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Legal Pluralism: Opportunities for Development from a Constitutional Perspective in Latin America

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Abstract: The recognition of legal pluralism by International Law on Human Rights, especially by Convention 169 of the ILO, as well as its positivization in the Constitutions of some Latin American states, allows us to affirm that this principle must move from its foundational phase to the phase of its consolidation. Through a qualitative and theoretical methodology that analyzes the state of the art proposed by recognized authors on the subject, this article aims to describe legal possibilities to overcome the current stagnation in the theoretical development of legal pluralism. With this, the author aims to describe the current perspective with which legal pluralism is studied, showing a problem of approach based on the lack of coordination and articulation between legal science, legal sociology and legal anthropology, causing a crisis and a stagnation in the development of the concept. Effectively, whit the recognition of indigenous normative systems in Latin American constitutions and their current development, it can be affirmed that the solution, of course, is that the study of legal pluralism must be carried out from the perspective of law. This is the only way to facilitate a normative and interjurisdictional dialogue between indigenous law and state law in the strict sense, which will make legal pluralism effective. In Colombia, the Special Jurisdiction for Peace is not only an example of this beginning of dialogue between jurisdictions, but also leads to the conclusion that legal pluralism is constituted as a core element in the new Latin American constitutionalism to guarantee the obligatory and binding nature of indigenous normative systems through dialogue between the civilized nations that make up a state.

Keywords: Law, Systems, Pluralism, Dialogue, Jurisdiction, Transitional, Peoples, Indigenous

1. Introduction

Legal pluralism is currently in stagnation; a period of circular debates [1]. Its fundamental concepts are presented cyclically without contributing any new ideas to the scenario [1]. For exemple, for Tamanaha, the terms legal and law are used inappropriately by social scientists. It is a classification of Griffiths. The weak is the incorporation of native judicial systems into the law of the state, which according to Griffiths is a production of jurists that is legal centralism because hierarchically they are below state law, while the strong (product of social scientists) is that which relates to the plurality of legal systems existing in every society.

The *reality* known by the main theoreticians in the field (mainly sociologists and legal anthropologists) is different from the current *reality* in Latin American societies. This difference is due to the fact that these societies have made progress in the normative recognition of the international and constitutional rights of plurality in their cultural, national and legal spheres. That is why to face the social reality, it is necessary that legal science and its law scientists assume legal pluralism as an object of study using tools of constitutional law dogmatics [2]. In this way, proposals may be submitted that offer solutions in accordance with the dynamics present in States with indigenous or plurinational populations [3].

The intention is to give life to contemporary scientific thought through a permanent juridical tendency of applied studies of pluralism. Latin America is called upon to carry out these theoretical-legal proposals because they are based on its own reality. The paradigm of the nation-state does not fully correspond to Latin-Americans states, that are plurinational and multicultural. Indeed, most of these countries have a native population with its worldview and

laws, which was present in these territories before the creation of the State. The Constitutions of Ecuador, Bolivia, Colombia, Mexico, Peru and Venezuela, among others, recognize their existence through the consecration of pluralism as a constitutional principle. Indeed, the plurinational state is conceived as an institutional design that confers on indigenous peoples or ethnic groups spaces of self-determination, autonomy and self-government, of particular forms of representation and of special rights depending on the collective, with the aim that their relationships be egalitarian [3].

To date, legal pluralism does not have its own autonomy in legal science as it has been absorbed by sociological and anthropological discipline [1]. The entrenchment to the concepts of these disciplines and the classification of legal pluralism into weak and strong [1], in spite of the nuances attempted by some authors [4], makes legal pluralism go outside the limits that it should naturally have. Books, dissertations and articles on legal pluralism question whether or not it is part of legal science since it contains principles of anthropology, sociology, psychology, everything but law. Extensive diffused sociological or anthropological topics are addressed that, though well-founded, are not supported by legal research, which according to Correas makes them barely scientific [5].

These investigations ignore the legal systems of states. They are not interested in knowing them nor in establishing a dialogue between the normative systems that integrate them that consequently can facilitate the dialogue between jurisdictions. Their interests are to maintain the dichotomy between monism and legal pluralism from their perspective. A legal theory has not been built on legal pluralism because researchers have not been scientists of law *stricto sensu,* when the truth is that dogmatic construction of the institutions of legal pluralism must be done based on the principles of the positive law in force. Legal pluralism does not enjoy the sympathy of lawyers and judges. The truth is that there is no discussion on legal pluralism, which should change because there is little knowledge of it, at least in Latin America. Law schools are partially responsible for this lack of knowledge.

