Alternatives to Development in the Andes

Contesting cosmovisions and their path towards recognition

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The concept of “development” has become a buzzword for social change, economic redistribution and ultimately socio-economic rights. This concerns both economic relations maintained in the international community built on the premise of State sovereignty and resulting intergovernmental agreements. Manifestations of such realities are manifold including a dominating WTO-steered legal order; new international trade deals such as current EU-Mercosur negotiations on the most extensive free trade zone on earth; the CETA deal between EU Members States and Canada that encounters civil society opposition; and Brexit negotiations in the light of new-old commonwealth alliances. However, existing development paradigms may similarly be designed to favour societal inequalities among people(s), resulting from rigid economic frameworks that paralyse social mobilisation, favour corporate elites in a neo-liberal world of international relations and disempower the State. It is therefore crucial to challenge the prevailing development paradigms and their underlying socio-economic “consensus”. In this regard, Alternatives to Development – such as the concepts of Buen Vivir/Vivir Bien or Mother Earth rights – have proven crucial to such forms of contestation.

Socio-economic consensus – codification of status-quo, its politization and contestation

The promissing social justice model of predominant development paradigms promotes the (supposedly) virtuous effects of an all-embracing trade regime, pretending to allow for participatory, equal-share economic governance by means of special differentiated treatment approaches. Similar socio-economic “common-sense” permeates social, economic and cultural rights instruments, paying due regard to the very pre-conditions of such rights such as their availability, accessibility, acceptability, adequacy and good quality (ESCR-Committee GCs on Housing and Education), yet, without deconstructing or unveiling the internal set-up of the State as a rights-guaranteeing entity. Accordingly, population-oriented legal standards evolve somewhat in isolation of State budgets, taxation systems, and external debts. In that sense, legal standards may enhance dominant patterns rather than favour a common spirit of international solidarity and international (development) cooperation. Mitigating global injustices, however, requires fundamental reconsiderations of the very rules of the game, codified in international trade agreements and statutes.

In societal terms, such purportedly “universal” social justice model predominates in a fragmented international legal landscape, adopting and taking exclusive possession of what could be termed a single authored model of (human) well-being. Such paradigmatic status quo through legal means does, however, depend on the very forces of application and implementation. In that sense, public discourses and policies reflecting such ideological orientation and its perpetuating shortcomings commonly fail to consider alternative understandings which potentially arise from the vernacular and ultimately jeopardise a contesting reading of international law. The very top-down functioning of law may lend itself for homogenising, unilaterally drafted implementing measures and ideas that merely pretend to reflect collective voices. Yet, the very spaces of (legal) articulation might similarly fall short of doing justice to the multiplicity of voices arising in the international community. As a consequence, binary divides such as collective versus individual, CPRs versus ESCRs, processes of democratisation versus redistributive policies/social welfare, equality-enhancing mechanisms versus politics of difference might find embedment in a shrinking space for civil society expression, dialogue and demands, steered by the dominant forces of the market.

Dismantling global “common sense” and “consensus” – institutionalising new development paradigms

Such perpetuating logics materialise in the particular context of Global South – Global North relations, revealing inequalities in a post-colonial fashion: this may include regional alliances, respective inter-institutional patterns of dominion; however, this may also extend to largely disregarded conceptual divergences on a generally assumed global consensus of worldviews, philosophical underpinnings or spiritual orientation of existing (legal) orders. Similar conclusions could be drawn from epistemological and ontological grounds underlying the academic world and its self-fulfilling discourses.

It is through the powerful, transformative forces of (global) constitutionalism that today’s fragmented legal landscape has gained in pluralist scope and approaches. Indeed, the channels of constitutionalism have demonstrated powers of “enforcement” beyond purely law-informed effects of application/implementation. Most notably, indigenous legal concepts emerging in Andean States have managed to deconstruct an assumed consensus on development (paradigms) introducing a variety of pluralisms and diversity by constitutional means. The latter have catalysed a rethinking of the consumption- and growth-oriented world order, exemplifying at the same time a new form of genuinely democratic governance. In fact, such refurnishing of existing legal orders promises new procedural venues for articulating demands arising at grassroots levels. It could be argued that such “Alternatives to Development” (see here and here) fill a long-standing lacuna existing since the very establishment of the sovereign State and a State-premised global community, providing for a multi-actor space of participation and advocacy.

While clearly enabling people/peoples-oriented visions to define and construct such procedural venues (constituting a unique feature in international law), the very sources of Alternatives to Development might concurrently be traced elsewhere. Indeed, two of the earliest, most widely embraced instruments of international

human rights law, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights establish peoples' right to self-determination including the right to "freely determine their political status and to freely pursue their economic, social and cultural development" (Common Article 1, ICCPR & ICESCR). A narrow reading of and strict adherence to the latter provision might have prevented common misconceptions and an assumed consensus oriented towards a one-sided reading of (the right to) development.

