

Postliberal Democracy Emerging?

A conceptual proposal and the case of Bolivia

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Since the turn of the century, the spread of left and centre-left governments across Latin America and, in particular, a new wave of constitutional reforms have led scholars to speculate about the possible emergence of some kind of a postliberal democracy in the region (cf. Nolte and Schilling-Vacaflor 2012). Most prominently, Benjamin Ardití (2008: 67) observes an ‘experimentation with post-liberal formats of political participation’ among the new and heterogeneous Left in the region. Ardití (2008: 72-80) identifies a series of postliberal elements that do not replace the liberal state and electoral democracy but, by adding non-liberal forms of participation and citizenship, tend to transform liberal-democratic polities. Deepening Ardití’s analysis with a view to Bolivia, Nancy Postero (2010) argues that the agenda of the Morales government is not only about moving towards post-neoliberalism, but about transforming – ‘vernacularizing’ – liberalism. Comparing the socio-economic, political, and cultural transformations in Bolivia, Ecuador and Venezuela, Arturo Escobar (2010) also finds traces of postliberalism – and post-developmentalism and post-capitalism – but concludes that, overall, contemporary political changes point towards alternative forms of modernisation, not alternatives to modernity. Boaventura de Sousa Santos (2010: 30-31) calls the emerging situation in these three countries ‘demo-diversity’, the result of an ‘enrichment’ of representative democracy with participatory and communitarian forms of democracy.

Until recently, writings on postliberal democracy used to focus on the ‘established liberal democracies’ in Northern America and Western Europe and consisted mainly in normative sketches of how an ‘improved’ democracy could look like (Schmitter 2006).² In contrast, Ardití is interested in the experimentation with postliberal politics that is ‘already happening’ across Latin America, ‘*presupuesto participativo*, *municipios autónomos*, and *usos y costumbres*’ being three keywords here (Ardití 2008: 74). In general, these postliberal challenges to real-existing democracy in Latin America have come from below: from social movements, indigenous communities and local politics.³ With new governments promising and, indeed, initiating national ‘re-foundations’ via constituent assemblies, these challenges have culminated in processes that aim to profoundly transform political regimes. Whether in the shape of ‘participatory democracy’ (Pérez et al. 2009; Santos 2005), ‘radical democracy’ (Postero 2010; Van Cott 2008) or ‘radical populism’ (De la Torre 2007), these challenges are widely seen to point towards a transformation of real-existing democracy into something less liberal and somehow differently democratic.⁴ Bolivia is a case in point: If there is a Latin American country which combines continuity in terms of basic standards of representative democracy with substantial innovation in the sense of deviations from mainstream notions of liberal democracy, this should be contemporary Bolivia.⁵ Whether the

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2 According to Schmitter (2000: 25, note 1), the term can be attributed to C. B. MacPherson and his essay ‘Post-Liberal Democracy?’ published in *Democratic Theory: Essays in Retrieval* (Oxford: Clarendon Press, 1973). For different notions of postliberal democracy, all concerned with the ‘North-West’, cf. Bowles and Gintis (1987: chap. 7); McGowan (1991: 212-217); Wallach (2001: chap. 6).

3 Cf. Alvarez et al. (1998); Ardití (2008); Escobar (2010); Van Cott (2007, 2008); Yashar (2005).

4 While the notion of ‘post-democracy’ (Crouch 2008) that has been coined for the ‘established’ democracies in the North-West resembles what Schmitter calls ‘more liberal [and less democratic] democracy’ (Schmitter 1995), ‘postliberal democracy’ is, thus, about essentially democratic changes that deviate from liberal norms. The repercussions of the ‘post-democracy’ debate in Latin America have been limited (cf. Wehr 2006).

5 Cf. Choque (2010: 500-501); Postero (2010: 75); Salman (2008: 88); Wolff (2011: 3-7). The other two usual suspects in this regard are Ecuador under Rafael Correa and Venezuela under Hugo Chávez. Yet, in the Venezuelan case there is

recent wave of leftist governments – and the new constitutions in Bolivia, Ecuador and Venezuela in particular – have led to macropolitical changes that point to the emergence of postliberal democracy at the state level is, however, still rather unclear.⁶ Existing studies on these transformations, while often rich in terms of empirical analysis, are usually characterised by a lack of an explicit conceptual framework that would enable systematically assessing this question.⁷

The present paper, therefore, has a dual purpose. On a general level, it aims at developing a conceptual framework that enables systematic analyses of political change towards postliberal democracy, in Latin America and beyond, and at probing the plausibility of this framework in a case study on Bolivia.⁸ On a country-specific level, it aims at demonstrating that the concept of postliberal democracy helps us understand the contemporary transformation of democracy in Bolivia. After having made the case that the ongoing transformation of Bolivian democracy can indeed be fruitfully analyzed through the lenses of postliberal democracy, the paper also discusses alternative conceptual frameworks like (radical) populism and defective (illiberal, delegative) democracy in order to show that postliberal democracy has advantages over these competing analytical perspectives. The case study on Bolivia covers the period since Morales's first inauguration in January 2006. After a brief overview of the political changes since 2006, the changes to the politico-institutional order are analyzed in detail, looking at the new constitutional framework, the preliminary state of its implementation and – in an inevitably selective way – the actual patterns of Bolivian politics under Morales.

Postliberal Democracy: A conceptual framework

Even if democracy is usually defined in rather limited, procedural terms, its actual meaning is *de facto* much more specific: Democracy as liberal democracy, according to Schmitter (2006: 1), is generally equated with 'constitutional, representative, individualistic, voluntaristic, privatistic, functionally limited, political democracy as practiced within nation-states'. Postliberal democracy, then, is about questioning these 'qualifiers' without breaking with basic standards of representative democracy in the Dahlian sense (Schmitter 2006: 1-2). This is precisely what Arditì is observing in Latin America. The (incipient) emergence of postliberal politics 'does not suggest the end of liberal politics and its replacement with something else, yet it is clear that the *post* of *postliberal* designates something outside liberalism or at least something that takes place at the edges of liberalism' (Arditì 2008: 73.).⁹

At a very general level, postliberal democracy then is characterised by the persistence of the basic features of representative, electoral democracy while being less liberal. But in order to develop a conceptual grasp on Arditì's 'something' beyond or at the edge of liberalism, it is necessary to systematically identify the potential challenges to the substantial, liberal 'qualifiers' in liberal democracy.¹⁰ In this sense, a conceptual framework can draw, for example, on the notion of five

much more doubt as to the basic continuity of democracy while in Ecuador the deviation from liberal principles is much less pronounced than in Bolivia (cf. Escobar 2010; Wolff 2012).