Therefore, this article arises the following question: What could be the initial solutions that the law can propose to overcome the current crisis in the development of legal pluralism? For this, (i) a succinct study will be proposed on the reasons for the crisis that legal pluralism is experiencing; (ii) a series of solutions will be presented in an indicative way briefly illustrated from the scenario of the Special Jurisdiction for Peace (JEP) in Colombia [6].

2. The Crisis of Legal Pluralism in Relation to Indigenous Law

2.1. The Crisis

Pluralism is used in many contexts, and since it can be individualized, the legal context is one of these [7]. The sciences that currently study legal pluralism define it as the coexistence of more than one legal system in a social space [8], and they do so without considering the legal system in force in a broad sense (constitution, block of constitutionality, own indigenous law, law, etc.) [5]. Normative orientation, as has happened before, must correct this error. Legal pluralism cannot be just a chapter in judicial anthropology or sociology.

Jurists must deal with the principles that guide the State in the exercise of law, in this case, the principle of legal pluralism. Positive law, in all its forms, is the object that legal-scientific research must deal with since it is a consequence of the very idea of law. The sociological and anthropological orientation of legal pluralism, based on the postcolonial circumstances of law in western non-European countries [9], has managed to move away from law, forgetting that the science of law must be renewed on the basis of the data provided by anthropological and sociological science. An articulation between these sciences is required. However, the current study of legal pluralism carried out from the perspective of anthropology and sociology has stopped at the means, disregarding any kind of description, harmonization and interpretation of legal norms; and when it does contain them, in the case of indigenous peoples, it is by way of context.

As it has been reiterated in this article, the main authors on legal pluralism come from legal anthropology and sociology. The work has been done from a social perspective without considering the legal aspect. Their interests have been to visualize mechanisms of social control other than law, without differentiating between informal or formal social control in a given society [10], and this has generated (as Tamanaha said) some uncertainty [11]. They treat state law as one of many laws existing in a society, in which even criminal organizations could be sites of legal production despite how problematic this is in societies plagued by drug trafficking and crime. Thus, taking into account that in legal science not everything can be law, legal pluralism becomes a social phenomenon and not a judicial one. In the latter case, considering that legal positivism emphasizes that the State is the legal order [11], we would be talking about *positive legal pluralism* or, in Twining's words [12], *a normative pluralism* to differentiate it from the legal pluralism that legal anthropologists and sociologists present as a tendency that questions legal monism [7].

From the works of Griffiths, Merry and Moore, the category of legal pluralism was introduced to the anthropology of law to observe the coexistence of different “legal” systems, particularly in the context of colonized societies [13]. Thus, in the existing literature on legal pluralism, two of its main authors, Cotterrell and Griffiths, understand legal monism as the law that is produced by the State and administered by its organs, which is studied by lawyers and applied by judges, norms that are equal for entire society and exclusive of any other form of law [14, 15]. According to its exponents, for legal pluralism to be recognized, it was necessary to reject what they call the ideology of the judicial centralism of the nation-State [16].

Most of these authors agree in pointing to Ehrlich's work

as the most important reference when indicating that the law of the State is not the only existing law in society [1]. Ehrlich referred to the concept of a "living law" in contrast to the law of the State which is applied by the courts. *Living law* is the one that dominates life itself, even if not required by law; its source is the direct observation of everyday life and of all associations, both legal and illegal [17]. In this regard it is necessary to state that although indigenous law is a *living law* does not properly fall into this category since it is a law that existed already before the emergence of the State and has remained in force to this day. Despite the passage of time, indigenous law remains current, accurate, efficient and effective, even more so than the law created by the State, to the point that it has been incorporated today into positive State law through constitutional recognition. Regardless of the debates around the issue, this article adopts a structure of pluralism from a formal point of view, it is to say, the existence of recognized legal pluralism within a system. It is also egalitarian, because the legal framework is based on equality, with rules and principles of coordination to handle and resolve conflicts of competence [18].

