A Dialogue Between Multicultural Political Theory and Mexican Political Thought on the Rights of the Indigenous Peoples

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Abstract

This thesis focuses on the rights of indigenous peoples in settler colonial societies. It does so by creating a dialogue between multicultural political theory and Mexican political thought on three important topics: (i) indigenous self-determination; (ii) the rights of vulnerable members of indigenous communities; and (iii) land. By endorsing a dialogical approach to comparative political theory, I will show sometimes these two different traditions of political thought reach similar conclusions, whereas at other times the stances developed are profoundly different. In general, my argument is that an engagement with Mexican political thought offers invaluable insights into the condition of indigenous peoples, which enable us to move closer to a deeper understanding of what is at stake in their struggles. In particular, I will show that Mexican political thought highlights three crucial aspects of such struggles. First, in a context like Latin American settler colonialism, indigenous identities cannot be regarded simply as cultural products; they are inherently political. This means that such identities both constrain and enable the mobilisation and demands for justice of those who are framed by (and reclaim) them in deep and important ways. Second, and relatedly, Mexican political thought shows that the demands for justice pressed by indigenous peoples cannot be merely taken as calls for cultural equality in pluralistic states or for control over cultural goods. They are always about holding the settler colonial state to account and making it responsive towards the enduring historical injustices that indigenous peoples suffer from. Third, Mexican political thought brings into stark relief the pivotal role that settler colonialism plays in shaping the identities and struggles of indigenous peoples.

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The beginnings of this thesis date back to my time as a master's student at the University of Toronto. I am thankful to Melissa Williams who provided very useful feedback on an early version of Chapter 4. Her guidance and support were key for me to believe in this project. Likewise, Courtney Jung was instrumental in me being able to see many things from a different angle and to engage seriously in Bonfil-Batalla's political thought.

In York, I benefited from invaluable exchanges with Sara de Jong who suggested most of all the works which form the body of literature regarding settler colonialism discussed in this

help it would not not have been possible to host a virtual event in the midst of the pandemic at which Lupita, along with producer and indigenous activist, Eduardo 'Lalo' Gutiérrez Pérez, shared their experiences, and Monica Wise, the director of the documentary provided additional context for some of the scenes in the documentary.

Last but not least, I would like to thank my family and friends in Mexico for many things. I thank my former mentor, co-author, and friend, Sergio, for all the words of encouragement. My best friends, Yannick, Morichi, and Carlos always provide the best laughs and for that I am thankful. I am grateful to my sister for the best and most honest conversations. And I am thankful to my parents for everything.

Declaration

I declare that this thesis is an original work and I am the sole author. The present work has not been previously submitted or presented for an award at this or any other academic institution. All sources have been acknowledged as references.

Introduction

> "We do not ask for separation, only respect for the logic of the federation. The best thing would be for each community, each group, to be given autonomy. The indigenous communities are capable of self-government. They have the right to govern themselves as indigenous and each ethnic group to govern themselves autonomously and they can manage themselves economically and culturally, which is important. We have realised that [external forms of] authorities have been imposed to every indigenous community and that they are treated as unable to govern themselves, that is why we ask for changes in the state relationship, new municipalities, multi-ethnic regions and that, based on this, new elections be called and for the introduction of an electoral reform that includes autonomy."

SUBCOMANDANTE MARCOS, *Untitled Speech* (1994)

Former colonies such as Australia, Canada, the United States and Mexico have for centuries been unable to treat the native population in a fair manner. Policies designed to achieve what Patrick Wolfe described as "the elimination of the native" through the dispossession of land are often regarded as an expression of a particular form of colonialism carried out by the settlers.[1] Settler colonialism as noted by numerous scholars, most notably Lorenzo Veracini and Glen Coulthard, is a form of colonialism directed at native populations and it produces a number of injustices in its effort to force their assimilation into the settler society.[2] As a concept, settler colonialism is often deployed by scholars and activists in an effort to illustrate

[1] Patrick Wolfe, Settler colonialism and the elimination of the native. *Journal of Genocide Research* 8(4) (2006).

[2] Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition.* Minneapolis: University of Minnesota Press (2014); Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview.* London: Palgrave Macmillan (2010).

what otherwise would be regarded as an isolated act of injustice as an expression of the condition of oppression to which indigenous people are subjected.

In the majority of these countries, a number of scholars have come up with different suggestions on how to approach the claims raised by indigenous people. In 'western' countries such as Australia, Canada and the US, multicultural political theory emerged in an effort to provide a justification regarding the provision of group rights to ethnic minorities. Since its emergence and consolidation as a philosophical tradition in the 1990s, a number of accounts have tried to capture the normative dimension of the claims raised by indigenous people. In Mexico, as in many other Latin American countries, the rise of a nationalistic project at the beginning of the twentieth century was accompanied by accounts which reflected the terms of the relationship between the dominant society and the indigenous people.[3] As a philosophical tradition, Mexican political thought is one which has shifted from being aligned with the nationalistic assimilationist project to endorsing a distinctive democratic perspective.

In this thesis, I see both philosophical traditions, multicultural political theory on one side, and Mexican political thought on the other, as two which from their respective perspectives attempt to capture the normative claims raised by the indigenous people. For this reason and also because of the objective of this work, in this thesis I see both as two sets of approaches to the normative claims raised by the indigenous people. The latter is largely understudied, but its own development as an approach provides a relevant insight into the condition of the indigenous peoples, making in turn a dialogue between the two something

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[3] For a discussion of the different authors and their nationalist approaches in Mexico, see Consuelo Sánchez, *Los Pueblos Indígenas: del Indigenismo a la Autonomía.* Mexico City: Siglo Veintiuno Editores (2011).

worthy of being studied. The argument which I advance in this thesis is that multicultural political theorists would benefit from the insights into the condition of indigenous peoples offered by Mexican political thinkers. Among the main reasons for this are that Mexican political thinkers (i) pay special attention to the context in which the indigenous claims emerge and (ii) often recognise and theorise what I shall call 'the political dimension of the indigenous identity'.

Before proceeding, let me make clear what I mean by *indigenous rights*. In this thesis, I do not advance a singular definition of indigenous rights nor do I use the language of rights in a formal legalistic way. My use of the term 'rights' is quite flexible for two reasons. First, in multicultural political theory and Mexican political thought, 'rights' are often conceived as synonymous with indigenous demands. Of course, in both approaches specific authors may choose (or not) to explore in more depth what the actual 'rights' would be in scenarios where indigenous people advance particular demands. However, very often indigenous demands are simply framed by theorists as amounting to demanding from the settler state agreement to the provision of particular rights. For instance, in Chapter 1 I shall analyse the debate over territorial rights and the accounts advanced by prominent political theorists such as Avery Kolers, David Miller and Margaret Moore. Although those three political theorists have developed different accounts of indigenous territorial rights, they all reduced indigenous grievances over land and territory to demands for territorial rights. As I shall show, this reduction of indigenous demands to claims about rights is often problematic as it deradicalises and depoliticises indigenous struggles for self-determination, especially in countries like Mexico.

Second, it is not only political theorists who resort to the language of rights in their discussion of indigenous demands for justice. Indigenous peoples themselves often frame

their demands in terms of rights in the hope of being heard, on the grounds that 'rights' are part of the political grammar of the settler society. As I shall show throughout the thesis through four different cases, the fact that indigenous peoples frame their demands in terms of rights shows how they are able to mobilize around demands and effectively manage to have a voice which otherwise would be simply denied to them. The cases which I use precisely highlight this dynamic. For instance, in Chapter 1, I use the case of the Cochabamba Water War and the activist politics of the Zapatistas to highlight the role that the 'rights frame' plays in such scenarios. These cases in particular show that indigenous peoples hope to be heard given that 'rights' is part of the 'technologies' used by the settler society to justify their exclusion. However, I shall also demonstrate that indigenous demands are not reducible to what settler societies frame as rights claims and are often a direct challenge to settler colonialism.

As I shall argue throughout the thesis and briefly summarise in the next section, in the context of settler colonialism, and in particular in Mexico, the indigenous identity has been used as a platform by the historically marginalized in settler colonial contexts, which allows them to mobilize their demands for justice.[4] One way in which indigenous peoples have mobilized around their demands is by deploying the exact terms that the settler state has used to justify and legitimise their exclusion. In short, the indigenous peoples not only embrace an identity which was originally imposed on them by the settler state with the aim of excluding them in order to challenge their marginalisation, but they also deploy the terms used by the settler state which are designed to achieve their exclusion in order to resist it.

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[4] For an interesting study on the making of the indigenous identity in Mexico, see Courtney Jung, *The Moral Force of Indigenous Politics: Critical Liberalism and the Zapatistas*. Cambridge: Cambridge University Press (2008): 231-232.

In sum, throughout the thesis I use the term 'indigenous people's rights' loosely to refer to some of the ways in which indigenous peoples have formulated their demands and tried to participate politically in settler colonial contexts. As I hope to show, a dialogue between philosophical traditions is particularly useful because the insights into the condition of indigenous peoples offered by Mexican political thinkers further reveal the need to approach the claims made by the indigenous people in a more open and dynamic way by recognising both the strategic deployment of rights talks and the radicality of indigenous demands for justice, which are often not only about obtaining rights over a resource or propriety but, instead, aim to challenge the settler colonial state. In this thesis, I therefore centre the dialogue between multicultural political theory and Mexican political thought around three of the most recurrent claims made by indigenous peoples which multicultural political theorists often frame in terms of 'indigenous rights': (i) indigenous peoples' right to self-determination, (ii) the rights of vulnerable members in indigenous communities, such as indigenous women, who might be further marginalised when the state accommodates indigenous cultural practices, and (iii) indigenous peoples' territorial rights.

The rest of this introduction unfolds as follows. First, I shall clarify what the main argument developed in the thesis is by focusing in on (i) what I define as the political dimension of the indigenous identity and (ii) what I believe is one of the most significant differences between how multicultural political theory and Mexican political thinkers approach the demands of indigenous peoples. Second, I shall explain how my thesis is a work in comparative political theory by discussing the importance and relevance of comparative political theory and focusing on the specific approach that this thesis endorses, that is, the so-called dialogical approach. Third, I shall outline the structure of the thesis and explain how my argument will be developed in the subsequent chapters.

0.1. The main argument of the thesis

One of the main arguments which I develop in this thesis is that mainstream multicultural political theory neglects the political dimension of the indigenous identity. This is because the accounts advanced by prominent multicultural political theorists approach identities, including indigenous identities, as 'cultural' identities.

Consider, for instance, Kymlicka's seminal account of multicultural accommodation. As I shall show in Chapter 3, Kymlicka's main concern is that, by being denied the right to self-determination, indigenous peoples are unable to support their distinctive cultural practices which allow them to access a notion of the good life. Although I shall return to Kymlicka's argument more in depth in the next chapter, for now it is useful to point out that Kymlicka did not focus on how the indigenous identity has been formed over time; the formation of the indigenous identity is irrelevant in his account because what ultimately matters is the protection of that identity, which is spelled out in cultural terms. In other words, according to Kymlicka, the protection of indigenous culture is what lies at the core of the claims advanced by the indigenous peoples because it is a culture which marks their identity and provides members of the indigenous tribes with access to their particular conception of what the good life is.

By stressing instead the political dimension of indigenous identity, my thesis aligns with the approach of scholars such as Courtney Jung, which puts the way in which indigenous identity has been formed and shaped over time at centre stage in reflecting on their demands.[5] As I shall argue, Jung's account of the formation of indigenous identity in

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[5] *ibid.*, 230-231.

Mexico sheds light on the role which the settler state has played in the formation of indigenous identities and the way in which those identities are eventually deployed by those framed by them in an attempt to contest the settler state.

In settler colonial contexts, the settler state has played a crucial role in the making of the indigenous identity by imposing that identity on the native population in order to achieve their dispossession and force them to assimilate into the settler society. At the same time, as Jung noted, that identity has provided the world's most excluded people with a voice. This is exemplified in the way in which the Zapatistas and other indigenous activists in Mexico have deployed the indigenous identity as a platform from which to advance their demands and challenge the settler state.[6]

To illustrate the political dimension of the indigenous identity, I shall draw on many examples throughout the thesis. For instance, in Chapter 3, I turn to the case of María de Jesús Patricio Martínez, also known as Marichuy, the first indigenous woman candidate who in 2018 sought to become the president of Mexico. In particular, I shall stress how Marichuy's speeches during rallies did not amount to claims for the accommodation of the indigenous people's 'culture', but were denunciations of the historical and ongoing injustices experienced by the indigenous peoples in Mexico.

In a similar way, in Chapter 5 I look at the case of Lupita, a Tzotzil-Maya activist and survivor of the Acteal massacre on 22 December 1997 during which the right-wing paramilitary group Máscara Roja murdered members of the indigenous pacifist group Las Abejas (who supported the Zapastistas), including pregnant women and children, while they were attending a prayer meeting in the municipality of Chenalhó, in the Mexican state of Chiapas. I shall show that Lupita's activism shows the different ways in which indigenous

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[6] *ibid.*, 231.

women participate in their communities and the role which they play in the formulation of the demands for justice by such communities and in the definition of the terms of the indigenous identity. The case of Lupita shows that although originally imposed on excluded populations, the indigenous identity has been profoundly reshaped by them through a dynamic and open-ended process which enables indigenous peoples to raise new demands for justice. Such a process of identity formation and mobilisation is not conducted by one single voice but is the concerted effort of different and polyvocal perspectives, including importantly those of indigenous women like Lupita. In the case of Lupita, the indigenous identity provides a voice which otherwise would not be available to the survivors of the injustice of the Acteal massacre. It also shows the potential for indigenous identities to become platforms from which victims of injustice are able to contest the settler state and hold it accountable.[7]

I shall then argue that the political dimension of the indigenous identity is neglected by mainstream multicultural political theory because of its tendency to approach identities and their claims through the lenses of culture and in particular indigenous identity as a product of cultural processes. Interestingly, I shall point out that a very seminal tradition in Mexican political theory, *indigenismo*, can be charged with the same shortcoming. Indigenismo is a political ideology which became prominent in several Latin American countries, including Mexico, in the first half of the twentieth century and focused on how to

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[7] It is worth noting that it has only been very recently (in September 2020) - and after a long and strenuous campaign conducted by activists like Lupita - that the government of Mexico has admitted responsibility for the Acteal massacre. See 'Government apologizes for its role in Acteal massacre of 1997', *Mexico News Daily*, 4 September 2020. Available at https://mexiconewsdaily.com/news/government-apologizes-for-its-role-in-acteal-massacre/. Accessed 1 September 2021.

regulate the relationship between the nation state and indigenous communities. In some contemporary uses, it refers to the pursuit of greater social and political inclusion for indigenous peoples in Latin America, whether through nation-wide reforms or region-wide alliances. Indigenismo also approaches the indigenous identity as a cultural category, arguing that the dominant society has a responsibility to assimilate indigenous peoples into the mainstream settler society. Although some *indigenistas* (the proponents of indigenismo) have argued in favour of indigenous rights, their ultimate goal was to progressively assimilate indigenous peoples into the dominant society. In Chapters 2, 4 and 6, I shall draw on the work of some prominent critics of indigenismo who precisely stress the political dimension of the indigenous identity. In these chapters, I shall show how Mexican political thinkers critical of indigenismo zeroed in on the role which the settler state has played in shaping the indigenous identity and in keeping indigenous communities in a condition of marginalisation and exclusion over history.

This leads me to highlight another important aspect of my overall argument. In the thesis, I shall suggest that one of the main differences between multicultural political theorists and the Mexican political theorists whose ideas I examine is the way in which they frame what justice means for indigenous peoples and what their demands for justice ultimately are about. The former conceive of justice and the indigenous demands for justice as being about achieving *cultural equality* in multicultural states like settler states, whereas the latter conceive of justice as *responsiveness to enduring historical injustices* and of indigenous

demands for justice as being ultimately about the new reproduction of the historical injustices inflicted by the settler state.[8]

As I shall discuss, multicultural political theorists offer very different accounts of why cultural equality is justified and what it should look like in liberal multicultural states. Famously, Kymlicka argued that liberal multicultural states should accommodate the cultural practices of national minorities such as indigenous peoples because culture is what provides members of these cultural groups with the context of the exercise of their autonomy. Equal access to culture is what, for Kymlicka, should characterise a fair and liberal society. Taylor's account also reduces the claims of indigenous peoples to the demand to have their cultural specificity recognised and protected by the state. It is only when the state recognises the culture of minorities such as indigenous peoples that members of such minorities can exercise their individual freedom. Chandran Kukathas's very peculiar account of multiculturalism in its own way described cultural equality and freedom as a state of affairs which can be achieved in an 'archipelago' society where each group can perform their specific cultural

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[8] In political theory, there is a lively debate over whether and why historical injustices are normatively significant and what is owed to an unjust past. Here, I cannot cover the complexities and nuances of such a debate. Suffice to say that in the thesis I align my argument to the one proposed more recently by scholars who conceptualise the unjust past as present because of being either enduring or being newly reproduced in the fabrics of our contemporary societies. This is because I believe that such accounts better capture the way in which the historical injustice of settler colonialism matters for indigenous peoples. For some of these approaches, see Alasia Nuti, *Injustice and the Reproduction of History: Structural Inequalities, Gender and Redress.* Cambridge: Cambridge University Press (2019) and Jeff Spinner Halev, *Enduring Injustice.* Cambridge: Cambridge University Press (2012).

practices without the interference of other groups, including the state. Notwithstanding their differences, all these multicultural political theorists reduce indigenous demands to claims about cultural accommodation and conceive their ideal state as one in which cultural equality has been achieved.

As I shall show in Chapter 1, theories of territorial rights in western political thought have followed a similar path. The works of Avery Kolers, David Miller and Margaret Moore in general terms reflect on territorial disputes, that is, when two ethnic groups claim control over a particular territory. Although very different, these accounts, which I label 'community-based theories of territory', share a similar approach to the demands of indigenous peoples - one that is structurally analogous to the approach endorsed by multicultural political theorists. These accounts regard land as key for the 'good life' of ethnic groups such as indigenous peoples and the provision of territorial rights as the best way to guarantee cultural equality.

The Mexican political theorists on whom I focus in Chapters 2, 4 and 6 instead approach justice, and specifically indigenous demands for justice, in a very different way. They frame justice as responsiveness to the historical and ongoing injustices of settler colonialism and read indigenous demands for justice as always being about challenging the settler colonial state and holding it accountable. This also means that they recognise the intrinsic connection between historical and contemporary injustices against indigenous peoples, a connection which the settler state has a responsibility to address. For this reason, the accounts developed by those Mexican political thinkers are better suited to understanding the specific demands which are made by activists like Lupita and the Zapatistas. As I shall show in Chapters 3 and 2, Lupita's demand for indigenous self-determination to be recognised was not about achieving cultural equality within a multicultural state, but amounted to holding the settler state to account for the historical and ongoing injustices of

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settler colonialism, which include the continuous exclusion and marginalisation of indigenous peoples. This is what Lupita was effectively asking for when she denounced Mexican politicians like former president Ernesto Zedillo as being responsible for the Acteal massacre. Likewise, as I shall show in Chapter 1, the invocation of land during the so-called Cochabamba Water War – a series of protests which broke out in Cochabamba (in Bolivia) between December 1999 and April 2000 as a reaction to the privatization of the city's municipal water supply company – cannot be reduced to a claim about achieving equal control over a fundamental cultural aspect of indigenous identities, in a word, land. It was ultimately a contestation of settler colonial injustice and one of its present manifestations, the privatization of water. So although I recognise that multicultural political theorists and theorists of territorial rights often use words such as 'justice' to frame their normative reflections, in the rest of the thesis I deploy the notion of 'demands for justice' exclusively to refer to the idea that indigenous demands are always about addressing the enduring injustice of settler colonialism, which is put forward by Mexican political thinkers.

It needs to be noted that in order to provide a definition of demands of justice first the concept of the settler contract needs to be covered, and a short account of the injustices that have led to exclusion and marginalisation needs to be provided. I proceed to do this later in this section, however one point that has already been mentioned needs to be briefly yet properly identified. And also one point regarding the importance of historical and theoretical background is advanced.

0.1.1. Ways in which claims raised by indigenous peoples are theorized

This thesis as mentioned seeks to use dialogue as a way to get a fuller picture on the conditions of the indigenous peoples. In this sense, it's worth noting that the subject matter of

the thesis is not the normative claims of indigenous peoples in settler colonial societies per se, but rather the ways in which those claims are theorised in the current scholarly literature. This is the reason behind the selection of approaches (multicultural political theory and Mexican political thought). Similarly, as mentioned this is also part of the reason that this thesis approaches indigenous rights in an unconventional way, i.e. as the political grammar used by the indigenous peoples and the way these are processed by thinkers.

0.1.2. The importance of historical and theoretical background

The thesis relies on a case study that facilitates the contrast between the two different approaches. It does so by using examples from Latin America, but it also relies extensively on a case study - the Mexican settler colonial state. The thesis aims to use the case study as a means to critique and develop existing relevant literature on multiculturalism, comparative political theory, and settler colonialism. For this reason both, such a case study and specific examples are employed throughout the thesis.

0.1.3. The settler contract

In social contract theory the key idea is the one of state of nature, i.e. the lack of a civilization, understanding this one as an organization of sorts in which individuals do not form or belong to a community as such, and even natural resources, including land remains for all purposes untouched. In this sense, the idea of the state of nature is often deployed as a thought experiment that forces people to imagine a 'world' without social order and the institutions that govern the life of a community. However, as Carole Pateman notes, the idea of the state of nature, together with the idea of an original contract, was not limited to being

part of a thought experiment but instead played a crucial role in the justification for the colonization of territories throughout the world.[9]

A concept which is key in understanding this aspect is the one of terra nullius, i.e. 'nobody's land'. As Pateman notes, one way in which European countries managed to justify the whole enterprise of colonization was through the idea that the land occupied by the indigenous people was in fact free of ownership because they remained in the so-called state of nature.[10] Indeed, Pateman highlights the fact that the importance of the doctrine of terra nullius is that it provides the answer to the question of 'why was it legitimate for Europeans to sail across the oceans and "plant" settlers in far away territories' because it shows that it was deemed that given that land belonged to no one, then the territory was 'uninhabited' and thus could be rightfully occupied.[11]

0.1.3.1. The settler contract as an expropriation contract

The relevance of understanding the relationship between the state of nature and the principle of terra nullius is that the logic of dispossession, which can be regarded as the

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[9] Pateman argues that research on early modern political theory has shown that the state of nature is not a mere theoretical construct but also a historical condition. Indeed Pateman makes emphasis on the fact that "[t]heorists of an original contract used the idea of the state of nature both as a thought experiment and as a descriptive of an actual stage of historical development". See Carole Pateman, 'The Settler Contract,' in Contract & Domination, Carole Pateman and Charles Mills. Cambridge: Polity Press (2007): 54.

[10] ibid., 35.

[11] ibid.

element par excellence of settler colonialism, finds its origin in the disregard of the indigenous peoples at the hands of the settlers. Pateman notes that such disregard took place "the moment the settler landed in Australia and proclaimed British sovereignty".[12] While it needs to be noted that Pateman observation can be expanded to include other countries and settlers, the point that is important is that ultimately the settler contract is a political technology which ensures and facilitates the dispossession of land. Indeed, as Pateman puts it: "the settler contract is a specific form of the expropriation contract and refers to the dispossession of, and rule over, Native inhabitants by British settlers".[13]

0.1.3.2. The settler contract as an original contract

Another aspect that needs to be considered is the fact that the plantation of colonists in 'an uninhibited' territory is not limited to the part of domination but also includes the objectives of both creating a civil society and governing. This aspect shows that the settler contract is not just about facilitating dispossession but its in fact an original contract in the sense that it paves the way to a civil society. Indeed, as Pateman notes, the plantation of colonists in reality involved planting the seeds of new governments, states, sovereignties.[14] The doctrine of terra nullius thus plays an important role because by deeming indigenous people insufficiently civilised, on the one hand they are forcibly incorporated into, while on the other hand this allows the settler state to achieve the ultimate goal of modern states: to have no competing sovereignties.[15]

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[12] ibid., 38.

[13] ibid.

[14] ibid.

[15] ibid. 39.

0.1.4. The settler contract in Mexico

Pateman's account focuses on the settler contract in former British colonies and in particular relies on the case of Mabo in Australia, and even though it mentions the role of the papal bull in making the case for terra nullius her account explores little, at least in comparison to the cases of Australia and the United States, the settler contract in other parts of the world. In Mexico the settler contract also paved the way for all the elements that Pateman mentions; such as a civil society, a government, and above all a settler state that seeks to have no competing sovereignties within its territory. The important part however lies in both the way this happened and also the moment when it happened.

Mexico achieved its independence in 1821, however its current constitution was only promulgated right after the end of the Mexican revolution in 1917. This constitution marked a turning point in the history of the country for a number of reasons that I will mention here but that I also explore in more detail throughout the thesis, specifically in chapter 1 and chapter 2. However, the way I treat this point in Mexican history is as one that allows us to see the lasting impact of the doctrine of terra nullius. Indigenous peoples not only were deemed insufficiently civilised to govern their communities themselves, but also their communal approach to land was regarded as a failure in the assimilation process.

The fact that indigenous communities still operated around the principles of communal property was in the eyes of many thinkers that conveyed the idea of 'forging a nation' as something that had no place anymore and that needed to be replaced. For thinkers such as Gónzalo Aguirre Beltrán, indigenous people had experienced in one way or another a level of protection since the conquest and for that reason they never found themselves in the

position needed to adapt and assimilate into the Mexican society. For thinkers such as Aguirre Beltrán the Mexican state needed to be able to accommodate the need for indigenous communities to organize their lands in a communal way, but only if it meant putting in place programs for these communities to embrace the idea of private property. Article 27 in the Mexican constitution came as a response to this 'issue'.

In chapter 2 I explore the work of Andrés Molina Enríquez, who was the person in charge of drafting the first version of article 27 of the Mexican constitution. Molina Enríquez strongly believed in the importance of allowing indigenous peoples to continue ruling their communities according to the principles of communal property. However, for him the reason for this is because indigenous communities had not 'evolved' enough and forcing upon them the ideals of private property would have little impact in both improving the efficiency of land and also their assimilation into the Mexican society.

0.1.4.1. The settler contract in the context of forging a nation

Postrevolutionary Mexico may look radically different to the scenarios that Pateman uses to advance her account on the settler contract, but there are a number of elements that suggest the need to approach it in a similar way. For example, as Pateman notes in the New Worlds, native peoples were deemed insufficiently civilised to create their own modern state.[16] While such matters was not even discussed by thinkers such as Aguirre Beltrán or Molina Enríquez, a similar disregard for the indigenous peoples is evident especially in the way they were regarded as 'not evolved' to understand the principles of private property.

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[16] ibid.

Another aspect that strikes as similar is the way it was deemed that a new start had to be made, one founded on the principles of civil society. However, one thing that it's important to note is that the 1917 constitution, as an original contract, could only pave the way for civil society. For some Mexican thinkers this showed that the potential of the 1917 constitution was limited to create a new state but not a nation. Distinguished anthropologist Manuel Gamio used the phrase "forjando una patria" (forging a nation) to capture the task that Mexicans had at hand. In chapter 4 I explore his account in depth, including his seminal work Forjando Patria, because it revolves around the obligation that the Mexican society has towards the integration of the indigenous peoples, for the moment however this only allows us to understand that from a the perspective of some thinkers, Mexico was a country that still needed to become what Stanley Ross described as "a cohesive and meaningful nation".[17]

According to Ross, the reason Gamio thought of this necessity is because for him a nation was not one in which thousands of villages remain isolated or where dozens of dialects were spoken by thousands of people and as such he assumed a "theoretical basis" of the nation-state.[18] In chapter 4 I explore in detail the ideas that Gamio advanced on how a nation could be forged and the way in which the implementation of such ideas would be able to address issues such as the isolation of entire villages or the presence of dozens of dialects. It needs to be mentioned that I also explore the critique of Gamios's account which revolves around the problems with considering a homogenous society a desirable outcome and one that fails short when it comes to the responsibility that the Mexican state has toward the indigenous peoples.

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[17] Stanley Ross, Forging a Nation, Revista de Historia de América 83(1)(1977): 135.

[18] ibid., 104.

0.1.4.2. The abolition of historic difference and historical inequality

Throughout the thesis different points of the critique against the homogenous society that Gamio and others thought necessary to 'forge' a nation are explored. However the aspect that needs to be highlighted is the one regarding the need to produce 'equal citizens'. As mentioned, it was deemed that the fact that indigenous peoples organised their communities according to the ideals of communal property showed a clear failure of their assimilation into the Mexican society. For thinkers like Aguirre Beltrán the problem was that through a number of legal instruments, indigenous peoples had since colonial managed to obtain some form of what now would be regarded as 'cultural accommodation', and thus they had never been forced to assimilate like other groups.[19] For Aguirre Beltrán, Mexico needed to move into a model in which there was no preferential treatment and the subjects of the nation-state were to be seen as equal citizens.[20]

Aguirre Beltrán's position was shared by many other influential thinkers of the time, like Gamio, but also José Vasconcelos and Moisés Sáenz. Same as Aguirre Beltrán and Gamio, Vasconcelos and Sáenz, held a number of positions within the government and under their supervision a number of educational institutions and programs designed to achieve the assimilation of the indigenous peoples into the Mexican society were implemented.[21] Such programs and policies signaled a change in the relationship between the state and the indigenous peoples, especially because of the emphasis placed on achieving unity of

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[19] Aguirre Beltrán, La población negra de México, 1519-1810: Estudio etnohistórico. Mexico City: Fondo de Cultura Económica (1946) 1972: 206.

[20] ibid.,

[21] Consuelo Sánchez, Los Pueblos Indígenas: del indigenismo a la autonomía. Mexico City: Siglo Veintiuno Editores (1999) 2011: 30-31.

language. Scholars of nationalism have noted the fact that the terms and ideals implemented by Latin American countries derived from German idealism.

Indeed, in his seminal work, The Theory of the State Johann Kaspar Bluntschli notes this aspect and also its role in molding the children of "still uninformed" peoples, whose customs were allowed to continue only so long as they did not "offend against the rights of the state".[22] The point that Bluntschli raised is important because it shows that it was deemed necessary that to achieve a united nation no groups were owed special recognition or protection from the state. Indeed, Bluntschli that the state needed to include the in its laws and "transform or abolish" the rights claims by particular peoples.[23] This is relevant because it shows many of the terms that can be found in the work of Gamio, mainly those present matters in evolutionary terms.[24]

In chapter 2 and chapter 4, the thesis shows the tendency of Mexican thinkers in presenting matters in evolutionary terms; from the 'evolutionary stage' of the indigenous peoples to the 'civilizational stage' of the nation. All this makes more relevant both the warning of disregarding such terms but also the need to demystified these in a similar sense to the way Pateman does it by exposing the way in which this logic revolves around the need to make the distinction between 'savage' and 'civilized' all as part of a political fiction that

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[22] Johan Kaspar Bluntschli, The Theory of the State. Ontario: Batoche Books (2000): 85-86.

[23] ibid.

[24] For an interesting account on the impact of German idealism in the work of Latin American thinkers, see David Brading, Nationalism and State-Building in Latin American History. Ibero-amerikanisches Archiv 20 (1994).

allows the settlers to see themselves as the "natural figures of the thought experiment in the texts of political theory".[25]

Article 27 of the Mexican constitution became key in the abolition of the historic difference and historical inequality because the state was reinstated as the original owner of all land within its territories and with it achieved what Pateman describes as making clear that the state has no competing sovereignties and also then the right to abolish the rights claims by particular peoples.[26] In this case, indigenous peoples were regarded as peasants from that moment and together with the imposition of educational policies, they found themselves after the Mexican revolution with limited opportunities to demand justice for historical inequality. Eventually indigenous people started to use their identity to advance their demands and challenge the terms of exclusion.

Chapter 1 explores this through the case of the uprising of the Zapatistas in 1994, which came as a reaction to a modification of article 27 in which it was the state stop recognising the right for indigenous peoples to organise their communities according to the ideals of communal property. For scholars of the Mexican constitution this shows that the weight of article 27 revolves around the fact that it grants the state to intervene in property ownership. Indeed, for Renato Gónzales Mello article 27 allows the state the capacity to deny the legitimacy of the indigenous modes of political organization.[27] Chapter 2 explores further

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[25] Pateman, The Settler Contract, 55.

[26] For Pateman the tempered logic of the settler contract is that the recognition of Native nations needs to take place according to the terms of the new imperium, effectively ensuring that there is only one sovereign power.

[27] Renato González Mello, When the State is the Estate: Copyright and Patrimony in Mexico. Art Journal 76 (2017): 171.

the reasoning behind granting the state the capacity to recover land from other groups, in an attempt to provide evidence that the settler contract does make the distinction between sovereignty and ownership, but ultimately identifies the settler state as the entity in charge of protecting private property.

0.1.5. Demands of justice

The definition that I advance in this thesis for demands of justice is the demands that are made when there is no possibility to advance a legitimate legal claim. Challenging the settler state and holding it accountable is a good starting point to describe how the indigenous identity provides a platform for the historically excluded but ultimately falls short. The reason for this is because one problem is the fact that the settler contract operates in a way in which grievances are difficult to articulate as it abolishes historical inequalities and this prevents tracing such grievances to a point in the past. The other problem is that it fails to say anything regarding the goal of the settler state to maintain an environment where there are no competing sovereignties within its borders.

A definition of the demands of justice should be able to explain the reason why indigenous peoples make normative claims in the first place. Settler colonialism leaves indigenous peoples with no legitimate legal claims to what they want and think as rightfully theirs under the constitution. Likewise, the very existence of the settler contract sheds light on why land and self-determination are central to those claims because as an original contract denies the legitimacy of any de jure claims on their part. The reason for this, as Pateman notes revolves around the fact that with the settlement of a colony, terra nullius vanishes as a civil society emerges and is further developed by colonists that husband the land, create

modern political institutions and the original inhabitants and their societies "are of no account as if they no longer exist".[28] In other words, indigenous peoples are treated as if they did not exist because they are excluded from any decision concerning them. Pateman illustrates this point via a number of examples from Australia, such as the exclusion in 1902 of the Aboriginal peoples from the national electorate, to the testing of British nuclear bombs in sacred Aboriginal grounds.[29]

It must be noted that Pateman highlights the fact that Rawlsian contract theory takes no account of the fact that in the political world there is no such thing as a clean slate.[30] The relevance of this point is that it resonates with the need to see the role that the doctrine of terra nullius had played in the historical exclusion of the indigenous peoples. Likewise, it further reinforces the need to see the political dimension of the indigenous identity and the normative claims raised by the indigenous peoples as expressions that make evident the fact regarding the impossibility of advancing legitimate legal claims.

0.1.5.1 Demands of justice and their theorization

Previously it was mentioned that the subject matter of this thesis is not the normative claims of indigenous peoples in settler colonial societies, but rather the ways in which those claims are theorised in the current scholarly literature. Having advanced a definition of demands of justice it seems appropriate to reiterate the point that the subject of this thesis is how scholars from different approaches theorize the claims raised by indigenous peoples and

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[28] Pateman, The Settler Contract, 68.

[29] ibid., 70-71.

[30] ibid., 77.

the degree to which they succeed in understanding or taking in consideration the context in which these are advanced.

0.2. Methodology: a dialogue between philosophical traditions

This thesis is a work in comparative political theory (CPT). CPT has a constellation of meanings but it can be generally understood as the study of knowledge, practices, political thought and philosophical traditions which are not considered as part of the western tradition. This broad definition immediately opens the door to a number of objections, such as what can be considered as non-western? What can be regarded as political thought? What is the west? Is not political theory inherently comparative? Such controversial and really difficult to answer questions show how complex it is to carry out CPT.

To make things even more difficult, although CPT is largely regarded as an approach or a way to work on political theory, a work in CPT can be conducted in a variety of ways. The methodological options available to those interested in doing CPT increase each time a work in CPT is published as very often such works also make innovative contributions to how CPT should be done.[31] This makes it really difficult to embrace typologies and categories which eventually end up being proven to be non-exhaustive. Having noted these difficulties, I shall now outline (i) some definitions of CPT which are useful for the purpose

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[31] As a recent example, consider Juliet Hooker's recent book *Theorising Race in the Americas: Douglass, Sarmiento, Du Bois, and Vasconcelos,* Oxford: Oxford University Press (2017), which not only comparatively analyses the ways in which race has been theorised by US African-American and Latin American political thinkers but also seeks to advance the methodological debate about how to do CPT by putting forward a new approach, juxtaposition. Juxtaposition for Hooker implies just placing one text next to the other.

of this thesis, (ii) the CPT approach which I use in this thesis and (iii) the reasons why I believe that doing CPT is a very valuable enterprise which expands the existing boundaries of dominant philosophical traditions.

Two points need to be noted though. First, at times I may refer to the approaches that I use in this thesis as traditions or philosophical traditions. Similar to my use of indigenous rights, the reason for this is mostly either because of conventions or to indicate a different background, but for all intents and purposes these are treated as approaches. Second, my understanding of 'dialogue' involves the juxtaposition of two different approaches, as opposed to conversational engagement between them, but it does not wish to be neutral between them: my own position, as it becomes clearer in the thesis, aligns more with the Mexican political theorists that I discuss than with the Multiculturalists and part of the point of setting the two approaches side by side is to demonstrate that, by comparison, the approach that I favour is more revealing one.

0.2.1. What is CPT?

Fred Dallmayr, in his seminal work *Beyond Monologue: For a Comparative Political Theory* (2004), defined CPT as "a mode of theorizing that takes seriously the ongoing process of globalization, a mode which entails among other things, the growing proximity and interpretation of cultures".[32] Dallmayr's call for CPT was fueled by what he perceived as a lack of attentiveness of political theory to current global challenges.[33] In other words, for

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[32] Fred Dallmayr, Beyond Monologue: For a Comparative Political Theory. *Perspectives on Politics* 2(2) (June 2004): 249.

[33] *ibid.*, 249.

Dallmayr political theory was too centred around canons and that results in an inability to address issues which are the result of a world which is more connected than ever.

This idea of a connected world, or as Dallmayr said, referring to the work of Marshall McLuhan, a "global village", is one shared by other proponents of CPT. For instance, Melissa Williams and Mark Warren noted that globalization has resulted in an increase of interconnectedness which makes CPT particularly relevant since it "provides some of the architecture of translation that enables self-constituting publics to form across boundaries of linguistic and cultural difference".[34] In short, CPT is regarded as a response to challenges which go beyond the boundaries of the west. Indeed Leigh Jenco, Murad Idris and Megan Thomas noted that the objective of CPT is the analysis of claims and expressions and formations of power from all over the world.[35]

CPT is usually done through the study of traditions of political thought and different accounts which go beyond the challenges which have preoccupied the western canon. As Jenco, Idris and Thomas commented, CPT involves the study of "bodies of thought and political experience" of both short-lived and long-standing distant communities and traditions.[36] Comparative political theorists observe that in the discipline of political theory the west has enjoyed a privileged position which marginalised other philosophical traditions even though such traditions might be particularly relevant to responding to pressing

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[34] Melissa Williams and Mark Warren, A Democratic Case for Comparative Political Theory. *Political Theory* 4(1)(2014): 28.

[35] Leigh Jenco, Murad Idris & Megan Thomas, 'Comparison, Connectivity and Disconnection' in *The Oxford Handbook of Comparative Political Theory*, ed. Leigh Jenco, Murad Idris and Megan Thomas. Oxford: Oxford University Press (2020): 1.

[36] *ibid*.

challenges. Although CPT seeks to achieve the inclusion of these excluded traditions, this is a task which, as many comparative political theorists are ready to admit, is impossible to achieve. As Jenco, Idris and Thomas noted, CPT "as an institutional and discursive expansion, cannot offer anything like perfect inclusion".[37]

In this thesis, I shall therefore define CPT as an approach to political theory which seeks the inclusion of voices which have been excluded from the mainstream debates on issues which would clearly require the input and participation of those different accounts to be properly addressed. What this implies is that political theory can be taught and done in such a way that it represents a challenge to western (that is, Euro-American) parochialism. Indeed as Brooke Ackerly and Rochana Bajpai commented, the term CPT indicates this shift toward the de-parochialisation of political theory, meaning that the Euro-American canon is both challenged and complemented by the study of non-western traditions, that is, works produced in Asia, Africa, the Middle East and Latin America.[38]

The inclusion of voices in political theory is in a way a form of decolonization. In this sense the decolonization of multicultural political theory can take a number of forms. For instance it can revolve around the acknowledgment that problems are not local and that we must assume a position which enables us to see them from a wider perspective. This is a point which advocates of CPT who see as necessary the inclusion of the voice of other

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[37] *ibid.*, 4.

[38] Brooke Ackerly and Rochana Bajpai, 'Comparative Political Thought', in *Methods in Analytical Political Theory*, Adrian Blau (ed.). Cambridge: Cambridge University Press (2017): 270-271. On how de-parochialising political theory is the main task of CPT, see Melissa Williams (ed.), *De-parochializing Political Theory.* Cambridge: Cambridge University Press (2020).

philosophical traditions often make on the grounds that problems are not local.[39] With this in mind, the idea of decolonization looks more like the act of deparochializing multicultural political theory because it can start with the assumption that colonialism, imperialism and settler colonialism are not local phenomena but rather an expression of capitalism and globalization.

From this position, the relevance of studying other philosophical traditions which takes place in settler colonial contexts such as Mexico may lie in seeing the ways in which different scholars have thought about injustice and the claims raised by indigenous people. Scholars of CPT such as Ackerly and Bajpai, for instance, used the term 'normative-analytic comparative political theory' to describe the works of scholars of non-western political thought who rely on normative-analytic methods to compare western principles such as human rights with the resources of non-western traditions.[40]

The expectation comes with a work on CPT is that by approaching issues from a local (and parochial) perspective and thus disregarding other philosophical traditions, western philosophy has ignored or problematically misframed important political issues. Indeed, as Jenco, Idris and Thomas observed, "comparative political theory seeks to analyze normative claims, discursive structures and institutions, and expressions and formations of power in and from all parts of the world".[41]

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[39] For an interesting discussion on the impact of globalization and the relevance of comparative political theory, see Williams and Warren, *A Democratic Case for Comparative Political Theory*.

[40] Ackerly & Bajpai, 'Comparative Political Thought': 276.

[41] Jenco, Idris, and Thomas, 'Comparison, Connectivity, and Disconnection': 1.

Works in CPT have therefore broadened the spectrum on a number of issues which benefit from the study of excluded bodies of thought. For instance, Jenco, Idris, and Thomas highlighted the interventions made regarding issues such as terrorism, realism and violence, democratic participation and the constitution of 'the people', among many others.[42] Although such works highlight the preference for a particular method within CPT, namely normative-analytic CPT, the relevance of interventions made by political theorists who engage with the study of concepts in historically marginalised traditions lies in the way in which particular forms of exclusion and relations of domination take place across the world.

This thesis focuses precisely on the political dimension of the indigenous identity and the way in which indigenous peoples make claims as examples of ways to navigate and resist settler colonial power. By establishing a dialogue between multicultural political theory and Mexican political thought, I shall interrogate the different ways in which these two traditions of political thought have conceptualised and theorised the normative demands made by indigenous peoples. I shall try to capture the way in which context also plays a role in the way that a philosophical tradition approaches a particular issue.

0.2.2. CPT: The dialogical approach

There are a number of ways in which a work in CPT can be done, but as has already been hinted, I have opted for what is often referred to as *the dialogical approach*. This is because I believe that such an approach has the potential to bring to light overlooked political issues by establishing a conversation between two traditions which share a number of

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[42] *ibid.*, 4.

elements, such as the settler colonial context, but which have largely developed in isolation from each other.