- 6 This question is obviously related to the debate about the possible emergence of post-neoliberalism. But while the latter focuses on the economic (development) model, the present paper deliberately looks at the political regime. On 'post-neoliberalism', cf. Burdick et al. (2009); Macdonald and Ruckert (2009); Rovira (2011a).
- 7 This is, of course, true for the bulk of studies that are not explicitly interested in postliberal democracy. See, for example, the collection of essays on 'Latin America's Left Turns' edited by Beasley-Murray et al. (2010) or the two issues on 'Bolivia under Morales' edited by Kohl and Bresnahan (2010).
- 8 The transformation of Bolivian democracy under President Morales is chosen here as a 'plausibility probe' because this case is critical in the sense that, as seen above, the notion of emerging postliberal democracies in Latin America can 'hardly be expected to hold widely if it did not fit closely there' (Eckstein 1992: 151).
- 9 Also Escobar (2010: 3) concludes that the ongoing transformations in Bolivia, Ecuador and Venezuela at the state level constitute rather 'alternative forms of modernization' than 'alternatives to modernity'.
- 10 Given the peculiar character of any 'post-something' concept, postliberal democracy is conceptually defined negatively by its differences – and commonalities – to liberal democracy. Hence the focus on challenges. If we could yet define in a positive way the main features of a postliberal democracy, we could give it a proper name. At the same time, although the 'post' in postliberal democracy signals a temporal sequence – postliberal democracy as something that emerges after, and out of, liberal democracy, this refers 'only' to the dominant normative template that guides the political order

‘partial regimes’ that, according to Wolfgang Merkel (2004),¹¹ constitute the main pillars of liberal democracy. By taking such a substantially liberal conception of democracy as a benchmark, it becomes possible to systematically identify the potential challenges and deviations that a movement towards postliberal democracy might include:

(A) Electoral regime: The competitive election of public office holders is at the core of liberal democracy. At the same time, however, the direct control of the population, in the liberal-democratic model, ‘is limited to the election of the governing elite and does not have any influence on how power is exercised between elections’ (Merkel 2004: 38). Substantially, this limited reach of the electoral regime points to liberal democracy’s fear of the Tocquevillian ‘tyranny of the majority’. In this sense, direct-democratic or plebiscitary mechanisms, by expanding the reach of popular elections and majority decisions, challenge the usual boundaries of liberal democracy (Escobar 2010: 19, 27-28). At the same time, communal forms of self-government at the sub-national level that do not rely on electoral rule but, e.g., on ‘deliberative assemblies for decision-making, horizontality in organizations, and rotation of assignments’ (Escobar 2010: 32) may exempt crucial – especially local – policy domains from the electoral regime (Santos 2010: 29).

(B) Political rights of participation: These, in a liberal democracy, are again crucial – as preconditions for competitive elections – but also constrained. They consist in the right to vote (in representative elections, see above) as well as in the range of freedoms (of association, assembly, speech, opinion) that enable the collective formulation of opinions and demands. At the same time, neither ‘non-electoral politics’, e.g. non-institutional political participation through social movements, has a systematic place in this liberal-democratic conception, nor have ‘non-liberal channels of participation’, like participatory budgeting, ‘that seek a voice in the allocation of public resources rather than in the designation of public authorities’ (Arditi 2008: 76-77; cf. Santos 2010: 29). If systematically established, both participation by mobilisation and participation in resource allocation point towards postliberal democracy.

(C) Civil rights: The ‘basic constitutional rights’ that protect ‘the individual against the state executive and against acts of the elected legislator’ (Merkel 2004: 39) represent the core element in the liberal (constitutional) containment of popular sovereignty. Democracy, from the liberal perspective, has to be tamed in order to be democratic (cf. Coppedge et al. 2011: 253; Santos 2010: 30). Postliberal democracy may deviate from this conception in two ways. First, democracy’s reach can be expanded, either formally by subjecting constitutional issues to democratic procedures (e.g., through constituent assemblies or referenda on constitutional reforms) or informally by means of a ‘populist’ style of governance that, by invoking ‘the power of the people’, tends to bypass institutional constraints (cf. Mény and Surel 2002). Second, the notion of citizenship rights itself can be broadened. Whereas, in the liberal-democratic model, ‘the socio-economic context’ is considered something outside the democratic regime even if the latter is embedded in the former (Merkel 2004: 44), ‘social citizenship’ as defined by T. H. Marshall may also be regarded as an indispensable feature if formal (liberal) equality is to have any real meaning (Huber et al. 1997: 324). Here, liberal democracy’s ‘restriction to formal political equality’ and to civil rights that protect the citizen *against* the state is challenged (Schmitter 2006: 3). Furthermore, the introduction of collective rights can challenge the individualist conception of (liberal) rights itself (cf. Escobar 2010). Collective rights (of indigenous peoples, ethnic minorities etc.) can aim at

and political change not to the real existing order. That is to say that, in a given country, we do not need, first, an established liberal democracy that ‘really’ complies with all the usual criteria (as outlined below) before we can, then, have a transformation towards postliberal democracy.

11 Of course, there are innumerable proposals for conceptualizing liberal democracy. But for the purpose of this paper, the one developed by Merkel and colleagues seems particularly suitable because it deliberately goes beyond a narrow notion of liberal democracy as polyarchy. Not only do the five partial regimes cover all the elements usually identified as typically liberal dimensions of liberal democracy. As will be seen, the shape of these partial regimes is also specified in fairly substantial liberal ways. The concept has been developed in detail in Merkel et al. (2003). It is applied in the German Bertelsmann Stiftung’s Bertelsmann Transformation Index (BTI), see www.bertelsmann-transformation-index.de/en/bti/.