2.2. Recognition of Indigenous Normative Systems in Latin American Constitutions

The texts on legal pluralism with a sociological or anthropological focus which have been the basis for most of the research carried out to date are from the eighties. These texts did not have the specific purpose of justifying the coexistence of the own laws of indigenous peoples or nations with the law of the state, but rather to define in a general way legal pluralism in a social field [1, 9]. In the nineties, this context changed substantially, starting with the Colombian Constitution of 1991, passing through the constitutional processes of Ecuador and Bolivia in 2008 and 2009, and with the possibility of also happening in Chile with its constitutional plebiscite of 2020. We are facing a new Latin American constitutionalism or plurinational legal pluralism [19-21].

Indeed, through reforms or the enactment of regulations, legal pluralism began to be positivized in the Constitutions of some Latin American countries with indigenous populations like Mexico [22], Colombia [23], Peru [24], Venezuela [25], Bolivia and Ecuador [26, 27]. For the example, Article 4 of the 1917 Constitution of Mexico was amended in 1992, recognizing the multicultural status of the nation, and in 2001 Article 2 was amended which "recognizes the presence of indigenous peoples and addresses the problem of legal pluralism" [22]. In the same way, the recognition of legal pluralism began with the reform of the Bolivian Constitution in 1994 and was positivized in the New Constitution of 2009 which maximizes the recognition of indigenous jurisdiction and cultural diversity [26].

In the latter two, plurinationality is expressly enshrined. Such cultural or political declarations achieve in these countries with indigenous populations the greatest normative victories through constitutionalization. In Bolivia, since the Constitution of 2009 which is at the top of the top of the normative hierarchy, plurinationality has acquired a "foundational, prior and transversal character", playing a central role in the entire legal framework, and "it is with this constitutional core sense that it must be analyzed by legal operators, applicators and interpreters of the Constitution". Thus "interculturality becomes plurinationality when it acquires a 'political-institutional', 'legal' and specifically 'jurisdictional' form" [28].

Another important milestone of legal pluralism was the inclusion of *opening clauses* in the Constitution of countries with ethnic populations, which allowed the incorporation of the International Human Rights Law into their legal systems. Through the constitutional body of law (bloc de constitutionnalité in french) [29], international treaties regarding human rights are incorporated into the constitution, hence human rights become fundamental rights when they are incorporated into the Constitution. Due to the *constitutional body of law* International Human Rights Law achieves constitutional normative force within the States, and is effective through basic guarantees such as the binding of the legislator and direct judicial protection in line with constitutional rigidity.

Among these international human rights treaties and conventions is ILO Convention 169 of 1989 on Indigenous and Tribal Peoples in Independent Countries which seeks to protect the rights of indigenous peoples and has been ratified by almost all Latin American states with ethnic populations. Article 8 recognizes the principle of legal pluralism, recognizing the law and jurisdiction of indigenous peoples, provided that they are not incompatible with fundamental rights or human rights and by enshrining the duty of States to establish procedures to resolve conflicts that may arise in the application of this principle.

It is also important to mention the 2007 United Nations and 2016 American Declarations on the Rights of Indigenous Peoples, which at least as part of the *soft law,* -since they have not been ratified yet by all Latin American States- do guide the interpretation of legal pluralism. Regarding the United Nations instrument of 2007, Bolivia approved the declaration by Law No. 3760 of November 7 of the same year, so that it acquires a binding force within the Bolivian legal system. This legislative experience is a benchmark of political will and normative adoption for other States with indigenous populations and also constitutes a step forward in the protection of the rights of indigenous peoples both domestically and internationally.

However, although legal pluralism has been recognized by International Human Rights Law (ILO Convention 169) and has been positivized as a constitutional principle in the constitutions of some Latin American States, this constitutional principle must move from its merely foundational phase to the phase of its consolidation. The starting point for this transition is for legal scholars to assume legal pluralism as the object of their research for its development and useful application in the practical life of our plurinational-multicultural societies and that necessarily require achieving a normative intercultural dialogue between

systems that makes possible and viable the coordination between jurisdictions; that is, the state and the indigenous one.

It could be argued that this is a Western position that affected the self-determination of indigenous peoples. But the same can be said from the perspective of legal anthropology and sociology. Taking into account the current context of plurinationality and legal pluralism, it could be asked which is the perspective that serves indigenous peoples or nations to guarantee the effectiveness of their individual and collective rights in their territories? From an indigenous perspective, it is considered to be that proposed by Twining: normative pluralism.

It must be recognized that legal anthropology and sociology helped to reach the foundational phase of legal pluralism. But now it is necessary to move towards the consolidation phase with the help of the science of law. Based on the Fundamental Norm (the Constitution), we must move from the mononational-monocultural constitutional paradigm to the plurinational-pluricultural constitutional paradigm [30].