So what is the dialogical approach? Dallmayr did not offer a specific definition but he did imply that dialogical engagement involves the interpretation of realities and the interaction between different interpretations of such realities.[43] Dallmayr's account makes no distinction between philosophical reflections and interpretations, although he was careful to point out that there are "limits to understanding"[44] which means that he recognised that understanding across different traditions of thought "encounters limits or dimensions of difference that need to be respected".[45] This avoids both cultural relativism and Eurocentric or western parochialism by acknowledging that there are cultural differences which "though understandable, may still be unacceptable" and that these repugnant cultural aspects might belong to any tradition, including western philosophy.[46] Dallmayr's dialogical approach to philosophy and political thought was explicitly indebted to Martin Heidegger's "hermeneutical phenomenology" and the legacy of Heideggerian methodology in western philosophy; for example Hans-Georg Gadamer's understanding of dialogue as an encounter which shakes the familiar and the simply assumed and Jacques Derrida's key notion of *différance* and also beyond western philosophy; for example through the Indian philosophy of J. L. Mehta and the embracing of dialogical comparative philosophising by the Spanish-Indian scholar Raimundo Panikkar.[47]

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[43] Dallmayr, 'Beyond Monologue': 250-251.

[44] *ibid.*, 252.

[45] *ibid.*

[46] *ibid.*

[47] *ibid.*, 250-252.

Dallmayr's account of the dialogical approach stresses the importance of avoiding the reduction of interpretations and visions to one which synthesises them all. As he pointed out by drawing on Panikkar, "Comparative philosophy cannot accept a method that reduces all visions to the view of one single philosophy".[48] For Dallmayr, the dialogical approach had a deeper constitutive role. He observed that comparison is a process of learning which on the one hand requires "continuous border crossing and negotiation of boundaries" and on the other is a "learning process across boundaries".[49]

In other words, the dialogical approach moves beyond a monologue and opens itself up to the authentic yet unsettling encounter between different traditions which cannot (and should not) be reduced to one another. It is fair to conclude that the main feature and methodological commitment of the dialogical approach is precisely the injunction against conflating one vision of the world with another and the full willingness to engage in an open-ended conversation without any preconceived expectations of its outcome.

As Dallmayr suggested, the dialogical approach is therefore committed to a specific understanding of the goal of CPT. According to him, CPT should "move toward a more genuine universalism, and beyond the spurious 'universality' traditionally claimed by the Western canon and by some recent intellectual movements".[50] Dallmayr's stress on a more genuine universalism might sound bizarre or even deeply problematic to other comparative political theorists who have instead criticised the very project of aiming towards universalism. Although one can endorse the dialogical approach to CPT without also embracing Dallmayr's specific understanding of the relationship between cross-cultural

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[48] *ibid.*, 251.

[49] *ibid.*, 251-253.

[50] *ibid.*, 253.

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dialogue and universalism, I think that his insistence on universalism should not be understood as a return to a synthetic and univocal vision of the world which is then imposed on everyone and constitutes the benchmark by which to assess different traditions. Indeed Dallmayr specifically stated that "no one can speak universally for everybody", which strongly suggests that he rejected a universalism claimed and monopolised by the western canon and instead sought to move towards a polyvocal universalism which includes different voices and perspectives without reducing them to one another.[51]

What are the advantages of the dialogical approach? I believe that the main advantages of a dialogical approach is that (i) it aims to provide a broader and more comprehensive picture of the problems in question by displacing the western canon as the main authorial voice on the matter; (ii) it pays attention to the specific context to understand

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[51] *ibid.*, 254.

specific traditions of thought and their formulation of key notions and ideas; and (iii), as already mentioned, it at least tries to avoid conflating one tradition into another.[52]

Let me explain the main advantages of the dialogical approach in turn, by making reference to the specific dialogue which this thesis tries to open, that is, the dialogue between multicultural political theory and Mexican political theory. As for the aim to achieve a deeper and more comprehensive understanding of an important political issue, the dialogical approach suggests that it is only by opening up a conversation between different traditions of thought that we can avoid an overly partial view on a matter and get closer to (although never master) a deeper appreciation of the issues at stake. In my thesis, I hope to show that issues such as 'indigenous self-determination', 'the role of vulnerable members of indigenous communities', and 'land' cannot simply be approached through the lens of western multicultural political theory. Multicultural political theory needs to be in an open (and

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[52] A number of critiques have been directed at the dialogical approach. For instance, Murad Idris has taken issue with what he called the "politics of comparison" as it might take for granted the west/non-west divide, instead of challenging the very power relations underpinning such a divide. See Idris, *Political theory and the politics of comparison, Guides through the Political Theory Archive*, (IV) (2016): 1-20; and for a similar point, see also Juliet Hooker, *Theorizing Race in the Americas*, fn. 34: 205-206. Insofar as the dialogical approach encourages a politics of comparison, it might be vulnerable to Idris's critique. I have not the space to defend the dialogical approach from this possible interpretation. Suffice to say that, as appealing as these critiques might be, I hope to ease their concerns by showing how fruitful a dialogue between multicultural political theory and Mexican political thought can be.

frequently unsettling) dialogue with other traditions of thought, like Mexican political thought, which have approached the same issues from a different angle.

As for the importance of context in comparative theorising, it must be noted that context might mean very different things in CPT. It can refer to the actual geographical location in which the thinkers of a philosophical tradition live(d), to the position/condition of the marginalized of a philosophical tradition which takes place outside the hegemonic location and frame of reference ('the west'), or to the way in which thinkers have deployed particular concepts and their intention in presenting these as alternatives to others developed by different philosophical traditions. For instance, Juliet Hooker's work relies on these different understandings of context by showing how theories about race in the Americas have depended on the life experiences of thinkers, their knowledge about the situation in other countries, and also their goal (and intention) in producing such theories which often were advanced as alternatives to how race was constructed in other traditions.[53]

In stressing the importance of context in the dialogical approach, I am not ambitiously seeking to replicate Hooker's deep and complex engagement with context. I make a more limited use of context but still one which gives context its due. Context, in my approach, is essential to understanding the accounts put forward by Mexican political thinkers and, in particular, how settler colonialism has profoundly shaped their reflections on the injustice towards indigenous peoples. For instance, in my discussion of the work of some Mexican political thinkers, I shall show how concepts such as *mestizaje*, which refers to 'racial mixing', 'interbreeding' and roughly translates as 'miscegenation', have played a crucial role in such theorists' arguments about the relationship between the state and the indigenous

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[53] For a detailed account of the role which context as location plays in the work of Hooker, see her *Theorizing Race in the Americas,* 1-22.

people in Latin America. It is impossible to understand the notion of *mestizaje* without taking into account the context of settler colonialism. Without such a context, that notion would not make any sense.

In more general terms, following the dialogical approach, the importance of context lies in its role in deparochialising political theory.

This leads me to discuss the third advantage of the dialogical approach for the purposes of this thesis: that it at least attempts to avoid conflating one tradition of thought into another. The dialogical approach proceeds precisely from the conviction that it is possible to approach an issue or problem from a non-western perspective without reproducing the terms of the dominant philosophical tradition, for example, in multicultural political theory. The dialogical approach stresses the benefits which an authentic dialogue can bring to our understanding of an issue, which also includes the benefits which those belonging to a dominant perspective can receive by entering into a sincere dialogue with other traditions. In this thesis, I shall stress that western political theorists interested in multiculturalism and the rights of indigenous peoples have a lot to gain from engaging in a dialogue with Mexican political theorists and that through this dialogue, they can achieve a deeper understanding of the oppression suffered and the demands made by indigenous peoples. Moreover, the dialogical approach strives to avoid grounding such a dialogue between different philosophical traditions on morality and, instead, to base political relationships on an open-ended dialogue.

James Tully commented that "a focus on moral principles that are said to provide the foundations of political relationships"[54] does actually reflect the interests and hegemony of

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[54] James Tully, Deparochializing Political Theory and Beyond: a Dialogue Approach to Comparative Political Thought. *Journal of World Politics, 51*(1) (2016): 52.

western philosophy. A work in CPT then should not start with the assumption of being able to find compatible ideas in other traditions of thought which can offer further support to a specific and predetermined moral basis. In other words, we need to restrain ourselves from the impetus of "finding [Immanuel] Kant" in every culture. Indeed, such an impetus would only lead to the reproduction of an already expected outcome, that is, of the superiority of moral principles grounded in western philosophy, and thus would simply undermine the very goal of de-centring and deparochialising western traditions. The dialogical approach therefore aims to carry out CPT with no expectation of finding (moral) equivalents. As I shall show in this thesis, Mexican political thought might not necessarily revolve around the same assumptions endorsed by multicultural political theory. For instance, it is grounded on an appreciation of the inherent political nature of identities and a scepticism towards the authority of the settler state. Starting a dialogue between multicultural political theory and Mexican political thought by looking at how crucial notions in the former such as 'freedom', 'equality' and 'toleration' are expressed in the latter would mean inadvertently prioritizing the western tradition of multicultural political theory in the hope of finding an answer which will validate our assumptions, rather than approaching Mexican political thought with the honest intention of hearing what it has to say.

As Tully poignantly observed, we should therefore enter into dialogue with other traditions of thought with minimal expectations and as open as possible to being challenged to avoid the reproduction of a "Western orientation to politics".[55]

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[55] *ibid.*

0.3. The structure of the thesis

In this thesis, I explore in detail the three most recurrent issues in multicultural political theory regarding the normative claims raised by the indigenous peoples: territorial rights, the right to self-determination, the rights of members within indigenous communities.. Each issue is examined first by looking at multicultural political theory and then by engaging with Mexican political thought. The thesis proceeds as follows.

Following the points mentioned above regarding the settler contract chapter 1 starts with the topic of land. The chapter builds on the idea that the reason indigenous peoples raise normative claims is because they have no legitimate legal claims to what they want and think of as rightfully theirs under the constitution. The constitution in settler colonial contexts denies the legitimacy of any de jure claims, thus the reason that the indigenous peoples have adopted the so-called non-statist approach.

Chapter 1 argues that non-statist theories of territory, which I call 'community-based' theories of territory, neglect the role which land has in the making of indigenous identity and in the formulation and mobilization of demands for justice because all the attention is directed to the idea that competing territorial claims should be pondered on the role that land plays in ethnic groups having access to a notion of 'the good life'. Territorial rights are not about controlling territory. To further explore this point, Chapter 2 reconstructs the work of two Mexican political thinkers: Andrés Molina Enríquez, a leading proponent of indigenismo, and Héctor Díaz-Polanco, a very influential critic of indigenismo. I show that, notwithstanding the important differences between these two authors, both accounts of territorial rights conceive of land as something not reducible to a territory to exercise control over. Molina Enríquez treats land (problematically) as something which can enable the

indigenous people to assimilate to the Mexican dominant society, whereas Díaz-Polanco compellingly shows how land can mobilise the demands for justice of indigenous peoples.

The contrast between multicultural political theory and Mexican political thought is highly revealing as it shows clear differences between the two approaches to the issues of the normative claims of indigenous people as they arise in the Mexican setting. In particular the developed contrast shows how inadequate multicultural political theory is to the subject matter since the part regarding settler colonialism and the political dimension of the indigenous identity is neglected. Mexican political thought, via the critique of indigenismo, makes evident the fact that indigenous peoples are left with no choice but to raise normative claims.

If the first two chapters focused on land, then it makes sense to explore in chapter 3 and chapter 4 the topic of self-determination because in the case of Mexico the constitution denies the legitimacy of any de jure claims on their part to either. In other words the chapters on self-determination need to come after those on land because the claims about self-determination as non-domination have to be assessed in light of the right claimed by the state to all property within its territories and to impose on private property limitations dictated by the public interest.

Chapter 3 therefore focuses on two ideals of self-determination which can be found in multicultural political theory: (i) self-determination as non-interference and (ii) self-determination as non-domination. It advances the argument that non-domination is more appropriate as it accounts for the level of dependency and vulnerability of the indigenous communities as a consequence of settler colonialism. Chapter 4 examines the concept of self-determination in the work of Mexican political thinker Guillermo Bonfil-Batalla. The chapter analyses Bonfil-Batalla's critique of indigenismo and the normative importance of mestizaje.

These two aspects of Bonfil-Batalla's account are crucial in comparison with the two understandings of self-determination advanced in multicultural political theory as they show that, given indigenous peoples' condition of vulnerability, the right to self-determination must be conceived along the lines of non-domination.

The contrast between the two approaches shows the limitations of multicultural political theory. Multiculturalism is portrayed in chapter 3 in a way that intends to show that because of its focus with culture as something that is both inherent and intangible the political dimension of the indigenous identity is overlooked. Likewise is also portrayed as one that for the same reasons tends to neglect the fact that the normative claims raised by indigenous peoples are framed as demands of justice because of the exclusive nature of the settler contract. Via the postcolonial literature and also through the use of examples, culture then is intended to be shown as that which is left for indigenous peoples when everything else is taken away from them. Together with chapter 4, the intention is to show that multicultural political theory, due to its focus on culture, reproduces and carries forward some of the dubious assumptions of official indigenismo.

If the first two chapters intended to set the ground for those on self-determination, in the sense that claims about self-determination as non-domination have to be assessed in light of the right claimed by the state to all property within it territories and to impose on private property limitations dictated by the public interest, then the chapters on self-determination then have the intention to set the ground for those on groups within groups. This in the sense that claims about the provision of groups rights being beneficial for gender equality have to be assessed in light of the right claim by the state to intervene within groups.

Chapter 5 focuses on the feminist critique of multiculturalism. By engaging with different western feminist authors, I argue that in some scenarios the provision of group

rights does not entrench gender inequality. In particular, after having criticised Susan Moller Okin's infamous critique of multicultural accommodation, I shall analyse the different approaches of feminist scholars who have attempted to ease the tension between multicultural accommodation and gender equality. I argue that although Ayelet Shachar's jurisdictional approach is bound to be counterproductive in settler colonial contexts as it does not take into account the power asymmetry between the settler state and indigenous communities, the democratic approach advanced by Monique Deveaux and Sarah Song holds more promise for promoting the participation of indigenous women.

Chapter 6 looks at the thinking of Mercedes Olivera-Bustamante, a feminist Mexican thinker whose reflections on the empowerment of indigenous women, in some respects, chime with the proposal of Deveaux and Song. In greater detail, I reconstruct Olivera-Bustamante's critique of indigenismo by focusing on the condition of indigenous women. I stress how she has cast light on the agency of indigenous women by highlighting its complexity and ambiguity. I then conclude by pointing out how Olivera-Bustamante identified different ways in which the provision of indigenous self-determination and group rights can promote indigenous women's participation. Unlike feminist scholars in the multicultural political theory tradition, Olivera-Bustamante also pointed out how it is the very process of struggling for indigenous self-determination that can prompt indigenous women to take leadership roles in their communities, thereby negotiating gender norms and expectations.

The contrast between the two approaches has as intention then to show the residual presence and effects of 'evolutionary assumptions' in the mainstream literature about multiculturalism. Chapter 6 builds on the argument advanced in chapter 5 with the intention of showing the way in which multicultural political theory, and Anglophone analytical

political theorising, tends to reproduce and carry forward some of the dubious assumptions of official indigenismo. It needs to be noted that it does this by showing it is one of the advantages of grassroots political thinking.

1. The Politics of Escalation: Indigenous Demands for Justice and Territorial Rights

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Abstract.

In this chapter, I argue that non-statist theories of territory neglect the political dimension of the indigenous identity and this leads to a conflation of territorial rights with the notion of jurisdictional authority. I argue that the indigenous identity is a strategic victory because it offers to historically marginalised groups a stance from which to make political claims and this shows that the ambition of the state to impose a homogenous legal-rational conception of what it is to be a citizen has broken down and so that the terms of legitimation for political action have been successfully challenged, and in this case, take the form of access to natural resources. I argue that the indigenous identity is a strategic victory used by historically marginalised groups to contest the terms of their participation and, in this case, access to natural resources.

> "The government has not understood anything about the meaning of the Indian rebellion in Chiapas, nor about the solidarity that it has aroused, nor about the demands for autonomy of all the Indian peoples of the country. Its answer implies not changing anything in the Constitution to make regional autonomy possible. We affirm that the current wording of Article 4 of the Constitution is unacceptable, since it does not contain the necessary elements to give the legal framework to the autonomy regime demanded by the EZLN and by us, all the indigenous peoples".

INDIGENOUS ELECTORAL CONVENTION, *Untitled Document* (1994)

Introduction

The issue of land is a recurrent one in the study of the relationship between any settler state and the indigenous people. This is because land is what was lost from the moment that empire powers descended upon the New World and its dispossession has continued ever since at the hands of the settler society. In other words, land has become the symbol *par excellence* of the domination of indigenous peoples byto foreign rule. Political theorists have focused on the topic of land mainly to explore and justify the devolution of land and the conditions of such devolution. The discussion has therefore primarily revolved around the nature of self-determination, the need for populations to have access to resources, the validity of territorial claims, and the role which land plays in the development of a community and its people because of the attachment which they have toward it. As a consequence, political theories have narrowed the issue of land to one of territorial disputes and this has been followed by the treatment of a number of territorial rights as if they were all the same. In other words, accounts of territorial rights in normative western political theory have framed territorial rights as being about control over a cultural good: land.

In this chapter, I shall argue that this is problematic, at least in settler colonial contexts, because it collapses claims into this narrow version of territorial rights. At the same time, a crucial aspect goes unnoticed under such approaches: the role which land plays in the formation of political identities, and especially how land provides a language into which broader claims about justice (present and past) are packed. In particular, in the case of settler colonialism and specifically in the context of the Latin American experience, political theorists neglect how land is central to the indigenous identity and how it is by mobilizing that identity through land that oppressed groups can formulate their demands for justice.

(note) In other words, claims about territory and invocations of territorial rights are about redressing historical and ongoing injustices against indigenous peoples.

The chapter builds on the idea that the reason indigenous peoples raise normative claims is because they have no legitimate legal claims to what they want and think of as rightfully theirs under the constitution. The constitution in settler colonial contexts denies the legitimacy of any de jure claims, thus the reason that the indigenous peoples have adopted the so-called non-statist approach.

In this chapter, I approach the topic of land from this novel perspective. My objective is to show that people indeed develop an attachment to land and that land also plays a role in the development of a community, as most theories of territory claim. However, instead of drawing on these observations to either propose an approach capable of solving territorial disputes between parties or make the case for the devolution of land, I focus on the way in which land informs the indigenous demands for justice. (specific demands of justice). In other words, in this chapter I argue that those affected by the dispossession of land do not remain passive; instead they adopt an active attitude and use the indigenous identity as a platform to extend their demands for justice. Therefore, land does not act as a point of access for a version of the good life, as community-based theories of territory hold. Instead, land shapes the grievances of those oppressed by settler states and the ways in which they can express these grievances in terms of demands for justice. Through this dynamic, indigenous people find themselves in a position from which they can centre their demands for justice around specific terms.

In many regards, the argument which I develop in this chapter mirrors my conclusions set out in Chapter 3. In Chapter 3, I make emphasis on how multicultural political theorists reduce indigenous peoples' self-determination to an issue of cultural equality, whereas here I

argue that western normative political theorists working on territorial rights narrowly frame them as control over a cultural good: territory/land. If in Chapter 3 I show that indigenous self-determination is about calling the settler state to account and urging it to be responsive to historical and present injustices, here I shall suggest that in a settler colonial context such as Mexico, demands about land encapsulate broader demands for historical and present justice and represent a challenge to the settler colonial state.

In other words, in the context of Latin American settler colonialism, land does not simply constitute a point of access to a people's conception of the good life or a people's culture. Land is what politically shapes the actions and the demands for justice of those oppressed by the settler state by directing their grievances against the state. This also means that, as I shall show, in a context where indigenous peoples seek to hold the settler state to account, the devolution of specific powers to indigenous peoples can be a more effective response to enduring historical injustice than granting them territorial jurisdiction, as western political theories of territory usually suggest.

A caveat before proceeding. In political theory there are two main approaches to the issue of territory: statist theories and non-statist theories. In this chapter, I only engage with the latter because they take non-state collectives (of a specific kind), such as indigenous peoples, to be the holders of territorial rights, whereas the former consider the state as the only agent entitled to make claims about territory.[56] The second approach, the non-statist

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[56] For two influential statist accounts of territorial rights, see Anna Stilz, *Territorial Sovereignty: a Philosophical Exploration*, Oxford: Oxford University Press (2019) and Lea Ypi, A permissive theory of territorial rights, *European Journal of Philosophy, 22* (2014): 288-312.

theories of territory, which I label 'community-based theories', is thus immediately more apt to capture the claims on land made by indigenous peoples.[57]

The chapter is structured as follows. The first section briefly introduces community-based theories of territory summarising their common threads, then the second section explores those theories in greater detail. In this section, I shall argue that the theories developed by Avery Kolers, David Miller and Margaret Moore resort to attachment to land as a criterion by which to evaluate territorial claims. At the same time, they treat territorial rights as if they were all the same. Thus, in this section I shall disaggregate all the different rights which might be related to territory. In the third section, I shall focus specifically on the Latin American experience. I shall discuss three cases which show the way in which claims about land quickly escalate into demands for justice. The fourth section builds from my argument about the 'politics of escalation' in order to show the problem with not disaggregating territorial rights. The fifth section argues that disaggregating territorial rights, rather than granting full jurisdiction over a piece of territory, is a better way to empower indigenous peoples in settler colonial contexts as it enables them to keep mobilising around land, press new demands for justice and hold the settler state accountable over time. The chapter concludes by arguing that community-based theories of territory are incomplete and that it is problematic to reduce claims about land to claims about authority over a portion of territory.

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[57] For an overview of the debate over territorial rights which helpfully maps out the different positions, see Lea Ypi, Territorial rights and exclusion, *Philosophy Compass, 8* (2013): 241-253.

1.1. Non-statist Approaches to Territorial Rights

In this section of the chapter, I shall briefly review the concept of territorial rights and then identify two different problems with non-statist accounts of territory: (i) the neglect of the political nature of indigenous identities and (ii) the claim that all different types of territorial rights stem from one jurisdictional authority and that claims about land are always claims about (and often disputes around) authority over a piece of territory.

One recurrent feature of community-based theories of territory is that they use culture as a criterion by which to identify which collectives can legitimately be holders of territorial rights. One consequence of this feature is that the role which the land plays in the formulation of claims of justice is often reduced to merely a cultural one. Margaret Moore observed that community-based theories of territory tend to "rely on the idea of culture to identify the relevant group" which can be the holder of territorial rights.[58] In their attempt to distance themselves from the statist accounts which tend to narrow territorial right-holders to the state only, community-based accounts have embraced what Moore called 'cultural nationalism' as a way to establish a criterion by which to identify the party with the stronger claim in a dispute for territorial authority.[59]

It is important to pause on the role which attachment (to a territory) plays in community-based theories as a ground for territorial rights. Attachment is a key element of community-based accounts because it shows that collectives tend to develop links toward a place and that these links play a role in shaping the life of the group as well as the development of its members' specific norms and institutions.

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[58] Margaret Moore, *A Political Theory of Territory,* Oxford: Oxford University Press (2015): 71.

[59] *ibid.*

Community-based theories rest on a specific understanding of territory, which conceives of territory as something which brings together different elements. For David Miller, one of the main proponents of community-based theories, to think of territory involves thinking of a triangular relationship between "first, a piece of land, second, a group of people who live on that land and, third, the political institutions that govern those people in that place".[60]

Miller identified three types of territorial right: (i) the right of territorial jurisdiction, in other words "the right to make and enforce law throughout the territory in question",[61] (ii) the right over resources, and (iii) the right to control movement within the territory.[62]

Although these three types of territorial right have been traditionally associated with the state's capacity to rule, Miller argued that even non-state collectives, such as nations, can hold them.

The problems faced by community-based theories of territory such as Miller's are the following: (a) they need to able to explain "what makes a group of people capable of having territorial rights", (b) they have to identify a normatively relevant connection between the collective and the territory and (c) they have to show why that connection can ground territorial rights over the territory in question.[63] For community-based theorists of territory, attachment becomes what makes it possible to reply to these three issues.

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[60] David Miller, Territorial rights: Concept and Justification, *Political Studies 60*(1) (2012): 253.

[61] *ibid*.

[62] *ibid*.

[63] *ibid*., 258.

1.2. Community-based theories of territory: attachment and jurisdictional authority

1.2.1. Koler's Account: Ethnogeographic Groups, Ontologies of Land, and Plenitude

Community-based theories of territory attempt to capture why a community would claim territorial rights in the first place. Avery Kolers's work is seminal in his revaluation of the importance of land. In particular, Kolers borrowed the term ethnogeography from a sub-discipline of geography which deals with the "geographical beliefs of various cultures" in order to make the case that some communities share a "culturally specific conception of land".[64] For Kolers, it was the different ontologies of land which lie at the core of territorial conflicts. This represents a shift in the approach to the topic of land since Kolers's account explicitly focused on "what land is, what about it is valuable, how humans interact with it".[65]

Kolers's account sought to ground legitimate territorial claims on the relationship between a community with a conception of land and the level of integration and knowledge which this conception of land gives to the community. In Kolers's account, attachment to the land which a community occupies becomes crucial in two respects. First, the existence of such an attachment is what makes a territorial claim legitimate. Second, attachment selects which kinds of group can make such claims.

To spell out his understanding of attachment, Kolers introduced the concept of an 'ethnogeographic community'. He described this as "a group of people who share an ethnogeography and whose land-use practices densely and pervasively interact".[66] It is a

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[64] Avery Kolers, *Land, Conflict, and Justice: a Political Theory of Territory,* Cambridge: Cambridge University Press (2009): 102-105

[65] *ibid.*

[66] *ibid.*, 3.

community which has "a culturally specific conception of land, what land is, what about it is valuable" and what is in a distinctive material relationship with such a land.[67] This relationship means that the community has a pervasive material interaction with the land, which deeply characterises it. According to Kolers, given that there is a connection between conceptions of land and land usage, only a community which manages to achieve what he called 'plenitude' with respect to a territory can make territorial claims. Having plentitude, that is 'fullness', with respect to a territory means (i) having internal diversity, which means that its elements "are distinct from one another", and (ii) external diversity in that it is "distinct from other places".[68] Kolers's attachment criterion was built around the idea of plenitude and, in particular, its intentional dimension, that is, intentional plenitude, which involves the desire to preserve the natural resources found in a place.[69]

In contrast, a community that lacks plenitude with respect to a territory is one which cannot make the claim that a specific piece of land plays a crucial role in its ontology. Kolers stated that "a territorial right exists if and only if an ethnogeographic community demonstrably achieves plenitude in a juridical territory".[70] Thus the scenario which Kolers envisaged was one of competing ethnogeographic communities, where indicators of attachment such as plenitude enable territorial disputes to be solved.

Moore pointed out that community-based theories of territory which rely on accounts of culture or similar issues, such as Kolers's, focus too much on the relationship between a group and the land. This does not mean that Moore's own theory differed massively because,

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[67] *ibid.*, 3-4.

[68] *ibid.*, 113-114.

[69] *Ibid.*, 155.

[70] *ibid.*, 5.

as she herself admitted, Kolers's structure of the argument was similar to hers in that "he identifies the territorial right-holder with a group that is already in a relationship to a particular piece of land".[71] Instead, what Moore found problematic was Kolers's definition of an ethnogeographic group.[72]

Moore raised a sharp criticism of Kolers's account from within a community-based theory of territory. There were two elements of Kolers's account which Moore found problematic: (i) Kolers's criterion for the provision of territorial rights; and (ii) the notion that members of a community have to share the same ontology of land. Both elements for Moore lacked relevance when it comes to the solution of territorial disputes. Moore believed that the environmental and ecological bond, which relies on an intention to sustain the conditions of a piece of land, says little about the weight of a land claim. Likewise, the lack of consideration of the possibility of internal dissent about land within a community indicated a problem with Kolers's criterion as in reality not all members of a community will share the same ontology of land. Moreover, the fact that the very same criterion can be applied in a variety of ways shows that not only distinct communities but entire (large) populations in a particular territory can share the same conception of the land.[73]

In sum, for Moore, Kolers's theory was unable to provide a satisfactory account of the territorial right-holder and thus could not offer a solution to territorial conflicts, that is, the situation in which two communities claim territorial rights over the same territory. Moore acknowledged that Kolers was aware of this possible limitation in his theory; indeed, he drew a distinction between boundary disputes and territorial disputes to ease this problem.

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[71] Moore, *A Political Theory of Territory*, 71.

[72] *ibid.*, 72.

[73] Moore, *A Political Theory of Territory*, 74.

Boundary disputes involve communities which share the same ontology of land but disagree on which community is entitled to it, whereas territorial disputes see communities with conflicting conceptions of land and were for Kolers more interesting and challenging.

Be that as it may, Moore was unpersuaded that Kolers's distinction had any normative value and referred to the cases of Northern Ireland and Quebec, which would count as only boundary disputes in Kolers's account, to show that Kolers's distinction is not particularly compelling when it comes to assessing conflicts over territory.[74]

Moore's theory also sought to adjudicate on conflicts over territory. Like Kolers and Miller, she also believed that unlike statist theories, community-based theories of territory can solve the problem of authority of a community over a specific land "through a more complete analysis of the relationship between the group and the land and between the people in the group".[75] However, she wanted to move away from a focus on 'culture'. In many respects, Kolers's and Miller's accounts rely on the importance of culture and in this sense they chime with the arguments for the protection of culture offered by commentators such as Kymlicka and Taylor. Consequently, their arguments are vulnerable to the same criticisms of essentialism as have been directed to protectionist accounts of multicultural accommodation. I shall now turn to Miller's own account of territorial rights.

1.2.2. Miller's Account: Culture and National Communities

Miller's account of territory is, in many respects, a continuation of his previous seminal work on liberal nationalism. This means that he gave special importance to nations as communities

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[74] *ibid.*, 77.

[75] *ibid.*, 71.

which have a specific set of values, or in other words, culture, developed around a specific piece of territory.

As already discussed, Miller identified three types of territorial right: (i) jurisdiction over a territory, (ii) the right to the resources within a specific territory, and (iii) the right to delimit and exercise control over the borders of a territory. He sought to identify communities which are capable of holding all three of these rights at once. At the same time, Miller regarded jurisdiction as what then determines the other rights, that is, control over the use of the territory, such as its resources, and control over who can enter and exit the boundaries of the territory[76] This was because, as was stated earlier, for Miller a "natural way to think about territory is to see it as involving a triangular relationship" in which jurisdiction comes first.[77]

Like other community-based theories of territory, Miller's account argued that the existence of a bond between a community and a land is necessary to provide the former with territorial rights over the latter.[78] Miller suggested that a community gains territorial rights the moment it transforms the land and its value, endows it with a symbolic value, and its institutions are built on and reflect this bond between the community and the land. This is similar to Kolers's argument on how an ethnogeographic community finds itself in a constitutive relationship with the land due to having the capacity to transform the land for its own improvement and sustainability.

Like Kolers (and Moore), Miller sought to identify which communities can be territorial right-holders so as to solve disputes over territory.

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[76] David Miller, Territorial rights: Concept and Justification, *Political Studies, 60*(1) (2012): 253.

[77] *ibid*.

[78] *ibid*., 254.

Moore observed that Miller's theory relied heavily on cultural nationalism[79] as it is only communities which are nations and have a specific shared culture which can legitimately claim territorial rights over the territory so central in their cultural identity. Moore recognized that Miller's theory had an important advantage: it moved beyond statist theories of territory by including non-statist communities, such as indigenous peoples.[80] However, she also pointed out that Miller deployed the term 'nation' "to refer to cases where groups share a common culture constituted in part by shared beliefs and to cases where they share a common identity constituted by shared sentiments".[81] There are communities which we intuitively think of as territorial right-holders (such as Canada) which do not have a sharply distinctive culture, different from other territorial right-holders (such as the United States) other that of communities (such as the US). Indeed, as Moore notes, "[...] it is not clear that the cultural differences between Canadians and Americans is greater than the cultural differences within Canada or within the United States.[82]

Another problem with Miller's definition of cultural nationality is that, given that for Miller, nations have territorial rights because of their capacity to transform a land by mixing their culture with it,[83] it is unclear why other non-national cultural groups should not also have territorial rights due to the way in which they have transformed a territory. Moore argued that Miller's account cannot successfully explain why migrant groups which have a shared culture and have significantly culturally transformed the space which they now

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[79] Moore, *A Political Theory of Territory, 80*36.

[80] *ibid*.

[81] *ibid*., 80.

[82] *ibid*.

[83] *ibid*., 82.

occupy do not have territorial jurisdiction over it.[84] Moore suggested that the only way

cultural nationalists can argue that, say, Cuban migrants in Miami and possibly Chinese

migrants in New York should not have territorial jurisdiction over Little Havana and

Chinatown respectively, is to include another *ad hoc* criterion to identify which communities

develop the proper cultural attachment to land which generates territorial rights – a criterion

based on the capacity of cultural communities to exercise political authority over that space.

In other words, the cultural nationalist account is more robust if it moves closer to Moore's

political community-based account. But, if it does so, the specificity of culture over the

political dimension of identities becomes unclear.[85]

1.2.3. Moore's Account: Political Communities and Their Jurisdictional Authority

Moore admitted that her own account was able to capture the attractive element of

liberal nationalism.[86] It shared with Miller's theory the notion that it is the relationship

between a community and the land that should lead to the recognition of the right of the

former over the latter. However, importantly, Moore's account focused on the political nature

of communities which can legitimately be territorial right-holders, not on their cultural

features. It is therefore less vulnerable to the problem of distinguishing between communities

such as nations and communities such as immigrant groups when it comes to their

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[84] It should be noted that this critique had been originally levelled by Anna Stilz, who argued

for a Kantian theory of territory. See Anna Stilz, *Territorial Sovereignty* and Anna Stilz, Why

do states have territorial rights?, *International Theory 1*(2) (2009).

[85] Moore, *A Political Theory of Territory*, 85-86.

[86] *ibid*., 86.

relationship with a specific territory. Moore said that "the principle that Miller [and other liberal nationalists] point to – the use of the land for subsistence, the effect on the landscape of the people's culture, and the cultural choices that they make in transforming the land – follow naturally from people occupying land".[87] It is not a criterion for determining which community should count as a legitimate territorial right-holder.

What mattered for Moore was that members of a community share the same political project and seek to achieve some form of administrative unit. Territorial right-holders are defined by a common political project and a desire "to be institutionally organized either in a state or in ways less formal than states".[88] It is important to note that Moore considered "mutual recognition and shared political identity, shared aspirations to be collective self-governing as a group of that kind" as the key features that constitute a community as a legitimate territorial right-holder.[89]

There are two interrelated problems with community-based theories of territory when it comes to the case of indigenous peoples, especially but not only in the Latin American context, which I shall explore in the following sections. First, such theories do not fully explore the political dimension of the indigenous identity and how this translates into a specific relation with land. In particular, land plays a crucial role in mobilizing demands for justice which are not merely about land but about settler colonialism. They fail to appreciate the broader role that land plays in the formulation of demands by indigenous peoples because of their account of community. For instance, Kolers's theory rests on the idea that disputes over territory are not fights "just for a piece of land, but for [the] ability [of a community] to

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[87] *ibid.*, 87.

[88] *ibid.*, 80.

[89] *ibid.*

be who they are and live as they 'always' have".[90] Territorial rights are about the right "to manifest one's ethnogeography – to have one's ethnogeography made viable through political, legal, economic, and other institutions".[91]

Second, all community-based theories of territorial rights reduce claims over territory (including indigenous peoples' claims over land) to a claim for jurisdictional identity. This applies also to Moore's account, which sought to be distinctive in that it relied on the political (rather than the cultural) dimension of the claims raised by communities when it comes to territory. Although Moore was right in pointing out that Kolers and Miller essentially approached territorial disputes from the ground of culture, she missed how this translates into collapsing claims about territorial rights into territorial jurisdiction. Quite the contrary, she endorsed a similar view, which reduced territorial rights (and territorial disputes) to conflicts over the jurisdiction over a territory. As she put it, territorial rights amount to "the right of a group to control (or possibly share with other groups in controlling) the legal system of a political and juridical territory".[92] Like Kolers and Miller, Moore's definition of territorial rights put at the centre of territorial rights jurisdictional authority and control.

In this respect, community-based theories of territory are not so different from statist accounts; they all assume that demands around land are always about authority over a territory. This assumption is particularly problematic when it comes to the case of indigenous communities, which is a central example in community-based theories of territory because such theories miss the full political nature of indigenous peoples' claims over land – a nature which does not necessarily amount to claiming jurisdictional authority over a portion of land.

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[90] Kolers, *Land, Conflict, and Justice,* 61.

[91] *ibid.*, 67.

[92] Moore, *A Political Theory of Territory,* 36.

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This is particularly clear in Kolers's account of the territorial conflict between indigenous peoples and the settler state. Kolers recognised that indigenous peoples have a specific ontology of land which differs from the one shared by the majority of the population within the settler state. He also acknowledged the history of oppression and the imbalance of power characterising the relationship between indigenous peoples and the settler state.[93] Even so, he still reduced indigenous peoples' claims over territory to claims about territorial authority over land. For him, indigenous peoples were the prime example of how claims about territorial jurisdiction can (and should) be separated from claims about sovereign statehood.[94]

I shall further explore these problems in the following section by looking at the Latin American context. This context is of course quite peculiar; however, at the same time, it shows the flaws of existing community-based theories of territory which seek to provide a universal framework for understanding territorial claims. In greater detail, the case of the Latin American context shows that the community-based theories of territory suffer from the same problem as it is identified in Chapter 3 in mainstream multicultural political theory. In Chapter 3 I use the case of Marichuy in order to shed light on the claims raised by indigenous peoples, the examples which I shall draw on in the following section are intended to show that claims for territory are not about the intention for the control over land and its role as a constitutive elements of ethnic groups, but rather about redressing historical and ongoing injustices.

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[93] Kolers, *Land, Conflict, and Justice*, 16.

[94] *ibid*, 30.

1.3. The Latin American Experience

Political theories of territory are formulated with a particular context in mind, one in which there are territorial disputes between different national or ethnic minorities with competing claims of authority over the same territory. When settler colonialism is considered by political theorists of territory, the context is usually the North American, Canadian or Australian experience. In these contexts, where indigenous peoples live in clearly demarcated territories, including reservations, it makes sense to seek to determine what constitutes a territorial right and what entity can claim territorial rights. However, in Latin American countries which are settler colonial states such as Mexico, indigenous communities are located either in rainforests or deserts, in municipalities within a state of the federation, or even in neighbourhoods in cities. It should be noted that the Latin American 'experience' is not unique in itself, but rather it shows another angle of a dynamic which takes place in other parts of the world.

1.3.2. The Role of Land in the Making of the Indigenous Identity

One of the issues which is particularly evident is supersession. Jung described this as "land that was once forcibly taken from indigenous peoples [and] has since been put to other uses" and this effectively means that returning it implies taking it from someone else.[95] Jung also explained that "[t]he Mexican Revolution enshrined the peasant at the heart of the Mexican nation, and of rural politics, for most of the twentieth century".[96] As a result, indigenous people framed for almost a hundred years the terms of participation around the

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[95] Jung, *The Moral Force of Indigenous Politics*, 241.

[96] *ibid.*, 145.

language of class struggle and it was not until the 1980s that they started to use the indigenous identity as a platform and to expand the terms of struggle beyond such language.[97]

The lack of defined spaces such as reservations and the specific history of indigenous identity are the main differences with the kind of scenario that political theorists of territory often have in mind when they focus on indigenous peoples and settler colonial contexts. Nonetheless, the relevance of highlighting these differences lies in showing how the meaning that land has for indigenous peoples varies from one settler colonial context to another. In the Latin American context, struggles over land are struggles against the endurance of settler colonial injustice.

1.3.3. Land and the Demands for Justice

When the Zapatista uprising took place in 1994, the slogan *La tierra es de quien la trabaja*, which roughly translates as 'The land belongs to those who work it', was echoed throughout the media and reached out to many supporters of the idea and the movement not only in Mexico but also across the world. The appeal of that slogan cannot be underestimated in a world in which indigenous people are not the only ones to suffer from dispossession. The Zapatista movement placed at the centre of its demands not only the bond of the indigenous communities with their land, but also the way in which NAFTA, a trade agreement between Canada, the US and Mexico, meant the dissolution of the legal mechanisms which allowed indigenous people in Mexico to own the land collectively.

Jung said that one of the key demands of the Zapatista platform since its beginnings in the early 1990s had been for Mexico to leave the regional integration mechanism as the

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[97] *ibid.*, 146.

Zapatistas saw this agreement as the expression of neoliberal economic policies and they worried that privatization posed a threat "to the capacity of indigenous people to maintain their cultural distinctiveness".[98]

In Mexico, the history of the privatization of the land is one full of reversals; its most recent form can be traced back to the end of the Mexican revolution in 1917 when peasants were awarded the recognition of collective lands known as *ejidos*. However, as Jung observed, the *ejido* system was a way in which the country "reverted to colonial indigenous policies".[99] The provision of communal property was in line with attempts to recover the indigenous identity and the whole identity of the nation. Jung commented that the new Constitution included an article on the recognition of communal property, Article 27, which was drafted by one of the main proponents of the new nation-state project and indigenismo: Andrés Molina Enríquez.[100]

Article 27 weaved together (i) a national identity built around an idealization of the indigenous past, (ii) a point of connection with this past by means of the transformation of peasants into indigenous people, and (iii) a symbol (land) of a new chapter in the relationship between the state and the less well-off. This allowed the Mexican state to claim a new point in its relationship with the indigenous communities, one in which historical injustices had allegedly been acknowledged. However, in this way the Mexican state not only closed the door to future demands for justice on the grounds of historical injustices, but also narrowed the terms in which demands for justice could be framed because, along with imposing the indigenous identity over the well-off, it undermined the opportunity for these communities to

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[98] *ibid.*, 205-206.

[99] *ibid.*, 88.

[100] *ibid.*

resort to the language of labour and re-distribution to frame their demands. Jung therefore commented that "this realignment, from peasant to indigenous identity, marked an important turning point for Mexican politics, one that would transform the scope and strategies of rural activists".[101]

Despite the imposition of the indigenous identity as the main tool to constrain the terms of the demands for justice, indigenous people in Mexico eventually started to frame their demands around the issue of land. Just as the civil rights movement was taking place in the US, in Mexico several indigenous organizations which had remained in the background for decades started to lead movements across the country by issuing demands for justice centred around the issue of land. In other words, even though the Mexican state wanted to silence peasants with the recognition of communal property and the imposition of the indigenous identity, the very terms of this identity started to be used by the indigenous communities to mobilize their demands for justice.

Jung commented that this became particularly evident with the reform of Article 27 in the 1990s because not only was communal property no longer protected under the constitution, but subsequent changes to Articles 18 and 21 of the Agrarian Reform Law allowed the formation of committees to which indigenous peoples and "landless peasants" could submit land claims.[102]

The fact that in Mexico the provision of rights to communal property came with a change in the content of the identity for peasants and a restriction of the terms available to them to voice their demands shows how the indigenous identity became an alternative source of political mobilization for those once labelled peasants. Indigenous people did not passively

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[101] *ibid.*, 3.

[102] *ibid.*, 6.

adopt the 'new content' (or terms) of the imposed indigenous identity, but instead they made it theirs and used it to advance their demands for justice. Jung insightfully illustrated this process through the case of two indigenous organizations, the Union of Agricultural Workers and Peasants (CIOAC) and the Front of the Indigenous People (FIPI), which exemplified the way in which the indigenous identity became recognised and empowered the movement of the disposed in Mexico. This identity essentially offered an "alternative type of politics to combat the problems facing indigenous people".[103]

Jung also observed that "the indigenous identity expands the arena of contestation" and this opened up a number of possible alliances and a reframing of the "demands for land and access to resources" around the terms of the indigenous right to self-determination.[104]

As a result, alliances were made and support for the indigenous struggle was not limited only to groups within the country. The indigenous people's struggle for their right of self-determination drew support from all sorts of international organizations and thus eventually both the territorial and the cultural rights of the indigenous people were recognised in the Labor Organization Convention 169 (ILO 169).[105] Given that Mexico, like many other developed and developing countries, had signed Convention 169 (Indigenous and Tribal Peoples Convention, 1989), this opened new opportunities and spaces for indigenous people

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[103] *ibid.*, 7.

[104] *ibid.*, 9.