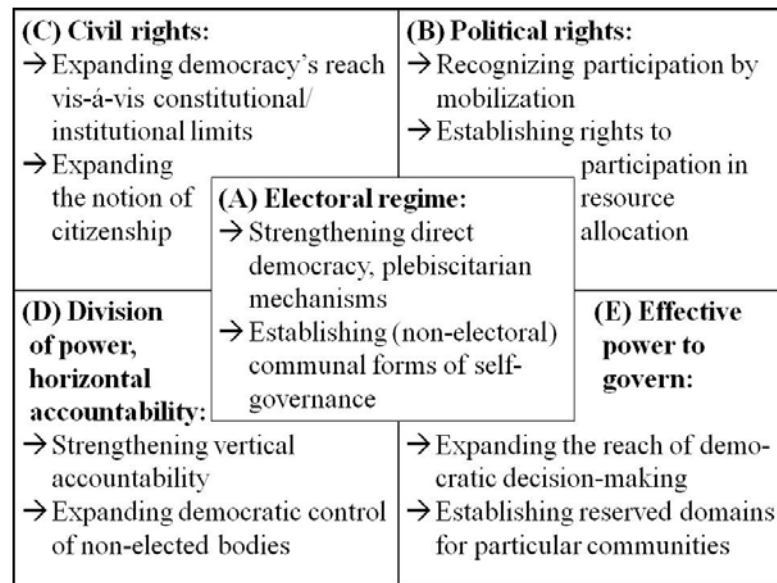
protecting specific groups against the state, at endowing them with entitlements to autonomy and/or at obliging the state to respond to specific needs of groups.

(D) Division of powers and horizontal accountability: In the liberal-democratic model, the existence of ‘state agencies that are authorized and willing to oversee, control, redress, and if need be sanction unlawful actions by other state agencies’ (O’Donnell 1998: 119) is the primary mechanism to prevent the democratic state, and namely the executive, from infringing on individual freedoms and undermining competitive elections (Merkel 2004: 40). Yet, the role of ‘complex systems of “checks and balances”’ is not limited to securing such basic democratic principles; given liberal democracy’s ‘hostility to coercive public authority, especially when backed by large numbers of less-privileged citizens’, they deliberately constrain the power of the state and, in particular, of those institutions expressing popular sovereignty (Schmitter 2006: 3; cf. Coppedge et al. 2011: 253). This hostility may be challenged in two ways. First, vertical accountability may be reinforced, either by subjecting bodies of the state formerly shielded from direct democratic interferences to popular elections or by strengthening mechanisms of social control ‘from below’. The above-mentioned mechanisms of direct or plebiscitary democracy as well as non-conventional forms of participation (by mobilisation and in resource allocation) have such an effect. Second, the democratically elected powers of the state may be strengthened vis-à-vis the more ‘technical’, ‘professional’ entities, thereby challenging the distribution of labour in ‘modern’ liberal democracies in which manifold ‘unelected bodies’ take a great deal of relevant policy decisions (cf. Vibert 2007).

(E) Effective power to govern: The criterion ‘that the elected representatives are the ones that factually govern’ refers to the absence of ‘extra-constitutional actors not subject to democratic accountability, like the military or other powerful actors, from holding (final) decision-making power in certain policy domains’ (Merkel 2004: 41). In the liberal-democratic framework, the reach of this rather self-evident condition is, however, fairly restrained. It explicitly does not encompass neither institutions regarded as necessary to uphold the constitutional order as such (like an independent judiciary including a constitutional court) nor the above-mentioned ‘unelected bodies’ whose relative autonomy is seen as functionally superior to democratic control (cf. Merkel 2004: 42; Vibert 2007). Furthermore, liberal democracy as a political regime for capitalist societies accepts major economic decision-making power by business leaders and anonymous markets with immediate and far-reaching implications for both democratic politics and society (Lindblom 1982). These limits to the effective power to rule are, of course, contested and may be challenged systematically by increasing the reach and scope of democratic decision-making both within the state and vis-à-vis society/economy (Escobar 2010). At the same time, the reach of democratically elected organs may also be limited in ways not envisioned by liberal democracy: For instance, the recognition of indigenous self-government by non-electoral, ‘traditional’ means (see above), from the liberal-democratic perspective, implies the establishment of ‘reserved policy domains [...] over which the government and parliament do not possess sufficient decision-making authority’ (Merkel 2004: 41).

Figure 1 summarizes the results of this discussion. Based on this overall conceptual framework, it is possible to study trends towards postliberal democracy by analyzing whether ongoing processes of political change imply challenges to liberal democracy’s different boundaries in the five partial regimes while maintaining basic liberal-democratic norms across the five dimensions.

Figure 1. The Analytical Framework: Postliberal challenges to liberal democracy



Source: Author's elaboration, drawing on Merkel (2004: 37, Figure 1).

Bolivia under Evo Morales: A brief overview

Following a turbulent transition to democracy, after 1985 Bolivia became a much-lauded development model that successfully followed a path of democratisation, stabilisation and (neo-)liberal economic reform (cf. Mayorga 1997). Between 2000 and 2005, however, a series of political crises erupted, characterised by massive social protests that forced the resignation of both elected President Sánchez de Lozada in 2003 and his successor Carlos Mesa in 2005. In the course of this period of recurring crises, the union leader, coca grower and head of the political Movement toward Socialism (*Movimiento al Socialismo*, MAS) Evo Morales established himself as the leading representative of the diverse protest movements. In December 2005, Morales was elected president of Bolivia by an absolute majority of the vote, becoming the country's first indigenous head of state in a country where more than 60 per cent of the population are considered of indigenous origin. Since taking office, Morales has initiated a process of profound political change that included, as core elements, a restructuring of the political system via a Constituent Assembly and policy changes in a series of areas (economic, social, drug, and foreign policies) (cf. Crabtree and Whitehead 2008; Kohl and Bresnahan 2010).

To 're-found' the country via a Constituent Assembly had been a long-standing demand of Bolivia's indigenous movements. The assembly was elected in July 2006 and finished its work in December 2007. Yet, the adoption of the draft constitution by a two-thirds majority of the present members of the Assembly – with the most important opposition groups being absent – was heavily disputed. Especially in the eastern lowland departments, where opposition to Morales was strongest, regional autonomy movements mobilised against the government. Following nine months of political struggle, in October 2008 a two-thirds majority in Congress agreed on a detailed revision of the constitutional draft (cf. Romero et al. 2009). In January 2009, the new constitution was approved in a referendum by more than 60 per cent of the population. In general elections at the end of the year, Morales was re-elected and the MAS won a two-thirds majority in the new parliament, the Plurinational Legislative Assembly (*Asamblea Legislativa Plurinacional*). Since 2010, a series of organic laws have been approved in order to implement the new constitutional framework.¹²

¹² This included laws on the Electoral Organ, the Electoral Regime, the Constitutional Tribunal, the Judicial Organ, Autonomy and Decentralization, and Jurisdictional Delimitation.