This opens yet another, albeit related, debate on the very framing of development discourses. According to the prevailing paradigm, development commonly finds articulation as a State-driven model, NGO strategy, public or private sector management component or community philosophy. It might thus essentially diverge from an understanding of "development" as an individual, group-based or collective right, i.e. embracing a rights-based approach. Hence, contradicting perspectives hardly find accommodation under the homogenising umbrella of unilaterally formed development paradigms. Spaces of pluralism and diversity might be particularly undermined where development paradigms pretend to represent consensus on a variety of objectives and agendas such as in the case of globally driven agendas – neo-liberal agendas being its most infamous and destructive vehicle or means of transmission and divulgation.

Looked at from yet another angle, Alternatives to Development embrace a novel stream in international law, most notably a mechanism of transformation, allowing for collective rights to find codification and eventually jurisprudential recognition. Bearing fruit to long-lasting efforts in decolonising the law, indigenous cosmovisions could be considered incarnations of a pluralistic conception of "development". Again, a constitutional venue is explored here. Apart from the conceptual and global paradigmatic merit of such debates, Alternatives to Development as constitutional novelties co-constitute the post-colonial State in an attempt to cure past injustices and freeing its institutions from the double burden of neo-colonial and neo-liberal rule, representing the modest success of a double-spurred struggle for recognition.

Articulating new rights: towards a rethinking of 'common-sense' constitutionalism

Enjoying increasing recognition both domestically and internationally, Alternatives to Development have been instrumental in introducing pluralistic approaches in several ways. Firstly, existing development paradigms have been called upon to adopt broader approaches which would, in turn, disentangle elitist structures. In the light of such structural transformations, competing or alternative paradigms have come to be absorbed and found recognition in predominant orders or "common sense" constitutionalism. Secondly, the very pluralism-oriented nature of Alternatives to Development such as Buen Vivir/Vivir Bien or Mother Earth rights are constitutive of a variety of approaches, ontologies and epistemologies, allowing for peaceful coexistence, articulation and ultimately enforcement of an amalgam of rights, principles and dimensions in a plural legal space.

However, differing views on situating such newly emerging paradigms (at least at global scale) reveal the complexities of uniform codification. Arturo Escobar

distinguishes between “alternative development” and “alternatives to development”, demonstrating the panoply of meanings attributed to “development” either embracing a holistic understanding beyond the realm promulgated by the Global North or adopting “common sense” terminology and its conceptual contestations. Far from constituting a neutral concept, indigenous proposals for such alternatives have been adopted and spurred in the very process of constitutionalisation, as argued by Edoardo Gudynas, most notably as a reaction to I) neo-liberal market reforms in the late 1990s and 2000s contesting classical “development” strategies or II) as part of political agendas. The latter developments may be attributed to the election of governments of the Latin American new left which provided the space for “oppressed, minimised or subordinated expression of indigenous knowledge and traditions” become articulated.

Respective rights falling under the generic conceptual agenda of Alternatives to Development or, more specifically, Buen Vivir/Vivir Bien have found distinct entry into constitutional frameworks; this becomes apparent in the Bolivian and Ecuadorian cases. Gudynas discusses their very legal origins and foundations. While, the Bolivian constitutional mindset accommodates Vivir Bien under general constitutional principles relating them to the very construction of the State, its plurinational, multicultural approach guided by specific values and objectives the Ecuadorian Constitution integrates indigenous cosmovisions into a general enumeration of rights, coexisting with health, education, food environment, participation.

Other observations might relate to procedural questions of invoking such rights if excluded from the operational realm of the law or if made dependent on the realisation of other rights. Further reflections include concerns as to the very subjects making such claims; indigenous cosmovisions commonly include other beings, the environment in respective articulations (see also here). In that sense, novel forms of constitutionalism have distanced themselves from their anthropocentric origins evolving into some form of “Earth jurisprudence” as argued by Pablo Solón. Illustrative of this may be the Bolivian Law of the Rights of Mother Earth which, however, falls short of representing constitutional demands, let alone finding embedment in constitutional orders. Questions as to realising such rights beyond legal theory remain. Which kinds of regulatory frameworks could possibly ensure genuine fulfilment of such rights, which bodies could monitor compliance (specific (vice)ministries as in the case of other indigenous rights)? How could constitutional frameworks be amended in order to enable such rights to be invoked, such as by particular procedural provisions? Further considerations are needed in that regard – for the sake of a systemic reform of the existing global order and ultimately its people(s) subjected to its perpetuating perverting ‘common-sense consensus’ of neo-liberal, neo-colonial logics.

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