3. A Proposal for the Study of Legal Pluralism from the Constitutional Regulatory Framework

With regard to legal pluralism, it is necessary to distinguish, but not to separate, legal science from legal anthropology and sociology. To this end, as happened before with criminal law [31], legal science must be reduced to a theory of law of the legal discipline of legal pluralism. In short, it is a question of limiting the analysis of legal pluralism to a general and special study, as a phenomenon regulated by the positive legal system in Latin America, and which also includes its subjective perspective. This subjective perspective should be understood not as the power of the addressees to choose one of the different norms authorized by plural systems [9], but as the type of interpersonal conflicts between systems or jurisdictions in countries with indigenous populations to determine which jurisdiction has the power to hear the dispute [32], imperatively taking into account the worldview and the collectivist and oral character of the norms of the normative system of the indigenous peoples [32]. Correct observation and understanding of normative conflicts are indispensable for managing and resolving them, without which legal pluralism could be maintained peacefully [9].

Therefore, the only possible orientation in the context of plurinational States is the legal orientation. It is the only orientation from which a deconstruction of the law of the almost non-existent scientific structure of legal pluralism can be expected [33]. To deconstruct is not to destroy or determine the true meaning or intention of the law or in a particular way of legal pluralism [34]. This activity, which would be carried out thinking about its practical usefulness for the legal operator in the fields of the administration of state and indigenous justice, has the capacity to warn of the pragmatic problems with which the current law collides with specific cases in the jurisdictional application, and whatever way it must assure that the plural law in force manages to achieve the essential purposes established in the constitution.

While it is recognized that the science of law and legal anthropology and sociology have in common the object of study, namely legal pluralism, they differ in method and purpose. The legal science of legal pluralism provides legal practice with guides for the application of plural law in force in specific cases. Legal pluralism is the content of those norms of the State in the constitution through which the various normative systems are linked. The immediate work of legal science in this context consists of the technical legal study of the normative systems that make up the legal system in a plurinational State. The means to study the plural law in force would be legal anthropology and sociology considered as a whole with legal pluralism.

In studying legal science, the pluralism contained in the legal norms that refer to the relationship of normative systems would fundamentally determine its difference with the other sciences despite the identity of the object of study. What is required is that the object of the investigations be limited to the exclusive study of the plural law of a State and, according to its means, of the only legal pluralism that exists as a data of experience, that is, normative pluralism. The purpose is that it is limited to studying legal pluralism from the pure and simply legal point of view, as a fact regulated by norms of plural objective law, leaving to the other sciences the study of the social fact. This distinction, or deconstruction, is not intended, in any way, to formalize the study of the legal pluralism radically separating it from social and cultural reality. When it is said, for example, that legal science studies legal pluralism as a legal phenomenon and sociology as a social phenomenon, only the object and limits of such sciences are being established. But at the same time, the harmonious work that must exist between them is established. Consequently, the study of legal pluralism will essentially be a technical-legal study. This is not to say that the researcher of legal pluralism does not sometimes coordinate his work with legal anthropology and sociology. This distinction or deconstruction between sciences is not a scientific separation. Indeed, legal pluralism is originally a historical, cultural and social concept, and for this reason the study of its antecedents and evolution is also necessary to understand its current reality.

However, some cases in which legal pluralism has been positivized through constitutional reforms and promulgations in some Latin American states with indigenous populations such as Ecuador, Bolivia, Mexico, Colombia, Peru and Venezuela, are presented in a general and illustrative way. Therefore, regarding indigenous jurisdiction, the normative dialogue that would seek to make legal pluralism effective could be graphed as follows:

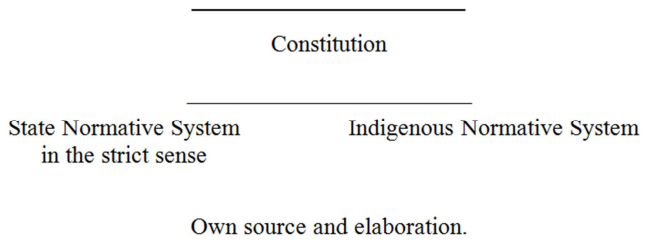

Figure 1. *Formal egalitarian pluralism.*

In this scheme, the Constitution is at the top of the legal system, and it is the product of a Constituent Assembly. The drafting of the Constitution is generally characterized by plurality as it integrates various political and social movements including indigenous ones; then it could be affirmed that they are plural constitutions. They are constitutions that enshrine legal pluralism as a principle and through the *constitutional body of law* they integrate ILO Convention 169. Normatively, they recognize the plurinationality or ethnic and cultural diversity of their plural societies and the exercise of the jurisdictional functions of indigenous peoples within their territorial space, in accordance with their own rules and procedures.