In the area of economic and social policies, Morales had promised to break with ‘neoliberalism’. Correspondingly, the government significantly increased the role of the state in the economy. Following Morales’s declaration of a ‘nationalisation’ of the country’s gas resources in May 2006, international gas companies were forced into new contractual relationships; the control of the state (and the state-owned company YPFB) in the hydrocarbon sector was strengthened; and taxes on gas companies were increased. At the same time, the government used rising revenues from hydrocarbon (and mineral) resources in order to expand social spending and public investment (cf. Weisbrot et al. 2009). In addition, Morales abandoned the U.S.-driven emphasis on coerced coca eradication and legalised coca (while continuing counternarcotics efforts directed at the drug production and trafficking).¹³

A Postliberal Democracy in the Making¹⁴

To what extent does Bolivia’s new constitution establish a framework for postliberal democracy in that country? And to what extent can we find evidence of postliberal forms of politics under the government of Evo Morales?¹⁵ Across the above-mentioned five dimensions, the following analysis will show that the emerging political regime in Bolivia *maintains* the basic norms and institutions of representative democracy while partially *modifying* them by adding other, heterodox or non-liberal notions of democracy, participation and governance.¹⁶

(A) Electoral democracy and the usual representative institutions constitute the core of the new ‘plurinational state’ as conceptualised by the new constitution. Therefore, in the usual measures by Freedom House, Polity and Bertelsmann, Bolivia is still considered a democracy.¹⁷ Yet, the constitution regards representative democracy as only one form of government, complemented by ‘participatory’ and ‘communitarian’ democracy (art. 11/I).¹⁸ While the latter refers to indigenous self-government (see below), the former concerns the exercise of democracy in general which encompasses ‘direct and participatory’ forms such as referenda, citizens’ legislative initiatives and the revocation of mandates (art. 11/II).¹⁹ Popular approval via referendum is required in cases of constitutional changes, the ratification of international treaties,²⁰ and the establishment of departmental, regional, municipal or indigenous autonomies (art. 411, 257-259, 274-275, 280, 294-295). In general, referenda can be held at the national, departmental and municipal levels (art. 298/II, 300/I, 302/I), and legislative initiatives of the citizens are of ‘obligatory treatment’ in parliament (art. 162/I) – but the precise competences and corresponding procedures of such referenda and initiatives are not specified in the constitution.²¹ Finally, recall referenda represent a

13 The Morales government, in particular, recognised the coca leaf’s traditional role in indigenous cultures, increased the level of legal coca production and trade, and pushed for coca’s international legalization. It did try to limit the amount of coca production via cooperative forms of social control at the community level while continuing joint military-police counternarcotics efforts to cut down on drug trafficking (cf. Farthing and Kohl 2010).

14 The following analysis draws mainly on the analysis of primary and secondary sources but was informed also by a series of interviews conducted in La Paz, Santa Cruz and Cochabamba between April and May 2009.

15 On Bolivia’s new constitution, see IDEA Internacional (2010); Käss and Velásquez (2009); Romero et al. (2009); Schilling-Vacaflor (2010); Wolff (2012). For overviews of Bolivia’s political development under Morales, see BTI (2009); Crabtree and Whitehead (2008); Gamarra (2008); Kohl and Bresnahan (2010); Postero (2010).

16 Cf. Choque (2010: 494-495); Escobar (2010: 27); Postero (2010: 71-72); Romero (2010: 29).

17 See www.freedomhouse.org; www.systemicpeace.org/polity/bol2.htm; www.bertelsmann-transformation-index.de (all accessed 14 September 2011).

18 This and all following references to articles refer to Bolivia (2009).

19 Further vehicles for direct and participatory democracy include assemblies (*asambleas*) and councils (*cabildos*) but these are to have a ‘deliberative character’ only (art. 11/II). A final participatory mechanism is the ‘prior consultation’ (*consulta previa*), i.e. the right of indigenous peoples to ‘be consulted [...] whenever there may be legislative or administrative measures that may affect them’ (art. 30/II). See also the corresponding law (Bolivia 2010a).

20 Popular approval of international treaties is mandatory if these imply border issues or processes of monetary, structural economic or political integration. In addition, a referendum can be requested by 5 per cent of the registered voting population or 35 per cent of the members of parliament (art. 257-259).

21 The corresponding law passed in June 2010 determines that, to initiate a referendum at the national level, at least 20 per cent of the voting population (and in no department less than 15 per cent). In addition, a series of issues – like the

new mechanism of vertical accountability or popular control, which gives voters the opportunity to revoke the mandate of all elected representatives. Only the judiciary – whose highest authorities are also elected by popular vote (see below) – is protected from revocation (art. 240).

The evolution of Bolivian politics since the election of Evo Morales in late 2005, on the one hand, confirms this ambivalent impact on the dimension of electoral representation. Representative institutions – the Executive, Congress, the Constituent Assembly, the Plurinational Legislative Assembly – have clearly dominated the political life. Yet, their relative autonomy vis-à-vis society was limited by both formal and informal instances of vertical accountability, namely by a series of referenda²² and the mobilisation of social groups putting pressure on representative institutions.²³ On the other hand, with the election of Morales, Bolivian democracy has clearly become more representative, which meant strengthening representative institutions. Very generally, '[t]he political inclusion of indigenous peoples improves the representational dimension of democracy' (Van Cott 2007: 134; cf. Gamarra 2008: 134) – in particular in Bolivia where the majority of the population is considered indigenous. There can be no doubt that both Bolivia's government and parliament, since the electoral victories of Morales and the MAS in late 2005, have become considerably more representative today than ever before.²⁴ Opinion polls demonstrate that this perception is widely shared among Bolivians (PNUD 2010: 26-27) and has led to a 'restoration of trust in the political system' (Gamarra 2008: 135).

(B) The new constitution guarantees all those political rights that mainstream conceptions of liberal democracy would expect (art. 26-29; cf. Böhrst 2009: 72-73; Cordero 2010: 103). Yet, in contrast to usual notions of representative democracy, political parties lose their monopoly on representation (Romero 2010: 23). Reinforcing changes in the modes of political representation already under way since the mid-1990s, indigenous organisations (*organizaciones de las naciones y pueblos indígena originario campesinos*)²⁵ and citizen groups (*agrupaciones ciudadanas*) can compete with political parties for elected public office on an equal footing (art. 209). Most notably, the constitution modifies liberal notions of political participation in the section on 'Participation and Social Control' (art. 241-242). Here, it is established that the 'sovereign people, through organised civil society, participates in the design of public policies'. Furthermore, 'organised civil society exercises social control' over state administration, public enterprises and institutions. How to organise this kind of participation and social control is left up to 'civil society', but the constitution stipulates that there will be a law establishing a general framework (art. 241).²⁶ During the Constituent Assembly, there were even demands to elevate the control by civil society (read: social movements) to a 'fourth power' of the state that 'would stand above the classic powers' and control them (Barrios 2008: 136). While this would have meant an open rupture with representative democracy, the new constitution, in the end, stuck to 'only' amending the

unity and integrity of the plurinational state, taxes, internal and external security, organic and framework laws, or the validity of human rights – is exempted from popular decisions (cf. Bolivia 2010a: art. 16/II, 14).