[105] *ibid.*, 8.

to put forward their land claims.[106] Jung poignantly commented on this by quoting an indigenous activist whom she had interviewed: "one needs to find the terms of the struggle".[107]

The case of the Zapatistas and other indigenous activists in Mexico therefore shows two intertwined things. First, the process leading to the indigenous identity being used as a platform, which in turn enabled collective mobilization around demands for justice, not only took time but was also in constant revision. In other words, whilst the category of 'indigenous peoples' in Mexico was one imposed on oppressed groups, it was also embraced by those groups and used to mobilize their demands for justice, even though this was a process which took time to take shape. Second, the case of the Zapatistas and other indigenous activists shows that such demands for justice were often framed around land. This was because, given that the category of indigenous peoples was imposed on oppressed groups by the settler state, it ends up opening some ways in which those groups can frame their demands for justice while closing others. To put it another way, the reason why land provides a political language with which to frame demands for justice is because land offers a way for oppressed groups to

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[106] The International Labour Organization (ILO) as an agency of the United Nations has as its main task to improve the labouring and living conditions of the citizens of member states and this includes the indigenous peoples. ILO 69 specifically recognizes the indigenous right to self-determination. The 44 articles cover a number of aspects, all of them revolving around the idea of indigenous peoples having control over their institutions. For an interesting description of ILO 69 see, ILO, available at https://indigenousfoundations.arts.ubc.ca/ilo_convention_169/

[107] *ibid.*, 9.

present an array of claims designed to point out the continuation of grievances which could be traced back in history.

What this shows is that once a group is constructed as an indigenous people, land becomes the symbol of a loss and provides the ideal language in which to frame demands for justice which are centred on historical and ongoing grievances against the settler-colonial state. Another important feature of this dynamic is what can be described as 'the politics of escalation'. Escalation here refers to a rapid increase in something. In this case, I use escalation to describe the way in which indigenous peoples in Latin American contexts such as Mexico framed each grievance as one which related to land and in consequence claims about land quickly escalated into wider claims of justice against the settler colonial state.

To put it another way, although indigenous peoples in Latin American contexts might centre their demands for justice on land, those demands are not necessarily about authority over a territory. Instead, they are about ongoing grievances which can often be traced back to a history of oppression. It is this context that enables the kinds of demand for justice that such groups formulate. This does not mean that claims about natural resources, for instance, are not about land, but only that, unlike what community-based theories of territory rights presume, they are not necessarily about authority over a specific territory. In the contexts of settler-colonialism in Latin America, claims about natural resources and land should be seen as claims for justice against the settler colonial state.

1.4. The Mobilization of the Indigenous Demands for Justice

In Latin America, there are several cases which can be used to illustrate this dynamic. One particularly illustrative case is the so-called Cochabamba Water War which took place in

the capital of Bolivia between December 1999 and April 2000. Bolivia is not only one of the poorest countries in Latin America but also it is characterized by a high level of inequality. As happens in Latin American countries, access to both private and public goods is already more difficult than in developed countries especially since governments often operate with large economic deficits and this causes higher prices of private goods and an inadequate infrastructure of public goods.

Likewise, this includes a long tradition of resource management by what Thomas Perreault called "grassroots users' groups".[108] In addition, developing countries on a regular basis need to ask for loans from international financial institutions such as the International Monetary Fund or the World Bank. Both of these institutions have a number of supporters, not only among their own ranks, but also in – external – government agencies and transnational development agencies such as the United Nations Development Program (UNDP). Consequently, whenever a developing country asks for a loan, the loan is conditional on several reforms which the developing country in question has to implement. In the case of Bolivia, there is an extensive history of the involvement of all these development and aid agencies in the management of water.[109]

In the Bolivian city of Cochabamba, access to water at the end of the 1990s was not only severely restricted due to the insufficient level of infrastructure, but it was also of a very poor quality, which triggered serious public health concerns. As part of a loan, it was agreed by the Bolivian authorities to privatize water in the city of Cochabamba. The rationale behind this move was that the market would be able to solve every asymmetry; thus, at an accessible

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[108] Thomas Perreault, From the Guerra Del Agua to the Guerra Del Gas: Resource Governance, Neoliberalism and Popular Protest in Bolivia, *Antipode 38*(1) (2006): 152.

[109] *ibid.*

price the quality of water and access to it would improve. It is important to note that this indicates a shift in how resources are perceived. Perreault noted that as part of this "accumulation by dispossession" rationale, resources such as water stop being conceived as public goods, "but rather as scarce commodities whose access for consumers is mediated by the market".[110]

Immediately after privatization, the neoliberal dream turned into a nightmare in that not only did access to water fail to be provided but also prices were impossible for the inhabitants of Cochabamba, most of whom were indigenous, to afford, leading to a situation in which many people even faced the possibility of eviction to pay the incurred debt. Only a year after privatization, the Bolivian authorities were forced to reverse the policy and this was seen as a victory not only against neoliberal policies but mostly against dispossession of land and the elimination of the native.

At first glance, this scenario was simply about a developing country implementing neoliberal policies in order to comply with the requirements imposed by international financial institutions. For the inhabitants of Cochabamba, however, most of them indigenous, it was just another chapter in the long history of the dispossession and oppression of the indigenous peoples. The event, which included a series of confrontations, came to be known as the Cochabamba Water War.

Although Mexico is one of the countries of the world with the largest population of indigenous people, Bolivia is one of the few exceptions because the indigenous people make up almost half of the country's entire population.[111] Despite this, indigenous people in Bolivia

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[110] *ibid.*

[111] US Library of Congress. Congressional Research Service. *Indigenous Peoples in Latin America: Statistical Information*, by Carla Davis-Castro, R46225 (2020): 4.

have endured the same legacy of oppression at the hands of the settler society, so the victory of a former indigenous farmer, Evo Morales, in the 2006 presidential election was seen as a major opportunity to both address this legacy of oppression and also overcome the racial divide. For scholars such as Diego von Vacano, Morales's government "was an historical watershed event" because of the resentment against indigenous groups.[112]

Until his removal from office in 2019, Morales's administration was perceived as a turning point in Bolivia's history on the one hand because his mere presence at the top of the political system for over a decade was a challenge to the negative stereotypes against indigenous people. On the other hand, the implementation of Morales's socialist-driven policies was not seen as a continuation of the efforts designed to achieve the dispossession of the land of the indigenous people as was, instead, the case with the Cochabamba Water War.

Just as in Mexico, in Bolivia the settler state had played a major role in the making of the indigenous identity and thus the legacy of oppression is one which also takes the shape, as with most settler colonial contexts, of dispossession. Given that dispossession has been mainly possible through the imposition of the indigenous identity on marginalized groups, the privatization of water, although being in appearance only a matter about resources, quickly escalated into demands for justice against the settler-colonial state. In other words, what was supposed to be only a mobilization of the indigenous people against the privatization of water quickly became a platform from which broader demands for justice were advanced.

It should be noted that the water war in Cochabamba in 2000 was not the only dispute about resources that quickly became a challenge to the settler state. Spronk and Webber showed that other cases took place in the following years, specifically a water war in La Paz-

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[112] Diego von Vacano, *The Color of Citizenship: Race, Modernity and Latin American / Hispanic Political Thought*, Oxford: Oxford University Press (2012): 162.

El Alto in 2005 and the gas wars in 2003.[113] The common factor in these cases is that each showed "a clear link between accumulated popular grievances and an identifiable set of government policies that was able to sustain coalitions of indigenous movements, workers, peasants, and the urban poor around a unitary national project".[114]

What this shows is the political nature of the indigenous identity in the Latin American settler colonial context, which can be traced back to the settler state and its imposition of indigenous identity as a category on oppressed groups but also allows those oppressed groups to draw a link between historical injustices and ongoing grievances. In this sense, rather than being limited to disputes over natural resources, the demands made by these movements represent what Sprong and Webber described as "the culmination of a rising indigenous radicalism",[115] which sheds light on the oppression which defines the reality for those framed under the indigenous identity.

It should be noted that cities such as Cochabamba, La Paz and El Alto have a high population of indigenous people. Sian Lazar pointed out that in the case of El Alto, the strong presence of indigenous peoples and their relationship with the settler state has given way to specific types of organization and memberships: *vecindad* (residence), *sindicalismo* (trade union) and *pueblo* ("a quasi-identity based upon attachment to one's birth village").[116] Like the Cochabamba Water War, in El Alto what started as a dispute over access to resources

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[113] Susan Spronk and Jeffrey R. Webber, Struggles against Accumulation by Dispossession in Bolivia, *Latin American Perspectives, 34*(2) (2007): 32.

[114] *ibid.*

[115] *ibid.*

[116] Sian Lazar, El Alto, Ciudad Rebelde: Organisational Bases for Revolt, *Bulletin of Latin American Research, 25*(2) (2006): 186.

quickly escalated into something broader, namely a series of demonstrations aimed at challenging the relationship with the settler state.

This escalation into demands for justice against the settler-colonial state was further intensified by the reaction from the Bolivian government which decided to deploy the army to crush the uprising, resulting in the killing of dozens of protesters. For this reason, Perreault argued that resource struggles in Bolivia need to be seen "within the historical context of foreign colonial and neocolonial projects" especially because they took place in a political economy which operated around the axis of ethnic stratification that can be traced back to colonial rule and that has made one of its elements *par excellence* the "mobilization and revolt" of groups such as the indigenous people.[117] A key element in this mobilization and revolt was that much like the Zapatistas in Mexico, the indigenous peasants in Bolivia also presented their demands in opposition to the neoliberal policies advanced by the government. This alternative project was centred on the problems with private property and rights over resources and on a different communal approach to land and resources as an option more in line not only with the principles of the indigenous communities but also with those endorsed by others participating in the struggle against the privatization of natural resources.[118]

What this shows is that the mobilization and revolt also aimed at securing the support of other groups by presenting the struggle along the lines of what Perreault described as a "moral economy of water rights". The relevance of this strategy is that it sought to capitalize on the connection between historical and ongoing grievances. In turn this link enabled the escalation of the demands of indigenous peoples because an act which seemed isolated at first sight, such as the privatization of water, only served as a reminder of the legacy of oppression

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[117] Perreault, 'From the Guerra Del Agua to the Guerra Del Gas, 155.

[118] *ibid.,* 159.

upon which the present political economy of the country was built by relying on the imposition of the category of 'indigenous people'. Perreault reported that with the passage of time and the violent reaction from the Bolivian government, the tone of the protests "shifted from their original position" and eventually demands which had been limited to access to resources quickly became a "set of demands for greater democratization based on new forms of social organization".[119]

In addition to illustrating how the mobilization of demands over natural resources can quickly escalate into demands for justice against the settler-colonial state, this case shows how the framing of these demands enabled indigenous people to draw support from other groups. Likewise, the framing of demands, their mobilization and the support from other groups give indigenous people something which otherwise would not be possible: the opportunity to challenge the settler state. Given the context, the indigenous identity shapes the ways in which oppressed groups formulate their demands for justice by opening some frames and closing others.

Territory in this sense plays an important role in the formulation of demands for justice in another way. For scholars such as Juan Manuel Arbona, cities such as El Alto are spaces in which the very – neoliberal – policies have defined not only the city itself but also the articulation of identities which push "to the surface the demands for an alternative political order".[120] An outcome of these policies is the concentration of marginalised subjects in specific spaces. Arbona argued that the articulation of a different future is "rooted in the histories and memories" of identities and thus, under such contexts, spaces which concentrate

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[119] *ibid.*, 163.

[120] Juan Manuel Arbona, Neo-liberal ruptures: Local political entities and neighbourhood networks in El Alto, Bolivia, *Geoforum 38*1) (2007): 128.

oppressed groups also become "articulators of conflict".[121] This articulation is particularly useful when the oppressed groups are left without other ways in which they can challenge the settler state.

Consider the case of the indigenous Tzotzil, one of the three main Mayan indigenous groups in the southern Mexican state of Chiapas. The Tzotzil have for decades endured territorial disputes with neighbouring indigenous communities and in 1992 this resulted in some of their members being jailed despite the lack of evidence against them. On their way to demand the liberation of those jailed, members of the community decided to name their movement *Las Abejas* and from that point on claims about natural resources began to escalate into bigger demands centred on the enduring condition of oppression. This became clearer with the uprising of the Zapatistas in 1994, also in the state of Chiapas. *Las Abejas* joined the Zapatistas in denouncing historical and ongoing grievances but unlike the Zapatistas, this organization made clear their pacifist approach towards conflict resolution. Despite this, in 1997, the Mexican army massacred dozens of unarmed innocent people, including women and children, while a religious ceremony was taking place. Ever since that incident, Tzotzil activists have mobilized around their indigenous identity to frame their demands for justice.

Another illustrative example is provided by the case of Lupita, a case which I have already discussed several times throughout the thesis and which is the subject of the documentary film *Lupita / Lupita Que retiemble la tierra*, which tells the story of a survivor of the massacre in Acteal, Lupita, who was only ten years old when the event in which she lost all her close family took place. At the same time, it tells the story of how for over twenty years Lupita has been looking for justice through her indigenous identity which allows her to link historical grievances such as the massacre with ongoing grievances such as dispossession

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[121] *ibid.*, 130-131.

of the land. The documentary shows how Lupita's role as a representative of her community was due to her personal tragedy, which is what enables her to speak about the injustices which continue to take place and which are seen as a continuation of those which took place in colonial times. Lupita's story enables us to see that land effectively provides a language with which to frame demands for justice, but, *pace* community-based theories of territory, these are not necessarily about authority over a territory. They are instead centred on historical and ongoing grievances.

1.5. The case for disaggregating territorial rights in settler colonial contexts

As noted in the first section of this chapter, the bond between a group and the land is what allows community-based theories of territory to determine in a territorial dispute the party with the stronger claim over the territory in question. However, as the example of the Zapatistas shows, there is an aspect which political theories of territory, including community-based ones, miss regarding the bond between indigenous communities and the land. This is the way in which land, and, above all, its dispossession, shapes the terms in which indigenous people frame their injustices and mobilize against the settler-state.

In other words, my argument does not attempt to disregard the way a group of people forms a bond over a particular territory. Instead, it seeks to enrich our understanding of what that bond could be and why it can be powerful. First, the case of indigenous peoples in Latin America shows that that bond can be formed against the backdrop of the legacy of domination. Second, in contexts where the devolution of land is extremely complicated for a variety of circumstances, that bond should be understood differently from how it is traditionally conceived by community-based theories of territory. In other words, such a bond

in settler colonial contexts, especially in Latin America, can serve a purpose other than pondering the strength of claims for territorial rights: it can be used to challenge settler colonialism.

Moreover, community-based theories of territory derive from the different types of territorial rights, and specifically from the right to jurisdictional authority, as they interpret all territorial disputes as being about jurisdictional authority. However, the cases discussed in the previous section show that in some settler colonial contexts, a group, or in this case an indigenous community, does not necessarily seek control over a portion of the territory when it makes a land claim. In these contexts, territorial disputes do not necessarily involve claims about jurisdiction, but are about marginalised groups which perceive not having access to natural resources or being further excluded from the control over these through, for example, their privatisation, as a continuation of colonialism.

One of the potential problems with having territorial rights derived from jurisdictional authority is that indigenous communities are likely to remain in a position in which they will still be excluded from, for instance, access to natural resources. In contexts in which indigenous communities are scattered across the country and many of them live in cities, territorial rights in the form of jurisdictional autonomy will not be necessarily empowering for indigenous communities. Following the argument which I develop in Chapter 3, in contexts of settler colonialism claims which might seem to be about cultural goods (such as land) are always about demands for historical and ongoing injustice, which means that group rights, or in this case territorial rights, should aim to redress such enduring injustices. Similarly, in Chapter 3 I also argue that the case for conceiving of indigenous peoples' self-determination as non-domination rests on the fact that such a model is better equipped to enable indigenous people to hold the settler state to account. The disaggregation of territorial

rights can play the same role. Rather than granting indigenous peoples jurisdictional control over their land through a one-off decision, the devolution of specific powers has the potential to be a more effective response to enduring historical injustice, especially when that devolution is open to be renegotiated over time through the input of indigenous peoples.

Disaggregating territorial rights can also raise another potential problem implicit in the deployment of the indigenous identity and the language of land. The problem in question is the fact that settler colonialism, due to its capacity to "eliminate the native"[122] through the manipulation of the indigenous identity, can further exclude indigenous communities from, for instance, having access to natural resources. Jung commented that in Mexico, the Mexican state has managed to accommodate "demands for local autonomy and collective rights" without altering or posing a danger to the neoliberal economic structure.[123] This is because the indigenous identity offers a platform from which to advance demands for justice, but at the same time, and particularly when combined with the language of land, such demands, as the politics of escalation show, end up being constrained.

The construction and deployment of the indigenous political identity is a strategic victory, but it also poses several limitations which are exploited by the settler state. Jung explained how in the case of Mexico, this has resulted in no improvement in rural well-being.[124] This highlights the fact that the provision of specific powers can therefore act as a mechanism for challenging settler colonialism. The failure to disaggregate territorial rights is

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[122] For a detailed account of the role of the settler state in the making and manipulation of the indigenous identity see, for instance, Wolfe, *Settler Colonialism and the Elimination of the Native*, and Veracini, *Settler Colonialism*.

[123] Jung, *The Moral Force of Indigenous Politics*, 231.

[124] *ibid.*, 232.

likely to increase these limitations, effectively paving the way for forms of domination such as "allowing local power brokers to use culture as a weapon against internal dissent".[125]

The relevance of the disaggregation of territorial rights lies in its potential to open the door to new claims about land which indigenous peoples might have in the future, rather than to close them. Contrary to the full provision of territorial jurisdiction, giving indigenous peoples specific powers which are always open to be renegotiated is a process that can enable a constant interaction between the state and indigenous peoples and allow indigenous peoples to keep contesting the settler state. In this way, indigenous peoples will be able to keep mobilizing around land over time, whereas a full jurisdictional authority over land will put indigenous peoples in the position of being unable to further call the settler state to account and raise new demands for justice. This devolution is more responsive to the fact that indigenous people challenge forms of domination by contesting "the terms of their incorporation, seeking to transform conceptions of citizenship that have excluded them from social, political and economic participation".[126]

Disaggregating territorial rights increases the flexibility which indigenous peoples have to make a legitimate claim about land without having to show that they also wish to have jurisdictional authority or that they can indeed effectively exercise it. Territorial rights in settler societies should ensure that marginalised groups are able to challenge the structures which keep them in a condition of domination, and thus should ensure their political, social and economic participation. Contrary to a non-disaggregated formulation of territorial rights which is likely to increase the vulnerability of the indigenous identity, disaggregation seeks to ensure the inclusion of those groups in areas from where they have been historically excluded

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[125] *ibid.*, 231.

[126] *ibid.*, 232.

and is more able to take into account the specificity of claims about land in settler colonial contexts such as Mexico.

Conclusion

In this chapter, I have engaged with community-based theories of territory. I have argued that, as compelling as they might be, such theories neglect the political dimension of the indigenous identity and thus how, in settler colonial contexts such as Latin America, claims about land advanced by indigenous peoples are not mainly or only about control over territory – they are about challenging the settler-state. I have also suggested that the political nature of the indigenous identity and the flexible role which land plays in the formulation of indigenous peoples' demands for justice in the Latin American context are better recognised when we disaggregate territorial rights. This means that, unlike community-based theories of territory, we should not presume that (i) only communities which seek to and are capable of exercising jurisdictional authority over a territory can make claims over that territory, and (ii) jurisdictional authority is the foundational territorial right from which all other territorial rights stem. Disaggregating territorial rights can, instead, ensure the potential of the indigenous identity to act as a platform for the mobilization of the demands for justice and also challenge the settler colonialism which advanced the case for disaggregating territorial rights in settler colonial contexts. To further explore this point, Chapter 2 reconstructs the work of two Mexican political thinkers: Andrés Molina Enríquez, a leading proponent of indigenismo, and Héctor Díaz-Polanco, a very influential critic of indigenismo.

2. Territorial Rights and Land in Mexican Political Thought

Abstract.

This chapter presents a review of two accounts of territorial rights by Mexican political thinkers. The first account to be reviewed is that put forward Andrés Molina Enríquez and the second is the one advanced by Héctor Díaz-Polanco. The chapter discusses how the two accounts approached land as something which enables indigenous people either to achieve assimilation to the settler society or to have access to the terms of their demands for justice. The chapter focuses on the way in which Díaz-Polanco's account advances the point that territorial rights should be provided when indigenous communities are organised around democratic principles and when the provision of territorial rights are likely to enhance their participation.

"For the rest, as the history of the autonomic processes teaches, the conquest of self-government and other rights requires that ethnic communities become social subjects, political force and a motor impulse of the national sphere. In short, it supposes an accumulation of political force on the part of the corresponding ethnic-national groups. Since autonomy is the result of a socio-political negotiation, its realization has historically supposed that the ethnic-national part involved also has the necessary political force that derives from its organization and mobilization."

HÉCTOR DÍAZ-POLANCO,
Autonomía Regional: La Autodeterminación de los Pueblos Indios (2011)

Introduction

In multicultural political theory, community-based theories of territory focus on the role which land plays in the culture of a cultural group in virtue of the attachment between that

group and a territory. It is often such an attachment that grounds the justification for a community's territorial rights over a specific place. As I shall show in this chapter, in Mexican political thought, the justification for territorial rights is instead based on the role which land plays in negotiating the terms of the relationship between indigenous peoples and the settler state. I shall focus on two accounts. The first is the one put forward by one of the main advocates of indigenismo, Andrés Molina Enriquez. The second is that of Héctor Díaz-Polanco, who criticised the position of indigenistas such as Molina Enriquez on the issue of territorial rights. Díaz-Polanco's critique was based on the idea that the provision of territorial rights should not be granted with the aim of promoting the assimilation of indigenous peoples into the wider settler society (which indigenistas argued for), but rather it should be a tool to enhance indigenous peoples' autonomy so that they can be in a position to develop and advance their demands for justice.

The chapter unfolds as follows. The first section discusses Molina Enríquez's account and the second section focuses on Díaz-Polanco's account. In the third section, I shall recap the main differences between the two accounts and stress how they both offer insights into the normative values of land which are neglected by the majority of community-based theories of territory in multicultural political theory.

2.1. The political thought of Molina Enríquez: *latifundia* and the assimilation of indigenous peoples

Andrés Molina Enríquez (1868-1940) is still regarded as one of the most influential thinkers of the Mexican Revolution (1910-1917) because of his prominent role in the drafting

of Article 27 of the Mexican Constitution.[127] Article 27 is often regarded as one that states that "the nation shall at all times have the right to impose on private property the modalities that dictate the public interest" and also that "direct ownership (dominio) of all natural resources corresponds to the nation".[128] This article has triggered several controversies and rebellions. The most notorious of these rebellions was the 1994 uprising, which came as a response to a reform of Article 27 which allowed communal property to be sold by individual parties, effectively changing the nature of the article which originally recognised the way

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[127] Molina Enriquez wrote the first draft of article 27 of the Mexican constitution and the main ideas of his seminal work, Los grandes problemas nacionales, on natural resources, private property and communal property became the most important elements in the constitution as they highlighted the distinction between this constitution and the body of laws that preceded the Mexican revolution. For an interesting account of the role that his notions on property and mestizaje played in the drafting of article 27 of the Mexican constitution see Óscar Cuevas Murillo, El Licenciado Andrés Molina Enríquez y su Influencia en la Constitutión de 1917, Revista Mexicana de Historia del Derecho, XXXVI (2017): 151-179.

[128] Constitución Política de los Estados Unidos Mexicanos, art. 27, § 30-31. Available at https://www.diputados.gob.mx/LeyesBiblio/pdf/CPEUM.pdf

indigenous peoples organize their communities in the country.[129] Unsurprisingly then, Molina Enríquez's name is often accompanied by titles such as 'Father of the Agrarian Reform' and 'Mexican Land Reformer'.[130]

Molina Enríquez was a man who wore many hats; he was a notary, a lawyer and an intellectual, and his work was driven by the ideal of equality, or at least of a specific understanding of equality, as I shall explain. During his lifetime, land in Mexico was divided in what are known as *latifundia*, which amounts to a system in which large portions of land are privately owned. The two main characteristics of this system are (i) that land is divided according to economic sectors and (ii) that the workforce is often recruited by force. As I shall show in what follows, the similarities between the emergence and operation of *latifundia* in ancient Rome and in Mexico seem to have played a role in the way in which Molina Enríquez perceived *haciendas* as modern versions of ancient Roman agricultural estates.

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[129] Article 27 in the Mexican constitution is the one regarding the authority that the state has over its territory. As such, this Article has played a crucial role in the claims raised by indigenous peoples. For an interesting interpretation of Article 27 as a legal instrument used by the state to claim sovereignty see Elisur Arteaga Nava, *La Constitución Mexicana Comentada por Maquiavelo,* Mexico City: Siglo Veintiuno Editores (2008). For an interesting account of the controversy surrounding the reform of Article 27 and the negotiations between the Zapatistas and the Mexican state, see Héctor Díaz-Polanco, *La Rebelión Zapatistas y la Autonomía*, Mexico City: Siglo Veintiuno Editores (2011).

[130] Stanley Shadle, *Andres Molina Enriquez: Mexican Land Reformer of the Revolutionary Era,* Tucson: University of Arizona Press (1994).

Latifundia as a system of land management can be traced back to ancient Mediterranean civilizations but was most effectively operated by the Roman Empire and eventually established itself in the medieval period in Italy and Spain. Laurence Roudart and Marcel Mazoyer claimed out that *latifundia* emerged in the fifth century BC in Rome but within two centuries they had become an essential element of land management as a consequence of the huge areas of conquered and expropriated territories which were declared to be *ager publicus*.[131] It was such an essential element of the administrative structure of the Roman empire because the Roman state needed to raise money to finance its wars and thus "rented [out] a greater part of the *ager publicus*".[132] As a result, a number of large agricultural estates called *latifundia* became such a recurrent trait that public officials were under pressure to increase the number of military campaigns so that more land could be acquired. Rich citizens eventually became owners of *ager publicus* and this resulted in a number of abuses ranging from not paying taxes, poor labouring conditions for slaves, and even (illegal) land appropriation.[133]

Because property rights in Rome were individual, *latifundia* resulted in the control of large portions of the territory in the hands of a few. This led to the conglomeration of agricultural production and forced those peasants living close to a *latifundium* to leave the countryside. Eventually, the problem of food supplies becoming increasingly dependent on the provinces, along with other problems of large estates, paved the way for an agrarian law

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[131] Laurence Roudart and Marcel Mazoyer, Large-Scale Land Acquisitions: a Historical Perspective, in *Large-Scale Land Acquisitions: Focus on South-East Asia*, Christophe Gironde, Christophe Golay and Peter Messerli (eds). Leiden/Boston: Brill Nijhoff (2015): 5.

[132] *ibid*.

[133] *ibid*., 6.

which limited the amount, but not the extent, of *ager publicus* and required the employment of peasants in addition to the exploitation of slaves.[134] In Italy, *latifondi* managed to remain in place in Sicily until 1950. John Paul Russo reported that in 1926, around 1055 *latifondi* remained operational, but due to peasant occupation of the land as well as a series of land reforms, *latifondi* in Italy eventually officially came to an end.

In Mexico, the *latifundium* took the form of a *hacienda*. *Haciendas* formed the main economic sectors of the country, such as farming and mining, but following the prevalent characteristics of this type of system, peasants worked under terrible conditions and often it was impossible for them to leave these places because they were constantly in debt due to their low earnings. The unjust nature of the system fueled the anger of the people and became one of the main sources of grievance during the Mexican revolution. Molina Enríquez was at the centre of this key moment in the history of Mexico. In 1909, one year before the revolution started, Molina Enríquez published his most influential work, *Los Grandes Problemas Nacionales* ('The Great National Problems'). In this work, he set out several relevant ideas, such as (i) the need to put indigenous peoples at the centre of a new national state-project and (ii) the plan to expropriate land from the *haciendas*. This is the work which I shall use to review Molina Enríquez's account in the following sub-section, mainly because, as scholars such as Claudio Lomnitz have noted, both the relevance and ingenuity of Molina Enríquez's work lie in how he managed to find a balance between the issue of the distribution

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[134] *ibid.*, 7.

of land and the justification of "the formation of an historical subject of Mexicanness: the *mestizo*".[135]

2.1.1. The idea of land as an enabler of civilization in the thinking of Molina Enríquez

For Molina Enríquez, land played an important role in the life of indigenous communities. He argued that land was not being used to its fullest potential. In his critique of the usage of land in *haciendas*, he observed that under a different model which integrates indigenous people and mestizo ranchers, it would be them"others would be "making the national fortune".[136] Although it is possible that Molina Enríquez was influenced by John Locke's political thought, there is simply not enough evidence to sustain this claim. However, the idea of efficiency is prominent in his work along with references to the use of land in

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[135] Claudio Lomnitz, 'Once Tesis Acerca de Andrés Molina Enríquez', in *En busca de Molina Enríquez: cien años de Los grandes problemas nacionales*, Emilio Kourí (ed.). Mexico City: El Colegio de México (2009): 65.

[136] Molina Enríquez, *Los Grandes Problemas Nacionales,* Mexico City: INEHRM (2016): 134.

countries such as England and France, and occasional reference to the works of prominent economists such as M. H. Passy and Frédéric Lullin de Châteauvieux.[137]

Molina Enríquez said that to make land economically productive, it should be transferred from *haciendas* to *rancherías* (private land in the hands of *mestizos*) and to indigenous people. In addition, indigenous communities should be allowed to continue to live according to their principles of communal property. He insisted that the devolution of land to indigenous communities was necessary both because it would improve the use of land in

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[137] Molina Enríquez's interest in the work of European thinkers was mostly driven by their notions of excess. Given that any extent of land beyond 250 hectares (250 km²) was considered too large to be used in the most efficient way possible, for Molina Enríquez the fact that *haciendas* had an average extent of 754,912 hectares (7549 km²) of land showed the problem with the distribution and ownership of land in Mexico. For a detailed account of this aspect and of the notion of excess, see Molina Enríquez, *Los Grandes Problemas Nacionales*, 134.

terms of efficiency and because it would allow indigenous communities to preserve some of their cultural elements while successfully assimilating into Mexican society.[138]

Molina Enriquez stated that the devolution and further division of land would correct the ways in which the country dealt with indigenous communities and the country's natural resources after the end of the Spanish colonial rule. It is important to note that Molina Enríquez was not a critic of colonialism; on the contrary, he regarded colonialism as ultimately a just regime. What he found deeply problematic was the way in which indigenous communities' land (and *rancherías*) had been organised after the end of Spanish colonial rule. In particular, he stressed the need to recognise that indigenous communities were organised around a principle of communal property and how the colonial regime had stripped away this distinctive trait from indigenous communities.[139]

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[138] An idea which is recurrent in the thinking of Molina Enríquez has to do with the relationship between 'evolutionary stages' and 'notion of property'. For Molina Enríquez, agrarian reform was necessary for a more fair and equal distribution of the land, but the current system in which each class and ethnic group operated with different notions of property needed to remain in place for two reasons. First, according to Molina Enríquez, it was necessary to ensure the achievement of more efficient use of land across the country. Second, he believed that this system would allow the indigenous peoples to gradually replace their current notion of the land as part of their progress in the 'evolutionary chain'. For a description of this point, and a complete chart of all the different ethnic groups in Mexico and their 'evolutionary stages' and notions of property, see Molina Enríquez, *Los Grandes Problemas Nacionales*, 134.

[139] *ibid.*, 182-184.

Molina Enríquez's stress on the distinctiveness of the indigenous identity was driven by his argument about the need to create a new identity, the *mestizo*. In particular, like many other indigenistas or scholars who became obsessed with the idea of race in the last century, Molina Enríquez conceived the indigenous as a racial category. For indigenistas, *mestizos* were an inherently superior race. In the thinking of Molina Enríquez this also meant that *mestizos* took after indigenous peoples in terms of their resilience and their capacity to adapt to work and life in any imaginable condition and harsh environment.[140] Nonetheless, it should be noted that this high regard for indigenous people was not without disinterest or completely authentic.

By praising the indigenous, the *mestizo* in turn – as the product of miscegenation (*mestizaje*) – they came to be theorized as the rightful heirs and rulers of the 'new world'. The *mestizos* were then portrayed as superior to "Europeans and Americans".[141] Certainly, as postcolonial theorists have noted, the recovery of the identity of the native and its glorification is profoundly ideological as it provides the mystical background required in the formation of the national identity of the settler society.

In particular, Molina Enríquez's argument chimes with the two complementary processes which, according to scholars of settler colonialism, take place in settler colonial contexts. The first process involves the recovery of the indigenous identity as part of an effort to construct the identity of the settler, that is, in the Mexican context, the *mestizo*. The second process has to do with making the claims advanced by indigenous peoples and the settler society equivalent. Veracini stated that the content of the indigenous identity is transferred to turn the settler into an 'indigenised' identity so as to present the claims of this one as the

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[140] *ibid.*, 411.

[141] *ibid.*

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same as those demanded by indigenous people and thus reduce the claims of the latter to those of the former.[142]

Evidence that a similar strategy was in play within Molina Enríquez's work can be found in the way in which he treated the *mestizos* and the indigenous people as the same by equating *rancherías* with indigenous communities and when he spoke favourably of the need to treat the *mestizo* as "the new ruler of the nation".[143] Although it should be noted that this perspective was shared by all indigenistas, the difference with Molina Enríquez's account lies in the way it places at the centre (i) the problem of land distribution and (ii) the need for the provision of territorial rights to ensure that indigenous communities will gradually move to notions of land ownership which would allow a better exploitation of natural resources, that is, those notions based on the idea of private ownership.

Molina Enríquez believed that the *mestizo*, with his capacity to dominate and bring others, including indigenous peoples, together as the outcome of an historical process, needed to be placed at the centre of the new system.[144] He condemned the fact that large agricultural estates were only in the hands of Criollos (those who were of sole or of mostly Spanish descent) who represented, in his eyes, a failure to miscegenate and the entrenchment of unjustified privileges of status. For him, such a monopoly constituted a continuation of the colonial structures which needed to come to an end.[145] This shows that, as Veracini argued, changes in land governance served the purpose of "making of a new man".[146] In this case the

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[142] Veracini, *The Settler Colonial Present*, 37.

[143] Molina Enríquez, *Los Grandes Problemas Nacionales*, 108.

[144] *ibid.*, 115-117.

[145] *ibid.*, 133; 138.

[146] Veracini, *Settler Colonialism*, 21-22.

'new man' who needed to be created was the *mestizo*, who in the eyes of Molina Enríquez was the rightful "new ruler of the nation".

2.1.2. Colonialism in the thinking of Molina Enríquez

Although the term 'postcolonial society' does not appear in the work of Molina Enriquez and, as already mentioned, he was a supporter of colonialism, this does not mean that the distinction between the colonial past and his contemporary Mexican society was not central to his thinking. By using the term 'postcolonial' in this discussion of his work, I want to stress how Molina Enriquez thought that Mexican society had failed to institutionally break with the colonial regime and that this failure was at the roots of the condition experienced by indigenous peoples. Let me explain this point further.

For Molina Enriquez, the problem with the continuation of colonial institutions did not lie in the fact that they were colonial, but had to do with the changed surrounding context in which these enduring institutions operated. He argued that institutions such as *haciendas* had a place in colonial times because other measures secured some rights for the indigenous peoples.[147] Molina Enríquez commented that, for instance, property law had mechanisms such as reversion which provided the right counterbalance to the direct way in which cession (of property) rights took place during colonial times when the crown was the only authority which allocated them. In particular, Molina Enríquez acknowledged that the Spanish crown had a "fine legal instinct and the desire to act on good will" so as to show that the Mexican

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[147] Molina Enríquez, *Los Grandes Problemas Nacionales*, 203.

state replaced the crown but failed to establish counterbalancing mechanisms like the one of reversion.[148]

In his view then, *haciendas*, for instance, were not necessarily unjust in nature because they were designed as part of a bigger system which had appropriate counterbalance mechanisms. However, once Mexico achieved independence from colonial rule and many liberal principles were embraced, the continuation of institutions such as *haciendas* became deeply problematic He even argued that the main reason that institutions like *haciendas* or large estates had not been abolished was because they enabled the domination of indigenous peoples, rather than promote their development.[149] This was because, according to Molina Enríquez, they were not coupled with some mechanisms of protection.

One of these mechanisms was the so-called Indian Law (*Derecho Indiano*) which ensured, within the racially stratified colonial society, a position for indigenous peoples as well as some rights, including the recognition of control over some portions of the territory. The removal of such legal mechanisms left indigenous peoples in a position of extreme vulnerability because institutions like *haciendas* were not dissolved. For Molina Enriquez, this situation opened the door to the exploitation of indigenous peoples because it meant that those in a privileged position during colonial times managed to secure most of their capacities whereas indigenous peoples were left at their disposal.

At this point, three things should be noted about Molina Enriquez's account. First, as already mentioned, he considered the colonial regime and its institutions as just. Indeed, his account was accepted as just the conquest, its rule, the dispossession of land and the resulting presence of a racialized society in which a caste system determined the range of opportunities

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[148] *ibid*.

[149] *ibid*.,140.

or the superior position of non-indigenous peoples *vis-à-vis* indigenous peoples. Second, his account addressed the continuation of institutions such as *haciendas* in a postcolonial context, but the replacement of old institutions was advocated in order to promote the establishment of new institutions which could incorporate the values of the new (*mestizo*) settler colonial national project. Third, Molina Enríquez regarded the removal of the mechanism of protection which, he believed, safeguarded indigenous peoples during Spanish colonial rule as deeply problematic. Even so, he did not oppose the embracement of liberal values of private property and individualism *per se*. For him, the problem lay in what he thought was an incomplete dissolution of colonial institutions. This aspect is important to note because both proponents of indigenismo and its critics identified an 'incomplete transition' as the main reason for an 'asymmetry of governability' underlying the condition of indigenous peoples in Mexican society.

2.1.3. Exploitation, Territorial Rights and Development

At the core of Molina Enríquez's defence of the recognition of communal property is the idea that there is a correlation between the stage of development in which a group is at and the conception of land which that group endorses. According to this line of thought, indigenous peoples are at a stage where the concept of private property is unintelligible to them. Molina Enríquez's account does not question the deeply problematic idea that a private conception of land is superior to a communal one. Indeed, for Molina Enriquez, the idea of private property is the best possible understanding of land and he thought that this idea is one that western civilizations had grasped through centuries of development.[150]

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[150] *ibid.*, 180.

In this line of thought, indigenous communities have been prevented from endogenously developing new (and more superior) understandings of their relationship with land by continuous attempts to disrupt their ways of life.[151] What Molina Enriquez suggested was that it is problematic for the dominant society to impose upon indigenous communities their own understanding of land despite its alleged 'superiority'. Indeed, for him, the problem with such an imposition was that it prevented indigenous peoples from reaching their full potential as a civilization by keeping them in a situation of oppression in which they were forced to live in a system which exploited them.

Molina Enriquez's account offers a highly controversial position that critics of indigenismo have rightly criticised as reproducing imperial tropes, such as the idea that indigenous peoples are a civilization at an inferior stage of development, and I do not intend to endorse it. What I do want to highlight is that although it is deeply problematic, his account hinges on an understanding of land which does not conceive of territorial rights as uniquely a matter of control over territory.

Molina Enriquez said that territorial rights should be seen as a tool which allows groups such as indigenous peoples to escape their condition of exploitation (even if his notion of exploitation rested on an account of civilization which we should reject). One of the novelties of Molina Enriquez's account is the way it treated communal property as a way to redress the grievances caused by the forced implementation of liberal individualistic values onto indigenous peoples and by the failure of the Mexican state to dissolve institutions such as *haciendas*.[152]

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[151] *ibid.*, 181.

[152] *ibid.*, 133.

Molina Enriquez believed that for indigenous peoples, freedom from exploitation required the recognition of their understanding of land (or, in Kolers's term, the "ontology of land"). He believed that the Mexican state should play an active role not only in the protection of the 'difference' of the indigenous communities but also in the actions necessary to accelerate their assimilation into the *mestizo* (dominant) society.[153] He believed that the state had a responsibility towards indigenous peoples precisely because of their lack of development and their lack of understanding of private property.

In this line of thought, the state should help indigenous communities to reach the further stages of development so that eventually they could be in a position to fully enjoy the benefits of private ownership. He said that the first step of this process was the conversion of large estates into public lands so that they could be used as communal property by indigenous communities.[154] He saw the possibility for indigenous peoples to base their communities around the principle of communal property as only a temporary measure because he believed that with the passage of time, members of indigenous groups would start to see themselves as separate from their community (that is, as individuals) and understand the benefits of calling their harvest their own.[155] Eventually, he believed, every indigenous community, regardless of its current stage of development, would embrace private ownership and former members of these communities, together with members of other groups in charge of farming such as the ranchers (*rancheros*), would act as the producing axis of the country, thus solving the problem of land inefficiency. Molina Enríquez noted as part of the case against *haciendas*

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[153] *ibid.*, 184.

[154] *ibid.*, 193.

[155] *ibid.*, 195.

that "the production of these is consistent, but rickety with respect to that of the small private property, *rancherías*, and even indigenous communal property".[156]

Before proceeding with the discussion, a clarification is in order. Molina Enriquez's account did not value communal property ownership, especially given the high regard he had for individual property. For Molina Enriquez, the problem was not with the idea of individual ownership and he did not challenge the legitimacy of the settler society. What he questioned was the exogenous imposition of the idea of private property onto indigenous peoples. He made the same argument as regards ranchers whom he saw as a group displaying an insufficient level of development to embrace private property. With all this in mind, in the next section I shall move on to examine Díaz-Polanco's account, which refashioned some of the arguments made by Molina Enriquez while strongly criticising his account for conceiving of the provision of territorial rights as instrumental to the assimilation of the indigenous peoples into the dominant society.

2.2. Land and Autonomy in the Political Thought of Díaz-Polanco

In this section, I explore the work of the anthropologist and philosopher Héctor Díaz-Polanco. Together with his academic work, Díaz-Polanco actively participated in the struggles of indigenous peoples in both Mexico and Central America. In Mexico, he has advised a considerable number of indigenous activists and even acted as advisor to the Zapatistas in the signing of a peace agreement with the Mexican government in 1994. Along with scholars such as Guillermo Bonfil-Batalla and Mercedes Olivera-Bustamante, Díaz-Polanco dedicated most of his extensive work to the development of a comprehensive

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[156] *ibid.*, 149.

critique of indigenismo which showed that indigenismo acknowledges indigenous identity while also "gobbl[ing] it up".[157] Much like Bonfil-Batalla, Díaz-Polanco approached the main problems with indigenismo from the angle of self-determination. The main difference between his work and that of Bonfil-Batalla is the emphasis on the issue of territorial rights.

2.2.1. The Critique of Indigenismo

As discussed above, for Molina Enríquez, land distribution and thus the provision of territorial rights were essential for the achievement of a society resulting from miscegenation. One of the many problems with this account is the fact that the provision of territorial rights in the form of communal property is linked to the goal of racial homogenization and thus, in reality, the provision of rights is only a temporary measure which will eventually lead to an homogenized society. Diaz-Polanco's critique focused on how ultimately indigenismo does not offer a sincere recognition of the territorial rights of indigenous people because, as Molina Enríquez's account showed, the provision of territorial rights has as its only objective the assimilation of the indigenous people into the (*mestizo*) dominant society, not the recognition of their capacity for self-governance.

For Diaz-Polanco, the importance of some form of recognition of territorial autonomy lay in it being an expression of a turning point in the relationship between the state and the indigenous people.[158] Instead, Diaz-Polanco argued that recognising some territorial

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[157] Héctor Díaz-Polanco, *La Rebelión Zapatista y la Autonomía,* Mexico City: Siglo Veintiuno Editores (2011): 18.

