

RESEÑA

**Reconciling Indigenous Peoples' Individual  
and Collective Rights: Participation, Prior  
Consultation and Self-Determination in Latin  
America**

**Jessika Eichler. Routledge, 2019, p. 196**

RESEÑADO POR

**RODRIGO CÉSPEDES<sup>1</sup>**

Indigenous peoples and their collective rights are topics which are not been properly engaged by legal scholars. In addition, consultation and indigenous participation are relevant topics in Latin America. What is more, the conflict between individual and collective rights has not been truly explored. This book meticulously evaluates the indigenous collective and individual rights divide. The analysis is holistic and integrates legal, political and anthropological standpoints comparing Bolivia with the rest of Latin American countries and Africa. It is difficult to find an analysis as complete as this one. This work is a relevant contribution to that legal field because it tackles the complexities of the legal problems involved, consequently, it fills a gap in the field. Since the 1990', large part of the continent recovered democracies and enacted new constitutions, permeable to human rights treaties, among them, ILO-Convention-169. Many of the indigenous peoples' rights have a collective flavor such as autonomy as a group, religious freedom, prior consultation, and, of course, self-determination. In fact, law as conceived by indigenous peoples, is more related to the community and nature than to individual rights as the author pointed out. Colonial powers imposed a different view, based on individual rights. The author also explored the possibility that individual rights have priority because the theorization on collective rights is, in fact, quite recent (they are part of the third generation of rights). On the other hand, classic constitutionalism stresses on the importance of individual rights. Indigenous peoples' self-determination or autonomy could generate conflicts with individuals,

1. Doctor en Derecho, Max Planck Institute for Social Anthropology (Halle), Alemania. Correo Electrónico: rodcespedes@yahoo.com.

part of those minorities. One example is the autonomy granted to indigenous courts, which could decide cases affecting individual rights. As the author rightly stressed, groups within indigenous communities, such as women, may be negatively affected. Another example is prior consultation as part of environmental impact assessment or other procedures that could affect indigenous peoples. Indigenous participation perfectly illustrates the conflict between collective and individual rights is participation. The best example of indigenous participation is consultation as is regulated by ILO-Convention-169. In fact, the organs in the Inter American Human Rights System have derived sometimes the right to be consulted from the right to political participation (including respecting the internal decision-making process inside the indigenous community when consulting). This mechanism is particularly important in the case of the extractive industry, so common in Latin America. Indigenous peoples' interests have to be balance against companies' and governments' ones. These legal procedures have deep theoretical implications which the author fully engaged. Her work proposed some sort of very original synthesis, a "reconciliatory framework", in order to make compatible both sets of rights, collective and individual which addresses the essence of this problematic topic. This subject has several ramifications, from the use of international law by indigenous communities to issues of standing and public interest litigation. In few words, an excellent contribution to better understand theoretical aspects with very practical implications.

## CUHSO

Fundada en 1984, la revista CUHSO es una de las publicaciones periódicas más antiguas en ciencias sociales y humanidades del sur de Chile. Con una periodicidad semestral, recibe todo el año trabajos inéditos de las distintas disciplinas de las ciencias sociales y las humanidades especializadas en el estudio y comprensión de la diversidad sociocultural, especialmente de las sociedades latinoamericanas y sus tensiones producto de la herencia colonial, la modernidad y la globalización. En este sentido, la revista valora tanto el rigor como la pluralidad teórica, epistemológica y metodológica de los trabajos.

### EDITOR

Matthias Gloël

### COORDINADORA EDITORIAL

Claudia Campos Letelier

### CORRECTOR DE ESTILO Y DISEÑADOR

Ediciones Silsag

### TRADUCTOR, CORRECTOR LENGUA INGLESA

Aurora Sambolin Santiago

### SITIO WEB

[cuhso.uct.cl](http://cuhso.uct.cl)

### E-MAIL

[cuhso@uct.cl](mailto:cuhso@uct.cl)

### LICENCIA DE ESTE ARTÍCULO

Creative Commons Atribución Compartir Igual 4.0 Internacional