- 22 Besides a referendum on establishing a regime of departmental autonomy (2006) – which was followed in 2008 by illegal referenda on statutes of autonomy in selected departments – and the constitutional referendum in 2009, also the revocation of mandates was tested already before the new constitution entered into force: In August 2008, Morales easily survived a recall referendum; among the prefects (governors) at the departmental level, Morales's major opponents also won their recall referenda while two (oppositional) prefects lost their offices (*ElPais.com*, 15 August 2008).
- 23 At the same time, both the government and the (regional) opposition instrumentally used allied social organizations to put pressure on representative institutions (cf. Mayorga 2009: 113; Laserna 2010; Van Cott 2007: 136-137).
- 24 Morales is indeed the first president since the transition to democracy in the 1980s that can count on direct democratic legitimation as he was elected (twice) in the first round with an absolute majority, whereas, in the case of his predecessors, it was Congress that decided the run-off.
- 25 The Bolivian constitution refers to *naciones y pueblos indígena originario campesinos*, translated here, for the sake of simplicity, as 'indigenous peoples'.
- 26 The latter restriction to civil-society self-organization resulted from the above-mentioned congressional revision. In the original draft, organised civil society was meant to participate in decisions about public policy ('*en la toma de decisiones de las políticas públicas*') and was free to independently establish 'its own norms and way of working' (Zegada 2008: 54).

representative institutions with additional mechanisms of participation by mobilisation and participation in resource allocation that are, ultimately, under the control of parliament.²⁷

With a view to the practice of ‘participation and social control’, political access to government and parliament by social movements and organisations representing the popular sectors (including the indigenous movements) increased significantly under the new government (cf. Kohl 2010: 112). But, at the same time, real-existing participation, up to now, is limited. Scholars have pointed to attempts by the MAS government to co-opt civil-society organisations, to steer participation ‘from above’ and to concentrate power in the person of the president.²⁸ In fact, while the corresponding law has yet to be adopted by parliament, the preliminary mechanisms of participation and social control reveal a fairly top-down pattern of consultation. It is the corresponding state entity (e.g. a particular ministry) that ‘convokes those social organisations that it considers pertinent to a meeting with an established agenda’ (Zuazo 2010: 134). This said, the well-known, but *informal* practices of ‘non-electoral politics’ and ‘non-liberal channels of participation’ (Arditi 2008: 76-77) are still far more important than formally institutionalised ones (see above; cf. Cortéz 2009). Since 2010, increasing protests by social groups and organisations that generally have been close or allied to Morales and the MAS demonstrate that this constitutes a real constraint (and check) on a government that, at the moment, has no serious contenders within the representative institutions.²⁹ At the same time, this implies, however, that the constitution’s attempt to channel Bolivia’s ‘participatory culture’ through the social control exercised by ‘organised civil society’ has yet to show results (Choque 2010: 494).

(C) The constitution also recognises the liberal canon of civil rights (art. 21-25; cf. Richter 2010: 103), including the right to private property (art. 56; cf. Böhr 2009: 74). However, already the emphasis on the sovereignty of the Bolivian people which is to be exercised ‘in direct and delegated forms’ (art. 7) makes it clear that the balance between ‘the rule of the people’, on the one hand, and ‘the rule of law’ and ‘constitutionalism’, on the other (Mény and Surel 2002: 8-10), is recalibrated in favour of the former (cf. Barrios 2008: 128). Hence the constitution can be substantially and even entirely rewritten by means of a Constituent Assembly which is convoked by referendum, elected by the people and endowed ‘with full powers’ (*plenipotenciaria*) (art. 411). Overall, the new constitution expands the role of majority decisions – both through extending the reach of popular elections and referenda (see above) and by increasing the number of ‘fundamental political decisions’ in parliament that are adopted by an absolute majority of the votes (Romero 2010: 29).³⁰ In the practice of political decision-making under the new constitution these questions – ‘rule of the people’ vs. ‘constitutionalism’ and absolute vs. two-thirds majorities – have not been too relevant. On the one hand, the MAS could count on two thirds of the members of the new plurinational parliament; on the other, interim judges appointed by President Morales in February 2010 did not openly challenge government. It remains to be seen whether this will change with the new judicial authorities that took office in January 2012 (following contested popular elections in October 2011). In any case, during the process of constitutional reforms itself, the government’s emphasis on the (majority) will of the people has clearly meant that respect for institutional and constitutional constraints was rather limited (cf. Lehoucq 2008). Hence the Bertelsmann Transformation Index notes a ‘decisive move towards derision, neglect and marginalization of representative democracy’s basic institutions, mechanisms, and procedures, including the judiciary’ (BTI 2009: 11-12). This particularly refers to disputes between the government and the

27 Cf. Barrios (2008: 136-7); Cortéz (2009: 351); Pinto (2010: 489).

28 Cf. Schilling-Vacaflor (2010: 14-17); Stefanoni (2009: 103-104); Zuazo (2010: 128-135).

29 While this is clearly not in the interest of the MAS government, it corresponds to the notion of vertical checks and balances emphasised by Evo Morales already in his pre-inauguration speech at Tiwanaku in January 2006 where he explicitly urged his followers to control, correct and push him (Dunkerley 2007: 165).

30 The congressional revision of the draft constitution, however, reestablished the need for two-thirds majorities for some crucial decisions, namely for the election of those members of the different electoral tribunals determined by parliament and for partial reforms of the constitution (Böhr 2009: 89, 105).

highest branches of the judiciary during which the latter gradually lost their capacity to act and decide in a series of resignations that were not followed by new appointments (until February 2010). But, even in this transitory period, the MAS's emphasis on the majority will of the people did not mean openly breaking with the basic constraints of democratic institutions: Most notably, the government accepted the decision by the Electoral Court – which had demanded a law before organizing the constitutional referendum – and agreed to parliamentary negotiations which, in the end, enabled a two-thirds majority in the old Congress (Peñaranda 2009: 150-151).