[158] Díaz-Polanco, *Autonomía Regional: la Autodeterminación de los Pueblos Indios,* Mexico City: Siglo Veintiuno Editores (2011): 200.

autonomy for indigenous peoples would entail overturning the historical relationship between the state and indigenous people.[159] Specifically, Diaz-Polanco pointed out that both the language of and the demand itself for the recognition of indigenous peoples' right to self-determination were produced by the indigenous people to frame the series of injustices which they suffered at the hands of the settler state. This means that such a demand must not be reduced to a mere claim about authority over territory or necessarily to a demand for secession.[160]

The fact that indigenismo, as shown in Molina Enríquez's account, treats the provision of territorial rights as an effort to assimilate the indigenous people into the dominant (*mestizo*) society was for Díaz-Polanco an indication that indigenismo does not take seriously the political demands of indigenous communities. An important note at this point is that Díaz-Polanco made no distinction between (i) the political dimension of the construction of an indigenous identity, (ii) the political existence of indigenous communities, and (iii) the political demands made by such communities. Although Díaz-Polanco did not recognise how indigenous identity has been, at least partially, politically formed in response to the terms imposed by the settler state onto indigenous peoples, he stressed how the political will of the indigenous people had been neglected. He argued that indigenous peoples had been deprived of the capacity to decide how to organise their communities according to their own norms.[161]

For Díaz-Polanco, at the core of indigenismo lay the idea that indigenous peoples are an uncivilized group, which translates into a rejection of any form of knowledge held by

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[159] *ibid.*

[160] *ibid.*, 161.

[161] *ibid.*, 201.

them and a disregard for the political organization of their communities. For instance, as shown in the previous section, Molina Enriquez's account revolved around the idea that indigenous communities are at a stage of civilisation in which the concept of private property is not possible for them to understand. In terms of land management, the implication of this imperialist position is the imposition of policies and development programmes which exclude indigenous peoples from any decision-making process. In this sense, although proponents of indigenismo are in favour of some form of territorial rights, such as communal property, they conceive of such a provision as a way of enabling indigenous communities to progressively assimilate, rather than ensure their actual participation in the political decisions which have an impact on their lives. Diaz-Polanco stated that indigenistas understand land and the provision of territorial rights as a path for indigenous people "to get access to better living conditions all while abandoning aspects of their culture which are incompatible with (the idea) of modernity".[162]

Moreover, Díaz-Polanco observed that since the provision of such territorial rights in reality is based on the idea that indigenous peoples are at an inferior stage of development, it also paves the way for the intervention of the (settler) state in the lives of indigenous communities. For Díaz-Polanco, this not only proved the complicit nature of indigenismo with the nation-state project but also further showed that for scholars such as Molina Enríquez, the provision of territorial rights was not based on the recognition of the political demands of indigenous communities but on their role in the achievement of the new national identity. Díaz-Polanco demonstrated how indigenismo was based on an "integrationist dialectic", which expressed a tolerant attitude towards indigenous communities while arguing

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[162] *ibid*., 94.

for the implementation of different (mainly educational) policies designed to achieve the replacement of their cultural values with the dominant ones.[163]

Whereas Molina Enríquez's account rested on a statist understanding of territory in that the settler state remains the sole authority which can ultimately claim control over territory, Díaz-Polanco's account did recognise indigenous peoples as an authority over their territory, as did the community-based theories of territory examined in Chapter 1. However, unlike those theories, Díaz-Polanco's account conceived of land as a tool for indigenous peoples to formulate their demands for self-determination, namely their demands for justice. This difference between Díaz-Polanco and non-statist theories of territory is important because although Díaz-Polanco thought that the Mexican state should grant indigenous peoples the right to control portions of territory, he also believed that indigenous claims over land play a crucial role in the framing of other demands made by indigenous peoples against the settler state. In particular, for Díaz-Polanco, the recognition of territorial control had deep implications because it entailed a "new distribution of power" between indigenous communities and the settler state. [164]

2.2.2. Regional autonomy: The Recognition of the Voices Silenced by the Settler Colonial Project (1)

Unlike Molina Enríquez's, Diaz-Polanco's account condemned the injustice of colonialism. He realized that indigenous peoples had suffered from injustice since the Spanish colonial rule. Although Diaz-Polanco did not write in the language of historical

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[163] *ibid.*, 96.

[164] Díaz-Polanco, *La Rebelión Zapatista y la Autonomía,* 17.

injustice, he recognised how the contemporary injustices suffered by indigenous peoples were a legacy of Spanish colonialism. This connection lies at the core of his defence of indigenous peoples' territorial rights, which he framed in terms of regional autonomy.

Díaz-Polanco's account recognised the connection between historical and present injustice through a consideration of the history of "the lack of space in the political-administrative organization to accommodate regional aspirations based on ethnic identity".[165] Specifically, Díaz-Polanco's account used the case study of the Isthmus of Tehuantepec, which was previously the major overland transport route before the opening of the Panama Canal, to trace back to the sixteenth century the establishment of a mayor's office which had under its control eight regions (Tehuantepec, Tapanatepec, Chimalapa, Tequizistlán, Guichicovi, Jalapa, San Mateo del Mar and San Francisco del Mar), which in turn were inhabited by five different indigenous tribes (Chontales, Huaves, Mixes, Zapotecos and Zoques).[166] Díaz-Polanco explained that whereas the indigenous tribes were granted a level of autonomy which was a rare exception compared with what indigenous tribes were provided with in other regions, the Spanish crown limited the authority of Spaniards in order to prevent the emergence of a feudal system with former conquistadores acting as feudal lords.[167]

Díaz-Polanco reported that the indigenous tribes in the Isthmus of Tehuantepec had benefited from both the little margin of autonomy granted to them and also from the limitations on the control of the territory that the Spanish crown imposed upon the Spaniards,

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[165] Díaz-Polanco, *Autonomía Regional*, 223-224.

[166] *ibid*., 211.

[167] It should be noted that the term which Díaz-Polanco uses was *vasallos*, which translates as 'vassals'.

a situation which lasted until the seventeenth century.[168] Díaz-Polanco described how this started to change; the corruption of the local Spanish governing institutions meant that Spanish officials tried to increase their wealth by harassing the indigenous tribes which had successfully managed to achieve some resources and income because of the level of autonomy previously granted to them.[169]

Díaz-Polanco explained that the conflict escalated to a point when, on 22 March 1660, the indigenous peoples rebelled and killed the mayor, consequently opening the door to a whole year during which the indigenous people were able to maintain control of the region.[170] He commented that the so-called Tehuantepec rebellion became the most important indigenous political movement during colonial times in the Viceroyalty of New Spain as its main demand was for the devolution of some faculties of self-government such as the capacity for indigenous peoples to (i) choose their own governing officials, (ii) exercise control over their resources, and (iii) govern their own affairs. [171]

That case study enabled Díaz-Polanco to understand the provision of some level of autonomy to the indigenous tribes of the region as a measure which eventually paved the way for a movement which demanded the recognition of autonomy in the specific form of the devolution of some faculties of self-governance.

Díaz-Polanco's account also used this case study to highlight three ways in which the historical and present injustices towards indigenous peoples were intrinsically connected. The first way on which he focused was the fact that the "lack of space to accommodate the ethnic

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[168] *ibid.*, 216.

[169] *ibid.*

[170] *ibid.*, 217.

[171] *ibid.*, 218.

identity" of indigenous peoples was not a recent unjust phenomenon; it went back to colonial times and still persisted in the present. Second and relatedly, according to Díaz-Polanco, this showed that the injustices experienced by the indigenous peoples not only resembled those suffered by them in the past, but were conceived by the indigenous peoples themselves as the result of the continuous denial of their capacity to govern their communities. The third way in which, according to Díaz-Polanco, historical and present injustices against indigenous peoples were connected was that there was a clear and strong reverberation of past struggles in contemporary movements. The Tehuantepec rebellion and its demands for self-determination was in many respects the forerunner of the struggles and campaigns for indigenous self-determination conducted in more recent times.

It should be noted that the most significant change which happened after Mexico achieved its independence from Spain and which Díaz-Polanco highlighted was that local government officers started to grant concessions to private companies and even accepted the privatization of natural resources, instead of directly managing the exploitation of indigenous tribes.[172] Much like what happened in Bolivia decades later during the Cochabamba Water War, a number of protests and revolts took place in the Isthmus of Tehuantepec as a consequence of the privatization of natural resources. Díaz-Polanco's account noted that the main causes for these protests and revolts were 'old issues' which had to do with access to natural resources and the imposition of administrative units.[173]

In summary, Díaz-Polanco conceived of the protests and demands for autonomy pressed by indigenous peoples as constant features of their struggles, and he also believed that those protests and demands had always been grounded on historical injustices. He also

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[172] *ibid.*, 219.

[173] *ibid.*, 219-220.

suggested that the demand for regional autonomy had been generally regarded by indigenous peoples as the best solution to their oppression not only because it would give them control over resources but also because it promised to put them in a position where they could have a say in matters which affected them and could participate on an equal footing with the authorities of the state.

Díaz-Polanco commented that this was what happened when indigenous peoples claimed the recognition of the Isthmus of Tehuantepec as one of the states of the republic shortly after the end of the Mexican revolution; an example of how indigenous peoples could potentially improve their condition through regional autonomy.[174] Although the Mexican state decided against recognising the Isthmus of Tehuantepec as one of the states of the republic, Díaz-Polanco stressed that indigenous peoples had tried to achieve regional autonomy in that specific way because previously the presence of different indigenous communities on the same territory had been used to deny indigenous peoples' regional autonomy on the basis of the misguided idea that capacity diversity is incompatible with having a region with a defined population.[175] Díaz-Polanco observed that the lessons of the past had pushed the inhabitants of the Isthmus of Tehuantepec to try to "achieve the recognition of regional autonomy via the only option available: becoming a federative entity".[176]

Díaz-Polanco's account therefore highlighted many different crucial aspects of indigenous politics. First, it stressed the interconnection between historical and present injustices, even in the very demands and protests of indigenous peoples. Second, it showed how indigenous peoples make a deliberative choice about which terms to use to shape their

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[174] *ibid.*, 220.

[175] *ibid.*, 223.

[176] *ibid.*

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demands; an aspect which I have highlighted several times in the thesis. Third, it defended regional autonomy as a way in which indigenous peoples can set a new and less asymmetrical relationship with the settler-state; a relationship between interdependent yet self-governing political entities.

2.2.3. The Regime of Autonomy: Regional Autonomy as a Model of Shared Governance

Although the concept of territorial autonomy is often invoked by scholars who argue that secession should be the solution to the claims of self-determination made by groups such as indigenous peoples, Díaz-Polanco stated that in the case of indigenous peoples in Latin America, the claim for autonomy does not necessarily invoke the idea of secession.[177] In his view, indigenous communities in Latin America did not aspire to autonomy and self-determination through secession from the settler state but wanted to become autonomous in other ways, such as being autonomous regions in a federal system. In federal systems, power is distributed across many political entities, each of which has overall authority over its own portion of territory, although ultimately the federal government still has sovereignty over a set of matters. Díaz-Polanco argued that for some indigenous communities, the aspiration for self-determination meant at the same time "autonomy within the national project" and "control over their territories and the use of natural resources".[178]

In the following section, I shall further unpack Díaz-Polanco's vision of indigenous peoples' autonomy and how this should lead to a reconfiguration of the relationship between indigenous peoples and the settler state.

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[177] *ibid.*, 200. See, for example, Coulthard, *Red Skin, White Masks*.

[178] Díaz-Polanco, *Autonomía Regional*, 200.

Unlike authors such as Coulthard, Diaz-Polanco believed that autonomy can be achieved without a full separation of the settler state from indigenous people; indeed, autonomy is about creating the circumstances in which the two parties are able to interact from equal positions of power and without either of them having complete control over the other. Díaz-Polanco commented that "autonomy is not meant to put into question the territorial unit of the national state, it simply defines a new political entity". [179] His conception of autonomy recognised the asymmetrical nature of the relation and interactions between the settler state and indigenous people. Díaz-Polanco's solution to the problem was the provision of governing faculties to indigenous peoples. In this view, regional autonomy becomes a model of governance integrated by two political entities. But what exactly does this mean? And how is the relationship between indigenous peoples and the settler state supposed to unfold in Díaz-Polanco's vision? In the next section, I shall explain how Díaz-Polanco believed that the two political entities are expected to work together.

Diaz-Polanco stated that determining the respective jurisdictions of the two political entities and the respective political obligation was particularly complicated in the Mexican settler colonial context because the relation between indigenous peoples and the settler state was profoundly unjust. He suggested that the most important thing was to ensure that indigenous communities are in a position to express their grievances.[180] It is only at that point that the question about jurisdiction can be settled and the level of involvement of each entity can be specified.[181] Diaz-Polanco's model hinged on the need to make the voice of indigenous communities heard and to increase their participation and involvement in

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[179] *ibid.*, 227.

[180] *ibid.*, 228.

[181] *ibid.*

governance. The model proposed by Díaz-Polanco relied on the inclusion of claims raised by indigenous communities to (i) define their grievances, (ii) establish the roles and responsibilities, and (iii) determine the level of control that each party has over the issues in question. The model of shared governance proposed by Díaz-Polanco was one which prioritized the prior conditions for ensuring that the historical grievance and contemporary injustices experienced by indigenous peoples are voiced and heard. This is why it also relied on principles of participatory democracy as the basis for his model of shared governance. He argued that not all the governance arrangements should be fixed once and for all; on the contrary, constant revision of the arrangements is necessary to make sure that both political entities fulfil their duties.[182]

It is important to stress that Díaz-Polanco believed that participation was not only essential once the model of shared governance has been set up, that is, in a way in which indigenous communities can revise key aspects of the agreement with the settler state in the light of any new evidence or change in circumstances. It was also a precondition to the very establishment of such a model.

Let me elaborate on this aspect of his argument. Díaz-Polanco stressed several times that his proposed "regime of autonomy" was based on the "participation of the groups involved".[183] In particular, indigenous peoples (and the settler state) were expected to participate in all matters every time. Regional autonomy and shared governance come with a strong commitment on the part of those who want to claim some level of self-governing rights. Such a commitment also involves the endorsement and implementation of substantial

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[182] *ibid*., 225.

[183] *ibid*., 230.

values of "fraternity and solidarity":[184] Díaz-Polanco said that "coexistence will have to occur between diverse indigenous groups, with non-indigenous groups ... what is unprecedented is that these diverse groups will have to coexist under new principles: fraternity and solidarity".[185]

Regional autonomy for indigenous peoples also means that non-indigenous populations living in an indigenous territory will have to adapt to live in a space governed by an indigenous community.[186]

In Díaz-Polanco's model of shared governance, indigenous communities are given great authority over who is to be allowed to enter and settle within their territory. The potential for any abuse or unjust treatment was disregarded by Díaz-Polanco on the grounds that the values of indigenous communities, which already include fraternity and solidarity, would prevent them – an observation which, albeit well-intentioned, arguably reveals a degree of romanticisation and essentialism on the part of Díaz-Polanco.[187]

Díaz-Polanco's regime of autonomy is based on a set of values, fraternity and solidarity, which are normative requirements for the provision of territorial rights. He said that indigenous peoples demand (regional) autonomy because land plays a role not only in shaping their communities but also in informing their demands for justice.

As stated above, Díaz-Polanco suggested that even though indigenous peoples might share some faculties of government with the settler state, when it comes to dealing with issues regarding the non-indigenous population living in their territory, indigenous

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[184] *ibid.*, 229.

[185] *ibid.*

[186] *ibid.*

[187] *ibid.*, 228.

communities should have authority over the matter. This is precisely because of the role which land plays in the formation of indigenous peoples' demands for justice and in their desire to participate politically. It was on this basis that Díaz-Polanco justified the authority of indigenous people over the non-indigenous population within their territory; in his view, regional autonomy will serve as "schools of democracy" for indigenous peoples.

The focus on the role of land and its potential for developing a sense of participatory democracy not only in members of indigenous communities but also in members of other groups shows that for Díaz-Polanco, the provision of territorial rights fundamentally sought to enhance the inclusion of the demands for justice which groups such as indigenous people who live in a condition of oppression might have.

Before proceeding with this discussion, it is important to recall that (i) the values which Díaz-Polanco attributed to indigenous communities, fraternity and solidarity, were key in his justification of their authority over non-indigenous groups within their territory; (ii) the relationship between indigenous peoples and land is political in that land shapes the demands for justice advanced by indigenous peoples and channels indigenous peoples' participation in political life; and (iii) territorial rights, in the form of regional autonomy, are meant to be a school of democracy for indigenous peoples.

Diaz-Polanco believed that the (settler) state should provide and recognise the capacity of indigenous communities for self-governance over a particular territory. If this is the case, however, the settler state still seems to have the power not to provide territorial rights to indigenous peoples if, say, they contest the terms of agreement proposed by the state. In other words, it seems that Díaz-Polanco failed to recognise the possibility of the state suppressing dissent from indigenous communities. His model of regional autonomy was therefore not a perfect solution to the asymmetry between the settler state and indigenous

communities. That said, his suggested model is interesting because it does not entail autonomy and self-determination in the strict form of non-intervention; instead, it conceives of the realisation of autonomy as a constant deliberation of key issues between the parties involved and the adherence to the normative values upon which the territorial rights are granted.

In the next section, I shall further explore the differences between Molina Enríquez's account and Diaz-Polanco's model by considering the role which land played in their understanding of indigenous identity. I shall then conclude by pointing out the difference between Diaz-Polanco's account and the work of the political theorists of territory which I examined in Chapter 1. My intention is to show how, for a Mexican political theorist such as Díaz-Polanco, land should be seen as an enabler and, in particular, as an enhancer of the democratic faculties of indigenous peoples. Land is not only about territorial control *per se* but is something which enables participation in scenarios of exclusion like those which take place in settler colonial contexts.

2.3. Land as an Enabler of Indigenous Politics

Despite being one of the main proponents of indigenismo, Molina Enriquez believed in the need for the state to accommodate the different conceptions of land held by indigenous communities, at least as a temporary necessary condition to ensure that – at their own pace – indigenous communities would have eventually endorsed a conception of land as private property. His account treated indigenous peoples' understanding of land as something which needs to be accommodated in order to achieve their assimilation and transformation into individuals with respect for private property. Molina Enriquez's account was therefore

imperialistic because it respected the specific understanding of land endorsed by indigenous communities only as something which needs to be temporarily tolerated but eventually replaced given that, for him, it was inherently wrong and it was only the lack of development of indigenous people that made them persist in embracing it.

As problematic as Molina Enriquez's account is, it is interesting to observe how, for him, territorial rights should be not be granted to indigenous peoples as a form of control over a portion of land, but they are necessary for the 'progressive' development of indigenous peoples towards a stage at which they will be able to conceive of land as individual property. It is through the provision of communal forms of property rights – that it, that form of property rights appropriate to indigenous peoples' current stage of development – that Molina Enriquez believed that indigenous peoples can, at their own pace and endogenously, develop the notion of individual property.

What this shows is that Molina Enriquez's account frames (communal) territorial rights as a tool enabling indigenous people to deal with the dominant society from a less disadvantaged position.[188] In this respect, although Molina Enriquez's account was flawed in many significant respects, it rested on a broader understanding of the role of land in improving the condition of indigenous peoples than accounts which simply conceive of land in terms of jurisdictional control.

The role of land as an enabler of indigenous peoples' demands for justice was further explored by Díaz-Polanco, whose account, as I have explored in the previous section, criticised many of the shortcomings of Molina Enriquez's approach. According to Díaz-Polanco, territorial rights are not necessary for the assimilation of indigenous peoples into the dominant society. Instead, his account treated territorial rights as a tool which enables

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[188] *ibid.*, 200.

indigenous people to voice their grievances and democratically participate in the discussion of political issues relevant to their communities as a partner equal to the settler state.[189]

For Díaz-Polanco, indigenous peoples in countries such as Mexico have endured pressure from the dominant society to assimilate. Moreover, indigenous peoples have resisted and responded to this pressure by advancing their own claims and setting up their own political organisations. Díaz-Polanco suggested that this achievement should be taken as proof of the "capacity of indigenous peoples to govern themselves" and as an expression of "a new constitutionality".[190] In other words, he believed that territorial rights in the form of regional autonomy should also be granted to recognise the political salience gained by indigenous peoples in their struggle against the settler state.

Díaz-Polanco's account therefore seems to have recognised that indigenous people have a peculiar relationship with land, one which had enabled them to react against the historical and ongoing dispossession at the hands of the settler state. For Díaz-Polanco, land had political salience for indigenous peoples. It informed indigenous peoples' demands and enabled them to achieve a political maturity which needs to be recognised by the settler state by granting them regional autonomy.

It is worth concluding by recalling the main difference between the accounts of territorial rights developed by the community-based theories of territory examined in Chapter 1 and the understanding of land in Mexican political thought. The accounts of territorial rights advanced by Kolers, Miller and Moore were based on the notion that some communities have an attachment to their land and that this attachment is normatively important because it is so central to the lives and organisation of such communities. It is the

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[189] Díaz-Polanco, *La Rebelión Zapatista y la Autonomía*, 49.

[190] *ibid*., 59.

right attachment to territory and land that justifies the provision of territorial rights; territorial disputes are precisely adjudicated by assessing which community has the stronger link to a particular place. In short, community-based theories of territory in multicultural political theory approach the issue of land mainly from the perspective of attachment. Similarly, as discussed in Chapter 1, with the exception of Moore's account, community-based theories of territory tend to downplay the political dimension of the indigenous identity.

The main difference between community-based theories of territory and the accounts of land advanced by Mexican political theorists lies in how the latter regarded the role of land in the struggle of indigenous peoples. Molina Enriquez argued that communal territorial rights are politically instrumental to the settler state's assimilationist project and the task of nation-building. Less problematically, Díaz-Polanco's account shows that in settler colonial contexts, rather than attachment, it makes more sense to justify the provision of territorial rights by the need to recognise the political salience of indigenous peoples' demands for justice and their achieved political maturity. Territorial rights, in the form of regional autonomy, become a means by which indigenous peoples can voice their grievances and become democratic participants in political decision-making processes. Importantly, neither Molina Enriquez nor Díaz-Polanco reduced the provision of territorial rights to a claim of cultural attachment.

Conclusion

In this chapter, I have explored how two different Mexican political theorists conceived the role which territorial rights and land should play in the struggles of indigenous peoples. I have paid particular attention to how they regarded land as an enabler for different political

projects, rather than something to simply exercise control over. In particular, Díaz-Polanco's account stressed that the provision of territorial rights can become a vehicle for democratic participation and the beginning of a new chapter in the relationship between indigenous peoples and the settler colonial state.

The contrast between multicultural political theory and Mexican political thought is highly revealing as it shows clear differences between the two approaches to the issues of the normative claims of indigenous people as they arise in the Mexican setting. In particular the developed contrast shows how inadequate multicultural political theory is to the subject matter since the part regarding settler colonialism and the political dimension of the indigenous identity is neglected. Mexican political thought, via the critique of indigenismo, makes evident the fact that indigenous peoples are left with no choice but to raise normative claims. This is particularly evident in the formulation of the demands for self-determination.

3. The Value of Self-determination in Multicultural Political Theory

Abstract.

The principle of self-determination is often theorised along the lines of non-interference. In this chapter, I argue that this model is unable to properly capture the claims raised by indigenous peoples and also that the conception of self-determination as non-domination is better equipped to account for the dependency and vulnerability of the indigenous peoples in settler colonial contexts. The chapter advances a critical reflection on the value of self-determination, and highlights areas for a dialogue with Mexican political thinkers.

"For the most part, indigenous peoples do not wish to be states in that sense, and while they claim autonomy they do not claim such a blanket principle of noninterference. Their claims for self-determination, I suggest, are better understood as a quest for an institutional context of nondomination."

IRIS MARION YOUNG, *Two Concepts of Self-determination* (2004)

Introduction

In multicultural political theory, there are two ways to think about the principle of self-determination: as non-interference and as non-domination. This chapter advances the argument that in settler colonial contexts the concept of self-determination as non-domination is more aligned with the normative claims raised by indigenous peoples because such claims are on the need for inclusion and participation rather than the recognition of their status as an independent nation.

The structure of the chapter is as follows. The first section starts by setting up the debate between self-determination as non-interference and self-determination as non-domination. The second section reviews the concept of self-determination as non-interference in the accounts advanced by Will Kymlicka, Charles Taylor, Glen Coulthard and Chandran Kukathas. The third section focuses on the specificity of settler colonialism in order to criticise the concept of self-determination as non-interference. The fourth section advances the case for self-determination as non-domination as a more appealing option because of the attention given to the relationship of dependency and the condition of vulnerability of the indigenous communities. It does so by engaging with the work of Courtney Jung and Iris Marion Young. Jung developed important arguments about the political and structural nature of indigenous identities whereas Young put forward an interesting model of self-determination as non-domination showing how the ideal can be realised. I shall suggest that Young's model suffers from some shortcomings in settler colonial contexts, but that that model should not be jettisoned. Instead, it can be revised to address its current flaws. The chapter concludes by advancing a critical reflection on the value of self-determination and highlights areas for a dialogue with Mexican political thinkers.

3.1. Two concepts of self-determination

The fragment quoted at the beginning of this chapter is useful in the sense that it identifies the two conceptions of self-determination and also the one that best captures the normative claims raised by indigenous peoples. Young dedicated her last works to the conception of self-determination as non-domination because she realised that the claims made by indigenous people, especially those regarding self-determination, differ at times

from the 'traditional' understanding of the right that every nation has to govern itself without the interference of others. Indeed as the fragment shows, she commented that the claims made by indigenous people are driven by the need "for an institutional context of nondomination".[191]

Although Young did not explicitly criticise multicultural political theory because of its tendency to theorise the right to indigenous self-determination along the lines of non-interference, she did try to balance out this tendency by focusing on the nature of the claims made by indigenous people and the fact that their condition is one of vulnerability and dependency. It should be noted that Young's preference for the conception of self-determination as non-domination contrasted with the vast array of accounts which have opted for the model of non-interference. Despite the fact that her argument seems to have influenced a number of accounts, mainly feminists accounts which also advance a democratic approach to the normative issues raised by indigenous peoples, the argument in favour of non-interference continues to be the dominant view and its origins in multicultural political theory can be traced back to Will Kymlicka's seminal work *Multicultural Citizenship* (1995).

With the publication of *Multicultural Citizenship*, a reflection of the multicultural policies adopted by the Canadian government was finally available, but it also marked the first wave of a number of accounts which favoured the model of non-domination. Kymlicka's preference for the model of non-interference is one that has been shared by political theorists such as Charles Taylor and Chandran Kukathas despite the similarities and above all the

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[191] Iris Marion Young, 'Two concepts of self-determination', in *Ethnicity, Nationalism and Minority Rights*, Stephen May, Tariq Modood and Judith Squires (eds). Cambridge: Cambridge University Press (2004): 187.

differences in their arguments. Even critics of the politics of recognition such as Glen Coulthard have preferred the model of non-interference, at least to some degree.

The work of Young therefore constitutes some of the few accounts which have opted for the model of non-domination. Arguments like the ones advanced by Avigail Eisenberg and Fiona MacDonald on the one hand share Young's preoccupation with the condition of the indigenous peoples, namely their vulnerability and dependency, whereas on the other hand, they also favour a 'democratic' solution, that is, an institutional context of non-domination.

As I shall show, unlike proponents of self-determination as non-interference, advocates of the concept of self-determination as non-domination prioritize the condition of vulnerability and dependency of indigenous people. Although for advocates of the model of self-determination as non-interference indigenous peoples remain in a condition of exclusion due to the legacy of oppression, their accounts seem to ignore the fact that in most cases indigenous communities suffer from the consequences of marginalization and thus the possibility of cutting any relation with the settler state is not only not feasible but is also the reason why not always and not all indigenous communities seek secession from the state when they demand the recognition of their right to self-determination.

In a sense the debate can be summarised in the following way. For advocates of the conception of self-determination as non-interference the answer to the injustices experienced by indigenous people is the recognition of their right to self-determination, understanding this as an acknowledgement of their capacity for self-governance without interference from the settler state. It is the interference of the settler state and the lack of capacity of the indigenous people to govern themselves which are regarded as the reason for their condition of exclusion. Scholars who propose an understanding of self-determination as non-interference are often driven by the goal of how to achieve cultural equality in multicultural states. As

different as they might be, the accounts put forward by Kymlicka, Taylor and Kukathas all revolve around how to construct a state in which members of ethnic groups such as indigenous people are also able to enjoy access to their specific culture and thus to a notion of the good life.

Instead, for advocates of the conception of self-determination as non-domination, indigenous peoples are prevented from participating in matters which concern them and such exclusion only makes their already vulnerable condition worse.[192] For such advocates, the fragility of the indigenous communities and also their dependence on the settler state is due to the exclusion from participation since the forceful incorporation of the indigenous people into the settler society has made them dependent on it. For them, this dependency not only makes unrealistic the idea of complete autonomy but is also the reason why indigenous peoples seek cooperation and inclusion. It must be noted that advocates of the concept of self-determination as non-interference are aware of the dependency of indigenous peoples, but argue that this is precisely the reason for the need for the recognition of indigenous peoples' right to self-determination, understanding this concept as the complete devolution of self-government powers and the lack of interference from the settler state. Scholars who propose

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[192] In former colonies around the world indigenous peoples have been historically excluded in different forms; either from being beneficiaries of social programs to being consulted by governments on the implementation of policies and programs in indigenous communities. For an interesting account of the different forms of exclusion suffered by indigenous peoples concerning universal healthcare programs see Jeannie Samuel, Walter Flores and Ariel Frisancho, Social exclusion and universal health coverage: health care rights and citizen-led accountability in Guatemala and Peru, International Journal for Equity in Health, (2020) 19:216.

an ideal of self-determination as non-domination are driven by a different goal. They aim to understand how the state can be responsive to and address a legacy of injustice towards groups such as indigenous peoples. The accounts proposed by Jung and Young seek to move towards a situation in which the settler state is held to account for the legacy of oppression – a legacy which continues to be felt by indigenous peoples in their condition of exclusion and the injustices which they experience.

It is therefore important to stress that these two different approaches to self-determination at least partially result from the two different goals which proponents of the different approaches have. The notion of self-determination as non-interference seems better suited to achieving the goal of cultural equality in multicultural states because what is required from the state in this context is to provide ethnic groups such as indigenous peoples with access to their culture, which in turn is meant to enable members of those groups to exercise freedom and have access to a notion of the good life. When the objective is to achieve cultural equality, the state might simply have to take a step back. Moreover, claims against the state on the part of such groups are easily interpreted as claims for cultural accommodation.

If, instead, the main aim of theorists is to hold the state accountable for a legacy of injustice, what is needed is an idea of self-determination which immediately recognises the power asymmetry between the state and the groups in question. This also means that demands to the state are more easily read as challenges to the way that the state has constructed its relationship with such groups, that is, as demands to respond to both historical and present injustices.

In the following paragraphs, I shall examine the two notions of self-determination in greater depth, starting with the idea of self-determination as non-interference.

3.2. Self-determination as non-interference

In this section of the chapter, I shall discuss the accounts advanced by Will Kymlicka, Charles Taylor, Glen Coulthard and Chandran Kukathas. Despite their differences, all these accounts argue in favour of self-determination as non-interference.

3.2.1. Self-determination as non-interference (1): Kymlicka, Taylor and the Role of Culture in the Access to a Notion of the Good Life

Kymlicka's account famously argued that 'national minorities', which is the term he used to refer to groups such as the Quebecois and indigenous peoples, should have their right for self-determination acknowledged and that the Canadian state should only be allowed to interfere in the case of grave violations of human rights.[193] The reason why Kymlicka set such a high threshold was because for him national minorities effectively are more than 'mere' ethnic minorities. As he put it, in many contemporary societies "one source of cultural diversity is the coexistence within a given state of more than one nation, where 'nation'

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[193] In this section of the chapter, I do not focus on the fact that 'national minorities' might not be an exhaustive category, however I rely on the accounts advanced by postcolonial theorists to highlight the specificity of the indigenous identity. Likewise, in Chapter 5, I shall explore the feminist critique of multiculturalism because it focuses on the problems of setting a threshold on the violations of human rights and the difficulty for members excluded within a group of being able to exercise their right to leave the group.

means a historical community, more or less institutionally complete, occupying a given territory or hormeland, sharing a distinct language and culture".[194]

This indicates two things. The first is that his approach privileges 'nations' over other groups. The second is the fact that Kymlicka used, with some slight alterations, a traditional understanding of the concept of 'nation', that is, as an historical community located in a defined territory where members share the same distinct cultural values and language. Effectively, for Kymlicka an ethnic minority which fulfils this criterion is a 'national minority' and thus the recognition of their identity is not only not limited to some form of cultural accommodation but involves their recognition of the right that every nation has for self-determination. Kymlicka therefore challenged the argument that only 'established' nations can claim a right of self-determination, and this also marks the distinction between ethnic groups and national minorities.

In multicultural political theory, the category of ethnic groups is commonly used to refer to those groups which are regarded as a minority and often find themselves immersed in the dynamics of recognition by the dominant group. For Kymlicka, however, that category was problematic since there is a clear distinction between national minorities and ethnic groups.[195] Kymlicka argued that the distinction between the two is one which, with the exception of Michael Walzer and Nathan Glazer, has been "neglected amongst political theorists".[196] However, Kymlicka noted that even Walzer and Glazer relied on the difference between 'New World' and 'Old World' to indicate the need for a distinction, in the sense that in the old world, nations established in defined territories claimed 'liberation' whenever they

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[194] Will Kymlicka, *Multicultural Citizenship,* Oxford: Oxford University Press(2000): 11.

[195] *ibid.*, 20.

[196] *ibid.*

were deprived of their freedom (to govern themselves) whereas in the new world individuals were behind the decision to 'uproot themselves' in order to settle in new territories; which is the reason why the claim "for self-determination had no resonance".[197] Despite noting that Walzer and Glazer's distinction operates under the problematic notion that there were no national minorities in the new world, Kymlicka reinstated this distinction in order to advance the point that national minorities are those which have been deprived of their right to self-determination whereas ethnic groups are those which voluntarily decided to become part of the dominant society and thus cannot claim the same right to self-determination.

The distinction between national minorities and ethnic groups is important in Kymlicka's argument because, for Kymlicka, it is only those groups which have been forcibly integrated into the majority society (as national minorities) that have a right to self-determination. For Kymlicka, the fact that indigenous people were forcibly integrated into the settler society was then not only the reason that they need to be regarded as national minorities instead of merely ethnic groups, but also the reason why the commitment of the majority liberal society for cultural diversity in this case requires more than the mere accommodation of cultural practices; it calls for the devolution of self-government powers and the recognition of the right of the national minorities to govern themselves without the interference of others.

It must be noted that Kymlicka did not use the language of reparation, but his account saw the recognition of the right of indigenous people to self-determination as one which sets the historical record straight, at least when it comes to making fair the terms of the relationship between the indigenous peoples and the settler society.

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[197] *ibid.*

In Kymlicka's account, the importance of national minorities' self-government stems from the role which, for him, a nation's culture plays in the achievement of individual freedom.

For Kymlicka, culture provides individuals with access to a notion of the 'good life' and this means that members of national minorities are endowed with a "vision of the world" from which they can evaluate a number of elements: (i) their own judgements and (ii) other notions of the world or other versions of the good life. In other words, access, through culture, to a notion of the good life is a crucial component of the achievement of freedom since it provides the elements which enable individuals to develop their capabilities.

Given that, for Kymlicka, the lack of recognition of a national minority's right to self-determination implied a frustration of its members' individual freedom, non-interference from the majority liberal society becomes a condition of both collective and individual freedom. By not having to direct their efforts to protect their culture, national minorities are able to immerse themselves in the process of evaluating and developing the elements which are crucial for the freedom of their members.

Kymlicka's position in regard to the role which culture plays in the access to a notion of the good life was shared by Charles Taylor. Taylor also made an argument regarding the role that culture plays in enabling individuals to access a notion of the good life and being effectively able to freely choose their life. The main difference with regards to Kymlicka's argument lies in the fact that Taylor focused on the way in which individuals experience recognition in a context where their culture endures the oppression of the dominant society. Taylor's account was centred on the problem of misrecognition. For Taylor, misrecognition

was not only "a lack of due respect", but also it "inflict[s] a grievous wound, saddling its victims with a crippling self-hatred".[198]

Through a revision of notions such as authenticity, honour and dignity, Taylor argued that recognition involves a dialogue in which a person negotiates his own identity through a constant interaction with others.[199] Taylor saw as problematic the fact that the "regime of reciprocal recognition among equals" or what he also described as "the new politics of equal dignity", is one that requires the absence of differentiated roles.[200] According to Taylor, traditional understandings of equality as sameness and universality leave a very small margin for recognising difference.[201] When equality is conceived in this way, the acknowledgment of cultural identities is deemed unacceptable because it involves considerations of difference and, specifically, "different collective goals".[202]

Although Taylor did not deploy the concept of self-determination as such, he did connect the case of the indigenous peoples, and in particular of the Quebecois, to his argument on the politics of recognition. In Taylor's account, the lack of recognition is not only the source of the mobilization of claims by Quebec independentists but also a key component of their fight against English Canada.[203] For Taylor, the root of the problem lies in misrecognition because the adoption in 1982 of the Canadian Charter of Rights came with a substantive change in the accommodation of "claims for distinctness put forward by French

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[198] Charles Taylor, 'The Politics of Recognition', in *Multiculturalism and the Politics of Recognition*, Amy Gutmann (ed.). Princeton: Princeton University Press (1992): 26.

[199] *ibid.*, 34.

[200] *ibid.*, 50-51.

[201] *ibid.*, 51.

[202] *ibid.*, 52.

[203] *ibid.*, 64.

Canadians, and particularly Quebeckers, on the one hand, and aboriginal peoples on the other".[204] In his view, the Charter followed the liberal perspective in the sense that individual rights are always put over collective goals and no substantive view regarding the ends of life is endorsed.[205]

Following the communitarian critique of liberalism, Taylor argued that liberals tend to privilege the individual over the collective group and endorse the idea of the state's neutrality towards different conceptions of the good life. This makes it impossible to recognise minorities' collective rights and demands for the protection and promotion of a specific cultural identity as a collective good. In the case of French culture in Quebec, according to Taylor, the preservation of that distinctive culture and language is not just a means for individuals to express themselves but is a collective good which needs to be preserved over time. Such claims of cultural promotion and protection therefore seek to keep creating the collective identity of the Quebecois over time. For Taylor, the liberal model of equality threatened the intention of peoples to preserve the culture of their ancestors and "mak[e] sure that there is a community of people here in the future".[206]

Taylor's defence of the accommodation of cultural difference stresses the irreducible and intrinsic collective value of culture, whereas Kymlicka's argument is still focused on the importance of culture for individual autonomy. Although Taylor did not specify what his account of recognition would involve for a cultural collective's self-determination, he seems

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[204] *ibid.*, 52.

[205] *ibid.*, 56.

[206] *ibid.*, 58.

to suggest that freedom as non-domination does not fully recognise cultural difference.[207] That being said, his stress on the irreducible and intrinsic collective value of cultural difference lends itself to the argument that to protect and preserve its collective identity over time, a community (such as the Quebecois and indigenous peoples) should not experience interference from the majority society.

3.2.2. Self-determination as non-interference (2): Coulthard and the Decolonial Route

Taylor conceived the recognition of the excluded as a revision of their image and thus of the internalisation of their 'inferior' status.[208] These insights were taken up, albeit in a different way, by Coulthard, who relied on Fanon's account of the colonised self to reflect on the condition of indigenous peoples and the limits of a politics of recognition. Coulthard was clear that indigenous peoples' self-determination implies non-interference from the settler state and, unlike Taylor, he argued that recognition needs to take place within the indigenous communities instead of coming from the settler colonial state. For Coulthard, the recognition of the values of the indigenous peoples was one that not only constitutes an act of resistance

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[207] Taylor's account engages with the work of Rousseau. In specific terms, for Taylor at the core of Rousseau's argument is the notion that for a society to have free relations, they must be identical, so that people can be both sovereign and subject. For Taylor, the concept of freedom that Rousseau has in mind was that of non-domination and it was one which is aligned with the idea that there should not be differentiated roles. Taylor considered this as the 'formula' for what he described as "the most terrible forms of homogenising tyranny". See Taylor, *The Politics of Recognition*, 51.

[208] *ibid.*, 65-66.

towards settler colonialism but was also key in making clear for the indigenous peoples that they do not need either the recognition of the settler state or any interaction with it.

For Taylor, recognition opens the door to a revision of the image imposed by the majority society upon the minorities. However, Coulthard tells us that in settler colonial contexts, such a revision is compromised because the act of recognition is conducted by the coloniser himself. In such a scenario, recognition does not lead to a revision of the image of the subjugated, but rather is an opportunity for the oppressor to further reassert his authority. Coulthard's account approaches recognition as a political act in the sense that the settler state deliberately produces the scenario in which the indigenous people see it as the only solution to them participating in the politics of recognition. Given that recognition does not take place in a vacuum but rather against the backdrop of settler colonialism, it's only objective is to curtail the indigenous right to self-determination and achieve the dispossession of land.

For Coulthard, the politics of recognition was a tool to further deprive indigenous peoples of their sovereignty over their land by subtly coercing them into yielding or transferring aspects of their self-determination in exchange for recognition of some of their 'cultural' grievances. Indeed, through the case of the Dene nation of which he was a member, Coulthard advanced the point that the efforts for reconciliation had come at the expense of a loss of the sovereignty of the Dene nation over the land which it had inhabited for thousands of years and also of the imposition of the capitalist mode of production.[209]

Together with the fact that the Dene nation and other indigenous groups had been ignored by the federal government over the construction of pipelines in their territory, this led Coulthard to maintain that claims over land grievances and efforts to achieve reconciliation

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[209] Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, 51-78.

had effectively rendered the indigenous people "a numerical minority in our homeland with little influence over issues pertinent to the well-being of our land and way of life".[210]

Coulthard explored how the politics of recognition and reconciliation had co-opted indigenous demands and transformed them in a way which did not challenge the legitimacy of settler colonial institutions. Scholars such as Coulthard urge indigenous people to stop seeking the recognition of the settler state in the first place. Coulthard stressed the point that indigenous communities have grown used to the expectation that they need to exchange their right to self-determination for some form or degree of cultural accommodation.[211] Under Coulthard's account, indigenous self-determination cannot but involve full independence from the settler colonial state. Indigenous people should reject the authority of the settler state.

3.2.3. Self-determination as non-interference (3): Kukathas and the case for Freedom of Thought

In *The Liberal Archipelago*, Chandran Kukathas advanced a liberal theory of cultural pluralism using the metaphor of an archipelago. A liberal society is an archipelago made up of different independent sources of authority which engage both in conflict and in cooperation with one another. Unlike many contemporary liberal theorists, Kukathas rejected the idea that the main normative value is justice. For him, liberalism rests on toleration and the appreciation of different sources of authorities. According to Kukathas, the problem with justice-centred accounts of liberalism is that they do not recognise that there are a number of

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[210] *ibid*., 56.

[211] *ibid*., 101-103.

moral standards, all taking place at the same time and in constant interaction; by focusing on justice, such plural and all authoritative moral standards are subsumed into a single one.

It is this peculiar understanding of the plurality of all authoritative moral standards which established the grounds for Kukathas's approach to multiculturalism. His account appeals to the coexistence of a variety of moral standards, "rather than a set of substantive moral commitments by which all communities should be required to abide".[212] Toleration as non-interference is therefore the value which, according to Kukathas, should guide the regulation of multicultural accommodation.[213] In Kukathas's account of toleration, the state has a very limited role; it does not have the authority to intervene in the affairs of a, say, religious or cultural group. Unlike Kymlicka's view, the liberal state should not try to "secure important liberal values",[214] but should just preserve the co-existence of different groups and associations in society.[215] Whereas Kymlicka still stressed the importance of autonomy and freedom as values which the liberal state should pursue (through multicultural accommodation), Kukathas argued that:

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[212] Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom*. Oxford: Oxford University Press (2007): 30.

[213] To be sure, Kukathas's understanding of toleration as non-interference is only one specific account of what toleration might mean. For an overview of the different ways in which toleration has been conceptualised historically and a normative defence of toleration as, instead, equal respect, see Rainer Forst, *Toleration in Conflict*, Cambridge: Cambridge University Press (2013).

[214] Kukathas, *The Liberal Archipelago*, 36.

[215] *ibid.*, 39.