Based on these constitutional principles, which must be "taken into account by judges and jurists who make legally binding decisions" [35], it is stated that such normative systems are composed of two subsystems that are on a horizontal plane, starting from the Constitution, which is their Archimedean point. With this understanding, its foundation is clearly based on constitutional principles. On the one hand, the state legal system in the strict sense, which was created by the State, and on the other hand, the one not created but recognized by the State through the Constitution; that is, that of the normative systems of the indigenous peoples as collective subjects. The characterization of the state normative system is made in the strict sense because from the recognition in the Constitution, the normative system of the indigenous nations integrates the legal system or general plurinational-pluricultural state law, configuring itself as one of the forms of regulation that integrate the positive law and from there the challenge of paradigm change.

Now, referring the Colombian case, the Special Jurisdiction for Peace (SJP) which was created due to the peace agreement of 2016 to investigate, clarify, prosecute and punish the most serious crimes committed during the armed conflict will be the starting point to explain illustratively, in a general and broad way, legal pluralism as an object of study that legal science must assume. In this context before analyzing the relations between indigenous jurisdiction as well as indigenous peoples' own legal system and other Colombian jurisdictions, two state scenarios must be distinguished: the ordinary and the transitional. The first one refers to the ordinary justice, and the transitional, for the purposes of this article, to the SJP. The Colombian Constitution in articles 1 and 7 enshrines the principles of legal pluralism as well as ethnic and cultural diversity and Article 93 establishes the *constitutional body of law* that incorporates ILO Convention 169 into the Colombian legal system at a constitutional level. Article 246 provides that the law shall determine the forms of coordination between the ordinary jurisdiction and the special indigenous jurisdiction (SIJ). However, the Colombian Congress has not issued this law. Meanwhile, in the case of the SJP, which became operational on January 15, 2018, the coordination mechanisms between SJP and SIJ were implemented according Internal Regulations of the SJP adopted on March 3, 2020, that established that such coordination should be guided by the principle of legal pluralism.

The SJP is composed of 38 judges, 8 of whom are of ethnic origin: 4 afro-colombian and 4 indigenous. These judges are members of the jurisdiction's ethnic commission which advises, through the issuance of concepts, the implementation of the ethnic approach in all the actions of the Jurisdiction and will be the guardians of legal pluralism in the transitional scenario. The legal framework on ethnic matters applied by the SJP is a product of the Final Peace Agreement signed between the Colombian State and the extinct guerrilla The Revolutionary Armed Forces of Colombia – Peoples' Army (commonly known as FARC-EP). In addition, although the Final Peace Agreement and the Constitution gave the SJP precedence over other jurisdictions to prosecute crimes related to the internal armed conflict committed before December 1, 2016, such prevalence does not automatically apply to SIJ, since the SJP is compelled to activate coordination and articulation mechanisms with the SIJ.

The Final Peace Agreement enshrines an Ethnic Chapter, which was a success achieved by the ethnic peoples during the peace negotiations, which establishes that the SJP must respect the exercise of the jurisdictional functions of the traditional authorities within their territorial scope (i) and must create mechanisms for connection and coordination with the SIJ according to the mandate of Article 246 of the Constitution (ii). Indeed, the particular regulations adopted by the SJP in this regard were previously consulted with indigenous peoples in Colombia and by provision of the *constitutional body of law* are contained in the Internal Regulations of the SJP, which makes this sort of prior consultation of transitional justice instruments with ethnic peoples a unique and very valuable experience. In addition, these two principles are contained in the Statutory Law on the Administration of Justice of the SJP and in Legislative Act No. 01 of 2017, which is the Constitutional reform that incorporated SJP into the Constitution and raised to constitutional rank the differential approach that includes the indigenous approach. Likewise, the Rules of Procedure of the SJP enshrine the indigenous authority as a special intervener in judicial proceedings and in compliance with prior consultation agreements, the Ethnic Commission issued Protocol 001 of 2019 for coordination, interjurisdictional connection and intercultural dialogue between the SIJ and the SJP.