Another challenge to liberal conceptions in this dimension concerns the notion of citizenship. The 'fundamental rights' recognised by the new constitution clearly go beyond the usual series of political and civil rights by strengthening socio-economic and collective rights (cf. Rojas 2010). The former include universal entitlements to free education and health care, access to potable water/sewage, electricity, cooking gas, and basic postal and telecommunication services as well as social security and retirement (art. 16-20, 45). The latter consist in far-reaching rights of the indigenous peoples in the framework of the new 'plurinational state'. Both types of rights come with consequences for civil and political rights. Extended socio-economic rights imply that economic activities are required to play a positive social, economic and environmental role (art. 312); that the right to private property is conditional on its performing a 'social function' (art. 56); that land rights are limited by a ban on the *latifundio* which includes an upper limit of 5,000 hectares and the requirement to fulfil a 'social-economic function' (art. 398); and that the privatisation of basic public services – namely, the supply of water, sewage, public health and social security services – is prohibited (art. 20, 38, 45).³¹ While constitutional guarantees apply, the exercise of political and civil rights is obviously constrained in the context of indigenous 'autonomies' which are governed not by liberal-democratic norms but by customary indigenous 'norms, institutions, authorities and procedures' (art. 290; cf. Barrios 2009) – norms that 'tend to privilege collective identities and interests above those of individual community members' (Van Cott 2007: 138). With a view to the new plurinational parliament, the constitution establishes special electoral districts for indigenous minorities (art. 146/VII) – a positive discrimination which is crucial to guarantee a certain (ethnic) representation of these peoples at the national level but obviously distorts proportional representation (Cordero 2010: 83).³² Furthermore, the recognition of indigenous languages leads the constitution to oblige every public servant to speak 'at least two official languages of the country' (art. 234/7).³³

Particular relevant (and contested) is the recognition of indigenous jurisdiction as a parallel system of justice on equal footing with ordinary state law (art. 179; cf. Derpic 2009). While being part of the establishment of non-electoral, communal forms of (indigenous) self-government that reduce the (territorial and functional) reach of the electoral regime (A) and, at the same time, limit the effective power of the liberal state and its institutions (E), this expansion of collective rights, most importantly, challenges individual civil rights. The constitution clearly states that indigenous law has to respect 'the right to life, the right to defense and the other rights and guarantees established by the present constitution' (art. 190/II). Adding to these constitutional constraints,³⁴ the 2010 Law

31 In line with the new emphasis on socio-economic (human) rights, the Morales government has significantly expanded social policies. These include an increasing minimum wage, a conditional cash transfer ('Bono Juancito Pinto') for children if they continue education, a universal state pension ('Renta Dignidad'), and a cash transfer ('Bono Juana Azurduy') for pregnant women and young mothers if they seek medical care during and after pregnancy (cf. Weisbrot et al. 2009: 15-16).

32 This distortion is, however, rather limited (cf. Choque 2010: 499). First, the constitutional revision by Congress restricted these special districts to indigenous peoples in rural areas who are a minority in their respective departments (Böhrt 2009: 78). Second, the respective law (Bolivia 2010a), as did the transitional law approved in 2009, limited the number of these special seats in parliament to seven out of 130.

33 Yet, the transitional dispositions, added in the congressional agreement, clarify that this requirement is only to be 'progressively applied according to the law' (art. 159).

34 Again, it was Congress that introduced crucial limitations to indigenous justice, most notably references to the 'right of defense', to the personal tie to an indigenous people as the basis of indigenous justice, and to a future Law on Jurisdictional Delimitation (cf. Böhrt 2009: 80-82; Hammond 2011: 665-670).

on Jurisdictional Delimitation explicitly delimits ‘the scope of applicability of indigenous law to cases where personal, territorial and material indigenous jurisdictions are simultaneously at work’ and includes a ‘long list of legal areas for which indigenous authorities may not undertake adjudication’, including corruption, rape, murder and homicide (Barrera 2011: 12; cf. Bolivia 2010b: art. 8, 10). While these regulations solve the most pressing concerns,³⁵ they do not (and cannot) dissolve the fundamental tensions between the diverse practices of customary law and individual civil rights as defined in liberal terms. Legal pluralism challenges liberal conceptions of ‘due process of law’ and of ‘a single system of law uniformly applied to all people’; customary practices that subordinate women clash with gender norms; physical punishments ‘may violate restrictions imposed by human rights norms’; and prioritizing ‘the good of the community as a whole’ collides with the individualist conception of rights ‘in western legal and moral systems’ (Hammond 2011: 677-680; cf. Van Cott 2007: 139). The new Plurinational Constitutional Tribunal, which includes representatives of the ordinary and the indigenous justice systems, is in charge of deciding conflicts between the indigenous and the ordinary jurisdiction (art. 196-197, 202; cf. Barrera 2011: 17).

(D) The powers of the state – and namely the executive, legislature and judiciary – are separated, their division of labour and mutual controls institutionalised.³⁶ Yet, all three classical branches of government are subject to increasing vertical control ‘from below’: In the case of the president and the new parliament, as seen, accountability by means of popular elections is broadened to include recall referenda, popular legislative initiatives and mechanisms of participation and social control. In the case of the judiciary, the top echelons of the judiciary are to be elected by popular vote as well.³⁷ This direct election of the highest tribunals, from a liberal perspective, endangers the nature of the judiciary as a rather apolitical, technical body, but proponents see it as the only way to reduce the influence of party politics on the nomination of judges (Chivi 2010: 416-417). Taking up the liberal concern, however, the constitution limits this mechanism of vertical (majoritarian) control by reintroducing a ‘classic’ form of horizontal control: the national parliament pre-selects candidates by a two-thirds majority (art. 193-195). While this parliamentary pre-selection represents one of the various concessions to the opposition introduced by the old Congress in October 2008 (Böhrt 2009: 84), the two-thirds majority of the governing MAS in the new Plurinational Legislative Assembly has meant that the opposition could not make use of this institutional control during the actual process of preparing the judicial elections (and, correspondingly, criticised the selection of candidates as illegitimately politicised) (cf. *La Razón*, 14 July 2011).