A liberal regime is a regime of toleration. It upholds norms of toleration not because it values autonomy but because it recognises the importance of the fact that people think differently, see the world differently, and are inclined to live – or even think they must live – differently from the way others believe they should.[216]

According to Kukathas, therefore, someone might freely live what many might regard a non-autonomous life if he simply follows his conscience. For instance, Kukathas gave the example of a Muslim woman who is both a mother and wife and who lives her life according to the directions of her religion, which prohibits her from pursuing many options.[217] According to Kukathas, such a Muslim woman could be free if she has not been forced to embrace her religion. Liberty of conscience, which can well lead to leading a non-autonomous life, normatively trumps autonomy.

Kukathas's account of toleration led him to argue that a state has no authority to interfere in the affairs of a minority cultural community. As long as members of a minority cultural community have a right to exit that group,[218] the state should simply step aside even when such communities pursue illiberal practices such as "bring[ing] up children unschooled and illiterate; […] enforce[ing] arranged marriages; […] deny[ing] conventional medical care to their members (including children); and […] inflict[ing] cruel and 'unusual'

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[216] *ibid.*

[217] *ibid.*, 113.

[218] For an insightful critique of the use of the 'right to exit' in liberal approaches to multicultural accommodation, including Kukathas's, see Susan Moller Okin, 'Mistresses of their Own Destiny': Group Rights, Gender, and Realistic Rights of Exit. *Ethics*, *112*(2), (2002): 205-230.

punishment".[219] Unlike Kymlicka, however, Kukathas also suggested that minority cultural groups cannot make any demands for multicultural accommodation to the state. What toleration requires is indifference, not accommodation.[220] According to Kukathas, the state must be reduced to a position of being primarily a limited agent, and this in turn provides all the different communities, groups and associates within the society with a more extensive degree of jurisdiction. As Kukathas put it, "the state should not be concerned about anything except order and peace."[221]

3.3. Three Faces of Settler Colonialism

In this section of the chapter, I shed light on some key aspects of settler colonialism and, in particular, its specificity as a form of colonialism. I shall criticise the accounts explored in the previous section in the light of the peculiarity of the settler colonial context.

3.3.1. Replacement and the Protection of Culture

Accounts like those advanced by Kymlicka and Taylor tend too often to make contradictory assumptions.[222] The first is the idea that identities change over time. The second is that at the same time there is a level of urgency to protect these from being dissolved in the processes of cultural assimilation as deployed by dominant societies. Both

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[219] Kukathas, *The Liberal Archipelago*, 134.

[220] *ibid.*, 15.

[221] *ibid.*, 252.

[222] I shall not go deeper into this apparent contradiction. Here, my interest is only to present these two assumptions.

the liberal and the communitarian approaches appeal to this ideal of cultural preservation, of course from different positions. However, despite being adamant that identities change, and that somehow that ability to change and yet to remain inherently 'the same' is what needs to be protected in the first place, we are provided with a limited understanding of how identities are shaped, that is, which agent(s) shape what has to change and what has to remain of an identity over time. When it comes to indigenous identities – the main identities on which this thesis focuses – we need to recognise how the settler state and society play a crucial role in shaping it. Indigenous identities are, thus, importantly 'political'.

The problem with neglecting the political dimension of the indigenous identity is that the claims made by indigenous peoples are then seen as claims for cultural accommodation. Although Kymlicka was aware that indigenous peoples suffered from historical injustice, he nevertheless treated their demands (and their history) as the same as those made by the Quebecois.[223] Ultimately, Kymlicka's account was forward-looking in that "group-specific rights are needed to accommodate enduring cultural differences, rather than remedy historical discrimination".[224]

In other words, Kymlicka neglected the specificity of the existing settler colonial context – a context which singles out the claims made by indigenous peoples compared with those advanced by other national minorities.

Specifically, the demands made by indigenous people are framed against the settler-colonial backdrop. On the one hand, this means that past injustices against indigenous peoples are not really 'past'; indigenous peoples' demands are about the ways in which their

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[223] Kymlicka, *Multicultural Citizenship*, 24.

[224] *ibid.*, 4.

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history of oppression continues to be reproduced in the present.[225] Marichuy argued in her campaign: "We [the indigenous people] cannot just forget the pain of our dead, the hunger of our children, the destruction of Mother Earth, nor their [the politicians of the establishment] cynical smile in the electoral publicity".[226]

On the other hand, the settler colonial context means that the claims made by indigenous peoples are never claims about cultural accommodation or protection; they are demands for justice and self-determination made against a settler colonial state.

To appreciate the specificity of the settler/colonial context, let me explain what 'settler colonialism' refers to. The concept of settler colonialism is one that in the last two decades has significantly become more used and explored by many thinkers from different fields. One of the main contributions has been that of Patrick Wolfe. In *Settler Colonialism and the Elimination of the Native*, Wolfe presented an idea of the native in a different light from the usual. He regarded the 'native' as an identity, not as a cultural outcome. At the same time, he was not worried about presenting to us the native only as a structural outcome. Instead, what Wolfe presented to us is a political outcome, one deliberately manufactured. Wolfe demonstrated this second part, the way in which the native is a deliberately manufactured identity, by shedding light on the way in which settler colonialism operates, that is, the way in which dispossession (of land) takes place.

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[225] For an account of how particular forms of injustice should be conceived as the new reproduction of history, see Nuti, *Injustice and the Reproduction of History*.

[226] EFE, 'No podemos perdonar el dolor por nuestros muertos, el hambre de nuestros hijos, dice Marichuy en la CdMx'. *Sinembargo*, 24 January 2018, accessed 16 March 2019, https://www.sinembargo.mx/24-01-2018/3377600

Wolfe began his argument by stating that settler colonialism has effectively two complementary dimensions, a negative and positive, meaning, that "settler colonialism destroys to replace".[227] What this meant is that for Wolfe, there is a series of processes which takes place as part of an effort by the settler society to present itself as something different from what it is already. Wolfe's argument was centred on the dialectical relationship involving the two parties, the settler society and the indigenous people. For Wolfe, given that the settler society needs to present itself as something different from the previous colonial regime, it sees in the native the way to achieve this goal. The figure of the native allows the settler society to track a point in the past before colonial rule. The native from that moment is seen as the bearer of values which differ from those of the colonisers and also as the perfect source for 'new and original' cultural elements. At this stage, the location and 'making' of the indigenous identity not only takes place, but also from that moment the aboriginal population is framed as antithetical to the national identity.

That being said, the settler society also needs to present itself as a legitimate – but sufficiently different – continuation of the colonial past. Settler colonialism therefore imposes itself negatively by 'eliminating the native' through different means which aim at the assimilation of the indigenous people and the dispossession of their land. Wolfe commented that at this stage the only thing that the native needs to do to obstruct settler colonialism is to stay at home.[228] Similarly, Scott Lauria Morgensen observed that the "elimination [of the

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[227] Wolfe, 'Settler Colonialism and the Elimination of the Native': 388.

[228] *ibid*., 388.

native] thus can be understood to follow any effort to erase indigenous nationality as a status that can interrupt the preeminent or sole nationality asserted by settlers".[229]

So far, Wolfe's analysis is not so different from many other theories which have explored how identities, including national identities, are constructed in opposition to the 'Other'. What makes Wolfe's account distinct and settler colonialism a specific process of identity-building is that, according to Wolfe, settler colonialism also 'recovers' the indigenous identity to further acquire possession of more land.[230] This 'positive' component of the dialectics between the settler state and indigenous peoples does not entail a lack of coercion and violence. The term 'positive' simply intends to capture the way in which the settler society attempts to incorporate (while eliminating) the native. Wolfe uncovered a list of methods by which this can be achieved, including "encouraged miscegenation, the breaking-down of native title into alienable individual freeholds, native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations".[231]

The connection between the two dimensions of settler colonialism is particularly evident when it comes to the role which indigeneity plays in the establishment of the 'new' society. Wolfe said that the settler society requires "the elimination of the native in order to establish itself on their territory".[232] At the same time, there is a symbolic component which

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[229] Scott Lauria Morgensen, Theorising Gender, Sexuality and Settler Colonialism: an Introduction. *Settler Colonial Studies*, *2*(2) (2012): 9.

[230] *ibid*., 395.

[231] *ibid*., 388.

[232] *ibid*., 389.

indigeneity provides. According to Wolfe, this has to do with the way in which the settler society recovers "indigeneity in order to express its difference".[233] Again, to complicate even more these two dimensions, Wolfe noted that difference in this regard not only refers to the native, but also to the 'mother country'. In other words, the recovery of indigeneity allows the settler society to present itself as a 'different' political outcome, one that is neither the continuation of the native population nor an expansion of a foreign power, but as something new and independent.

Wolfe's understanding of settler-colonialism chimes with other accounts, such as Lorenzo Veracini's, for whom settler societies resort to removal in order "to establish a better polity, either by setting up an ideal social body or by constituting an exemplary model of social organisation".[234] For Veracini, this only shows that settler societies are driven by what he described as "fantasies of ultimate supersession", mainly because the ideal of a settler society is exactly only that, an ideal, one that relies on the exogenous 'other', in this case the indigenous, to distinguish itself as settler.

Veracini commented that this requires the indigenous to be recovered in order to be preserved along with notions of 'difference'. As Veracini put it: "In the end, the indigenous remains always more genuinely indigenous and 'cultural cringes' linger on: 'demi-savages' and 'horrible colonials' lurk behind all representations of regenerated frontier manhood (unshaved barbarians are a recurring concern of settler colonial imaginative traditions)".[235] In

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[233] *ibid.*

[234] Lorenzo Veracini, *Settler Colonialism: a Theoretical Overview.* London: Palgrave Macmillan (2010): 4.

[235] *ibid.*, 23.

other words, the settler identity recovers indigeneity to define itself in opposition to it. At the same time, however, it also appropriates some elements of indigenous identities for two main reasons. First, the settler society wants to present itself as an independent and unique political outcome – one which needs to incorporate in a specific way the 'native'. Second, incorporating some elements of indigeneity becomes a tool for the settler society to claim authority over indigenous land. As Wolfe demonstrated, an 'indigenous aura' is often attached to geographical locations, public buildings and sports teams.[236] Once the settler society has incorporated some elements of indigeneity, dispossession does not look the same any more.

Morgensen used the expression the "naturalisation of settler colonialism" to describe this process in which the imaginary of the indigenous people is used to give way to "settler indigenisation".[237] For Morgensen, the settler society presents itself as one which belongs to settled lands as part of an effort designed to resolve its own illegitimacy. In other words, the recovery of the native (and its subsequent elimination), is driven by the dubious grounds on which the political legitimacy of the settler society stands. At the same time, this allows the settler to define his own identity. As Morgensen put it: "by asserting a civilised nature marked by race, gender, or sexuality that defines their own national character or universality".[238]

Scholars of settler colonialism such as Wolfe show that the role of the settler state in shaping indigenous identity should be taken into consideration. Once we have considered the settler colonial context, indigenous peoples' demands cannot be simply seen as demands for

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[236] Wolfe, 'Settler Colonialism and the Elimination of the Native': 389.

[237] Morgensen, 'Theorising Gender, Sexuality and Settler Colonialism: an Introduction': 9.

[238] *ibid*.

cultural protection and/or accommodation; they become demands for justice against the settler colonial state.

3.3.2. 'Transferences' in Settler Colonial Contexts

Scholars of settler colonialism have pointed out that in order to understand how the settler society frames indigenous identity, the process of 'transference' should be considered. Veracini, for instance, described this process as "the making of a new man".[239] In a similar vein to Wolfe, Veracini saw this process as one of replacement by elimination.[240] Whereas Coulthard focused on the role which recognition plays in the framing of indigenous demands and on how ideas of reconciliation depoliticise the demands of indigenous peoples against settler colonial institutions, Veracini instead approached this dynamic through the term 'transference'.[241]

'Transfer' refers to the changes in the structures which allow the state to keep indigenous people in a condition of oppression. The main objective of these changes is to keep the indigenous people 'on their toes' so that they stop developing their own norms and institutions and eventually become assimilated into the settler state. For Veracini, this is possible through 'hybridity', such as the category of *mestizo* and the very indigenous identity, and the way in which it is the settler state which through transference (of content) provides the meaning of the 'other'.[242]

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[239] Veracini, *Settler Colonialism: a Theoretical Overview*, 21-22.

[240] *ibid.*, 34.

[241] *ibid.*

[242] *ibid.*

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In turn, according to Veracini, this allows the settler state to govern the native through a variety of transfers, such as necropolitical (liquidation), ethnic (cease being indigenous), conceptual displacement (indigenous peoples not considered indigenous to the land), assimilation (indigenous people welcomed into settler communities), repressive authenticity (lack of recognition of indigeneity and subsequent expulsion from the indigenous space), multicultural transfer (collapse of the indigenous demands into cultural demands), administrative transfer (lack of recognition of historical treaties), transfer by settler indigenisation (settlers claim to be 'natives'), transfer by name confiscation (confiscation of indigenous terms), transfer by executive termination (indigenous people are declared to be 'administratively extinct') and transfer by reconciliation (a new unified nation).[243]

What all the transfers which Veracini listed show is the different ways in which alterity gets moulded to achieve the purpose of settler colonialism, in other words, the elimination of the native as part of the process of dispossession of land. Put simply, it shows the role of the indigenous identity in framing around itself the most vulnerable and historically marginalised. Andrea Smith said that the "logic of genocide" is one which enables "non-indigenous peoples' rightful claim to land".[244] By proceeding this way, the settler society becomes the inheritor of "all that was indigenous – land, resources, indigenous spirituality, and culture".[245] In other words, it is not only land that passes to become part of

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[243] *ibid.*, 34-47.

[244] Andrea Smith, 'Indigeneity, Settler Colonialism, White Supremacy', in *Racial Formation in the Twenty First Century*, Daniel Martinez HoSang, One LaBennett, and Laura Pulido (eds). California: University of California Press (2012): 57.

[245] *ibid.*

the settler society, but also every element of indigeneity – this is the full range of domination which follows the dispossession of land.

The full extent of settler colonial domination is what Coulthard's otherwise perceptive critique of the politics of recognition missed. The dispossession of land is more connected to the making of the identity than Coulthard assumed and, as I shall show in the following sections, explains why indigenous self-determination should be conceived as non-domination, rather than non-interference.

The political making of indigenous identities is not the only specificity of the settler colonial context which accounts for indigenous peoples' self-determination, including Coulthard's view of it as non-interference neglect. Another crucial aspect is the level of vulnerability and dependency which indigenous peoples experience in such a context – a vulnerability and dependency which inevitably have an impact on how indigenous peoples' self-determination can be realistically expressed.

3.3.3 Vulnerability in Settler Colonial Contexts

The argument of vulnerability focuses on how indigenous communities have no other option but to depend on the settler state for every important administrative task, mainly, but not limited to, by the transfer of funds. Avigail Eisenberg put forward a version of this argument as part of her account which warned about the potential problems with theorising indigenous peoples' right to self-determination. Eisenberg used the case of the devolution of powers in the Mexican state of Oaxaca to highlight that self-determination, as theorised by Coulthard, would actually translate into (i) making indigenous communities unable to continue to

formulate and advance their demands for justice, (ii) worsening the conditions of indigenous communities, (iii) offering an additional opportunity to the settler state to justify its authority, (iv) putting the settler state in the position of claiming that indigenous communities are not able to rule themselves, and (v) leaving indigenous communities open to manipulation.[246] Eisenberg commented:

> The devil's bargain of self-determination is that, as a political framework that aims at extracting vulnerable communities from relations of recognition with the state, it jeopardizes the prospects that these communities can make demands on the state to meet their needs or to compensate them for historical injustices. The history of decolonization shows that political struggles for self-determination can leave vulnerable communities open to manipulation by internal and external elites.[247]

Eisenberg's sceptical position toward such a framework is aimed at showing that although self-determination, in particular framed around the ideal of non-intervention, seems a normatively desirable option, in reality the relationship between the settler state and the indigenous communities is often much more complex. Eisenberg pointed out how indigenous communities are not in the position of being able to cut ties with the settler state given their resources and institutions. Coulthard's proposal of immediate full independence as non-interference neglects the actual condition of vulnerability and dependency of indigenous communities. Importantly, such a vulnerability and dependency means that if indigenous

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[246] Avigail Eisenberg, 'Self-Determination versus Recognition: Lessons and Conclusions', in *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics*, Avigail Eisenberg, Jeremy Webber, Glen Coulthard and Andrée Boisselle (eds). Vancouver: University of British Columbia Press (2015): 298.

[247] *ibid*.

communities were to cut off ties with the settler state, they would not only lose access to vital material resources for conducting their lives, they would also preclude themselves from the opportunity to make any new demands on the settler colonial state in the future. Although complete non-interference might be justified in terms of the historical injustices suffered by indigenous peoples, it would effectively mean leaving indigenous people on their own, in no position to make future claims against the settler state.

In a similar vein, Fiona MacDonald argued that the acknowledgement of indigenous self-determination as non-interference leads to opposite scenarios in which rather than negotiation, indigenous communities might collapse due to the amount of external pressure and jurisdictional responsibilities, ultimately reinforcing the idea that they are incapable of governing themselves. MacDonald based her account on the case of the devolution of faculties of self-government to indigenous communities with 'free members' in the province of Manitoba where the Canadian state devolved jurisdiction over child welfare policy.[248] MacDonald emphasised the way that Aboriginal peoples were suddenly given "full responsibility for Aboriginal child welfare services"[249] but commented that this devolution, which was framed around "a discourse of 'returning' this aspect of governance to its rightful and 'natural' place" left the state "dangerously unaccountable for their continued role in the well-being of these peoples".[250]

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[248] Fiona MacDonald, Democratic Multinationalism: a Political Approach to Indigenous-State Relations. *Constellations, 21*(4) (2014): 611-612.

[249] *ibid.*

[250] *ibid.*

While acknowledging the pitfalls of the politics of recognition and reconciliation, MacDonald stressed how indigenous communities are likely to be even more vulnerable by having to cope on their own with devolved faculties of self-government. Such vulnerability would also amount to an inability to hold the settler state accountable for any future responsibility toward indigenous communities.

It is easy to picture a scenario in which in the future indigenous communities in Manitoba might want to advance claims against the settler state for failures in child welfare services and would be met by a rejection on the grounds that this faculty of government had been returned to its proper holder. In sum, MacDonald's argument, just like that advanced by Eisenberg, highlights the way vulnerability takes form in settler colonial contexts. Both saw self-determination, in particular in its realisation along the lines of the ideal of non-intervention, as ill-suited for the context. This was intended as a critique of the approach championed by Coulthard and thus its relevance; it focused on the problems with theorising self-determination as non-intervention, despite sharing the same level of scepticism on the politics of recognition.

3.4. Self-determination as non-domination

In this section, I shall consider the work of authors who conceive of the value of self-determination as non-domination. Self-determination as non-domination implies a level of self-government but not necessarily separation from the state. These authors also argue that identities, in particular the indigenous identity, should be regarded as structural categories and therefore recognise the role of the state in shaping them. I shall argue that this approach

to self-determination (and indigenous identity) is one that is more sensitive to the settler colonial context.

3.4.1. Self-determination as non-domination (1): the political dimension of the indigenous identity

In her book *The Moral Force of Indigenous Politics: Critical Liberalism and the Zapatistas*, Courtney Jung showed that in Mexico, the indigenous identity is one imposed by the state upon the most excluded and marginalised in a move which had turned peasants into indigenous people. It must be noted that this must not be interpreted as something which indicates that there were no longer any indigenous people by the time the Mexican state 'created/recovered' the indigenous identity. What Jung's study shows is that the creation/ recovery of the indigenous identity was intentional as it served a key role in the outlining of the nation-state project. In the following paragraphs, I shall explain this process in depth and the role which it plays in the defence of the model of self-determination as non-domination.

Let us reconsider the case of Marichuy. As explained previously, Marichuy was a practitioner of traditional medicine who became an activist with the Zapatista National Liberation Army uprising in 1994. Marichuy had no intention of actively participating in any indigenous organisations during her youth, but that changed with the emergence of the Zapatista movement. Then Marichuy, who by then had fought against both patriarchal norms and the indigenous rights of her community, the Nahua community in the region of Tuxpan in the western state of Jalisco, was elected to act as a representative in a forum convened by the

Zapatistas in the region of San Cristóbal de las Casas in the southern state of Chiapas.[251] From that moment her life changed and she became more involved in the indigenous fight than ever before.

Accounts of the indigenous identity like the one advanced by Jung put an emphasis on these turning points in the political experiences of people like Marichuy, which shows how the indigenous identity is embraced because it offers a platform to get access to justice. In Marichuy's words:

> Those are our primary problems, especially trying to dispossess communities of their cultures and imposing foreign ways on the community. All these problems motivate me to take on this great responsibility to participate; it's the reason that indigenous communities look to me. It's another way to bring visibility to these problems and put them on the table for discussion and to facilitate the connection between Indigenous communities and civil society to unite and begin reconstructing Mexico, which capitalism has been destroying.[252]

This shows that the indigenous identity is one that the most dispossessed in settler colonial contexts use as a platform on which to anchor their demands for justice, draw visibility and support to their cause, and also have a say in outlining the terms of debate by bringing into the discussion the issues which affect the indigenous communities. In Jung's

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[251] It is the time of the People: Maria de Jesus Patricio Martinez, *Cultural Survival* (2017), accessed 2 February 2020, https://www.culturalsurvival.org/publications/cultural-survival-quarterly/it-time-people-maria-de-jesus-patricio-martinez

[252] *ibid.*

words: "Indigenous identity has emerged as the condition of political action for many of the world's poorest and most marginalised populations".[253]

Political theorists conceiving of indigenous identity as a structural outcome like Jung focus on an element which those accounts centred on the survival of culture often neglect: the use which oppressed groups can make of political identities. As Jung put it:

> Advancing new political identities is a matter of fierce political contestation, often involving transgressions that challenge the boundaries of what is already considered political. The attempt to invest in a social category with new political weight can fail, and it can be thwarted. Political identity depends on recognition, and such recognition is not often easily granted.[254]

Oppressed groups often re-claim their imposed identity. Indigenous people embrace an identity originally shaped and imposed on them by the state. As the example of Marichuy shows, even though the settler state imposed an indigenous identity on peasants in Mexico, those now framed as 'indigenous peoples' can draw on that indigenous identity to challenge the state and advance their demands for justice. For Jung, this showed that indigenous identity should be regarded as a structural outcome not only because of the role which the state has in its formation but also because of how indigenous identity is politically embraced by those framed under it. As Jung noted, "If political identities are constituted by prior

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[253] Courtney Jung, *The Moral Force of Indigenous Politics: Critical Liberalism and the Zapatistas*. Cambridge: Cambridge University Press (2008): 38.

[254] *ibid.*, 68.

political relations and the terms of those relations are set by the hegemonic power of the state, then it is the state itself that produces the terms of its own contest".[255]

According to Jung, recognition of the right to self-determination offers those categorised as 'indigenous' a platform from which they can advance their demands for justice. In other words, the problem for Jung with the approaches to multiculturalism and, in particular, the accommodation of indigenous claims which focus on cultural difference, like Kymlicka's, was that they neglect the political dimension of the indigenous identity.

Jung said that such accounts "assume that demands for bilingual education, local-level self-government, territorial autonomy, and public support for the cultural practices of minority groups are the political expression of a universal human need for the affirmation and preservation of the cultural groups to which they belong".[256] Such accounts overlook how the indigenous identity is a platform which allows the less well-off to advance their demands for justice and even to challenge the terms of the public sphere. As Jung put it:

> In many parts of the world, including Mexico, indigenous identity offers a political alternative to peasant identity, arising as a strategic response to shifts in the political landscape that undercut the discursive leverage of a redistributive political paradigm at the same time that the international human rights regime has expanded to include collective and cultural rights.[257]

It is worth highlighting that although Jung stressed the role played by the state in shaping the indigenous identity, she also recognised that such an identity has been

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[255] *ibid.*, 59.

[256] *ibid.*, 11.

[257] *ibid.*

deconstructed and re-constructed by those oppressed by it in original ways. [258] The indigenous identity is thus political in different respects.

According to approaches like Jung's, which conceive of the indigenous identity as a politico-structural outcome, the right to self-determination should not be regarded in terms of non-intervention as this would miss the real normative dimension of the claims raised by indigenous people. In particular, self-determination as non-intervention lets the state off the hook by overlooking the responsibility it has towards those who have experienced injustices because of the way that they have been framed.

3.4.2. Self-determination as non-domination (2): Indigenous identity and contestation

Jung's account acknowledges the capacity of ethnic groups such as indigenous people to be able to hold the state accountable, rather than opt for leaving the state. This is not to suggest that Jung did not recognise that there might be scenarios in which groups such as indigenous people decide to secede from the state; however, she considered this option as the last resort when injustices are too extreme and the settler state does not show any intention to address them. Indeed, she said that a "group of people may have been so oppressed, brutalized, and discriminated against by the dominant society that individual members of the group can only expect to flourish through territorial autonomy and separation from that society".[259] Jung also acknowledged that this reaction might be justified on the grounds of structural injustices, especially when structural injustices have constituted the group itself.[260]

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[258] *ibid.*, 18-20.

[259] *ibid.*, 285.

[260] *ibid.*, 286.

In other words, Jung did not deny that secession might be a justified response to structural injustice against indigenous peoples under specific circumstances. This is important because, although Jung acknowledged that sometimes (although not always and not as a first option) secession is justifiable because of the role that the dominant society has played in the constitution of a structural group, she denied that secession can be justified on the grounds of "cultural self-determination or ethnic homogeneity". Justifying secession on the basis of cultural self-determination is problematic not only because a "cultural group does not form an irreducible unit" but also because "ethnic homogeneity creates perverse incentives for people to mobilize cultural difference in antagonistic and exclusive ways".[261] In this sense, Jung conceived as justifiable "indigenous autonomy and self-government" only if the "normative basis of indigenous authority rests in democracy and individual rights and not in cultural difference alone".[262]

By identifying in structural injustice the justification for secession, Jung made it clear that secession is a last resort to achieve justice. According to Jung, redressing structural injustice means shaping "the future with an eye to the past".[263] If indigenous peoples are left in a position where responsiveness to historical and ongoing injustices is not to be expected from the state or it does not translate into a reconfiguration of the asymmetries of power between indigenous communities and the settler state, then justice might require indigenous peoples to secede from the settler state. By being grounded on an understanding of injustice as structural, Jung's account of self-determination as non-domination aimed at "structuring

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[261] *ibid*.

[262] *ibid*., 287.

[263] *ibid*., 252.

political discourse in a way that recognises and resists existing asymmetries".[264] This recognition and resistance entail some flexibility in the tools of redress; sometimes secession might be the only realistic option on the table, although we should not assume that it always is.

It is worth restating that, for Jung, the structural nature of indigenous identity (that is, the fact that it had been originally been constructed by the settler state) puts indigenous peoples in a position to advance a number of claims directed at holding the settler state accountable and at resisting their condition of exclusion.[265] Indeed, as Jung put it, "indigenous peoples can make claims for redistribution, representation, and restitution – claims that cut toward inclusion and not only toward autonomy".[266] Full independence from the settler state is not the only option available to indigenous peoples. For Jung, the framework of structural injustice provided indigenous peoples with a better vehicle from which to challenge "the structural relations that are the condition of their disadvantaged position".[267] Therefore the advantage which Jung saw in the framework of structural injustice is that indigenous peoples are able to avoid "being backed into demands for cultural protection and the preservation of tradition",[268] which severely restricts their scope for action to hold the settler state accountable for past and contemporary injustices. According to Jung, the claims of culture not only pose no threat to the neoliberal economic order but also put the settler state in a position where it can avoid its responsibility when it comes to the

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[264] *ibid.*

[265] *ibid.*, 248.

[266] *ibid.*

[267] *ibid.*, 249.

[268] *ibid.*

development and provision of social services for indigenous peoples through the concession of territorial autonomy.[269]

In many respects, Jung's argument chimes with the observations made by Eisenberg and MacDonald as she also appreciated how the provision of territorial autonomy can become a way for the settler state to avoid its responsibility towards indigenous peoples and further compound their condition of exclusion. The difference and distinctiveness of Jung's account is that it does not close the door to autonomy and full independence; it simply prioritises indigenous peoples' ability to hold the settler state accountable, which she thought can be boosted if indigenous peoples do not secede from the settler state. Jung, for instance, used the case of the overall sceptical and ambivalent position that indigenous people in the Mexican state of Chiapas have towards the settler state's provision of autonomy so as to highlight why full autonomy might backfire when it comes to holding the Mexican state accountable. As Jung commented, "refusing public goods and services, which has been the most manifest expression of so-called autonomy in Chiapas, is not an obvious challenge to the state, and it does not automatically confer benefits on those who take such autonomy".[270]

For Jung, then, autonomy – at least when formulated as full independence from the settler state and as entailing that the settler state stops fulfilling its functions as a provider of public services – does not fully recognise the potential that indigenous identity can have as a platform for advancing demands for justice.[271] As she noted, "indigenous identity is an important political achievement" and one which offers to those historically constituted

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[269] *ibid*.

[270] *ibid*., 226.

[271] Autonomy here intends to capture the idea of a clean break between the settler state and the indigenous peoples.

through marginalization and oppression a voice with which they can challenge the terms of their incorporation.[272] According to Jung, indigenous people "invoke a history of discrimination to establish their contemporary political presence and the legitimacy of their claims. Their very existence highlights the illegitimacy of existing political boundaries".[273] Such illegitimacy is expressed by the unequal terms under which indigenous peoples are incorporated in settler colonial societies.

It should be clear by now that the reason why Jung's account is centred on the settler state's responsibility to be responsive to historical and present injustices towards indigenous peoples is that her account relied on a constructivist approach to identities. For Jung, the advantage of this approach was that it allows one to see "the connection between how groups are formed and what they are owed".[274] As her study of the formation of the indigenous identity in Mexico shows, groups are constituted by a litany of structural injustices and thus the grounds for redress lie in the particular history of these groups.[275] Jung stated that "[w]hat ethnic groups are owed by liberal democratic governments depends, therefore, on the historical record – the history that has given rise to particular ethnic groups".[276] In settler colonial contexts, that history, which is not past, requires the settler state to address its legacy, not to simply try to achieve cultural equality.

For Jung, the indigenous identity was a strategic victory because it allows the most marginalized and dispossessed (i) to have a recognisable stance from which to make political

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[272] *ibid.*, 232.

[273] *ibid.*

[274] *ibid.*, 237.

[275] *ibid.*

[276] *ibid.*

claims, and (ii) to go beyond the reach of the state and form alliances which act as additional sources of pressure on the state.[277] Jung provided as evidence for the latter point the way in which the Zapatistas managed to link indigenous rights to the emerging anti-globalization movement in the 1990s, which resulted in massive support for indigenous struggles from a number of countries and from organizations both national and international.[278] Such broad support and alliances which can be built around the indigenous identity are evident in the case of Marichuy's presidential campaign. A number of news outlets, organisations and activists covered her campaign and made it possible to show the fact that the indigenous peoples in Mexico had the support of external sources which could put pressure on the state, exactly as Jung suggested.[279]

Marichuy's case not only illustrates Jung's point about how indigenous identity can attract the support of many groups, organizations and sectors, it also shows how the indigenous identity provides a way to resist and overcome exclusion.

According to Jung, by mobilizing around their indigenous identity, indigenous people can raise their voice to participate in the organization of their communities and their

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[277] *ibid.*, 231.

[278] *ibid.*

[279] Among the organizations which showed support for Marichuy were Open Democracy and NACLA. Likewise, VICE covered Marichuy's presidential election. Among the main features of the coverage were the attention given to portraying Marichuy as a feminist and a member of the Zapatistas. See for instance, Laura Castellanos, 'The Feminist Indigenous Candidate Running for President of Mexico', *VICE*, 13 November 2017, https://www.vice.com/en/article/9kqbqd/the-feminist-indigenous-candidate-running-for-president-of-mexico. Accessed 2 September 2021.

relationship with the settler state. However, Jung did not conceive of participation and inclusion in terms of consensus but, instead, along the lines of contestation.[280]

Jung argued that the demands raised by indigenous peoples should be thought of in terms of contestation because they seek to call out the state for its role in their condition of oppression.[281] It is in the process of contestation that indigenous peoples can identify what justice means to them. Jung therefore rejected a specific understanding of deliberation as reaching consensus across disagreement, which has been notably formulated by political theorists such as John Rawls and Jürgen Habermas and aims at achieving an impartial standpoint.[282] In settler colonial contexts which are characterised by an ongoing history of oppression, impartiality and consensus can easily be exclusion and domination in disguise.

It is also important to observe how indigenous peoples' contestation of the settler state often exposed not only the way in which they had been excluded, but also how other groups have been marginalised too. For instance, in the case of Marichuy, her presidential campaign not only revealed the exclusion of the voice of the indigenous people and the difficulties of indigenous communities in participating in electoral politics, it also showed the marginalisation of women resulting from men's dominance of politics in Mexico, the lack of access to justice for the victims of drug-related violence, and the grievances of the relatives of those 'missing' due to the so-called War on Drugs. Indeed, Marichuy focused on the exclusion and injustices experienced by all these groups in the majority of her speeches. For instance, during a political rally in Oventic, Chiapas, which was the heartland of the Zapatistas, Marichuy claimed that those excluded by the system were the ones who really felt

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[280] Jung, *The Moral Force of Indigenous Politics*, 262.

[281] *ibid.*, 253.

[282] *ibid.*

the pain and experienced oppression, but also that it was their responsibility to dismantle "the power from below".[283]

Marichuy's case shows that indigenous people invoke the historical character of their exclusion in order to appeal to the similar pain and experience shared by others who also suffer from being excluded from the public sphere. It also shows that indigenous peoples do not seek to achieve consensus through the inclusion of their voice, but rather to contest the extent of the exclusionary terms of their participation. This provides support for Jung's point on contestation, which sheds light on the injustices which consensus renders invisible.[284] Indeed, the claims raised by indigenous peoples expose both the terms of their exclusion and those which constitute an unequal public sphere.

To sum up, according to Jung, indigenous peoples often do not seek separation from the settler state and instead push to hold the state accountable through forms of participation and contestations because this is the way in which they can obtain redress for their structural injustice. As the case of Marichuy shows, indigenous peoples resist exclusion by deploying the indigenous identity, and by including their voice on their own terms, they challenge the settler state. So although secession from the state might be justified on the grounds of structural injustice, indigenous peoples in most cases opt for forms of self-government which are based on what they are owed. For instance, the *Consejo Nacional Indígena* (National Indigenous Congress, CNI), not only elected Marichuy but through its council resisted mining and energy projects in the territory inhabited by the indigenous communities.[285] The claims mobilized by the indigenous people through the indigenous identity enabled them to

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[283] Castellanos, 'The Feminist Indigenous Candidate Running for President of Mexico'.

[284] Jung, *The Moral Force of Indigenous Politics*, 262.

[285] Castellanos, 'The Feminist Indigenous Candidate Running for President of Mexico'.

have a say in matters which affected their communities. This was a way in which they resisted the asymmetry of power between them and the settler state, which in turn shows why self-determination as non-domination is better equipped to think about the relationship between the settler state and the indigenous peoples.

3.4.3. Self-determination as non-domination (3): Relational autonomy

A scholar who has provided a comprehensive account of the value of self-determination as non-domination is Iris Marion Young. For Young, self-determination should be theorised along the lines of non-domination for a variety of reasons, but mostly because of the condition of interdependence between different parties. Specifically, the concept which Young deployed was relational autonomy. Relational autonomy is a concept which Young borrowed from two theoretical frameworks: neo-republicanism and feminist political theory. In a nutshell, the key idea is that no agent ever operates in a vacuum; rather its actions affect others that surround it. Therefore an action by one of the involved parties will necessarily affect the others. However, being involved in relations of interdependence does not mean that we should not enjoy a level of autonomy.[286]

Young drew on the concept of autonomy from the neo-republican tradition, primarily from Philip Pettit's work. For Young, to think of self-determination as non-intervention was problematic because this form of self-determination is rooted in principles which fail to

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[286] Iris Marion Young, 'Two concepts of self-determination', in *Ethnicity, Nationalism and Minority Rights*, Stephen May, Tariq Modood and Judith Squires (eds). Cambridge: Cambridge University Press (2004): 176-177.

capture the nature of the claims raised by indigenous people which are not about being an independent state but about regional autonomy.

In Young's view, accounts of self-determination as non-intervention were flawed in that they were grounded on the ideal of independence rather than starting from the interdependent nature of the relationship between indigenous people and the settler state. Young suggested that we can approach the issue from a different angle by conceiving self-determination as a concept based on the idea of a set of relationships in which the parties involved do not dominate each other. Self-determination as non-domination relies on the possibility of negotiation. However, as Young said, negotiation needs to be regulated by institutions. The key point of Young's formulation therefore lies in the participation of all the affected parties in the institutions which regulate the negotiations. Participation should entail that no decision can be both unilateral and detrimental to the other group's interests.

Although Young did not focus on the problem of arbitrariness, her use of the neo-republican account of domination meant that she perceived arbitrariness as a core element of the grievances voiced by indigenous people. Arbitrariness is a major concern in neo-republican theories because it involves unilateral decisions which reflect the dominance of one group over another. As the example of Marichuy has shown, often indigenous claims invoke sentiments of exclusion and historical marginalisation, signalling the fact that indigenous people perceive their condition of vulnerability and oppression as a result of the imposition of decisions by the settler society through its political entity, the settler state.

The case of Marichuy is particularly useful to illustrate this point. The objective behind Marichuy's campaign was to make visible many indigenous causes which otherwise would have gone unnoticed. Everyone involved, including the Zapatistas and the National Indigenous Congress (in which were integrated the majority of indigenous communities,

towns and tribes in Mexico) were all fully aware of the slim chances of her winning the presidential election. The objective of running for president was only about shedding light on their condition of exclusion. So despite failing to be named among the official candidates, Marichuy succeeded in deploying her indigenous identity which in turn acted as a platform for demands for justice which otherwise would have been excluded from the public sphere. In other words, Marichuy's campaign, and effectively the deployment of the indigenous identity, was a mirror in which to reflect an image of the exclusionary terms of the public sphere, and effectively of their condition of exclusion.

Indeed, by drawing on feminist accounts of relational autonomy, Young pointed out that autonomy is always relational in that it is constituted through our relations with others. In a similar way, for her, indigenous self-determination should be considered along the line of a relationship and connection, rather than its common understanding as separation and independence. In turn, this level of connection and interdependence implies that the relationship between indigenous people and the settler state needs to be negotiated.

Young used the case of the Goshutes vs Utah in order to illustrate this point. In that case, the Goshutes, under the authority given by the law of tribes, could issue their own guidelines regarding waste storage. Under the terms of the law, as Young explained, the Goshutes were not obligated to "consult the state of Utah nor to abide by the regulations of the US Environmental Protection Agency".[287] This means that the Goshutes were in a position to strike deals regarding the management of waste with private companies, which translates into getting access to much needed resources. However, for Young, given that the Goshutes were in a relationship in this case with the state of Utah, then the decision over waste management should also be one in which the state of Utah participates.

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[287] *ibid.*, 190.

What this shows is that the model of self-determination as non-domination seeks to acknowledge the level of interdependence between different groups. However, the aspect which strikes us as novel is the fact that recognition of the right to self-determination is accompanied by a sense of responsibility on the part of the settler state.

Unlike the model of non-interference, which implicitly recognises the right to self-determination as if the indigenous people were already an independent nation, Young's solution tried to recognise the self-determination of indigenous peoples while acknowledging that their autonomy depends on the relation with the settler state.

One problem with Young's account of self-determination is that participation works well only when the parties involved are on an equal footing. This is not the case with indigenous people who are not in an equal position to negotiate the terms of their relationship with the settler state. As Coulthard would suggest, negotiation might potentially undermine the self-determination of the indigenous people instead of enabling it. For instance, Young's case of the Goshutes actually shows the way in which the indigenous communities are likely to perceive such a form of self-determination as one which curbs their right to govern themselves as opposed to securing it. However, the case could be made that if such a right has yet to be recognised, and that there is such a thing as the law of tribes, then this form of recognition is better since it only results in the inclusion of the indigenous people.

After exploring Young's account, we now can return to the case of Marichuy. The case of Marichuy shows that those framed under the indigenous identity can deploy this identity to contest either the terms of participation or the lack of it. Young seems to have had in mind a form of participation through institutions in which the process of negotiation can be regulated and followed by every party involved. But there are scenarios in which indigenous people distrust institutions or might simply regard participation in them as detrimental to

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securing their right to self-determination, even if they do not mean separation from the state when they claim recognition of their right to self-determination. The case of Marichuy shows precisely this dynamic. As previously discussed, the intention of the campaign was to contest not only the terms of the public sphere, but also, and more immediately, the terms of participation in the presidential election. The question at this point is therefore whether Young's model of self-determination can work in cases in which participation takes place in a different and indirect manner. I think that it can. The main problem is that Young's account, as it stands, does not create enough room for indigenous people to keep holding the settler state to account after the division of governance has been negotiated. This does not mean that indigenous people should strive for non-interference from the settler state. What Young's model realises is that being in a relationship with the settler state can give a voice to indigenous people which they would not have if they had exited the state. However, that relationship must keep being renegotiated over time and indigenous people must have open to them some channels to contest the settler state even after the initial negotiation.

Let me explain the problem with Young´s account in greater detail. Consider how Young regarded the Goshutes as being morally obliged to listen to the claims raised by communities outside the tribe because they were not granted an unlimited right to non-interference.[288] According to Young, "self-governing entities stand in relationships of contiguity or mutual effect".[289] For Young, the division of governance and the form of the rights granted to indigenous communities rest on the notion that the indigenous peoples need to listen to the claims of other self-governing entities, like the settler state, or in the case of the Goshutes, the state of Utah. Young did not mention the fact that the relationship must

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[288] *ibid.*, 192.

[289] *ibid.*

keep being renegotiated over time. Instead, for Young the relationship between self-governing entities is already based on terms negotiated and agreed by both parties, and indigenous peoples need to respect these terms once they have been agreed. These terms not only seem not to be open to being renegotiated, but also limit the participation of the indigenous people to specific forms which might either hinder the way in which indigenous peoples advance claims or act as a filter to reject particular claims.

As it stands, then, Young's account does not create enough room for indigenous people to keep holding the settler state to account. On the one hand, the terms of the division of governance between the state and indigenous peoples do not seem to be open to revision. The idea of revisability is widely regarded as a crucial element in liberal democratic theory. In Young's account, revisability seems to be limited to the point where self-governing entities need to remain engaged in discussions and negotiations about conflicts and shared problems. But revisabilty in settler colonial contexts should also include the option for a revision of the terms of the relationship between the settler state and indigenous peoples. If the terms of the relationship are not able to be revised after the negotiation between the settler state and the indigenous peoples, the procedures of discussion about conflicts and shared problems are likely to gradually start benefiting the settler state due to it being the party with greater power.

On the other hand, it might be expected that after the division of governance has been negotiated, the historical roots of contemporary claims advanced by the indigenous peoples would be downplayed or rejected. Scholars such as Jung have noted that often the inclusion of demands for justice is used by states, like the Canadian state, to close the door to future

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demands for justice.[290] Therefore the negotiation on the division of governance is vulnerable to the same problem. The agreed division of governance might reduce the types of claim which indigenous people are allowed to advance. If the settler state does not intend to recognise its historical responsibility for the oppression of indigenous peoples and repair it when entering into an agreement with indigenous people over governance, indigenous people will not have an opportunity to hold it accountable for such an oppression after the agreement has been reached.

Revisability of the terms of the division of governance is also important because other forms of participation can be dismissed, forcing the indigenous people to participate according to the model of consensus deliberation preferred by the settler state. As Coulthard noted, one of the problems when a settler state engages in efforts for reconciliation is that it assumes that all the possible past demands for justice which might be advanced by the indigenous peoples have already been taken into consideration. Indigenous peoples are

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[290] Jung noted by her approval of the Indian Residential Schools Settlement Agreement (IRSSA) which revolved around five components of transitional justice, from independent assessment, to payments, and above all a truth and reconciliation commission, that the problem with the framework of transitional justice is that the parties, in this case the government and the indigenous group, agree to "address a discrete segment of the historical injustice that have structure relations between them". However, this framework can then also be used by the government to use "apologies and reparations to shut down other Indigenous demands". See Courtney Jung, 'Walls and Bridges: Competing Agendas in Transitional Justice', in *From Recognition to Reconciliation: Essays on the Constitutional Entrenchment of Aboriginal & Treaty Rights*, Patrick Macklem and Douglas Sanderson (eds). Toronto: University of Toronto Press (2016), 369.

expected to be content that their claims have been accepted and any attempt to voice another demand is then met with scorn and indigenous peoples are accused of being resentful and holding other negative emotions.[291] The negotiation of the division of governance has the potential to create such a scenario mainly because it is likely to be regarded as the mark of a 'new chapter' in the relationship between the settler state and the indigenous peoples – a new chapter which closes the door to other channels whereby indigenous peoples might voice new demands for justice.

