

The Department of Legal Studies cordially invites you to

‘You Have No Right to Remain Silent: Self-incrimination in Ecuador’s Indigenous Legal Systems’

A JOB TALK BY

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Abstract: Ecuador’s Constitution recognizes the indigenous peoples’ collective right to use and apply their own legal systems in cases of internal disputes. The Constitution, however, sets as a limit the respect of human rights. The presentation will study one particular human right: the right to remain silent. After describing the findings of three field research conducted in Ecuador, the presentation will explain that indigenous legal systems (ILS) do not to provide such a right to the offender. The basis the West has to uphold the right to silence departs from a particular conception of individual-state relations that is not necessarily present in the indigenous world. Western societies created this right only for the accused in criminal procedures, following a constant value-based factor which deems false positives (the wrongful conviction of the innocent) much costlier than false negatives (the wrongful acquittal of a criminal). ILS would seem to follow a different logic, similar to the one the West uses in civil cases (where silence is not permitted). ILS do not make distinctions between criminal and non-criminal law, neither have they used prison as punishment. Silence in these type of settings could not be as necessary as in those where the accused is threatened with jail-time. The presentation will suggest that the focus should not be on whether the offender was requested to speak, but rather on the tactics employed to obtain a statement. It will be shown that certain tactics could be regarded as persuasion, while others could be safely called ill-treatment.

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