Adding to the direct democratic control of the judiciary (by means of popular elections), the constitution also increases the political influence on supposedly ‘technical’ issues and bodies (cf. Barrios 2008). For instance, the Central Bank ‘loses its previous level of independence’ (Chávez 2010: 207). According to the constitution, it is the executive – ‘in coordination with the Central Bank of Bolivia’ – that determines the aims of monetary and exchange rate policy (art. 326/I). In addition, the ‘social control’ over state administration and public services adds a decidedly non-technical mechanism of oversight ‘from below’ to the usual horizontal control by state institutions (like the *Procuraduría General del Estado* or the *Defensoría del Pueblo*).

(E) According to the new constitution, the democratically elected representatives are those that are entitled to govern. There are no veto powers or reserved policy domains. Also the diverse

35 Together with the prohibition of the death penalty, the mentioned restrictions imply, e.g., that lynching – often (if misleadingly) discussed under the heading of ‘community justice’ (Hammond 2011: 671-672) – can by no means be justified as implementing indigenous law.

36 Cf. Argirakis (2010); Chivi (2010); Cordero (2010); Rodríguez (2009). That the electoral tribunals are upgraded to a fourth branch of the state – the ‘Electoral Organ’ – is unusual, but does only strengthen this picture of horizontal controls (art. 109-140).

37 This refers to the Plurinational Constitutional Court (*Tribunal Constitucional Plurinacional*), the Supreme Court of Justice (*Tribunal Supremo de Justicia*), the Agri-Environmental Court (*Tribunal Agroambiental*) and the Judicial Council (*Consejo de la Magistratura*).

amendments and modifications discussed above do not imply a departure from representative democracy as they, in the end, all remain firmly under the control of representative institutions.³⁸ However, the establishment of non-electoral, communal forms of (indigenous) self-government that reduce the territorial and functional reach of the electoral regime clearly limit the effective power of the liberal state and its institutions. Hence the fear that the recognition of indigenous self-determination, autonomy and self-government could lead to ‘a gradual construction of political, parastatal and independent entities within the Bolivian state’ (Cordero 2009: 166). Even if this seems exaggerated as indigenous autonomies remain – as do departmental, regional and municipal autonomies – embedded in the overall national framework as regulated by the constitution and the law, the constitution does imply a deliberate decision to grant particular (indigenous) communities the right to reserved domains governed not necessarily in accordance with principles of representative democracy and the liberal rule of law (see above).

Furthermore, when compared to mainstream standards of liberal democracy, the constitution does not ‘only’ increase the importance of plebiscitary mechanisms and elected institutions *within* the state, but it also expands the democratic state’s overall role in the economy. Under the new constitutional framework, neither the market economy nor private property rights are abolished, but they are qualified (see above) and become part of a ‘plural’ economy which is to include ‘communitarian, state, private and social cooperative’ forms of economic organisation (art. 306). These constitutional changes confirm (and reinforce) the turning away from neoliberal economic policies pushed by the Morales government (see above). Since assuming power, the MAS has ‘substantially reworked the relation between the state and market, making the state once again a primary actor in economic development’ (Postero 2010: 62; cf. Cunha and Santaella 2010). Public investment has increased as has the state’s control of strategic sectors (hydrocarbons, mining, electricity, and infrastructure) and the overall number of state-owned enterprises (cf. IMF 2011).

Alternative Conceptual Frameworks

To summarise, the postliberal democracy framework leads us to see contemporary political change in Bolivia as a transformation of democracy that implies a complex rebalancing of democratic norms, priorities and mechanisms. If we analyze liberal democracy as a specific way of blending the contradictory democratic principles – sovereignty of the people vs. constitutionalism, majority rule vs. protection of minorities, real political equality vs. formal equality and individual freedom, representation vs. direct participation, individual equality vs. recognition of cultural differences (cf. Coppedge et al. 2011: 257), then the search for postliberal democracy can be interpreted as a process of readjusting and rebalancing these principles by strengthening the plebiscitary and participatory aspects of democracy as well as the economic, social and cultural dimensions of human rights. In this sense, the notion of a postliberal democracy does indeed grasp the main patterns of these changes: the continuity of basic procedures and institutions of representative democracy combined with significant changes across the different liberal ‘qualifiers’ usually attached to liberal democracy that imply a deviation from the mainstream liberal-democratic model. As will be argued in this section, such a perspective seems indeed better equipped than alternative frameworks if we are to understand contemporary Bolivia’s emerging political regime.

Probably the most prominent alternative lens is populism.³⁹ When avoiding simplistic – and highly normative – readings that regard populism as either ‘a pathological political phenomenon’ or as ‘the most authentic form of political representation’ (Rovira 2011b: 1), ‘the uneasy and ambiguous relations between populism and liberal democracy’ (De la Torre 2007: 384) is well in line with the above observations. The Morales government has mobilised and politically incorporated segments of society that have been traditionally marginalised (Gamarra 2008: 134), but in doing so, Morales

38 As seen, legislative initiatives by citizens must pass through parliament; the framework for ‘participation and social control’ is defined by law, i.e. parliament, as are the limits of indigenous justice.

39 Cf. De la Torre (2007: 384); Laserna (2010); Madrid (2008); Mayorga (2009).

and the MAS systematically relied upon a 'claim to embody the people', on an expression of 'the people's will' outside institutional channels and on 'plebiscitary acclamation'; 'populist understandings of democracy as mass rallies and occupations of public spaces' are clearly important in contemporary Bolivia (De la Torre 2007: 385, 388).

Yet, populism does at best grasp part of the patterns of what is here called an emerging postliberal democracy in Bolivia while missing some and misrepresenting others. First, there is clearly a certain anti-institutional bias in the rhetoric and practice of the Morales government and the MAS (BTI 2009: 11-12), but the process of constitutional reform was fundamentally institutionalist in its overall orientation. While political participation by mobilisation and pressure 'on the street' is a traditional phenomenon in Bolivian politics (cf. Gray 2008), formally recognising plebiscitary and participatory mechanisms like the 'revocation of mandates' or 'participation and social control' is a step towards institutionalizing informal phenomena like the protest-driven toppling of elected presidents and the direct negotiation between protestors and government. Especially, as this institutionalisation takes place in the context of a predominantly representative regime (see above). Second, there is, in part, a dichotomous world view that contrasts the good people with the bad old elites, but neither the constitution nor government rhetoric describes 'the people' as a unified entity. The notion of a fundamentally plural society is the very basis of the 'plurinational state' (cf. Santos 2010: 27, 32). Third, while '[p]opulist personalization is based on an extreme personalization of politics' (De la Torre 2007: 388), the importance of Evo Morales for the whole process of transformation does not imply that Bolivian politics can be reduced to him. Both in conception and in practice, the self-proclaimed 'government of the social movements' is characterised by a broad spectrum of relatively autonomous social organisations that are far from simply obeying the leader but mobilise, negotiate and, if need be, openly fight for what they regard as their legitimate entitlements (cf. Kohl 2010: 116; Laserna 2010: 50-57).