Although Young's account seems to regard this new chapter in the relationship between the settler state and indigenous communities as one which can be harmonious enough for self-governing entities to keep engaging in discussions on shared problems, history shows that in settler colonial contexts politics is not conciliatory; quite the contrary, any attempt at forcing an harmonious and reconciliatory relationship is bound to reduce expressions of dissent into mere expressions of negative emotions. Thus, the efforts of the

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[291] Coulthard for instance, through a reading of Fanon's theory of decolonisation, addressed the way in which the literature and discourse on forgiveness and reconciliation in Canada often approaches the responses of the indigenous peoples to settler colonial rule as mere expressions of anger which show that they are 'unable to move on'. Coulthard thus challenged the discourse of the problem with 'clinging to one's anger' by arguing on the one hand that so-called 'negative emotions' are actually a "turning point in the individual and collective coming-to-consciousness of the colonised". On the other hand, Coulthard argued that the expression of negative emotions such as anger is actually an externalisation of "that which was previously *internalized*: a purging, if you will, of the so-called 'inferiority complex' of the colonised subject". See Coulthard, *Red Skin, White Masks*, 114 (italics in the text).

indigenous peoples to reject participating in discussions if they feel pressured to do so or if there is enough dissent within different indigenous communities are likely to be used by the settler state to accuse the indigenous people of being unable to leave 'the past in the past'. This is precisely the reaction with which, according to Coulthard, the Canadian state met the demands of Idle No More, a grassroots movement made up by Inuit, Métis and First Nations which mobilised against the removal of the protection of natural resources originally guaranteed by treaties signed by the Canadian Government.[292]

This dynamic whereby indigenous peoples' dissent is reduced to the expression of negative emotions, rather than being taken seriously, shows that indigenous peoples need to be put in a position from which they can renegotiate the relationship with the settler state over time. Moreover, indigenous peoples must have open to them some channels to contest the settler state even after the initial negotiation. Without the option to contest the settler state, claims raised by the indigenous peoples are reduced to expressions of negative emotions or simply disregarded because of not being expressed through the designated and accepted channels. For instance, among the most notorious critics of Idle No More, conservative senator Patrick Brazeau, who was Algonquin, condemned the protests which ranged from flash mob dances to highway blockades as not setting a "good example for

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[292] Coulthard noted that together with being accused of not being able to leave the past in the past, the movement was also criticised on the grounds of lacking clarity, making evident that the objective was to deny the transformative potential of Idle No More, despite the fact of being a movement which started with indigenous women and that it was led from below by hundreds as opposed to a few from above. See Coulthard, *Red Skin, White Masks*, 161.

young Aboriginal youth" and as overlooking "the existing democratic process to get the changes they want".[293]

Brazeau's critique shows the diversity of opinions among indigenous peoples. But it also shows that for some, the treaties and the agreed democratic processes were already fair and capable of channeling the claims raised by indigenous peoples, which results in dismissal of the political weight and validity of the claims when voiced in other forums.

It is worth mentioning again that Young's model realises that being in a relationship with the settler state can give a voice to indigenous peoples which they would not have if they had exited the state. However, if this relationship is not renegotiated over time and there are no channels left for indigenous people to contest the settler state, then the whole objective of having a political voice as a way to hold the settler state to account, which constitutes the benefit of remaining in a relationship with it, is undermined.

Importantly, leaving the door open to further negotiations is crucial for giving a voice to those who might have not participated in the original negotiation. A negotiation might not include all members and the claims of those who were not present can be easily dismissed after the negotiation has taken place. This is even more problematic when we consider how the inclusion of vulnerable members might shed light on the role which the settler state has

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[293] APTN National News, "Brazeau: Attawapiskat chief's hunger strike doesn't set "good example for young Aboriginal youth," *APTN*, December 20, 2017, https://web.archive.org/web/20121224012920/http://aptn.ca/pages/news/2012/12/20/brazeau-attawapiskat-chiefs-hunger-strike-doesnt-set-good-example-for-young-aboriginal-youth/. Accessed 2 September 2021. For a defence of these forms of 'uncivil' protests in the face of severe injustice, see Candice Delmas, *A Duty to Resist: When Disobedience Should be Uncivil*. Oxford: Oxford University Press (2018).

played in fostering and supporting oppressive norms and institutions within indigenous communities. I shall come back to this point in Chapter 5.[294] However, for now, it is important just to highlight that the renegotiation of the relationship between the settler state and indigenous communities over time is also crucial to incorporate the voice of minorities within indigenous communities. Similarly, through the acknowledgement of spaces of contestation, the diversity within indigenous communities is likely to become more evident.[295]

The shortcomings of Young's account should not lead us to reject it. As I have already argued, Young's model is valuable as it realises that being in a relationship with the settler state can give a voice to indigenous peoples which they would not have if they had seceded. However, in order for a model of self-determination as non-domination to work in settler colonial contests, particular conditions need to be met, otherwise the voice of the indigenous people is likely to be reduced to the production of consent. The terms of the relationship between the settler state and indigenous peoples should no longer be regarded as either final or closed to substantial changes over time. As a product of a compromise for the two self-governing entities to engage in a number of issues which in almost every instance can be traced back to the incorporation of the indigenous peoples into the settler society, the

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[294] For an interesting account of the role which the dominant society, through its political entity, has in the support and presence of patriarchal norms and institutions in ethnic groups, see Sarah Song, *Justice, Gender, and the Politics of Multiculturalism.* Cambridge: Cambridge University Press (2007). I shall return to Song's account in Chapter 5.

[295] For an interesting view of the diversity within groups, see Monique Deveaux, *Gender and Justice in Multicultural Liberal States*, Oxford: Oxford University Press (2006).

presence of dissent and the refusal of the indigenous peoples should be both expected and accepted, instead of being dismissed.

Conclusion

In this chapter, I have advanced the argument on the advantages that the principle of self-determination as non-domination has over the one of self-determination as non-interference. I started the chapter by exploring the main accounts which rely on the principle of self-determination as non-interference. I highlighted the main differences among these and emphasis was put on their approach to the settler colonial context. The intention of this was to set the ground for section 2. I then proceeded to explore the main accounts which capture the complexity of settler colonialism. The objective here was to highlight the specificity of the context and the importance of seeing the claims raised by indigenous peoples as ones which emerge with settler colonialism in the background.

In section 3, I moved to explore the principle of self-determination as non-domination. This section started with a study of the account advanced by Jung. The reason for this is because Jung's account is one which focuses on the formation of the indigenous identity in Mexico. The case of Marichuy enabled a clearer picture of the role which the settler state has in the formation of the indigenous identity and the way exclusion takes place due to the logic of dispossession which lies at the core of the settler colonial project. With this in mind, the chapter proceeded to take a closer look at Jung's suggestion on the benefits of contestation especially in the context of the need for different channels to be made available so that the indigenous peoples can contest the settler state after the initial negotiation.

The chapter then proceeded to explore the account advanced by Young. Young's account is one which endorses the principle of self-determination as non-domination. I used her argument to show the benefits of thinking of the relationship between the settler state and the indigenous peoples as one of relational autonomy. In particular, I sought to show the novelty of Young's account, but also aspects where it could be improved. Among these, I emphasised the fact that the relationship must keep being renegotiated over time and that indigenous peoples must have opened to them some channels through which to contest the settler state even after the initial negotiation. I emphasised the importance of these points in order for indigenous peoples to be able to hold the settler state to account, which is the reason why Young's model offers a feasible alternative to the model of self-determination as non-interference. These points are further explored in the next chapter where its evident the lack of attention to the link between land and the right to self determination.

4. Recognition, not Assimilation: Self-determination in Guillermo Bonfil-Batalla's Political Thought[296]

Abstract.

In this chapter, I explore the account advanced by Guillermo Bonfil-Batalla regarding the recognition of the indigenous right to self-determination. His account revolves around the ideal of self-determination as non-domination. However, most of it is in the form of his critique of indigenismo and the concept of *mestizaje*. I shall therefore explore both the main ideas of indigenismo and how its proponents have deployed the concept of *mestizaje* to defend the legitimacy of the Mexican settler society on the grounds of a responsibility toward helping the indigenous people to assimilate, and also Bonfil-Batalla's critique.

"I imagine and desire as well a plural world, a plural Mexico. I think that the next few years will erode even more the established convictions about the inevitable uniformity. We will have to knock down many absolute truths that support the dominant thought and embark on the adventure of rethinking everything. It is not easy nor comfortable (why should it be? If both the easiness and the commodity need to be questioned as well as absolute values), but it seems indispensable. I cannot imagine anything better for the beginning of the third millennium [Western account, it is worth noting], that a world in which everyone thinks for himself, without dogmatic ties, critically consistent with its own history, imbued with an unwavering longing for freedom: a freedom that is only possible if others are also free."

GUILLERMO BONFIL-BATALLA, *Cuánto Soñar Cuesta* (1987)

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[296] The works of the Mexican political theorists with which I engage in the thesis have not been translated into English. Therefore, all the translations from the original Spanish texts are mine.

Introduction

In this chapter, I explore the argument for the recognition of the indigenous right to self-determination advanced by Guillermo Bonfil-Batalla. In particular, I highlight two things. The first is that Bonfil-Batalla's account is one that focuses on the efforts conducted by the settler state to keep the indigenous people in a condition of domination and the responses given by the indigenous communities in order to make the point on the need for the recognition of their right to self-determination. The second is the fact that Bonfil-Batalla's account is mostly a critique of indigenismo, a philosophical tradition which endorsed the idea of *mestizaje* (racial intermixing) as a way to achieve the assimilation of the indigenous people into the settler society. I focus on how his critique revolves around the responsibility of the settler state toward the indigenous communities in order to advance the argument that the legitimacy of the settler society requires the recognition of indigenous peoples' capacity for self-governance rather than supporting them to assimilate into the dominant society.

The structure of the chapter is as follows. The first section provides a reconstruction of Bonfil-Batalla's critique of indigenismo. The second focuses on his theory of 'cultural control'. The final section is an analysis of Bonfil-Batalla's justification for the recognition of the indigenous right to self-determination.

4.1. *Mestizaje* and assimilation into the Mexican settler society: Bonfil-Batalla's critique of indigenismo

Guillermo Bonfil-Batalla (1935-1991) was an anthropologist who not only produced a considerable collection of works throughout his lifetime, he also held different positions in academia and became the director and founder of museums and research centres.[297] He is still celebrated as one of the most influential thinkers in Mexico.[298] The reason for this is that Bonfil-Batalla dedicated most of his life to studying and denouncing the problems with the nationalistic myth which was embraced by both public officials and academics in the years after the end of the Mexican Revolution (1910-1917).[299] As I shall show in this section of the chapter, for Bonfil-Batalla the implementation of policies based around such a myth were problematic because they had as their main objective the achievement of the assimilation of the indigenous people into the dominant Mexican society. In particular, most of his works revolve around what he saw as the further exclusion of the indigenous communities and the

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[297] Guillermo Bonfil-Batalla: Biografía. Universidad Nacional Autónoma de México (UNAM), accessed 21 February 2021, http://biblioweb.tic.unam.mx/diccionario/htm/biografias/bio_b/bonfil_bata.htm.

[298] Public libraries and sections in museums, mainly in Mexico City, are named after him.

[299] For works which acknowledge the contribution of Bonfil-Batalla's work to the critique of indigenismo see, for instance, Héctor Díaz-Polanco, *Autonomía Regional: La autodeterminación de los pueblos indios*, Mexico City: Siglo Veintiuno Editores (2011) and Sánchez, *Los Pueblos Indígenas*. For works which regard Bonfil-Batalla's work as a key contribution to Mexican political thought, see, for instance, Elvira Concheiro Bórquez et al., *Antología del pensamiento crítico mexicano contemporáneo*, Buenos Aires: CLACSO (2015).

overall condition of domination to which the indigenous communities were subject as a result of policies and attitudes derived from the realisation of such a nationalistic myth.

4.1.1. Mestizaje in Mexico

Mestizaje is a deeply complex topic, so in this part of this section of the chapter, apart from a brief explanation, I shall restrict myself to reconstructing this aspect of Bonfil-Batalla's account. The relevance of exploring Bonfil-Batalla's understanding of *mestizaje* is because it sheds light on the elements which he saw as problematic and inconsistent in indigenismo. In Bonfil-Batalla's account, *mestizaje* plays a crucial role and enables him to identify the causes of the condition of domination of the indigenous people. In turn, the concept also plays an important part in the way that Bonfil-Batalla aligned self-determination with the ideal of non-domination.

The term *mestizaje* can be traced back to colonial times when all sorts of racial categories were used to denote the social standing of individuals. Courtney Jung stated that the category of *mestizaje* shows the "obsessive preoccupation of Mexican colonial society with racial classification".[300] At that time, the category of *mestizo* (half-blood: half Spanish and half indigenous) was one of the many used to describe the different racial combinations, but the term was also employed to denote different social standings and to preserve the hierarchy of European rule. Jung argued that race was instrumental in the definition of power

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[300] Courtney Jung, 'Race, Class, and Ethnicity in the History of Mexican Indigenous Politics', in *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics*, Avigail Eisenberg, Jeremy Webber, Glen Coulthard and Andree Boisselle (eds). Vancouver: UBC Press (2014): 25.

relations in the Mexican colonial society but also acted as a reminder of colonial rule. As Jung put it:

> The multiplication of categories was meant to remind both colonial subjects and the Spanish Crown that, despite racial mixing, Mexico was still an ordered, hierarchical country in which each group occupied a specific socio-economic niche defined largely by race. And even more importantly, it was a reminder that Europeans were firmly at the top of that hierarchy.[301]

Historically, the hierarchical system during colonial times used as a unit of racial measurement the amount of European blood and this meant that the *mestizo*, with the exception of Spanish Criollos, was positioned above other categories. In other words, this hierarchical system was based on biological attributes.

Bonfil-Batalla argued that an encounter between two civilizations, the European and the Mesoamerican, had effectively taken place not only in the sense of war and the imposition of colonial institutions, but in terms of preserving the genetic material of the native population. He stated that "A large part of the Mexican mestizo population, which today makes up the bulk of the non-Indian [sic], peasant and urban population, is hardly distinguished, by its physical appearance, from the members of any community that we indisputably recognize as Indian: from a genetic point, both are the result of a miscegenation".[302]

So for Bonfil-Batalla, the use of the category of *mestizo* to describe the majority of the population in Mexico as mixed-race people was correct, or at least not problematic. The problem for him lay in attaching the part of racial intermixing to a dimension of legitimate

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[301] *ibid.*, 25.

[302] Guillermo Bonfil-Batalla, *México Profundo: Una Civilización Negada.* Mexico: Debolsillo (2005): 41.

rule and responsibility toward the indigenous population, as theories of indigenous rights of the time did. At the beginning of the twentieth century, a group of scholars in Latin America, not only in Mexico, from all different academic backgrounds saw the exclusion and condition of vulnerability of the indigenous communities as a sign of an inability of the country to reconcile its colonial past as the reason for the civil strife which lasted over seven years, as well as the reason for the country's inability to unleash its full economic potential. Consuelo Sánchez commented that in Mexico after the revolution, the indigenous question gained attention from all sorts of intellectuals for whom ethnic heterogeneity was the reason for the problems in the country and thus it was necessary to achieve the "insertion of the Indigenous people into the nation state".[303]

For these scholars, *mestizo* was not only a biological outcome, it was an historical outcome in the sense of symbolising the combination of the two civilizations; the Mesoamerican and the European. The hierarchical system which Jung noted in her account was one recovered by these scholars to justify the authority of the settler (*mestizo*) society, because of the fact of being the already-finished product of the clash of two civilizations, and the fact that they were not limited by the customs and institutions which prevented the indigenous peoples from integrating into the post-colonial nation.

For Manuel Gamio, who is often not only regarded as the father of anthropological studies in Mexico but also the father of 'inter-American' indigenismo (Latin American political ideology centred on the protection of the indigenous people), the *mestizo* was an historical outcome and had played a crucial role in containing the exercise of colonial power. Indeed, for Gamio the only reason that the *mestizo*, which he referred to "as having been

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[303] Sánchez, *Los Pueblos Indígenas*, 28.

forever the rebel group", were able to carry out such a task was because they were capable of understanding the "threnody of the indigenous people".[304]

My interpretation of this intricate part of Gamio's work is that, according to Gamio, given that the *mestizo* were the product of two civilizations coming together, they were able to see the injustices suffered by the indigenous people rather than embracing the view of power of colonial rulers. For Gamio, therefore, the reason why the *mestizo* had always resisted domination "by those from 'pure blood'"[305] was because its sense of rightness was informed by 'its connection' to the indigenous people. For indigenistas like Gamio, *mestizaje* not only meant racial interbreeding but was instead regarded as a process from which a people (as nation) had emerged. Such an approach to *mestizaje* allowed indigenistas to advance accounts of responsibility of the *mestizo* society towards the indigenous people and such accounts were grounded on ideas like the one of the *mestizos* being able to understand better than any other group the "threnody of the indigenous people".

For indigenistas the *mestizo* population had a responsibility to help those who remained in a colonised condition to overcome their condition. The form which this took for indigenistas was a responsibility for the members of the new civilization to intensify the assimilation of the native population. Sánchez stated that a number of indigenistas, such as Gamio, Molina Enríquez and José Vasconcelos, not only made arguments for such a responsibility, but also proposed ways to fulfil it, and in most cases directly supervised the

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[304] Manuel Gamio, *Antología*, Mexico City: UNAM (1993): 106.

[305] *ibid*.

policies implemented to achieve the assimilation of the indigenous communities.[306] In specific terms, indigenistas considered it a priority to intensify the process of assimilation and *mestizaje* to the point where the 'difference' (the indigeneity) of the indigenous people disappeared and their transformation into *mestizos* was complete.[307]

What this shows is that for indigenistas, the social position of *mestizos* gave them greater insight into indigenous peoples. For them, the *mestizo* represented the best of the two civilizations and thus had a greater insight into the indigenous peoples while lacking what they regarded as the elements which kept the indigenous communities in a constant state of exclusion. For the indigenistas, the indigenous peoples had suffered injustices for centuries, but also their vulnerable condition was the result of their lack of both willingness and exposure to learn western ways and knowledge. As Gamio put it, "the indigenous peoples do not have access to the necessary means to achieve their liberation, they have lacked 'skills management'[308] which is only learnt through scientific knowledge and convenient cultural expressions".[309]

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[306] Sánchez, *Los Pueblos Indígenas*, 30. Note that indigenistas such as Gamio often use the term 'integration' to refer to what we should more properly define as assimilation, that is, the process of obtaining cultural homogeneity by removing the cultural specificity of a minority group and requiring them to endorse the practices and norms of the dominant culture. Since indigenistas do actually argue for assimilation, I shall use this term to denote their political project.

[307] *ibid.*, 30.

[308] The term used by Gamio was *dotes directivas*, which roughly translates as 'managerial skills'.

[309] Gamio, *Antología,* 102.

Gamio even went as far as to ask himself the question: "Why does the 'Indian' not know how to think, direct, make his revolutions triumphant, despite having physical energies that are likely to be superior and possessing intellectual aptitudes comparable to those of any race in the world?"[310] Gamio's reply to his own question was, "the evolutionary state of the indigenous peoples".[311] This further reinforces the point that for indigenistas, the indigenous peoples had failed to adapt into the modern society. Gamio added that "the 'Indian' with a delay of 400 years, because his intellectual manifestations are only a continuation of those that developed in pre-Hispanic times, only reformed by the force of circumstances and the environment".[312]

Because of the notion that indigenous peoples had failed to adapt to modern society, indigenistas thought that the responsibility of the *mestizo* society was to help indigenous peoples to assimilate into the settler society. Given that responsibility was viewed in these terms, indigenistas thought that the best way for the *mestizo* society to fulfil this responsibility was through education policies. Sánchez wrote that through the creation of rural schools, indigenistas sought to transmit a 'civilizing influence' and achieve the dissolution of their socio-cultural systems.[313] Effectively, for the indigenistas it was the responsibility of the *mestizo* to 'Mexicanize'[314] the indigenous people.[315]

For the majority of indigenistas, a modern society was a strong and united one. Cultural homogeneity was regarded as necessary and thus it was up to the state to assimilate

[310] *ibid*.

[311] *ibid*., 103.

[312] *ibid*.

[313] Sánchez, *Los Pueblos Indígenas,* 30.

[314] The term Sánchez used was *Mexicanizar*, which roughly translates into 'Mexicanize'.

[315] Sánchez, *Los Pueblos Indígenas,* 31.

minorities such as the indigenous peoples. Sánchez stated that for indigenistas, the achievement of national unity required an "ethnically homogeneous society".[316] In Gamio's view, centuries of exploitation had resulted in the indigenous peoples internalising the idea that they were inferior and that their culture had no value.[317] Therefore, it was up to the state to fight against negative stereotypes of the indigenous peoples within the *mestizo* society, and also to make an effort to change the state of mind of the indigenous peoples. For Gamio, the achievement of an homogenous society needed to start with an appreciation of the indigenous culture because he realised that endowing the indigenous people with education counted for little if the *mestizo* society continued to operate around racial and cultural prejudices.[318] For Gamio it was up to the state to fight for the inferiority complex in the mind of the indigenous people to disappear.[319] He suggested that all this would translate into facilitating the assimilation of the indigenous people into the *mestizo* society, which in turn would mean the achievement of a united and strong nation.

For indigenistas, *mestizaje* as a cultural process could be manipulated, that is, intensified, in order to achieve an homogenous society. This notion was grounded in the idea that the *mestizo* society had dominated what Gamio described as "intellectual culture".[320] For Gamio, the *mestizo* population had a tendency to favour and adopt the "intellectual manifestations" of the indigenous people while showing a tendency to reject those of European origin.[321] At the same time, however, for Gamio the lack of progress and the

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[316] *ibid*. 21.

[317] Gamio, *Antología,* 80.

[318] *ibid*., 80.

[319] *ibid*., 82.

[320] *ibid*., 106.

[321] *ibid*.

absence of indigenous schools of thought meant that despite that preference, the *mestizo* population was educated on the lines of European traditions, effectively creating what Gamio described as an "intermediate culture".[322]

This form of culture was neither entirely indigenous nor entirely European; it was something 'new'. Gamio's explanation of the *mestizo* culture as a dialectical outcome was shared by other indigenistas for two reasons. The first was that it allowed them to present the *mestizo* culture as a dialectical outcome rather than a continuation of European culture. The second reason was that in this way, the intensification of *mestizaje*, that is, the replacement (as elimination) of the indigenous knowledge, was easier to justify. Sánchez commented that the realisation of such an idea meant the creation of rural schools and the implementation of federal educational programmes which had as their objective "the linguistic and cultural unification of the population and the strengthening of nationalist sentiment".[323]

For indigenistas like Gamio, who at the time was also the director of the Instituto Nacional Indigenista (INI), such action was necessary because of the current "evolutionary state" of the indigenous people.[324] As mentioned in the introduction, the influence from German idealism played a crucial role in the formulation of the ideas of influential thinkers, like Gamio. This is important to note because it shows that Gamio shared these assumptions but he was not responsible for their theoretical articulation. In his view, the "indigenistas methods" (of assimilation) were reserved for the indigenous population because, unlike the *mestizo* population, it was about fulfilling both the "needs and biological aspirations of the groups that vegetate in the lowest stages of evolution", and as such members of the *mestizo*

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[322] *ibid.*, 107.

[323] Sánchez, *Los Pueblos Indígenas*, 30.

[324] Gamio, *Antología,*136.

population were exempt from these due to the fact that their "cultural and economic characteristics were no longer indigenous".[325] For Gamio the urgency of intensifying *mestizaje* lay in the need for the indigenous population to stop living "either partially or completely on the sidelines of the benefits produced by the economic structures".[326]

For indigenistas like Gamio, the condition of exclusion of the indigenous people was in many respects the result of centuries of indifference from the ruling societies, both colonial and settler, and governments therefore had an obligation to increase the living standards "of all social groups that vegetate in inferior living conditions".[327] To be clear, Gamio's account should not be regarded as one on the lines of historical injustice and responsibility for past grievances. The reason for this is because his account had as its main objective to provide the theoretical basis for the nation-state project which emerged after the Mexican revolution. His approach to *mestizaje* should only be regarded as the way that in his view the *mestizo* society had moral superiority over the indigenous people, and thus, implicitly, authority as well.

This point constitutes the main element of Bonfil-Batalla's critique, for whom cultural assimilation is a 'long-term process' which therefore cannot even be considered to have already taken place. So Bonfil-Batalla labelled the whole idea of *mestizaje* in cultural terms "a fallacy".[328]

For Bonfil-Batalla, the deployment of the *mestizo* as an identity had as its only objective to confer the dominant society with a moral authority over the indigenous people so that indigenous people could be stripped of their indigeneity in a process which Bonfil-

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[325] *ibid.*

[326] *ibid.*, 137.

[327] *ibid.*, 155.

[328] Bonfil-Batalla, *México Profundo*, 241.

Batalla described as *desindianización*. According to Bonfil-Batalla, *desindianización* was not the result of biological miscegenation, but of the action of ethnocidal forces which end up preventing the historical continuity of a people as a socially and culturally differentiated group.[329]

For Bonfil-Batalla, this meant that, on the one hand, indigenous people were portrayed as uncivilised and in need of help, and on the other hand that the Mexican *mestizo* was seen as the bearer of universal knowledge who has the right to 'help to develop' indigenous people by removing their indigeneity. According to Bonfil-Batalla, this was a process which had not only provided the *mestizo* with a considerable margin of governance over the indigenous people, but had also resulted in the oppression and persecution of indigenous people in an attempt to eradicate their cultural elements. Bonfil-Batalla explained that:

> The process of *desindianización* initiated almost five centuries ago has achieved, through mechanisms almost always compulsive, that large sections of the Mesoamerican population renounce identifying themselves as members of an Indian community, which considers itself the heir of a specific cultural heritage and assumes the exclusive right to make decisions in relation to all the components of that cultural heritage (natural resources, forms of social organization, knowledge, symbolic systems, motivations, etc).[330]

What this shows is that for Bonfil-Batalla, the indigenous people found themselves in a situation where the preservation of their cultural elements was almost impossible. In my view, this resonates with Lorenzo Veracini's take on hybridity and provides a useful

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[329] *ibid.*, 42.

[330] *ibid.*, 42-43.

illustration of what Veracini meant. As I explained in Chapter 3, according to Veracini, transfers (of content) play a key role in the elimination of the native and can produce hybridity. Veracini notesd that "hybrid forms disturb the triangular system of relationships inherent in the settler colonial situation, and ultimately reproduce a dual system where two constitutive categories are mixed without being subsumed".[331]

The concept of hybridity is useful for understanding the concept of *mestizaje* because it shows that two categories are mixed with one another, but through an active and planned process. The transfer of content means making something, say X, look less X by transferring (and thus replacing) its content so that it can be in terms with Y. As noted in Chapter 3, for Veracini transfers were key in the elimination of the native, in identity terms, by eliminating the constitutive elements of the indigenous identity. In this process the indigenous peoples were forced to renounce such constitutive elements, eventually making it impossible for them to deploy the indigenous identity any more. This resembles the process which Bonfil-Batalla described as de-indigenisation (*desindianización*) because the indigenous peoples renounced their indigenous identity, effectively achieving the goal of settler colonialism: the elimination of the native.

For Bonfil-Batalla the intensification of *mestizaje* (as a cultural process) rather than ensuring the assimilation of the indigenous people was instead instrumental in the process of *desindianización*, as it meant that indigenous people were forced to renounce their cultural elements. It needs to be noted that by the intensification of *mestizaje*, Bonfil-Batalla was referring to the assimilationist approach which the Mexican state had embraced after the revolution of 1910-1917 and the policies designed to achieve the removal of the norms and ways of the indigenous communities. For this reason, Bonfil-Batalla used the term

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[331] Veracini, *Settler Colonialism,* 30.

desindianización which he understood as the process by which indigenous peoples "are forced to renounce their identity, with all the consequent changes in their social organization and culture".[332]

In practice, this process had very deep implications for the lives of indigenous people. According to Bonfil-Batalla, through this process, within the indigenous communities the traditional norms, institutions and authorities were replaced by those which did not correspond to the culture of these communities.[333] Likewise, the traditional roles of labour were altered as more indigenous people were forced to sell their labour not only within their community but also outside it, and manufactured goods replaced those produced within such communities.[334] What this shows is that the process of *desindianización* created an environment of coercion which pushed indigenous communities to gradually morph, effectively leaving behind their norms and institutions and rearranging their communities according to the principles of the capitalist modes of production. For Sánchez, this was always the objective of the indigenistas, because for them the indigenous peoples were an obstacle to realising the project of a modern and industrialized nation.[335] Bonfil-Batalla commented on this process of alteration of the indigenous communities saying that "in this way, consumption needs that do not correspond to the demands of their own (indigenous) culture are created and these generate new mechanisms of exploitation and dependence".[336]

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[332] Bonfil-Batalla, *México Profundo*, 42.

[333] *ibid.*, 202.

[334] *ibid.*

[335] Sánchez, *Los Pueblos Indígenas,* 30.

[336] Bonfil-Batalla, *México Profundo,* 202.

To summarize, the main ideas which were popular at the time and which lay at the core of Bonfil-Batalla's critique are the following. The first is what could be considered as the normative dimension of *mestizaje*; *mestizaje* had come with a distorted sense of responsibility of the settler society towards the indigenous population. The second is the idea that indigenistas had argued for the protection of indigenous peoples but only to achieve their assimilation into the dominant culture, not as a recognition of their right to self-determination. These points enable us to see the role which the figure of the Mexican *mestizo* plays in the legitimization of the Mexican settler state. It shows that for indigenistas, a truly united Mexican society was possible (a society in which citizens embody a harmonious fusion of Spanish and indigenous traits) but it could be legitimate only as long as it helped assimilate indigenous people into the settler society. I call this the normative dimension of *mestizaje* because it entails the basis for legitimate rule, specifically in the form of responsibility of the settler society towards the indigenous people.

Now that we have identified the normative dimension of *mestizaje*, it is possible to understand a bit more clearly Bonfil-Batalla's critique of indigenismo. Most of this critique of indigenismo and the normative dimension of *mestizaje* is located in his seminal work *México Profundo: Una Civilización Negada (Deep Mexico: A Neglected Civilization)*.[337] Bonfil-Batalla explained at the beginning of the book that his intended audience was not academics and experts on the topic of indigenous rights; instead it was the public, Mexican

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[337] Different editions of the book have been published since its original publication in 1987. The English version has as the subtitle 'Reclaiming a Civilization'. I have opted for my own translation, because, from my view, the word 'neglect' is closer to the condition of exclusion of those who form the 'deep Mexico'.

society.[338] This shows that his intention was to address directly the population which accepted the idea that by helping the indigenous communities to assimilate, the Mexican settler state was in a position to claim legitimate rule.

4.1.2. Deep Mexico vs Imaginary Mexico

For Bonfil-Batalla, there were two versions of the same country. One was 'Imaginary Mexico', the other was 'Deep Mexico'. It should be noted that Bonfil-Batalla used the word 'imaginary' to highlight the fact that this is a version of the country which only exists in the mind of a few. In other words, it is one that does not correspond to reality. This was the Mexico which existed in the mind of indigenistas. As the critique of the indigenistas showed, the kind of country that they had in mind was one which needed to achieve homogeneity because it was already the finished product of the clash of two civilizations. Also, as the critique of the indigenistas showed, for them the indigenous people remained in a condition of exclusion because they relied on knowledge which, unlike western knowledge, is not as useful in achieving development, and thus it is the *mestizo's* task to help the indigenous peoples to assimilate by being educated in western knowledge and values. Imaginary Mexico is that version of the country in which the *mestizo* indigenous peoples have access to western knowledge and Mexico is on its path to becoming a modern nation.

Indeed, imaginary Mexico is the one embraced by those who only see value in western ideas, notions, and even aesthetic values. For Bonfil-Batalla, these were the same group of people who tended to glorify the indigenous past while looking with contempt at anything related to indigenous communities or with traces of influences or links to indigenous culture.

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[338] *ibid.*, 9.

In his view, this group of people, mostly made up by white, wealthy and powerful individuals, not only ruled the country but had effectively propagated an idea of a nation which has little resemblance to reality, and for whom the country should simply adopt the institutions of the west despite the lack of compatibility and the potential for domination. Bonfil-Batalla stated that "Western democracy has worked in Mexico to justify a structure of cultural control that limits the development of Mesoamerican cultures".[339]

In contrast, the deep Mexico for Bonfil-Batalla constituted the real version of the country. Deep Mexico was one made up mostly by indigenous communities, but also by other groups such as the marginalised in urban areas and *mestizo* peasants. In other words, deep Mexico was inhabited by the dispossessed and the excluded. For Bonfil-Batalla, the problem with the notion of the country being embraced and imposed upon through institutions shaped around it was that the mere presence of an element which was identified as belonging to indigenous culture resulted in immediate ostracism.

For Bonfil-Batalla, a simple look at the cultural practices and daily behaviour of peasants showed the legacy of the indigenous culture and the appropriation of some of its values by the peasant community. Similarly, for Bonfil-Batalla, peasants, although perhaps not indigenous in the sense of speaking an indigenous language and in the way of considering themselves as such, needed to be viewed as the basis of the Mesoamerican civilization. In other words, for Bonfil-Batalla, the excluded and marginalised in Mexico were those associated with an adherence to cultural practices associated with indigenous communities and this has an impact on the kind of job they are likely to get in the city. Bonfil-Batalla said

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[339] *ibid*., 236.

that "Many more, poorly dressed in work clothes, serve as masons and in tasks of any kind. The more stable domestic service occupies a large number of Indian women".[340]

Although terms and concepts like stereotypes and oppression were not used or even deployed by Bonfil-Batalla with the same intention as contemporary accounts in political theory, his account is one which shares some elements as those which are deployed in a similar yet less precise fashion. For Bonfil-Batalla, the problem lay in the way members of the groups which populated deep Mexico suffered from harassment and institutionalised discrimination by members who were under the delusion that they inhabited Superficial Mexico. So although concepts such as oppression and cultural imperialism were not deployed by Bonfil-Batalla, his account is one which focuses on the consequences experienced by members of any of the groups which constituted deep Mexico simply because they displayed features which denoted an indigenous background.

4.1.3. Deep Mexico and Imaginary Mexico: Cultural Pluralism vs Assimilation

In Bonfil-Batalla's view, despite having a critical attitude towards the abusive and exploitative treatment experienced by the indigenous communities and being driven by the goal of securing the acknowledgement of their rights, indigenistas had not only accepted the notion that indigeneity was a sign of backwardness but had also defended the idea of *mestizaje* as key in the assimilation process of the indigenous people.[341] For Bonfil-Batalla

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[340] *ibid.*, 88.

[341] Guillermo Bonfil-Batalla, 'Del Indigenismo de la Revolución a la Antropología Crítica', in *La Quiebra Política de la Antropología Social en México*, Andrés Medina and Carlos García Mora (eds). Mexico City: UNAM, (1983): 143-144.

this was partially due to the euphoria which followed the Mexican Revolution, in which the utopia of a unified and developed nation was within sight. In consequence, the indigenous people could not be left behind.[342]   Bonfil-Batalla saw this as an indicator that indigenistas themselves had accepted the notion that indigeneity needed to be regarded as a sign of backwardness. He said, "If any reproach should be made to the indigenistas of that time ... it is for having abandoned the indeclinable exercise of criticism".

For Bonfil-Batalla, the problem was therefore that for indigenistas, this meant that the state had a responsibility to help indigenous communities to achieve development, which in this case implied their assimilation into the dominant culture and ironically the elimination of elements associated with indigeneity. Bonfil-Batalla stated that "The ideal of redemption of the indigenous people, as formulated by Gamio, translated into their denial. The goal of indigenismo, brutally stated, is to achieve the disappearance of the native".[343] It should be noted that, according to my interpretation, Bonfil-Batalla was addressing the way in which indigenistas such as Gamio attempted to argue against the generalised indifference toward the indigenous people and focused on defending an idealised version of the indigenous communities and their customs. Bonfil-Batalla mocked the fact that such idealisation was pointless not only because it simply meant trying to preserve the cultural elements associated with indigenous people by "putting the craft objects in a museum display case", but also because the idea of assimilation in reality meant "the loss of their ethnic identity and a complete integration [that is, assimilation] into the social and cultural systems of the Mexican mestizo society".[344]

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342 *ibid*., 143.

343 *ibid*., 144.

344 *ibid*., 145.

A crucial point which needs to be addressed is that Bonfil-Batalla's account was not rigorous enough when it came to making the distinction between assimilation and integration. Generally speaking, the distinction between assimilation and integration lies in the fact that the former aims at cultural homogeneity whereas the latter implies the act of incorporating into social and political institutions without cultural homogenisation. However, as the previous paragraph shows, he used the two terms interchangeably. This of course obscures the fact that his argument differs from that of the indigenistas. As has already been discussed, for indigenistas, the *mestizo* had the responsibility to help indigenous peoples to *assimilate* into the settler state. Instead, Bonfil-Batalla's account is one which advances the argument on the recognition of diversity and the incorporation of the indigenous peoples into social and political institutions *without cultural homogenisation*. The relevance of this is that it shows that assimilation is formulated along 'evolutionary ideas', which as argued previously in the introduction, were key assumptions of nation-state building.

Another important difference is how indigenistas and Bonfil-Batalla saw the responsibility owed to the indigenous communities. For indigenistas, given that *mestizaje* had already taken place, the resultant *mestizo* civilization had a responsibility to the indigenous people. Instead, for Bonfil-Batalla the birth of a new nation required time. In other words, for Bonfil-Batalla this process was still taking place. It required two steps. The first was an acknowledgment and acceptance of the elements of the indigenous culture. For Bonfil-Batalla, this was crucial to pave the way for the inclusion of the indigenous communities on an equal footing. The second step was setting up a democratic basis so that the resulting nation operated around the principles of what he understood as 'cultural pluralism'. In this sense, the nation-state project which Bonfil-Batalla had in mind rather than seek the assimilation of the indigenous people into the dominant culture, had as its objective their

inclusion as members of the groups which could trace their cultural elements back to pre-colonial times. This was the understanding which Bonfil-Batalla had of the concept of cultural pluralism, which as the quotation at the beginning of the chapter shows, played a key role in the outlining of his argument. In this sense, responsibility for Bonfil-Batalla meant the recognition of the right of the indigenous communities to govern themselves according to their norms and institutions.

What this shows is that for Bonfil-Batalla, the goal was to pave the way for a truly pluralistic nation rather than force the assimilation of the indigenous communities into an already existing nation-state project whose institutions and norms worked only against the indigenous people. This contrasted with the notion of the indigenistas, for whom the *mestizo* nation was already in place and the responsibility of the state was to assimilate indigenous communities. As a result, not only did the understanding of the responsibility of the state vary between the account advanced by Bonfil-Batalla and that advanced by indigenistas, but also the formulations on how to realise it. For Bonfil-Batalla, this meant the recognition of the indigenous right to self-determination. For indigenistas, instead, it entailed the provision of rights which would ensure the protection needed to preserve the elements associated with the culture of the indigenous communities. In Chapter 2, I explored the argument of Andrés Molina Enríquez regarding territorial rights and argued that an interesting part of his account is the fact that for Molina Enríquez, the indigenous peoples were not ready to embrace the idea of private property, and thus the state needed to ensure that they would be allowed to preserve some of the foundations of their communities, such as the communal ownership of land.

Another difference between the two approaches is the fact that Bonfil-Batalla did not think of the recognition of the right to self-determination as necessary to preserve or protect

the indigenous elements. For Bonfil-Batalla, the act of recognition meant the acknowledgement of the capacity of the indigenous communities for self-governance. In specific terms, he associated different elements to the expression of such a right, such as, but not limited to, the way indigenous communities also make use of cultural appropriation but as a way of both resisting alienation (as exclusion) and producing their own cultural elements.[345] In the following paragraphs, I shall explore further this dimension of Bonfil-Batalla's account, most of which is contained in the argument of his theory of 'cultural control'. The relevance of this point at this stage lies mostly in the forms in which the indigenous communities showed their capacity for self-determination, including resistance, and thus the need to recognise this in the light of the ideal of ensuring a plurality of voices.

Indigenistas did see it as necessary, given the exploitation and exclusion of indigenous people, for some form of cultural recognition/accommodation. However, given that in their view, the indigenous people had been left behind by the rise of the *mestizo* nation, then the provision of cultural accommodation was seen as an act of state responsibility to achieve their assimilation into the dominant culture.

In the next section, I turn to the other key part of Bonfil-Batalla's argument on the indigenous right to self-determination, his theory of cultural control. To understand the main point behind this theory, it is necessary to have a clear picture of the reasons behind the exclusion of the indigenous communities (that is, the domination of superficial Mexico over deep Mexico) because, as mentioned above, for Bonfil-Batalla, the appropriation and deployment

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[345] Guillermo Bonfil-Batalla, 'El Etnodesarrollo: Sus Premisas Jurídicas, Políticas y de Organización', in *América Latina: Etnodesarollo y Etnocidio*, Guillermo Bonfil-Batalla *et al.* (eds). San José: Ediciones FLACSO (1982): 139.

of cultural elements on the part of indigenous peoples not only constituted an act of resistance but also should be regarded as an expression of their capacity for self-governance.

4.2. Bonfil-Batalla's theory of cultural control

Bonfil-Batalla developed his theory of cultural control along the lines of concepts such as 'hegemony' and the 'subaltern' formulated by Antonio Gramsci in the *Prison Notebooks*.[346] In this theory, Bonfil-Batalla put forward the idea that indigenous communities resist the cultural hegemony of the dominating society by re-appropriating and making their own the cultural elements (and practices). In this section of the chapter, I put an emphasis on the fact that for Bonfil-Batalla, indigenous communities were always immersed in a reflection of the elements of their culture, thus, for him, cultural appropriation was just one of the many ways employed by the indigenous communities to carry out that process. I also consider how for Bonfil-Batalla, the fact that indigenous communities kept reflecting the elements of their culture showed that the culture of the indigenous people was not frozen in time but rather remained a work in progress. For him, this in turn proved the capacity of the indigenous

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[346] Bonfil-Batalla acknowledged the fact that his theory of cultural control was an adaptation of, and thus heavily influenced by, Gramsci's theory of cultural hegemony, despite also being influenced by the works of Barth and Durkheim. This is particularly evident in his work on ethno-development. See Bonfil-Batalla, 'El Etnodesarollo'.

communities for self-governance and the need for them not to have to allocate resources to resisting domination by the Mexican society.[347]

4.2.1. The mobilization of the indigenous identity in Mexico and the impact on Bonfil-Batalla's formulation of the theory of cultural control

Bonfil-Batalla developed his theory of cultural control after he witnessed the emergence of new indigenous political organisations in Mexico in the 1970s. The emergence of these organisations happened during a time when institutionalized indigenismo was consolidated. For Bonfil-Batalla, this suggested that these organizations were reaffirming their culture rejecting the imposition of cultural values which were part of the myth of *mestizaje*. Bonfil-Batalla stated that "all these organizations are defending the rights and interests of ethnic groups."[348]

In trying to understand the basis of their mobilization, Bonfil-Batalla proposed two categories: 'exogenous factors' and 'endogenous factors'. Exogenous factors referred to all the other/foreign factors, such as the persistence of the mode of production of the dominant group, concrete forms of articulation (terms of participation), recognition and negation of

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[347] It needs to be noted that this point refers only to the idea that resisting the state, a structure of domination almost by definition, requires certain resources or 'cultural elements'. This is one of the main points of Bonfil-Batalla's theory of cultural control. See Bonfil-Batalla, 'El Etnodesarollo'.