The obligation to activate the mechanisms of connection and coordination with the SIJ will occur when it comes to the territory or individual or collective defendants or victims

belonging to an indigenous people or nation [36]. Also within the framework of interculturality, we have moved from normative dialogue to interjurisdictional dialogue. Judicial hearings of interjurisdictional coordination have been held between authorities of the SJP and the SIJ on a horizontal plane [37], egalitarian and of conviviality [38], where the actions in the territories of the indigenous peoples have been articulated with ethnic relevance or the jurisdiction between the jurisdictions has been determined. The SJP, in its decisions, within the scope of its competence, has recognized the mandatory and binding force of the judicial orders issued by the SIJ [39]. In the event that indigenous authorities do not act in the exercise of jurisdictional functions, in cases in which the competence in favor of the SJP has been defined, they may intervene in the judicial proceedings as *special interveners* with similar powers to those of the Public Prosecutor's Office; that is, "in defense of legal pluralism and their own law, of their territory, or of the fundamental or collective rights and guarantees of their people" [36]. Furthermore, the SJP and indigenous peoples have maintained an intercultural dialogue through institutional, academic and informal channels.

Finally, the SJP has issued judicial decisions to materialize legal pluralism through the recognition of indigenous normative systems and through a direct and horizontal dialogue with indigenous Authorities. However, the first sanctioning sentences have not yet been issued, which will have to be enforced in ancestral territories when imposed on members of indigenous peoples. This will be an important element of analysis.

4. Conclusions

Of all that has already been expressed, there can be no other conclusion than the need for the study of legal pluralism from the perspective of law, with jurist as its main researchers so as not to make the mistake of chameleonizing the object of study. This object, as has already been stated, is the positive law in force in the broad sense, because it includes the normative system of indigenous peoples, which is also law in the strict sense and, therefore, mandatory and binding for all legal operators. It is not and will not be an easy task, but it will be the way to the awareness of plurinationality for the effectiveness of legal pluralism. Indeed, indigenous social movements through "strategies for international recognition" and constitutional recognition have affirmed the conceptions of self-determination, cultural identity and autonomy "in part by [positively] placing the initial claim of indigenous culture in the hegemonic practices of the colonizers" [40].

In Colombia, ILO Convention 169 is part of the *constitutional body of law* and the positivization of legal pluralism in the Constitution, as well as in the Internal Regulations of the SJP, is a guarantee of recognition and protection of the ethnic and cultural diversity of Colombian society. In general, these are the constitutional norms that the SJP must comply with in order to recognize the own law and jurisdiction of indigenous peoples in the normative and interjurisdictional dialogue that it has begun to implement and execute in its actions and that lead to undertaking a process of exchanges and communication between different legal areas [41]. This constitutional regulation was incorporated into the Ethnic Chapter of the Final Peace Agreement of 2016 signed between the Colombian state and the extinct guerrillas of the FARC-EP, reinforced with the differential approach elevated to constitutional rank by Legislative Act No. 01 of 2017 and positively developed in the Statutory Law on the Administration of Justice of the JEP, the Internal Regulations and the Rules of Procedure of the SJP. This transitional jurisdiction, which became operational at the beginning of 2018, has not yet issued the first sanctioning sentence, but has launched the adoption of a whole normative process, with the prior consultation and participation of indigenous peoples, to facilitate the effectiveness of legal pluralism in the transitional scenario established by the Final Peace Agreement and the Constitution. The SJP is a model to take into account as an input of legal research, in the proposed change of the approach of studies on legal pluralism from the perspective of law, connecting not only the sciences, but also these with the realities of that pluralism. Thus, legal pluralism is constituted as a core element in the new Latin American constitutionalism to guarantee the obligatory and binding nature of indigenous normative systems through dialogue between the civilized nations that make up a state.

Declaration

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[6] This text is not a study of transitional justice and therefore is not intended to focus on the study of cases of the JEP or the balance of its actions. The purpose is the proposal of legal pluralism in Colombian plural positive law. Therefore, the JEP, as a state jurisdiction in Colombia, will only be a frame of reference to succinctly explain why this pluralism should be the object of study of the science of law. This is precisely because legal pluralism would be the concrete constitutional basis for the normative and interjurisdictional dialogue between indigenous and transitional state jurisdictions.

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