Resolution A/RES/61/295, 13 September 2007
Uribe de Hincapié M. T., *Órdenes complejos y ciudadanías mestizas: una mirada al caso colombiano,* 'Estudios Políticos' 1998, Vol. 12
Uribe de Hincapié M. T., *Proceso histórico de la configuración de la ciudadanía en Colombia*, 'Estudios Políticos' 1996, Vol. 9
Viljoen F., *International Human Rights Law in Africa*, 2nd edn, Oxford 2012
Volkmann H.-E., *Die Polenpolitik des Kaiserreichs. Prolog zum Zeitalter der Weltkriege*, Paderborn 2016
Waszkiewicz Z., *Duszpasterstwo w siłach zbrojnych Drugiej Rzeczypospolitej (1918–1939)*, Toruń 2002
Woźniak K. P., *Niemieckie osadnictwo wiejskie między Prosną a Pilicą i Wisłą od lat 70. XVIII wieku do 1866 roku. Proces i jego interpretacja*, Łódź 2013
Wrzosek M., *Wojny o granice Polski Odrodzonej 1918–1921*, Warszawa 1992
Yampara Huarachi S., *Cosmo-convivencia, Derecho y Justicia de los Pueblos Qullana* (2005), Address at the Seminar on Law and Communitary Justice organized by the APPNOI-TARI-Community Pacha[kuti], http://www.katari.org/pdf/justicia%20Qullana.pdf (accessed 25.04.2023)
Zaporowski Z., *Sejm Rzeczypospolitej Polskiej 1919–1939. Działalność posłów, parlamentarne koncepcje Józefa Piłsudskiego, mniejszości narodowe*, Lublin 1992