[348] Guillermo Bonfil-Batalla, Las Nuevas Organizaciones Indígenas (hipótesis para la formulación de un modelo analítico). *Journal de la Société des Américanistes 61*(1) (1978): 209.

ethnic pluralism and institutional failure. Endogenous factors, on the other hand, referred to what he labelled as primordial identities (that is, the cultural elements associated with a particular community, *pueblo* or *etnia*), the use of new spaces (such as platforms) and technologies, and the presence of new elites who sought to contest the terms of the relationship with the dominating society.[349]

For instance, with regard to the exogenous factor of the persistence of the mode of production, Bonfil-Batalla tried to show that indigenous communities were prevented from living according to their own ways through the imposition of the mode of production of the dominating society. For Bonfil-Batalla, this was the result of the settler state's attempt to eradicate alternative (or indigenous) forms of production. Bonfil-Batalla stated that "the specific characteristics of the forms of production, exchange and consumption of indigenous communities do not fit into the conceptualization of capitalism."[350] Although he provided a detailed explanation of each of the other factors, what it is important to highlight here is that Bonfil-Batalla's classification offered him a clear picture of all the different forms in which the state oppresses indigenous people. In some cases, it would be through the imposition of the mode of production, in other cases it would be through institutional failure to accommodate their claims, and sometimes the state would recognise cultural diversity but without offering legal protection.

Although Bonfil-Batalla did not envisage all the theoretical and normative potential of his own theory, his theory of cultural control casts light on how different forms of exclusion are intertwined. He defended from the start the capacity of communities to govern themselves

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[349] *ibid.*, 209-218.

[350] *ibid.*, 211.

according to their own rules and institutions. He expressed this in a way which anticipated Kymlicka's argument:

> If we want a democratic society, the recognition of cultural diversity must be translated into the recognition of the legitimacy of each culture. Legitimacy, not only in terms of its past nor its current existence but fundamentally in relation to the right that each 'people/nation' (*pueblo)* has to build their future and develop their cultural potentialities.[351]

According to Bonfil-Batalla, it is crucial that indigenous peoples develop their cultural capabilities as these capacities play a crucial role in enabling indigenous communities to challenge the decisions of the settler state. To put it differently, for Bonfil-Batalla, the real problem with the interference and oppression from the settler state lay in the fact that indigenous communities were prevented from undertaking the process of cultural revision which would allow them to establish a less asymmetrical relationship with the settler state. Bonfil-Batalla's theory focused precisely on a key aspect of the decolonial approach: the continuation of colonial control. The continuation of colonial control is crucial to understanding the relation of past injustices with contemporary forms of injustice. For instance, focusing on the case of Canada, Tricia Logan argued that the invisibility of Canada's crimes against the Métis was not a "mere oversight" but the way in which "historical blind spots allow for the comforting national myths and the continuation of colonial control".[352] What this shows is that by neglecting the past crimes against indigenous

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[351] Guillermo Bonfil-Batalla, Notas sobre civilización y proyecto nacional. *Cuadernos Políticos 52*(1) (1987): 30.

[352] Tricia Logan, Settler colonialism in Canada and the Métis. *Journal of Genocide Research*, *17*(4) (2015): 447.

people, current forms of injustice are seen as new forms of injustice with no connection to the past. Logan traced current injustices back to the Canadian settler state's decision to "dismantle .. Métis title to their own lands through lawless administration of the Manitoba act", and the ways in which this act of dispossession of land had far-reaching consequences, ranging from discrimination to the spread of diseases "among the Métis".[353] Logan also noted that although indigenous peoples were discriminated against and decimated through diseases, the Canadian government launched a series of infrastructure projects to create access to the land which was formerly in the hands of the Métis. Logan stated that this dispossession paved the way for future injustices during the era of the depression when "houses were burned, dogs and animals were shot on sight and the church was dismantled to create a piggery".[354]

Logan commented that the dispossession of land and further forms of capitalist dispossessions put the Métis into a condition of severe vulnerability, which was subsequently exploited by the settler state in order to further eradicate the indigenous identity through, for instance, the implementation of the infamous federal programme of residential schools and of a biased child welfare system.[355] Logan's observations resonate with Bonfil-Batalla's insight into the transformation and exclusion of the indigenous identity through the expansion of capitalism. In the context of settler colonialism, indigenous peoples are put into and kept in a condition of oppression by the settler state through the creation of new historical narratives which fail to recognize the role that settler colonialism had on the condition of indigenous

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[353] *ibid.*, 442.

[354] *ibid.*, 443.

[355] *ibid.*, 444.

peoples. Logan argued that decolonization "does not mean sending the newcomer home: it means finding these points of connection and restoring dialogue between nations".[356]

Dialogue between indigenous and settler colonial nations was exactly what Bonfil-Batalla's theory of cultural control attempted to capture by highlighting the ways in which the indigenous communities can appropriate the terms of the discussion and advance claims which challenge them. Similarly, for Logan, the Métis have learned how the settler state communicates and uses the indigenous cultural elements to maintain a legitimising historical narrative.[357] The inclusion of indigenous voices not only broadens the margins of the discussion, it can also help to shed light on the historical blind spots and thus show how close the relationship between the settler society and the indigenous people is and address the injustices against the indigenous communities.

4.2.1. Cultural imposition vs cultural appropriation

Bonfil-Batalla's theory of cultural control was centred on the level of control which a community has in times when it needs to make decisions about its cultural elements. These cultural elements and decisions involve two spheres: (i) own and (ii) 'other' (foreign). Figure 2 shows that Bonfil-Batalla's theory of cultural control can be summarized by a matrix which shows the different possible levels of control that a community can have over its cultural elements.[358]

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[356] *ibid*., 448.

[357] *ibid*., 448.

[358] Guillermo Bonfil-Batalla, *La Teoría del Control Cultural en el Estudio de Procesos Étnicos*,13-53.

Cultural elements	Own decisions	Other (foreign) decisions
Own	Autonomous culture	Alienated culture
Other (foreign)	Appropriated culture	Imposed culture

Figure 2. Cultural control elements

As can be seen in Figure 2, when a community participates in the construction of its own cultural values and decisions on cultural elements are made by the community, the community can be said to have an 'autonomous culture'. At the opposite side of the spectrum, there are communities displaying foreign cultural elements and following decisions over their cultural elements which are made by a different community. In this case, the cultural community displays an 'imposed culture'. Bonfil-Batalla's theory of cultural control enables us to measure the amount of freedom that a community has over its cultural elements. Effectively it provides us with the theoretical tools to appreciate the changes from one way of cultural control (for example, cultural appropriation) to another way of exercising control over the cultural elements of a community (such as cultural imposition). Bonfil-Batalla's theory also allows us to appreciate the severity of the impact that the settler state's imposition of cultural values has on indigenous people in a way which is not fully captured by the liberal egalitarian and communitarian defences of multiculturalism.

4.3. The recognition of the indigenous right to self-determination

Bonfil-Batalla did not provide us with a definition of self-determination. Nevertheless, through an engagement with his work, it is possible to appreciate that ultimately Bonfil-Batalla embraced a version of self-determination as non-domination. This is for two reasons. First, Bonfil-Batalla believed that the level of interaction between the settler society and the indigenous communities does not allow for greater political independence than what mutual governance could offer. Second, his account retains a nationalist component, as is clear from his categories of imaginary Mexico and deep Mexico. As important as the nationalist component may be, Bonfil-Batalla's stress on the level of interdependence between the settler society and the indigenous communities is what ultimately led him to conceive of self-determination as non-domination. He stated that indigenous peoples see themselves as both indigenous and Mexicans. However, as his theory of cultural control shows, the capacity of the indigenous communities to challenge the settler state is crucial. In his account, the recognition of the indigenous right to self-determination is a way to include in the wider democratic societies not only those who are the worst off, but also those who are marginalized because of their indigenous identity.

According to my interpretation, Bonfil-Batalla adopted a version of self-determination which involved giving communities an equal standing in democracy. Instead of insisting on the idea that communities must be protected to guarantee their survival, Bonfil-Batalla argued that indigenous people's participation in Mexican democratic institutions is crucial. Indeed, it is only by having a say on the decisions affecting them that indigenous communities can have the resources to resist the imposition of the settler state's systems of value or production. Bonfil-Batalla regarded negotiation as fundamental: "In the face of a

decision of the dominant society (the legal delimitation of communal lands, for example), the group sometimes has the possibility of negotiating, that is, of influencing other people's decisions."[359]

By negotiating with the settler state, indigenous communities can try to influence the decision-making process started by the settler state. For Bonfil-Batalla, indigenous communities' capacity to come to their own decisions according to their set of values enables them to have control over their cultural elements, their relations with other communities and, in particular, with the settler state. The importance of grounding the right of self-determination of indigenous peoples on the legacy of their oppression lies in highlighting the fact that the historical oppression of indigenous people was precisely intended to prevent them from controlling the cultural elements of their identity. Bonfil-Batalla said that:

> The impoverishment of the communities, as a result of the loss of their better lands and the unequal commercial exchange that has been imposed by the dominant economic interests, is a limiting factor that severely affects the margin of the lie within which the Indian peoples take many of their own decisions, concerning actions of very diverse nature.[360]

As can be seen, Bonfil-Batalla described deep Mexico as the oppressed form, a Mexico where indigenous elements are excluded and indigenous peoples are oppressed. Does this mean that for Bonfil-Batalla the settler state has no legitimate authority over the indigenous people? According to my interpretation, Bonfil-Batalla's argument does not go as far as negating the legitimacy of the settler state and its authority over indigenous peoples. For Bonfil-Batalla, the problem with indigenous peoples lay in their exclusion from the

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[359] Bonfil-Batalla, '*La Teoría del Control Cultural en el Estudio de Procesos Étnicos*, 13.

[360] *ibid.*, 13.

democratic Mexican society, not in the lack of authority of the Mexican state. This is why Bonfil-Batalla conceived of the recognition of diversity as both a way to achieve reconciliation with the past and an opportunity for indigenous people to have a better future. At the end of *Deep Mexico*, Bonfil-Batalla wrote that "The adoption of a pluralistic project, which recognizes the validity of the Mesoamerican civilization process, will make us want to be what we really are and can be: a country that pursues its own objectives, which has its own goals derived from its deep history".[361]

In other words, Bonfil-Batalla interpreted the principle of self-determination as self-government and non-domination, and not as non-interference. Bonfil-Batalla's position resonates with the proponents of the politics of difference who perceive the condition of oppression of the indigenous people as a form of second-class citizenship, which takes the form of exclusion from democratic life. According to Bonfil-Batalla, the injustice experienced by indigenous people amounts to being prevented from participating in democratic life through their own forms, norms and institutions and having inclusion conditional upon the adoption of the norms of the dominant settler society. He said that "The state, then, has defined a specific objective for a particular political action: the Indians. This particular policy seeks to stop them from being Indians, to change and incorporate them into the national society as conceived by the State".[362]

This is where the shortcomings of Bonfil-Batalla's argument are evident. He tended to side-line the question over the settler state's authority over indigenous peoples and thus his argument offers only a very partial answer to how indigenous people's self-determination should be recognised. According to Bonfil-Batalla, indigenous communities have a right to

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[361] *ibid.*, 245.

[362] Bonfil-Batalla, *Las Nuevas Organizaciones Indígenas*, 212.

self-determination because they have a right to develop their culture in their own ways. However, indigenous peoples do not fall out of the jurisdiction of the state; he warned that "it is not enough to let them do [as they please]".[363]

Similarly, Bonfil-Batalla was sceptical that jurisdiction over a territory should be exercised by its original owner. Arguing against the devolution of lands on the grounds of history, Bonfil-Batalla maintained that jurisdiction depends on a community's capacity to govern: "It would be affirming their right to organize their internal life and their participation in national affairs according to the particular historical project that is implicit in the cultural tradition that is recognized internally as the main tradition, which defines and sustains that historical project".[364]

Conclusion

In this chapter, I have analysed the political thought of Guillermo Bonfil-Batalla. I started by engaging with his critique of indigenismo and, in particular, of the crucial normative ideal of *mestizaje*, which indigenismo (and its project of assimilating ndigenous people into the settler society) hinges upon. Bonfil-Batalla's account of indigenous peoples' self-determination highlighted the responsibility that the settler state has for injustices towards indigenous peoples and thus took the context of settler colonialism seriously into account. In many respects, Bonfil-Batalla put forward an account of indigenous self-determination which chimes with the ideal of non-domination. In the hope of establishing an authentic engagement

[363] Bonfil-Batalla, Notas Sobre Civilización y Proyecto Nacional, *Cuadernos Políticos*, *52*(1) (1987): 30.

[364] Bonfil-Batalla, *México Profundo,* 242.

with Bonfil-Batalla's thinking, I did not take his observations at face value. Instead, I critically identified some problems with his account and highlighted the insights that it provides into how indigenous self-determination should be conceptualised. This chapter nonetheless, intends to make evident the evolutionary logic present in multiculturalism, implicitly via the study of indigenismo, but this point only becomes more evident in the next chapters.

5. Multiculturalism and its Feminist Critics

Abstract.

Under what circumstances does the extension of group rights not entrench gender inequality? The tension between multiculturalism and feminism revolves around the idea that group rights further entrench gender inequality within ethnic minorities. In this chapter, I advance the point that under certain circumstances, that is, when women within ethnic minorities participate in the definition of the terms of the identity and in the mobilization of the demands for justice, the provision of group rights is crucial in the achievement of gender equality. Several accounts are reviewed before advancing the point that the model of deliberation is better equipped to deal with scenarios of historical domination and asymmetry between the settler state and ethnic groups.

> "Justice requires that multicultural accommodation be rights-respecting, and the best way to achieve rights-respecting results is through a deliberative process that includes the voices of all those affected by the rules or traditions question. Such inclusion not only comes closer to treating members of minority cultural groups as equals; it also has practical advantages."

SARAH SONG, *Justice, Gender and the Politics of Multiculturalism* (2007)

Introduction

The feminist critique of multiculturalism as advanced by Susan Moller Okin revolves around the idea that the provision of groups' rights entrenches gender inequality. Okin's

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argument was a response to Kymlicka's position which, as discussed in Chapter 3, argued that the state should intervene in the affairs of cultural minorities only if severe human rights violations take place. For Okin, this was problematic because it leaves vulnerable members exposed to abuses since they do not have real options to resist or escape their communities. Her critique sought to point out the lack of options for vulnerable members of communities, in particular women, and the way that the provision of group rights can lead to further oppression, rather than improving their condition.

Through the case of Lupita, a Tzotzil activist and member of the organization *Las Abejas*, I shall argue that women within communities such as indigenous peoples participate in forms which Okin did not consider. I shall show that indigenous women play a crucial role in the definition of the terms of the indigenous identity and in both the formulation and the mobilization of the demands for justice for their indigenous communities. I shall then argue that the provision of group rights in such scenarios does not entrench gender inequality but is actually a recognition of the participation of women within their communities. I shall develop this point by engaging with those feminists who have criticised Okin and advocated a democratic approach to multicultural accommodation because their accounts centre on democratic deliberation as the main justification for the provision of group rights.

The structure of the chapter is as follows. In the first section, I discuss Okin's account. The second section is a criticism of her account through the case of Lupita. The third section presents the democratic approach and argues for its superiority over the jurisdictional approach formulated by Ayelet Shachar. The chapter concludes by stressing which conditions must be met for the provision of group rights to take place without further entrenching gender inequality.

5.1. Gender Inequality in the Age of Multiculturalism

With the publication of her seminal essay *Is Multiculturalism Bad for Women?* Okin spearheaded the feminist critique of multiculturalism.[365] Her critique, as noted previously, revolves around the idea that the provision of group rights entrenches gender inequality. This is because, for Okin, cultural groups such as national and ethnic communities, just like any other collectives, are gendered. Okin's account is centred on gender equality and the obligations of the (liberal) state to protect and promote women's rights.

For Okin, not only are cultural minorities "suffused with practices and ideologies concerning gender", but also male members of those minorities are the only ones allowed to have a say in outlining the "group's beliefs, practices and interests".[366] Okin commented that

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[365] Okin further elaborated her account of the tension between gender equality and multicultural accommodation in later essays. Although she refined her position, she never substantially changed it. See Susan Moller Okin, 'Reply', in I*s Multiculturalism Bad for Women?*, 115-131; Susan Moller Okin, 'Mistresses of their own destiny'. For some of Okin's articles preceding 'Is Multiculturalism Bad for Women', see Susan Moller Okin, Gender inequality and cultural differences. *Political Theory*, *22* (1994): 5-24; Susan Moller Okin, Response to Jane Flax, *Political Theory*, *23* (1995): 511-516; and Susan Moller Okin, Feminism, women's rights and cultural differences, *Hypatia*, *2* (1998): 32-52. It is also worth noting that Okin previously published her best-known essay with a different (and arguably less controversial) title, see Susan Moller Okin, Feminism and multiculturalism: some tensions', *Ethics*, *108* (1998): 661-684.

[366] Susan Moller Okin, 'Is Multiculturalism Bad for Women?' in *Is Multiculturalism Bad for Women?* Joshua Cohen, Matthew Howard and Martha Nussbaum (eds). Princeton: Princeton University Press (1999), 12.

"group rights are potentially, and in many cases actually, antifeminist" because they are likely to entrench gender inequality by further severing the rights of women and undermining their capacity to freely choose their lives and develop their individual capacities.[367] Okin thought that multicultural political theorists such as Kymlicka had completely neglected the ways in which multicultural accommodation is likely to worsen the condition of women in those communities.

As discussed in Chapter 3, Kymlicka defended the provision of groups rights as a necessary tool to ensure the conditions of autonomy of members of cultural minorities and give them access to their conception of the good life. Okin thought that Kymlicka and others had neglected (i) the diversity within cultural minorities, (ii) the fact that "minority cultural groups ... are themselves gendered", (iii) the different roles which are imposed on the members of these groups, and (iv) "the context in which persons' senses of themselves and their capacities are first formed and in which culture is first transmitted".[368]

According to Okin, since cultural minorities are gendered and sexist, multicultural accommodation would give access to a conception of a good life which is inherently problematic because it prioritises the rights and interests of some members of the cultural minorities (men) over those of others (women).

Okin's concerns about the tension between gender equality and multicultural accommodation is one shared by many feminists contributing to this debate (even those who

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[367] *ibid.*

[368] *ibid.*

then criticise Okin's response to that tension).[369] Most notably, Martha Nussbaum has argued that the problem with tolerating illiberal practices is that it will result in women being unable to move within their own communities, to have a political voice, to have the freedom of assembly and to have access to education. Nussbaum said that when liberal egalitarian states tolerate illiberal practices, they violate the principle of equal respect underpinning their own values. Moreover, according to Nussbaum, toleration of illiberal practices shows a condescending attitude towards such groups because it indicates that "we don't hold them up to the same moral standard to which we hold ourselves".[370]

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[369] For some feminist accounts of multiculturalism which, although pointing out some flaws in Okin's argument, give her the credit for having pointed out the severe impacts that multiculturalist policies are bound to have on women's lives, see, for instance, Alison Jaggar, 'Okin and the challenge of essentialism', in Debra Satz and Rob Reich (eds), *Towards a Humanist Justice: the Political Philosophy of Susan Moller Okin,* New York: Oxford University Press (2010): 168; Martha Nussbaum, *Sex and Social Justice,* New York: Oxford University Press (1999): 105; Anne Phillips, *Multiculturalism Without Culture,* Princeton: Princeton University Press (2007): 26; Katha Pollitt, 'Whose culture?' in Joshua Cohen, Matthew Howard and Martha Nussbaum (eds), *Is Multiculturalism Bad for Women?* Princeton: Princeton University Press (1999): 27; Ayelet Shachar, 'Feminism and multiculturalism: mapping the terrain', in Anthony Simon Laden and David Owen (eds), *Multiculturalism and Political Theory,* Cambridge: Cambridge University Press (2007): 118; and Ayelet Shachar, 'What we owe women: the view from multicultural feminism', in *Towards a Humanist Justice*, 146.

[370] Nussbaum, *Sex and Social Justice*: 109.

The feminist critique of multicultural accommodation is therefore centred on the value of gender equality and thus problematises group rights as undermining the rights of individuals. For feminists such as Nussbaum, "the denial of legal and political rights to women" constitutes a violation which justifies state intervention in the affairs of cultural minorities.[371]

5.2. Challenging Okin's argument – Lupita's example

In 1997 in the southern Mexican state of Chiapas, dozens of indigenous people were massacred by the Mexican army while they were praying for peace. They were part of a pacifist organisation known as *Las Abejas de Acteal*. More than twenty years later, survivors of the Acteal massacre continue to demand justice. At the forefront of their struggle for the recognition of injustices is Lupita, a Tzotzil-Maya activist who lost her family in the massacre. Lupita has become the face of a new generation of indigenous activists who seek justice for settler colonialism. For two decades, along with members of *Las Abejas de Acteal*, she has denounced the indifference of the Mexican state as well as the continuing violent acts and harassment by local authorities, criminal organisations, paramilitary groups and the army. Lupita's involvement in the movement has pushed her to the front of indigenous politics in Mexico. In 2018, she was appointed as a representative of her community in the CNI (*Congreso Nacional Indígena*), which is the indigenous organisation which elected Marichuy as a presidential candidate.

In 2020, a documentary film entitled *Lupita* was commissioned by *The Guardian* and directed by Monica Wise Robles and received its première at the Sheffield Film Festival. The

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[371] *ibid.*, 108.

documentary shows Lupita present at Marichuy's rallies and other public events at which she denounced the oppression of indigenous communities by the Mexican state and the lack of recognition of their right to self-determination. The documentary also shows her important role as a representative of her community as well as her hopes for its future. For instance, Lupita acknowledges the fact that she owes her life to her father who saved her on the day of the massacre, but she also points out how his death was the main reason why she has been allowed to assume a position of leadership which is most often reserved for men. Other scenes reveal the gender norms of her community and the way in which she defies them. For instance, we are shown a scene of her being a single mom harvesting, which is an activity often done by the men in the community.

For Okin, the main problem with group rights was that they entrench gender inequality. She was also worried that, *pace* scholars such as Kymlicka and Kukathas, women within communities such as indigenous peoples can neither easily exit their community nor voice their opposition to oppressive gender norms characterising it.[372] Therefore, for Okin, the problem was that women in minority cultures lack the means to be able to fight against their marginalisation. Lupita's case complicates Okin's account because Lupita not only used her voice in a number of different ways, most notably by adopting roles reserved for men, but more importantly, she actively participated in the struggle for the recognition of indigenous peoples' right to self-determination. Okin's argument relied on the assumption that men within minority cultures are those outlining the norms of the group and demanding the provision of group rights, mainly in order to ensure their dominance over women. Instead, Lupita, along with other women in her community, actively contributed to outlining and

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[372] Okin outlined her famous critique of exit as a solution to the conflict between women's rights and multicultural accommodation in her 2002 article 'Mistresses of their own destiny'.

revising the norms of the community, as well as advancing demands for justice for her community.[373]

Recognising the political nature of indigenous identities also means acknowledging the ways in which women within indigenous communities have an impact on the formulation of the terms of that identity and also on the ways in which they are deployed. The problem with Okin's account is that, by rejecting the provision of group rights on the grounds that they reinforce the power of men within communities, it overlooks the crucial role that women

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[373] Several feminist scholars have taken issue with Okin's representation of women in minority cultural groups. See, for instance, Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights*, Cambridge: Cambridge University Press (2001): 66; and Leti Volpp, Blaming culture for bad behavior, *Yale Journal of Law and the Humanities, 12* (2000): 89-116. For a more recent analysis of how women in non-western countries actively and significantly contribute to struggles for equality, see Margaret A. McLaren, *Women's Activism, Feminism, and Social Justice,* Oxford: Oxford University Press (2019).

might play in asking for such rights.[374] Okin's account illustrates another sense in which the different ways whereby indigenous peoples draw on their (initially imposed) identity to challenge the settler state can be overlooked in multicultural political theory, that is, by underplaying the role which women in these communities have in framing that identity.

It should be noted that when Okin talked about gender equality, she did not have in mind only distributive equality between men and women, but also equality in terms of participation in community affairs. Indeed, her argument about men being the sole ones negotiating the terms of multicultural accommodation with the state shows that equal participation (or the lack thereof) was an important dimension of gender equality for Okin.

Although Okin's concern is understandable, she did not recognise that sometimes women in minority cultures such as indigenous communities are not passive recipients of the provision of rights or measures. Neither do they simply reluctantly accept an identity imposed on them by the tradition to which they belong. Women are frequently crucial actors in the reshaping of such an identity, often by challenging its gender norms.

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[374] In what follows, I stress the way in which the case of Lupita shows how indigenous women actively participate in the struggle for indigenous peoples' self-determination and in so doing, how they manage to renegotiate gender relations within their communities. That said, I do not intend to reduce women's agency to the active fight against gender norms and oppression. Agency is a much more complex and capacious concept to be simply conflated with active resistance, and women in minority groups, such as indigenous women, might well exercise their agency in other different ways – ways which are often neglected by secularist feminists. For a seminal analysis of how women in minority and especially religious groups exercise their agency, see Saba Mahmood, *Politics of Piety: the Islamic Revival and the Feminist Subject*, Princeton: Princeton University Press (2004).

Instead of thinking about participation only in terms of formal negotiation with the state, it should be conceived more broadly as the different ways in which collective identities are framed and reframed by their diverse members. In other words, by neglecting how the indigenous identity is a political one, Okin was unable to appreciate the way in which women often participate in the re-making of that identity.

It is also important to stress how indigenous women often contribute to reshaping their indigenous identity precisely by challenging the terms of that identity.

For instance, in the documentary, Lupita makes it clear that the lack of the recognition of the right to self-determination is the reason why indigenous people continue to experience injustices and thus the reason why she decided to stand up and fight against the settler state, that is, because she wanted a better world for her children.[375] Despite being aware of the many limitations and overall injustices that women in indigenous communities face, Lupita did not see the recognition of the indigenous right to self-determination as something which would necessarily translate into the entrenchment of such injustices. Instead, for Lupita the recognition of such a right was an acknowledgement of the work that she and other women have done by contesting the terms of the indigenous identity which had been imposed on them by the settler state. In short, the participation of women within minority cultures takes place but not necessarily in the way that Okin assumed it should. Group rights might then not be what prevents women in such communities from taking an active and leading role; they might well be the reason why these women do become active participants and, in so doing, defy the gendered norms of their community.

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[375] Monica Wise, 'Lupita: the indigenous activist leading a new generation of Mexican women', *The Guardian,* 5 January 2021, https://www.youtube.com/watch?v=mTEwhoC0CKY

As discussed in Chapter 3, the indigenous identity acts as a platform which allows historically marginalised groups to mobilize their demands for justice. However, as Okin herself paradoxically acknowledged, minority groups such as indigenous peoples are internally diverse.[376] This means that the terms of the indigenous identity are also negotiated by different members and often include a variety of interests and grievances. Thus, the provision of groups' rights does not necessarily mean the exclusion of women from the positions of power within the community. Instead, in scenarios where identities act as a platform for the mobilization of the demands for justice and where women contest the terms of such identities, the provision of group rights is a way in which women can become active leaders and their role in the community can be recognised.

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[376] Some critics of Okin have pointed out that her account rests on a problematic account of culture and cultural groups. For instance, Uma Narayan argued that Okin tends to depict minority cultures as 'packages', sealed and separated from one another (Undoing the 'Package Picture of Cultures', *Signs: Journal of Women and Culture and Society, 25* (2000): 1083. In a similar vein, Seyla Benhabib argued that Okin treated cultures as 'harmonious' entities, thereby neglecting the fact that cultures are actually internally heterogeneous and change over time (*The Claims of Culture: Equality and Diversity in a Global Era*. Princeton: Princeton University Press (2002): 102). For similar critiques, see also Bonnie Honig, 'My culture made me do it', in *Is Multiculturalism Bad for Women?*: 36; and Madhavi Sunder, Piercing the veil, *Yale Law Journal, 112* (2003): 1402-1403. As compelling as these critiques are, I believe that they slightly miss their target. Okin did recognise some dimensions of the internal diversity of minority cultural groups (for example, the fact that some members are more vulnerable than others), but she did not draw the proper implications from such diversity.

In interviews and other events as part of the promotion of the documentary, Lupita has been asked what her hopes are. Her main hope is to keep alive the memory of those who died in the massacre as well as to show the world the resistance of the indigenous people. However, Lupita also stresses that she aims to inspire women in other indigenous communities to continue fighting, and to resist traditional roles within their communities. For Lupita then, the struggle for gender equality is part of the struggle for indigenous justice and for the recognition of the right to self-determination. The connection between the struggle for self-determination and the fight for gender equality is that they are both intimately connected in the case of indigenous people, and this is what Okin completely failed to acknowledge.

I shall further explore the ways in which indigenous women have reclaimed their agency through and in the struggle for the indigenous right to self-determination in Chapter 6 by looking at the analysis put forward by Olivera-Bustamante. In what follows here, however, I shall examine the positions of feminist scholars who have contributed to multicultural political theory by showing how group rights and gender equality can be reconciled.

5.3. Beyond Okin: Alternative Feminist Approaches to Group Rights

In this section, I explore two feminist approaches which, despite sharing Okin's concern about the possibility that group rights might entrench gender inequality, do not reject group rights outright; they reflect on how group rights can be conceived and implemented in ways which do not result in the further marginalisation and disempowerment of women. The first approach is the democratic or 'voice' approach. This approach focuses on how to ensure that women within cultural communities participate in the conversations and decision-making

processes leading to the provision of group rights. This approach also sees the provision of group rights as useful to address the structures underpinning inequality, including gender inequality. The second approach is the jurisdictional approach. This approach is centred on the potential for the law to empower vulnerable members in cultural minorities. By making the threat of exit something which such members can direct against their community credible and real, it seeks to encourage internal change.

3.3.1. The Democratic Approach (1): Illiberal Practices and Group Rights

Monique Deveaux's influential account of cultural conflicts sought to facilitate discussions between the dominant society and minority cultural groups. It is centred on the idea that cultural minorities are not homogenous and united in their position regarding cultural practices; instead, they are characterised by internal discussions and debates in which cultural practices are often contested by some members of the group.[377] Therefore, for Deveaux, the provision of group rights could become an opportunity to further encourage and improve the internal deliberative dynamics within cultural minorities. She said that "informal instances of democratic practice" already take place, but these end up leading to the production of conflicts of culture because "practitioners attempt to change or to resist" the change of "a particular custom or arrangement".[378] Instead, by facilitating deliberation within cultural minorities, new information can become available to members of such groups who can then better evaluate their customs and cultural practices. Deveaux suggested that this can result in the transformation of informal democratic practices, such as forums organised by

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[377] Deveaux, *Gender and Justice in Multicultural Liberal States*, 7.

[378] *ibid*.

members of the group, within the cultural minority into "critical vehicles for determining the validity and future status of controversial cultural practices in liberal democratic states".[379]

A key aspect of Deveaux's account is her approach to culture. Unlike other scholars of multicultural accommodation such as Kymlicka, Deveaux did not treat culture as something fixed, immutable and inherent in a cultural minority. For her, culture is a platform which allows the mobilization of interests. This approach to culture enabled Deveaux to appreciate how conflicts of culture can be expressions of internal power struggles and disagreements within cultural minorities. For Deveaux then, democratic deliberation provides the perfect platform for the resolution of such disagreements because different points of view can be voiced and discussed by all the affected parties.[380]

The main strategy of the democratic approach relies on using deliberation not only as a way to create a space of negotiation between the dominant society and the cultural minorities but also as a tool to give a voice to those often silenced within the cultural minority. However, there is the possibility that deliberation might lead to 'undesirable outcomes', by which I refer to those outcomes which are not in line with liberal egalitarian

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[379] *ibid*. Other scholars have proposed a deliberative approach to multicultural accommodation, although they have not focused on the issue of how deliberation can improve the conditions of women in minority cultural groups. See, for instance, Matthew Festenstein, *Negotiating Diversity: Culture, Deliberation and Trust,* Cambridge: Polity Press (2005).

[380] Monique Deveaux, 'A Deliberative Approach to Conflicts of Culture', in *Minorities within Minorities: Equality, Rights and Diversity*, Avigail Eisenberg, and Jeff Spinner-Halev (eds). Cambridge: Cambridge University Press (2005): 351. See also, Deveaux, *Gender and Justice in Multicultural Liberal States*.

values. For instance, it is possible that the inclusion of the voice of women within a cultural

minority might show their support for practices which are deemed oppressive by the

dominant minority, such as polygamy, for example. According to Deveaux, accepting the

possible illiberal outcomes of a democratic deliberation is a key aspect of a democratic

society. Instead of rejecting such outcomes or arguing for state intervention, Deveaux

suggested that deliberation should be left open because this is the only way in which a

democratic society can encourage the further revision of illiberal outcomes and ensure that

the most vulnerable members of cultural minorities can have a say on matters which concern

them.[381]

Deveaux defended deliberation as a mechanism by which to address gender inequality

within cultural minorities regardless of the possible illiberal outcomes of the deliberation

because she believed that unity of interests and opinions, that is, the absence of dissent within

a group, is often claimed by elites of cultural minorities to preserve patriarchal norms and

institutions[382] According to Deveaux, the state should engage in a dialogue with cultural

minorities in order to allow the most vulnerable within such communities to participate in the

decisions regarding the community.[383] Deliberation then establishes a new relationship

between the state and the cultural minority which can only benefit the most vulnerable within

the community not only because their voice can now be included but also because they can

start looking at the state as an ally in their quest for freedom.[384] This is because, through the

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[381] *ibid*, 340-341.

[382] *ibid*., 350.

[383] *ibid*. 340-341.

[384] *ibid*., 359.

implementation of a democratic dialogue, the state treats "members of cultural communities" with "respect and equal regard for them as citizens".[385]

5.3.2. The Democratic Approach (2): 'The Boomerang Effect' and Intercultural Interactions

Like Deveaux, Sarah Song argued for dialogue between the dominant society and cultural minorities as the way to address injustices against such communities and give a voice to the excluded and marginalised within cultural minorities. However, there are two crucial differences between her account and that of Deveaux: (i) Song did not accept any possible illiberal outcomes resulting from a process of deliberation; and (ii) she regarded deliberation as a way to shed light on the role of the dominant society in sustaining patriarchal norms and institutions within cultural minorities.

Scholars such as Deveaux argued that illiberal outcomes are part of democratic deliberation and should be accepted as such, whereas others such as Song argued that such outcomes should not be respected. For Song, the reason why advocates of deliberation such as Deveaux accepted illiberal outcomes was because they "stop short of examining how intercultural interactions have shaped the identities and practices of minority cultures, as well as how they have fueled cultural conflicts".[386]

If Deveaux moved beyond scholars like Okin by approaching culture as a platform for the mobilisation of different interests and voices within cultural minorities, Song's account of culture further recognised how culture is not produced in a political vacuum. Although Deveaux recognised that there is no such thing as unity within cultural minorities, she failed to acknowledge the role that the state plays in the internal conflicts within cultural minorities.

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[385] *ibid*.362.

[386] Song, *Justice, Gender, and the Politics of Multiculturalism*, 36.

For her, the state is simply a regulatory actor which should engage in dialogue with cultural minorities and thus facilitate discussions within those communities about cultural practices as an external party. Instead, Song focused on the role which the interaction between the state and the cultural minorities plays in the formation of cultural identities and in so doing she acknowledged the political dimension of those identities and also adopted a critical stance on the role which the state plays in the process of deliberation. For Song, the state plays an important role in the formation of cultural identities and the claims mobilised by them, and thus the deliberation process should not lead to nor accept illiberal outcomes.

Song stated that the state and cultural minorities are immersed in intercultural interactions.[387] Deliberation offers an opportunity to reveal the role which the dominant society has played in the definition and protection of illiberal practices within cultural minorities in the past. For instance, "the [US] state directly imposed mainstream gender biases onto minority communities, as in the 1887 Dawes Act, which subverted Native American women's roles in agricultural work by making Native American men heads of households, landowners, and farmers".[388] It can also unmask how the state keeps on promoting gender inequalities within such communities in the present day. As an example, Song focused on the acceptance of 'cultural defence', which effectively recognises cultural motives behind acts of gender violence and abuse, such as marriage by capture and honour killing.[389] Song observed that in past and present cases, "it is the congruence of patriarchal norms [between the state and the cultural minority], rather than respect for difference, that

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[387] *ibid.*, 36.

[388] *ibid.*, 6.

[389] *ibid.*, 87-113.

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has informed state accommodation of minority practices".[390] Therefore, illiberal outcomes of a deliberative negotiation between the state and a cultural minority should not be accepted at face value.

Whereas Deveaux focused on the internal disagreements within cultural minorities, Song directed her attention to the historical relationship between the dominant culture and the minority culture when dealing with issues of cultural accommodation. As already discussed, it is important to highlight how historically and currently the dominant culture plays a key role in maintaining patriarchal norms and institutions within cultural minorities. But it is also crucial because, according to Song, granting cultural accommodation to illiberal cultural practices creates a negative precedent.[391] Song used the term 'boomerang effect' to describe how the accommodation of illiberal cultural practices can cause a regression in the progress made on gender equality within the dominant society. She stated:

> Given that the struggle for gender equality within the majority culture is incomplete, tolerating patriarchal norms and practices within minority cultural communities may allow such norms to boomerang back and threaten struggles toward gender equality within the wider society.[392]

For Song, the acceptance of illiberal outcomes was not only problematic in terms of entrenching gender inequality within cultural minorities, but also because it can undermine gender equality outside such communities, that is, in the larger society. Song believed that multicultural accommodation needs to be at the service of gender equality both within and outside cultural minorities.

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[390] *ibid.*, 6.

[391] *ibid.*, 6.

[392] *ibid.*

Importantly, according to Song, the fact that both the dominant society and the cultural minorities are characterised by gender unequal norms shows the falsity and hypocrisy of the binary opposition between an 'emancipated' larger society and a 'regressive' cultural minority. Song drew on the experience of colonial contexts to show that "a discourse of binary oppositions between an enlightened West and a traditional barbaric rest" led to an overturn of "women's historical sources of power" and also enabled western societies "to deflect criticism away from gender inequality".[393] In other words, Song was worried that the very label of 'illiberal' (and the acceptance or rejection of illiberal outcomes) reinforces the dominant role of the larger society; it is a tool whereby the larger society maintains its power over cultural minorities and diverts attention away from its own patriarchal norms and institutions. She said that:

> Such rhetoric not only provided them with a ready justification for intervention into minority communities, but also helped divert attention from gender inequality within the majority culture by focusing on the gender relations of minority communities.[394]

For Song, the problem with illiberal outcomes, which Deveaux accepted as part of the democratic game, lay in the fact that often the dominant society had welcomed these outcomes because they resonated with its own patriarchal norms and institutions. Even when the dominant society had decided not to allow illiberal practices, it had done so not out of a concern for gender equality, but driven by the need to reinforce its own 'superior' status over cultural minorities and distract its members from the patriarchal norms and institutions regulating the larger society. In the context of settler societies, this observation is particularly

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[393] *ibid.*, 7.

[394] *ibid.*

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compelling. The settler society has historically dealt with the practices of the indigenous communities to portray itself as different from and better than them.[395]

Song's alternative deliberative approach, which she called a "right-respecting accommodationism",[396] had two intertwined objectives; (i) justice for cultural minorities and (ii) justice for women, or as Song put it more broadly: "the protection of the basic rights of individual members of minority groups".[397] Although this approach revolves around the principle of equal respect, it "is open to differential treatment under certain circumstances".[398] Among the circumstances which Song envisioned were present discrimination, historical injustice and state establishment of culture.[399]

Given the multiple dimensions which the normative approach put forward by Song sought to encompass, her account of democratic deliberation in cases of multicultural accommodation is the best approach to shed light on the complexities which surround internal conflicts of culture. Song said that it is only "by drawing on the voices of affected parties" that it is possible to understand "the interests at stake" and the "sources of cultural conflicts".[400] For Song then, deliberation offered the best way to address the normative problems posed by minorities within minorities because it is one which offers a voice to those affected, treats members of minority cultures as equals by granting them a voice, and above all it can expose not only internal power struggles but also the intercultural congruence

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[395]*ibid*.

[396] *ibid*., 9.

[397] *ibid*.

[398] *ibid*.

[399] *ibid*.

[400] *ibid*., 10.

between the larger society and cultural minorities as a threat to the rights of vulnerable members within the minority group.[401]

5.3.3. The Jurisdictional Approach: Making the threat of 'exit' real

Ayelet Shachar put forward a seminal and alternative approach to easing the tension between multicultural accommodation and gender equality – one which resorted to the potential of the law to empower members of cultural minorities (which she labelled "nomoi groups"), rather than focus on the prospect of democratic deliberation. Sachar's model was meant to apply in the case of nomoi groups, that is, groups which share a comprehensive view of the world which led to the establishment of a legal system or legal conventions for the community.[402] This included some religious communities, for example Muslim and Jewish communities, and also indigenous communities.

Shachar put forward a model of joint governance which divides legal authority on branches of the law between the state and the nomoi groups. This model was meant to address what Shachar called "the paradox of multicultural vulnerability", which occurs "whenever state accommodation policies intended to mitigate the power differential between groups end up reinforcing power hierarchies within them".[403] Her approach sought to avoid the "'either/or' types of solutions to the paradox of multicultural vulnerability" where the choice is between, on the one hand, accommodation of cultural differences without promoting change and, on the other hand, universal citizenship which is indifferent to cultural

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[401] *ibid*.

[402] Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women′s Rights,* Cambridge: Cambridge University Press (2001): 2.

[403] *ibid*., 17.

diversity.[404] In short, Shachar's approach sought to encourage internal change within nomoi groups.

Shachar said that usually members of nomoi groups find themselves caught between the authority of the nomoi community and that of the state when a conflict between them and their community emerges. This means that any protection that the state grants to such members is likely to result in their forced exit from their group. Shachar's model of joint governance instead was intended prevent this outcome by avoiding granting one legal authority (either the state or the nomoi group) jurisdictional monopoly over a branch of the law (that is, family law).

Shachar explained that any area of law is divided in legal sub-matters. For instance, family law is divided in (i) sub-matters of the status of a relation (such as whether members of a nomoi groups marrying outside the group still count as members) and (ii) distributive/ property sub-matters (for example, what happens to property in the case of divorce). Instead of granting one legal authority such as the nomoi group full jurisdiction over family law, authority over family law should be split between the state and the nomoi group; one having the first say over sub-matters of status and the other regulating the distributive/property sub-matter. Shachar commented that since it is impossible to resolve a legal dispute without taking into account all the sub-matters, both the state and the nomoi groups will always be involved in legal decisions pertaining to family law. Importantly, when designing joint governance, the state and nomoi groups should set some reversal points where individuals can move from one jurisdiction to another.[405] Imagine, for instance, that normally a nomoi group such as an indigenous community controls the terms of divorce for its members (for

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[404] *ibid*., 146.

[405] *ibid*., 104.

example, whether an indigenous woman can divorce her husband without his approval), whereas the state controls the distribution of responsibilities after a divorce (for example, whether an indigenous woman should receive alimony). Normally, an indigenous woman would respect the division of authority between her community and the state. For Shachar, this is already empowering as her interests would be protected in some respects by the state, for example, when it comes to deciding on alimony. But importantly, if an indigenous woman wants to divorce her husband, and her indigenous community which normally has jurisdiction over status denies it because the husband does not agree, the woman can resort to the state and reverse the jurisdiction over that specific matter.

Shachar's goal was to empower members of nomoi groups by making each authority 'bid' for individuals' continuous adherence to their jurisdiction. This, in Shachar's intentions, would effectively mean that in order to avoid losing authority to the state, the nomoi group will eventually change its norms to accommodate the needs of its vulnerable members. Importantly, the model of joint-governance was based on the idea that the nomoi group can also press the state just as an individual can in theory move from the state's jurisdiction to a nomoi group's jurisdiction, should they disagree with how the state regulates a specific sub-matter.