In sum, while we may characterise part of the style of politics employed by Morales as populist, it would clearly be misleading analytically to call the emerging political regime one of 'radical populism' or 'populist democracy'. The same argument applies to attempts to categorise Bolivia as an (emerging) 'participatory' or 'radical democracy'. In line with such visions of democratic change (Postero 2010: 75; Santos 2010: 29-30; Van Cott 2008: 8-9), political change in Bolivia encompasses attempts to deepen democracy by adding participatory mechanisms to representative democracy. Yet, as Boaventura de Sousa Santos's notion of 'demo-diversity' makes clear, new mechanisms of participation constitute but one dimension in a complex articulation of different forms and conceptions of democracy (Santos 2010: 29). Furthermore, as seen above, the importance and place of 'participatory democracy' in this overall setting is far from settled.

Another alternative conceptual framework would draw on the well-known strategy of defining what 'real' democracy ought to look like to then build diminished subtypes (cf. Collier and Levitsky 1997). In this sense, Bolivia has been characterised as 'a defective – illiberal and also delegative – democracy' (BTI 2009: 2). This particularly refers to violations of the rule of law and the separation of powers during the process of constitutional reforms (see above). The features that define illiberal and delegative democracy – limited 'binding impact' of the rule of law on state actions and limited control of the government by the legislature and the judiciary (Merkel 2004: 49-50) – can be observed in contemporary Bolivia. However, there are two crucial differences to the postliberal democracy framework developed above.

First, the notion of 'defective democracies' implies an explicit normative assessment – any deviation from liberal-democratic principles is a 'defect' that needs correction. In addition, this leaves no conceptual room for assessing those dimensions of political change that may include advances towards more democracy, even if departing from the liberal-democratic framework (Barrios 2008: 128; cf. Gamarra 2008: 134-135).⁴⁰ Second, this analytical perspective is based on a

⁴⁰ In this sense, Whitehead (2008: 32, 35) has characterised contemporary Bolivia (like Ecuador and Venezuela) as 'distributivist', 'participatory' and 'illiberal' democracy.

linear – ultimately teleological – conception of political development. Dramatic changes in the shape of the political regime notwithstanding, Bolivia in both 2002 (Merkel 2004: 51) and 2008 (BTI 2009) was categorised as an illiberal democracy. The illiberal and delegative facets of Bolivian democracy, thus, appear simply as continuity (BTI 2009: 2), signalling a failure to overcome ‘the practices of the past’ (Gamarra 2008: 134). This, again, may grasp part of the story but loses sight of the fact that deviation from liberal principles can take quite different forms – it can consist in the perpetuation of authoritarian/ illiberal legacies or in political innovations that challenge liberal qualifiers of democracy or, as in Bolivia, in complex combinations of both. The premise that the only democratic alternative to ‘diminished sub-types’ is ‘consolidated liberal democracies’ (Merkel 2004: 33) misses the ‘conceptual contestability’ of democracy (Kurki 2010)⁴¹ that is clearly evidenced by the contemporary political changes in Bolivia (Postero 2010) and, more broadly, in Latin America (Whitehead 2008).

Conclusion

The present paper has presented a conceptual framework that enables systematically analyzing processes of political change towards postliberal democracy. A case study on Bolivia demonstrated that this framework is indeed analytically useful and that we do find evidence that points to an emerging postliberal democracy in this country. To be sure, Bolivia is a very particular case and even here the analysis revealed a series of limits to postliberal innovations. In this sense, more – and broader comparative – work is clearly needed in order to answer the question to what extent which kinds of postliberal democracy are emerging as alternatives to liberal democracy in Latin America. This, furthermore, is obviously related to another, equally unanswered question that was not dealt with in the present paper, namely: the debate about contemporary changes in economic policies in Latin America and about the question whether we are witnessing the emergence of post-neoliberal models of development.⁴²

The appeal of the postliberal democracy framework is that it enables assessing processes of transforming democracy without ‘interpreting them through worn out categories’ or ‘imputing to them utopias that might be far from the desires and actions of the main actors involved’ (Escobar 2010: 3). Alternative concepts like populism or defective democracy do the former, notions of radical or participatory democracy tend towards the latter. Postliberal democracy, in this sense, helps us avoid a narrow – linear and ultimately teleological – perspective that judges political regimes only in terms of their ‘defects’ and ‘deficits’ as defined by a fixed and uniform understanding of what (liberal) democracy should look like. At the same time, it refrains from defining in substantial terms such a postliberal alternative. By drawing on the Bolivian experience, this paper has argued that such openness is analytically useful for assessing transformations of democracy given the contradictory, contested and uncertain character of such processes of political change.

A final conclusion directly follows from this argument and connects this paper to PRIF’s new research program on ‘Just Peace Governance’ (cf. Daase 2011): To (try to) evaluate the ongoing transformation of democracy in Bolivia by asking whether the democratic quality is increased or diminished, is perhaps of little avail. Remarkably frankly, Gamarra (2008: 124) concludes that Bolivia’s ‘democracy has changed’, but that whether ‘these changes have deepened democracy in Bolivia remains an unanswered question’. To be sure, this indecision could be due to the fact that the politico-institutional changes initiated by Evo Morales and the MAS and condensed in the new constitution are still underway – and they certainly were so in 2008 when Gamarra wrote his piece. Yet, perhaps the question itself is misleading. If we are to normatively assess the quality of democracy in contemporary Bolivia, an alternative question could be more appropriate: To what extent do the emerging shapes of transformed democracy incorporate, respect, disregard or violate whose perceived entitlements? Raising this question implicates taking a perspective that judges

41 For a recent attempt to conceptually grasp this contestability, see Coppedge et al. (2011).

42 Cf. Burdick et al. (2009); Macdonald and Ruckert (2009); Rovira (2011a).

political development in a given country not by some external standard, but in reference to the (diverse) conceptions of a just political order present in the respective country.⁴³

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43 In the terminology proposed by David Welch (1993), this would require analyzing the justice claims articulated by socio-political groups with a view to identifying the agreements and discrepancies between the entitlements perceived as legitimate by socio-political groups, on the one hand, and the rights, benefits and obligations apportioned and implemented by the political regime, on the other.

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