5.3.4. The Democratic Approach vs the Jurisdictional Approach

Both the democratic approach and the jurisdictional approach show that there are different ways in which multicultural accommodation might not lead to the entrenchment of gender inequality. However, when the settler colonial context is taken into consideration some problems, especially with the jurisdictional approach, become evident. For example,

Shachar did not explain in detail how the division of authority between the state and the nomoi group should take place. She only said that somehow the state and the nomoi groups decide to take on different legal sub-matters and that they set reversal points to measure the level of performance of each of them in their respective jurisdictions.[406] Implicit in this observation is that some form of deliberation occurs between the state and the nomoi group to define the responsibilities of each party involved.[407]

In neglecting this important aspect, Shachar overlooked the asymmetry between the state and nomoi groups – an asymmetry which is particularly striking in the case of settler colonialism.[408] Song pointed out that the historical and ongoing relations between groups such as indigenous communities and the state is one of power inequality. She commented that in these contexts, the state is likely to use deliberation to further reinforce its position, not to mention to further entrench gender inequality both inside and outside indigenous communities. Shachar neglected how the power differential between indigenous communities and the settler state would mean that the latter will use joint governance to reinforce its domination over the former.

In Shachar's model, it is assumed that the nomoi group is on a par with the state and can press the state to change some of its norms and relinquish some of its authority.[409] However, this assumption is unrealistic in scenarios like settler colonial contexts, where there

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[406] *ibid.*, 40.

[407] *ibid.*, 37.

[408] For a different critique of Shachar's account of joint governance, see Clare Chambers, *Sex, Culture and Justice: the Limits of Choice*, University Park, PA: Penn State University Press (2008): 146-158.

[409] *ibid.*, 42-43.

is a history of domination by the state over the nomoi group and where the former is in a position to reinforce its domination over the latter. The model of joint-governance works only if both parties can put pressure on the other and have the resources to manage their legal responsibilities. However, in real scenarios such as the one of Pueblo Indians in the Southwestern US which was discussed by Shachar, the level of asymmetry between the indigenous community and the settler state is likely to turn the model of joint governance into a further tool in the hands of the settler state to rule over indigenous affairs. In other words, the model of joint governance could easily become a new way in which settler colonialism reconfigures itself in so-called liberal democracies.[410]

Shachar's account seems to revolve around the notion that nomoi groups are already in the position where not only can they negotiate a division of authority with the state from a position of equal power, but also they are able to meet the levels of legal responsibility assigned to them. In a sense, Shachar shared with someone like Coulthard the assumption that nomoi groups like indigenous peoples are already in a strong position where they can fulfil some of the functions usually pertaining to the (settler) state.[411] One implication of this assumption is that if a nomoi group fails to meet the expectations set with the state, then it

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[410] This outcome would be similar to the one which, according to Glen Coulthard, a politics of recognition has led to in societies such as Canada. See Coulthard, *Red Skin, White Masks,* 77-78.

[411] This is not to say that Coulthard and Shachar agreed on what should follow from their assumption that indigenous communities have the capacity to negotiate with the state on equal terms. As explored in Chapter 3, Coulthard thought that indigenous communities should secede from the settler state, whereas Shachar argued for a model of joint-governance.

would be assumed that it is because of a lack of will or of care for the protection of the welfare of its members.[412] This would lead to blaming the nomoi group itself for such failures. The problem with this is that often nomoi groups such as indigenous communities have endured a long-lasting battle with the settler state, and this translates into a history of exclusion, which has profoundly weakened these communities.

The problem with the model of joint-governance is that it assumes that both parties have equal power and they are both willing and capable to fulfil their responsibilities. This would leave indigenous communities vulnerable to the settler state in cases both when it comes to negotiating the division of jurisdictional authority and when conflicts with individual members arise.

The deliberative approach, especially as proposed by Song, is better suited for settler colonial contexts because it does not assume that indigenous communities and the settler state have the same power and it does not seek to make exit from an indigenous community a real threat; instead, it seeks to enable vulnerable members within indigenous communities to make their voices heard and to reveal the problematic role of the settler state in supporting patriarchal norms and institutions within the community. In settler colonial contexts, the possibility for indigenous people to have a say in matters which concern them is crucial. Song commented that these are contexts in which the state always tries to portray itself as superior to indigenous communities.[413]

Song observed that deliberation can shed light on which burdens actually constitute "burdens on fundamental interests", which is something that vulnerable members of minority

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[412] *ibid.*, 67-68.

[413] *ibid.*, 7.

groups can reveal. Vulnerable members within such groups might disagree with cultural practices which are presented by the leaders of the community as key for the survival of its systems of values.

A key aspect shown by the case of Lupita, which I shall also come back to in the next chapter and which I discussed in previous sections, is that indigenous women in settler colonial contexts such as Mexico contribute from their own perspective to both the definition of the terms of the indigenous identity and the demand for the recognition of the indigenous right to self-determination. By resisting and challenging the patriarchal norms and institutions of their communities, indigenous women like Lupita push the terms of the indigenous identity while also challenging the authority of the settler state.

Lupita's case, like that of Marichuy explored in the previous chapters, shows the multiplicity of voices within indigenous communities and the way in which participation and deliberation might enable them to be heard. It is important to note, however, that often the selection of indigenous women as representatives of their communities follows a particular strategy of struggle against the settler state. Such a selection takes place in a context where the indigenous community is portrayed as more backwards and patriarchal than the wider society. By selecting women as their leaders, indigenous communities can challenge the stereotypical narratives attached to them by the settler state, reach out to bigger audiences and inspire wider transnational solidarity.

To sum up, Song's understanding of deliberative democratic interactions between the settler state and indigenous communities, and within indigenous communities, is an apt model to think about how the provision of the indigenous right to self-determination does not necessarily entrench gender inequality.

Conclusion

In this chapter, I have argued that under particular circumstances, the provision of group rights does not entrench gender inequality and can in fact be crucial for the achievement of justice and gender equality. I argued that part of the reason that the participation of women within cultural communities tends to be overlooked is because of the little attention which is given to the political dimension of identities. The indigenous identity is one formed through intercultural interactions but also actively reshaped by its members, even those who find themselves in a condition of marginalization within such communities. By engaging with different feminist approaches to multicultural accommodation, I have argued that Song's deliberative approach is particularly suited to take into account the specificities of the settler colonial context and enable indigenous women's voices within their communities and against the settler state. In the next chapter, I shall suggest that the feminist deliberative approach can be interestingly enriched and complemented by the analysis of the agency of indigenous women and of the relationship between the provision of group rights and indigenous women's participations offered by Mexican feminist scholars such as Mercedes Olivera-Bustamante.

6. Mercedes Olivera-Bustamante, the Feminist Critique of Indigenismo, and the Relationship between Indigenous Women's Participation and the Right to Self-Determination

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Abstract.

The feminist critique of indigenismo is one which focuses on the agency of indigenous women and the role which the provision of group rights can have in the amplification of the voice of women within and outside their communities. This chapter explores this argument through a review of the argument advanced by Mercedes Olivera-Bustamante. The chapter focuses on the different dimensions of the agency of indigenous women and the role which the provision of group rights is likely to have in reinforcing this rather than entrenching gender inequality.

"One question is whether there will be democracy and justice without resolving the contradictions that women experience due to their gender condition. What strategies are needed to include gender equality among the political demands necessary to build personal and collective autonomy? Not just among ethnic groups, but throughout society. In any case, we have to recognize that the existence of the revolutionary laws of women and their political and military participation are immeasurable advances in the legitimation of women's rights, their implementation will be a test for the validity and direction of the changes."

MERCEDES OLIVERA-BUSTAMANTE,
Sobre las Profundidades del Mandar Obedeciendo (2004)

Introduction

In this chapter, I review Mercedes Olivera-Bustamante's critique of indigenismo in order to show how her account highlights indigenous women's participation in challenging and redefining the terms of the indigenous identity. I argue that her critique of indigenismo shows the importance of accounting for indigenous women's participation within indigenous communities and the role which the recognition of the right to self-determination has in encouraging such participation. Olivera-Bustamante also contended that group rights do not necessarily entrench gender equality because the very provision of group rights can give indigenous women new opportunities to participate in that they will take advantage of the spaces and channels opened up by group rights.

This chapter unfolds as follows. The first section discusses the main elements which form the critique of indigenismo advanced by Olivera-Bustamante as it is in the context of this critique that she developed her insightful observations about indigenous women's participation. The second section analyses Olivera-Bustamante's reflections on the agency of indigenous women. The third section focuses on her argument regarding the effect that the provision of group rights can have on the participation of indigenous women. The chapter concludes by exploring the similarities and differences between the argument advanced by advocates of the deliberative approach such as Deveaux and Song, and that put forward by Olivera-Bustamante. Although both the deliberative approach and Olivera-Bustamante's account focus on the importance of indigenous women's participation, Olivera-Bustamante showed how it is not only the provision of group rights that can enhance indigenous women's participation, it is also the very process of fighting for such a provision that prompts indigenous women to stand up and take an active role in their communities.

6.1. The indigenistas' assimilationist project and neoliberal domination

Mercedes Olivera-Bustamante has spearheaded the feminist critique of indigenismo for decades. Her work has influenced new generations of feminist theorists and activists in Mexico because of the way that she seamlessly combined activism with academia. Having earned a PhD in anthropology, Olivera-Bustamante first worked in the *Instituto Nacional Indigenista* but soon joined fellow critics such as Guillermo Bonfil-Batalla who shared her concern about the assimilationist approach of the policies implemented by indigenistas and the INI. She wrote in her paper 'From Integrationist Indigenismo to Neoliberal De-Ethnification in Chiapas: Reminiscences' that despite her criticism she continued working at the INI under the supervision of Gónzalo Aguirre Beltrán who, along with Gamio, was one of the main proponents of indigenismo in Mexico. Olivera-Bustamante was eventually fired from her position in the INI after being accused of organising workshops for insurgent groups in the same region where years later the Zapatistas would emerge. However, she remained in the south of the country working with different indigenous communities.

Olivera-Bustamante herself said that her critique of indigenismo put forward in 1972 had focused on the problems with the assimilationist approach of the policies advanced by the INI. For her, rather than pursuing the objective of assimilating indigenous peoples into the dominant society, there was a need for efforts to be directed towards "awakening the historical consciousness for the indigenous people of Chiapas, analysing the causes of their class and ethnic oppression with the objective of transforming them into actors participating

in resistance and proud of a valuable secular culture that, re-evaluated by themselves, would become an instrument of their liberation".[414]

In particular, Olivera-Bustamante's critique centred on the idea that assimilation is a process leading not only to the rejection of indigenous peoples' culture but also to the imposition of the capitalist system of production upon indigenous communities. Olivera-Bustamante regarded as the opposite of the process of assimilation the need to transform indigenous peoples into "actors participating in resistance" who are proud of their cultural heritage and whose historical consciousness, including their long-standing anti-capitalist commitment, has been awakened. By being forced to assimilate into the dominant society, indigenous people are coerced into leaving behind the values and norms of their communities. Although Olivera-Bustamante did not use the term 'de-indigenisation', which as was stated in Chapter 4 was used by Bonfil-Batalla to describe that process, her account relied on a similar understanding of how indigenous peoples are forced into the dominant *mestizo* society. In describing how the Mexican settler state encouraged indigenous people to trade their traditions for social mobility, she wrote:

> [T]he indigenous people arrived at the school believing that the INI was the only door open for attaining individual progress through becoming first a promoter and then a bilingual teacher for the state, which was the career they envisioned. Without changing their thinking, the consciousness of raising needed to achieve their liberation in its many dimensions could advance only with difficulty, the more so as part of a state institution that was dedicated to a completely contrary goal – linking the indigenous regions to the market and the political party in power.

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[414] Mercedes Olivera-Bustamante, From Integrationist Indigenismo to Neoliberal De-Ethnification in Chiapas: Reminiscences, *Latin American Perspectives 39*(5) (2012): 101.

It must be noted that Olivera-Bustamante did not think that indigenistas such as Gamio and Molina Enríquez, both of whom argued that the Mexican state should have taken responsibility for educating indigenous peoples to learn what they regarded as 'useful knowledge', were fully aware of the reach and implications of their arguments and the policies which they supported.[415] This is important not only because it humanised indigenistas, but mainly because Olivera-Bustamante showed that the problem with indigenismo lies not in the evilness of its proponents but in the way in which this responsibility argument fails to acknowledge how the efforts to assimilate indigenous peoples to the dominant *mestizo* society will only result in the further subordination of those communities to the central power of the settler state.[416] Likewise, Olivera-Bustamante also stated that the only margin of agency left to indigenous peoples in the proposal of indigenistas was nothing but subordination. She pointed out that "they have been granted only enough space for survival and to silence their protests".[417] In a nutshell, the assimilation of the indigenous peoples into the dominant society simply leads to their silencing.

As was explored in Chapter 4, for indigenistas like Gamio, a modern society has a responsibility to 'help' indigenous people to achieve the same level of development as the surrounding 'civilised' society. However, what Gamio did not foresee is the fact that when the settler society assumes that responsibility and considers the knowledge and institutions of the indigenous peoples as 'less valuable', the imposition of the dominant society's policies and institutions is likely to produce further exclusion because the very spaces of indigenous

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[415] For a description of this point, see the review of the accounts of Manuel Gamio in Chapter 2 and of Andrés Molina Enríquez in Chapter 2.

[416] *ibid.*, 102.

[417] *ibid.*

peoples' participation are then redefined according to the terms set by the dominant society. Olivera-Bustamante stressed that indigenistas did not realise that their approach would lead to the creation of very limited spaces of participation for indigenous peoples, that is, spaces in which the claims of the indigenous people can only be advanced in particular – and alien – terms and their protests can be downplayed on the grounds that the settler state is already actively involved in the development of indigenous communities.[418]

Scholars of indigenous politics have observed that one of the main concerns about the efforts made by settler states to achieve reconciliation is that those efforts can close the door on future indigenous demands for justice to be listened to. In other words, once the settler state takes some form of responsibility for the past injustices committed towards indigenous peoples, indigenous peoples might lose their entitlement to voice new demands for justice. Jung commented that in settler colonial contexts, governments are likely to use "apologies and reparations to shut down other indigenous demands".[419]

This form of control exercised by the settler state seems to be an aspect which Olivera-Bustamante's account did consider, although she did not fully theorise it. We can infer its importance in Olivera-Bustamante's thinking not just from the way in which she theorised indigenous women's resistance to the settler state and their participation in redefining the terms of indigenous identity – an aspect to which I shall return in the next section – it can also be inferred from the attention which she gave to the way that indigenous organizations emerged as a way of resistance to the channels of participation that the

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[418] Olivera-Bustamante, Subordination and rebellion: Indigenous peasant women in Chiapas ten years after the Zapatista uprising, *Journal of Peasant Studies, 32*(3-4) (2005): 610-611.

[419] Jung, *Walls and Bridges*, 369.

Mexican state had created for indigenous communities.[420] She also focused on the organisation of different events and workshops designed to prompt and sustain what she described as "the process of consciousness raising", by which she meant a process whereby indigenous people were encouraged to mobilise in order to "achieve rights to land and realize a life of justice and peace".[421]

For Olivera-Bustamante, indigenous peoples in Mexico realised that the settler state had effectively defined the way in which they could participate and this paved the way for the emergence of a number of indigenous organizations. In other words, she echoed Bonfil-Batalla's point regarding the importance of recognising the emergence of indigenous organisations. In Chapter 4, I argued that Bonfil-Batalla had used the case of the emergence of different indigenous organizations to argue that indigenous communities had achieved that level of political maturity which should grant them the recognition of their capacity for self-governance.

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[420] Olivera-Bustamante explored this point through the lack of opportunities and crisis which came with the reduction of public investment which led many, but above all women, to participate in peasant movements which used the corporativist networks created by the government. She also spoke of the steady increase in the participation of indigenous women in movements and networks which had once acted as a barrier to prevent indigenous participation. See Olivera-Bustamante, 'Women's organisations in Chiapas: a mosaic of light and hope', in *The Struggles for Women's Rights in Chiapas: a Directory of Social Organisation Supporting Women in Chiapas*, Jodie Lea Martire (ed.). New South Wales: Lilla (2009), XIII-XXI.

[421] Olivera-Bustamante, 'From Integrationist Indigenismo to Neoliberal De-Ethnification in Chiapas: Reminiscences', 106.

In particular, Olivera-Bustamante saw the emergence of these indigenous organizations as acts of resistance to the injustices experienced by indigenous peoples but also as a way to challenge the channels available to indigenous peoples to voice their demands.[422] This is a point which scholars of the indigenous politics of Mexico have described as key moment in the mobilization of the indigenous identity as a platform from which those excluded managed to reframe their demands around a new language and new forms of participation. Jung, for instance, used the case of Antonio Hernández Cruz, a CIOAC activist, to argue that indigenous peoples once rejected the political potential of the indigenous identity, but eventually realised that this could act as the heart of their "strategies of opposition".[423] Jung saw this as showing that indigenous peoples were immersed in a process of finding new terms of struggle.[424]

In Chapter 3, I argued that for Jung the indigenous identity in Mexico was a political achievement, mainly because it showed how indigenous people in Mexico realised that the terms imposed upon them, which were intended to exclude them from actually participating in political decision-making processes, could be eventually embraced and could provide a platform for the advancement of their demands for justice.

For Olivera-Bustamante, this also seems to have been the case. She wrote that the embracing of neoliberal ideology by the settler state and the wider Mexican dominant society implied not only that the importance of old institutions such as the INI was progressively fading, but also that the indigenous peoples "have been transformed into very cheap migrant

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[422] *ibid*.

[423] Jung, *The Moral Force of Indigenous Politics*, 9.

[424] *ibid*.

labor for the transnational corporations and companies in the United States and Canada".[425] Olivera-Bustamante stated that different indigenous organisations opposing neoliberalism, and especially the Zapatistas, were the last remaining option for indigenous peoples to avoid the fate of being "poor and marginalised" which awaits them.[426]

She said that the consequences of "the neoliberal developmental model" is that it included a depoliticization of the indigenous peoples because they are not only "integrated into the transnational system through the labor market, consumerism, and debt" but also continue to "identify themselves as indigenous but without having any significant transformation of their subordinated social position".[427] For this reason, her account seems to regard the indigenous identity as one which, once properly re-politicsed, could provide the indigenous people with a platform from which to redefine the terms of the struggle against the settler state. By focusing on the alternative vision of the Zapatistas, Olivera-Bustamante envisaged a world in which indigenous peoples resist their oppressors and achieve a place where they do not merely provide a "low-paid and docile labor force"; as a scenario which, she commented, would make "utopia a reality".[428]

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[425] Olivera-Bustamante, 'From Integrationist Indigenismo to Neoliberal De-Ethnification in Chiapas: Reminiscences', 108.

[426] *ibid.*,110.

[427] *ibid.*, 109.

[428] *ibid.*, 110.

6.2. On the agency of indigenous women

Olivera-Bustamante said that many indigenous peoples have become "integrated into the [neoliberal] transnational system through the labour market, consumerism, and debt"; some of them have even been forced to migrate and offer their labour to industries in the US and Canada.[429] She observed that indigenous peoples had become so deeply integrated into the capitalist system of production that they now found themselves in the position of having to leave their land and their communities, thereby renouncing their indigenous identity. And those who do not leave, mostly women, cannot escape the same fate.[430] Although the picture depicted by Olivera-Bustamante seems quite bleak, she still thought that "marginalized indigenous people will produce new ways of being indigenous".[431] She was convinced that indigenous peoples will find ways to preserve their norms and institutions by adapting them to and redefining them in response to new circumstances.

What makes Olivera-Bustamante's analysis unique is that she focused on the ways in which indigenous women have reacted to such new circumstances. Her account focused on the number of activities carried out by indigenous women such as workshops, and the roles which they assume in the organisation of their communities. Her account was centred on how

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[429] *ibid.*, 109-110.

[430] *ibid.*, 109.

[431] *ibid.*

indigenous women have further developed their indigenous identity in cases where indigenous men have emigrated to the US and Canada for work.[432]

One of the main elements of her feminist critique of indigenismo and her account of indigenous peoples' emancipation is the importance of recognising the agency of indigenous women. Mariana Mora said that Olivera-Bustamante's account not only focuses on the changes in the economic production of the indigenous communities and the forced displacement of thousands who were unable to find a job and food, but also on the significance of the role of indigenous women in the struggle against the settler state.[433] By actually working with indigenous communities, Olivera-Bustamante realised that indigenous women display a degree of agency which is often unacknowledged, and that their condition of oppression is more complex than how it is portrayed. Mora explained that this realisation, along with her criticism of a type of feminism which fails to be respectful of the traditions of the indigenous communities and their practices, had prompted Olivera-Bustamante to "work simultaneously against racism, classism" and gender inequality, and to take into consideration "relations between women in project development."[434] Because of this, Olivera-Bustamante's

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[432] This point has been further explored by other feminist scholars of transnational indigenous communities in Mexico, such as Deborah Bohem, who observed how indigenous women have been able to redefine their roles in their communities and have stopped "passively submit[ting] to new forms of control and exaggerated performances of masculinity" (Deborah A. Boehm, Now I Am a Man and a Woman! Gendered Moves and Migrations in a Transnational Mexican Community, *Latin American Perspectives 35*(2008): 26). I shall come back to Bohem's analysis below.

[433] *ibid.*, 161.

[434] *ibid.*, 162.

work has influenced a number of new scholars to embrace a form of feminism which pays special attention to the agency of indigenous women.

Olivera-Bustamante developed her defence of the agency of indigenous women in the context of her critique of indigenismo. Feminist scholars in Mexico tend to focus on one aspect of indigenismo: the way in which it embraces an essentialist account of the indigenous identity. Feminists like Olivera-Bustamante therefore stress how the main proponents of indigenismo, such as Manuel Gamio, treat indigeneity as the reason behind the exclusion and marginalisation of the indigenous people.[435] Olivera-Bustamante argued that indigenistas assume that indigenous people lead a marginalised life as a consequence of their identity.[436] In Chapter 4, I focused on the way that indigenistas like Gamio think that indigenous peoples are excluded from Mexican society not only because of the fact of being indigenous, but also because their culture is what prevents them from successfully assimilating into the dominant society and thus overcoming their condition of exclusion. According to Olivera-Bustamante, indigenismo, as a political philosophy, argues for cultural protection, not with the aim of ensuring the survival of the indigenous culture but to assimilate indigenous peoples into the dominant society.[437] She said that,

> [T]he development of the indigenous peasantry, which coexisted with proposals for the disappearance of the indigenous people through miscegenation and racial whitening, was aimed at consolidating the national state, and this consolidation ultimately benefited the emerging agrarian and

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[435] Olivera-Bustamante, From Integrationist Indigenismo to Neoliberal De-Ethnification in Chiapas: Reminiscences, *Latin American Perspectives, 39*(5) (2012): 102.

[436] *ibid.*, 106-107.

[437] *ibid.*, 104. On this point, see also Sánchez, *Los Pueblos Indígenas*, 43-44.

commercial bourgeoisie in opposition to the local large-landowner political bosses.[438]

For Olivera-Bustamante, indigenismo was the ideological component of the strategy of dispossession and exclusion of indigenous people in Mexico. In explaining the exploitation of indigenous peoples under the neoliberal regimes of the settler colonial state, Olivera-Bustamante anticipated some of the arguments about the capitalist transformation and dispossession of indigenous peoples developed by scholars such as Glen Coulthard. In particular, she explained that "indigenous people and other marginal sectors have been transformed into very cheap migrant labour for the transnational corporations" when land was privatized through "agrarian certification", which, along with the reduction of assistance, accelerated the "proletarization of the peasantry".[439]

Importantly, Olivera-Bustamante analysed this dimension of oppression by looking at the case of indigenous women in Mexico. She highlighted the fact that it was mostly women who were in charge of production since the "notorious decrease in peasant production."[440] She also sought to show that indigenous women had developed, all by themselves, a new indigenous identity, one with its own meanings and in opposition to more traditional understandings.[441] In this way, she explained how agency does not emerge in a vacuum but is the result of political efforts.

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[438] *ibid*., 104.

[439] *ibid*., 108.

[440] Olivera-Bustamante, "Sobre las profundidades del mandar obedeciendo," in *Chiapas: miradas de mujer*, Mercedes Olivera-Bustamante, Magdalena Gómez, Diana Damián Palencia (eds). Donostia-San Sebastián: Tercera Prensa Hirugarren Prentsa (2010), 34.

[441] *ibid*., 34-35.

Olivera-Bustamante developed these arguments by analysing the condition of indigenous women in Chiapas. In her article 'Subordinación de Género e Interculturalidad Mujeres Desplazadas en Chiapas' (Gender Subordination and Interculturality: Displaced Women in Chiapas), she defended an account of feminism capable of theorising the agency of indigenous women. She focused on four principal aspects: (i) the transformation from peasantry to proletariat, (ii) the changes in access to the means of production, (iii) the capacity of indigenous women to shape their identity and form networks, and (iv) both subordination and challenges to gender roles within the indigenous communities. Olivera-Bustamante sought to endorse a gender perspective "to analyse the cultural and social changes" which "women have experienced as part of their displacement and reintegration".[442]

In that article, Olivera-Bustamante explored the ways in which indigenous women in the southern Mexican state of Chiapas had been pushed either to do jobs which were formerly reserved to men or to leave their community in search of a better life in cities. She examined five municipalities, Chamula, Chalchihuitán, Chenalhó, Mitontic and Tenejapa, which were all characterised by a change in the means of production and the displacement of indigenous peoples from their land, resulting in the majority of the indigenous population leaving for the city, San Cristóbal.[443] Olivera-Bustamante paid special attention to this case to show that "the displaced have created a new system of relationships and of culture which is different from that of their original communities and also from that of the dominant society, 'the

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[442] Mercedes Olivera-Bustamante, Subordinación de Género e Interculturalidad: Mujeres Desplazadas en Chiapas, *LiminaR 1*(2) (2004): 29.

[443] *ibid.*, 31.

coletos' (non-indigenous) in the city; they have in fact resignified the indigenous identity as part of the process of re-adaptation and change".[444]

Olivera-Bustamante also observed how this process of displacement and re-adaptation had an impact on gender relations within indigenous communities. Indigenous women now had access to official identification cards which were required to vote in both local and federal elections and allowed them to get access to the resources available through government programmes.[445] Along with these changes which brought indigenous women to a more visible position, the women also created different organizations and craft cooperatives.[446] The impact of these changes can also be appreciated by observing that in the city, indigenous women were no longer "forced to marry someone from their own ethnic group".[447]

Olivera-Bustamante found that unlike indigenous men, in most cases indigenous women can find sources of income more easily in the city not only because of the availability of low-paid jobs, but also because of the vast network of indigenous women who support each other to change from a mentality of "sow and gather" to one of "buying everything".[448] She also highlighted that these changes had resulted in many indigenous women being single parents. It should be noted that Olivera-Bustamante did not want to present a picture of a perfect life outside traditional indigenous communities. Nor did she argue that indigenous women had achieved full gender emancipation in the city. Indeed, she reported that

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[444] *ibid.*, 35.

[445] *ibid.*, 35.

[446] *ibid.*

[447] *ibid.*

[448] *ibid.*, 36.

indigenous women were still expected to take on the bulk of domestic chores and many of them continued to recognise men as the main decision-makers. She pointed out that "the new culture has naturalized new forms of inequality and injustice". Among these injustices, she mentioned the fact that because indigenous men were often unable to find a job in the city, they migrated to the US and left their family behind, which meant that women had to do two jobs instead of one.[449] Deborah Boehm, a feminist scholar who has researched transnational Mexican families, captured the reality that many indigenous women had to face in her article poignantly entitled 'Now I Am a Man and a Woman!'.[450]

That being said, Olivera-Bustamante pointed out that indigenous women's "identities drive them away from passivity" and, having faced many challenging experiences, indigenous women "have discovered their internal strength, developed their capacities, participated in public matters and claimed the protection of their rights".[451] This process of empowerment did not take place in the official forums of participation which, as Olivera-Bustamante noted, were still dominated by men. She highlighted the ways in which indigenous women have instead organized informal forums where not only they can discuss their own concerns and problems, but they can also participate in projects with "a number of NGO's and also government programs".[452]

Indigenous women also found the chance to further redefine their identity because the government offers, through a variety of programmes such as *Oportunidades* (Opportunities), channels for them to improve their condition. For instance, through the *Oportunidades*

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[449] *ibid.*, 37.

[450] Boehm, 'Now I Am a Man and a Woman!', 16-30.

[451] Bustamante, 'Subordinación de Género e Interculturalidad', 38.

[452] *ibid.*

programme, indigenous women have access to cash payments. *Oportunidades* is a government social assistance programme designed to tackle poverty by providing cash payments to families in exchange for regular school attendance, health clinic visits and acceptance of nutritional support. Importantly, the recipients of these conditional cash payments are mothers who directly receive the support from the government without it having to pass through their indigenous leaders. These payments have improved the condition of indigenous women by giving them direct access to a source of income and thus (at least partially) contributing to redefining their role in the family and community.[453] Olivera-Bustamante also showed that indigenous women were likely to remain in the same subordinated working conditions but that at the same time this did allow them to have some "control over their mobility and agency".[454] Even so, she did not fully embrace programmes like *Oportunidades*; she was very aware that they reinforce the role of the settler state as the 'provider' and 'protector' of indigenous women, which increases their dependence on the state and leads to the "legitimation of the absence of men and parental obligations, which represents the expropriation of a substantial part of the male workforce and the transfer of the value of female work to agro-industrial and service companies".[455]

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[453] Mercedes Olivera-Bustamante and Mauricio Arellano Nucamendi, 'Las mujeres marginales de Chiapas frente a la economía campesina en crisis y el proceso de polarización social', in *Reproducción social de la marginalidad: exclusión y participación de las indígenas y campesinas de Chiapas* Mercedes Olivera-Bustamante (ed.). Chiapas: UNICACH (2015), 54.

[454] *ibid.*

[455] *ibid.*

Olivera-Bustamante's account therefore casts light on the complex and ambiguous condition of indigenous women in the cities and how their gained agency, far from being a straightforward process, was the result of many challenging trade-offs. However, notwithstanding such challenges and complexities, indigenous women have redefined the terms of their identity and found ways to change their position within and outside their communities by creating networks and actively participating in their communities. Indigenous women's claims and challenges within and outside their communities can play a crucial role in holding the settler state accountable.

6.3. Indigenous women's participation and the right to self-determination

Olivera-Bustamante's account of the agency of indigenous women enables us to see that indigenous women can actually play a crucial role in outlining the terms of the relationship between the settler state and the indigenous communities. This means that opportunities for indigenous women to voice their concerns and collectively organise should be created.

One possible recommendation which can be drawn from Olivera-Bustamante's account is that the settler state should fund 'safe spaces' in indigenous communities for indigenous women which can enable them to discuss issues concerning them, such as displacement, the gender division of labour, and other issues of gender inequality. These spaces could provide the basic infrastructure to then empower indigenous women to gather together and take ownership of their own activities. A substantial budget could be provided for them to organize their workshops and activities although, unlike *Oportunidades*, not conditional on their compliance with the expectations set by the settler state. It is important to note that the role of the settler state here would only involve providing the initial resources

for such spaces and regular funds, for example on a monthly basis, to keep sustaining them. Although this recommendation may seem far-fetched or ill-suited, it is worth pointing out that such spaces already exist in some indigenous communities in Mexico. They are indeed used by indigenous women to gather and discuss a range of topics, including arranged marriages and reproductive rights.

Diana Damián-Palencia is one of the scholars who have studied the way in which indigenous women participate within their communities by zeroed in on the role that safe spaces play in challenging the patriarchal norms and institutions of their communities. In particular, Damián-Palencia's work focuses on the life of indigenous women living in *el pueblo* Cristóbal Obregón in the southern state of Chiapas and in the role of spaces like those provided by the so-called *Diálogos de San Andrés* – a series of agreements reached between the Zapatista Army of National Liberation and the Mexican government in 1996, which granted indigenous peoples some autonomy, recognition and rights. Diamán-Palencia showed how indigenous women have seen these spaces as a place where they can reflect on what gender equality means to them and their relegation to the 'private and domestic sphere', which prevents them from participating in the political decision-making process.[456]

Damián-Palancia showed that such spaces are used by indigenous women to discuss issues which otherwise would be left unaddressed. Among such spaces, there is the *Colectivo de salud reproductiva y sexual* (the Collective of reproductive and sexual health), where indigenous women discuss and work around the so-called *derecho consuetudinario*, which is

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[456] Diana Damián-Palencia, 'Las Mujeres dentro del derecho consuetudinario', in *Chiapas: Miradas de Mujer*, Mercedes Olivera-Bustamante, Magdalena Gómez, Diana Damián Palencia (eds). Donostia-San Sebastián: Tercera Prensa-Hirugarren Prentsa (2010), 90.

the customary law, or as Diamán-Palencia explained, "the customs that become laws", regulating indigenous communities.[457] This particular space offers indigenous women an opportunity to reflect on sexual practices and gives them "the power of decision over their body".[458] The collective also provides indigenous women with another platform from which to approach the leaders of their communities. This has resulted in indigenous women being able to work with indigenous leaders on topics such as health, reproductive rights and the type of support available to indigenous women suffering from violence and abuse.[459]

Safe spaces like the *Colectivo de salud reproductiva y sexual* achieve many of the goals which, according to feminist advocates of a voice-based approach to multicultural accommodation like Deveaux and Song, deliberation can reach. For instance, in such spaces, deliberation takes place in an environment free of coercion. Moreover, indigenous women have found ingenious ways to push indigenous men out of these spaces; knowing which kind of topics indigenous men are not interested in discussing, indigenous women pretend to reflect on those specific issues to discourage men from attending and effectively knowing what happens within the walls of those spaces.[460] For instance, if some indigenous men attend the sessions of a workshop, indigenous women might well start talking about

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[457] *ibid*., 91.

[458] *ibid*., 92.

[459] *ibid*.

[460] For a description of the function which this workshop serves in the discussion of topics which are important for indigenous women and which they would otherwise find difficult to discuss in front of men, see María Dolores Palomo Infante, 'Mercedes Olivera: su contribución a la historia y al conocimiento de los pueblos indígenas', *Desacatos 1*(36) (May-August, 2011): 187-192.

menstruation in order to repulse the men and drive them to leave the room in order for them to then turn to discuss another topic of their choice. In this sense, in these safe spaces oppositional views are cultivated and indigenous women are more likely to collectively voice their disagreement to the leaders of their community by even refusing to participate in forums which they perceive as not very productive.[461]

This analysis shows that there are ways in which group rights and indigenous peoples' right to self-determination can be recognized and indigenous communities can receive some level of self-government, at the same time as promoting gender equality. One way in which this can be realised, which I can only briefly discuss here for reasons of space, is by facilitating the creation of a network of indigenous communities which interact at some level in their respective affairs and play a prominent role in the resolution of internal conflicts having to do, for instance, with gender equality. A network of indigenous communities can be grounded on the trust which, in most cases, indigenous communities already have in each other due to their shared experience of oppression at the hands of the settler state.

We can envisage the role of this network as similar to one of a jury; for instance, if an indigenous community seeks the accommodation of a practice which might be deemed illiberal, for example establishing membership on the grounds of blood lineage or allowing arranged marriages, neighbouring indigenous communities can determine whether the practice in question merits accommodation and the settler state, as a judge does, proceeds to consider the claim and then issues a decision. Although this proposal would leave scholars like Coulthard unsatisfied as it still leaves the final decision to the settler state, it can be a way to minimise the settler state's intervention while recognising the current precarious

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[461] Damián-Palencia, 'Las Mujeres dentro del derecho consuetudinario', 90-91.

condition of indigenous peoples. When such a solution is implemented with the creation of safe spaces for indigenous women to deliberate, it can also improve gender equality as indigenous women would be more likely to participate in the adjudication processes and voice their opinions. They could also capitalise on the solidarity with indigenous women's networks in neighbouring communities.

To go back to Olivera-Bustamante's account, group rights not only do not necessarily entrench gender inequality in some scenarios, but also the very provision of group rights might result in an increase in indigenous women's participation. In Olivera-Bustamante's account, indigenous women's participation can be facilitated by the provision of group rights in two important ways. The first way chimes with the analyses offered by feminist proponents of the voice approach such as Deveaux and Song. It amounts to the recognition that group rights, when properly devised and implemented, can promote indigenous women's agency by creating a forum where indigenous women can collectively reflect on issues concerning them and mobilise themselves to engage in dialogue with the leaders of their communities from a more powerful position and take part in the discussion of cultural practices within the community and with the settler state. Since indigenous women are not acritical towards the settler state but well recognise its historical and ongoing role in the oppression of indigenous communities, indigenous women's participation in negotiation with the settler state can, as Song pointed out, reveal the complicity of the settler state with the patriarchal norms of customary laws and the ways in which it has historically entrenched gender inequality within indigenous communities.

Unlike Deveaux and Song, however, Olivera-Bustamante was more ambiguous about the fact that the provision of such group rights necessarily leads to a full emancipation of

indigenous women even when it does facilitate the creation of forums of deliberation where indigenous women can voice their concerns. As the case of *Oportunidades* has shown, even when leading to the creation of safe spaces of discussion for indigenous women, the provision of group rights can still put indigenous women in a condition of dependency, in this case dependency on the settler state rather than on indigenous men. This does not mean that group rights should not be granted but that, in addition to facilitating the establishment of forums for indigenous women, they must be devised in a way that minimises indigenous women's dependency on the settler state.

Importantly, Olivera-Bustamante identified a second way in which indigenous women's participation can be encouraged by the provision of group rights which has not been fully appreciated by the otherwise insightful analyses offered by feminist advocates of the voice approach to multicultural accommodation. This way focuses on how the very process of demanding group rights (and, in particular, the indigenous right to self-determination) can encourage indigenous women to participate in the struggle against the settler state and take on positions of leadership in their communities. For instance, Olivera-Bustamante directed her attention to the political participation of indigenous women in movements like the Zapatistas, showing how the indigenous struggle for self-determination has prompted many indigenous women to negotiate their role in the community and actively stand up for their rights as women and members of indigenous communities. She commented:

> By integrating into insurgent structures, indigenous women have transcended
> the rigid female roles of biological and cultural reproducers of traditionalism
> and subordination. Little by little they are accessing the public stages as a
> popular conquest and as an alternative for survival; now they occupy spaces
> that were previously exclusive to men, including war, which has led to the

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breakdown of traditional models and has generated the transformation of family relationships, fostering the construction of a culture of resistance and struggle.[462]

The provision of group rights might therefore enable the participation of indigenous women in different ways. Some have been recognised and theorised by feminist proponents of the voice approach to conflicts of culture. The reflections of Deveaux and especially Song interestingly resonate with some of the conclusions reached by Olivera-Bustamante in that they all stress how providing indigenous communities with group rights can enhance indigenous women's participation and deliberation within their communities. Other ways in which the relationship between group rights and gender equality pans out in the context of settler societies, however, were not fully considered by scholars such as Deveaux and Song. As observed by Olivera-Bustamante and shown by the cases of Lupita and Marchuy examined in Chapters 3 and 5, it is often the very process of struggling for group rights and the right to indigenous self-determination, rather than the provision of such rights, that enables indigenous women's participation and facilitates the renegotiation of gender roles and norms within indigenous communities.

Conclusion

In this chapter, I have discussed Mercedes Olivera-Bustamante's feminist political thought. Olivera-Bustamante's account casts light on the agency of indigenous women and

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[462] Mercedes Olivera-Bustamante, 'De subordinaciones y rebeldías: una historia de la participación de las mujeres indígenas de Chiapas', in *Chiapas: Miradas de Mujer*, 106.

the different ways in which the provision of group rights can empower them. Her reflections are particularly insightful as they do not shy away from the complexity of the settler colonial context. On the contrary, they support the indigenous right to self-determination as a way to improve the lives of indigenous women while recognising the difficult trade-offs and obstacles which indigenous women face in the implementation of such rights. The chapter started by discussing Olivera-Bustamante's critique of indigenismo and then moved on to her insightful reflections on the agency of indigenous women, which align with other feminist analyses of the condition of women within indigenous communities in Mexico. I concluded by offering some reflections on how Olivera-Bustamante's account can insightfully complement the feminist voice approach to multicultural accommodation proposed by scholars such as Deveaux and Song.

Conclusion

In this thesis, I have provided an account of the demands of indigenous peoples by focusing in particular on the case of settler colonialism in Latin American countries. To do this, I have put two approaches which are usually analysed in isolation from one another into a single dialogue: (i) multicultural political theory, an influential tradition in western political theory which emerged in the 1990s but still casts its shadow on many contemporary debates over pluralism, such as that over territorial rights; and (ii) Mexican political thought, a rich and heterogenous tradition which has directly dealt with the difficult relationship between indigenous peoples and the settler colonial state and provided diverse ways to restructure that relationship. As for (ii), I have specifically focused on indigenismo and its critics because of the influence which it played in thinking about the way in which the Mexican state should interact with indigenous peoples. I have tried to treat both traditions of thought as internally heterogeneous, rather than monolithic, and generally in agreement over the issues under discussion. This has enabled me to identify and emphasise both where a productive synergy between these two traditions can be built and which assumptions of one tradition might hinder an intellectual alliance with the other.

In unfolding this dialogue between two different approaches which are nevertheless both concerned with the status and place of indigenous peoples in multicultural (or, better, settler colonial) states, I have concentrated on three specific topics. First, I looked at the complicated yet crucial issue of land by critically engaging with how western normative political theorists and Mexican political theorists (in particular, Molina Enriquez and Díaz-Polanco) have framed indigenous peoples' demands centred on land and territory.. Second, I

examined the way in which multicultural political theorists and Mexican political thought (exemplified by the work of Bonfil-Batalla) have conceived of the value of indigenous self-determination. In imagined conversations among different authors belonging to two diverse traditions of thought, I paid special attention to the value grounding self-determination (that is, non-interference vs non-domination) and to the way in which settler colonialism is (or is not) factored in such accounts. Third, I analysed how feminist scholars in the west and in Mexico (but particularly in the thinking of Olivera-Bustamante) have engaged with multiculturalism and indigenismo respectively and especially how they have tried to solve the alleged tension between, on the one hand, granting groups such as indigenous peoples rights and autonomy, and on the other hand making sure that vulnerable members such as women do not suffer as a result of such an accommodation.

In line with the spirit of the dialogical approach to comparative political theory, which this thesis endorses, this dialogue between multicultural political theory and Mexican political thought over indigenous peoples' rights has been at times reassuring and at times unsettling. Sometimes, some of the conclusions reached by the scholars examined in the two traditions were interestingly similar. For instance, many of the reflections offered by authors like Young about the need to ground indigenous peoples' self-determination in the value of non-domination (which I examined in Chapter 3) chimed with the observations about what indigenous self-determination should look like put forward by an author like Bonfil-Batalla (whose political thought I reviewed in Chapter 4). At other times, multicultural political theory and Mexican political thought more neatly separated in their approaches and conclusions. For instance, on the important issue of land (which I discussed in Chapters 1 and 6), western political theorists have framed territorial rights and land-related claims in a radically different way from how even very dissimilar Mexican political thinkers have

conceived what land means in indigenous peoples' struggles. On some occasions, instead, the conversation between multicultural political theory and Mexican political thought has been one of complementarity as the latter has refined in important ways some of the insights provided by the former. For example, Olivera-Bustamante's analysis of the role of indigenous women in the struggle for indigenous self-determination (which I reviewed in Chapter 6) resonates with the stress on women's participation put forward by theorists such as Deveaux and Song (covered in Chapter 5); but it also sheds light on different dimensions of indigenous women's participation, which would remain hidden if we simply looked at the western feminist accounts of the issue.

Nevertheless, in all instances, I believe that Mexican political thought has offered invaluable insights into the condition of indigenous peoples which has enabled us to move closer to a deeper understanding of what is at stake in their struggles for self-determination. In particular, it has highlighted and placed centre-stage four crucial aspects. First, indigenous identities in a context such as Latin American settler colonialism cannot be regarded simply as cultural products; they are inherently political and as such they importantly both constrain and enable the mobilisation and demands for justice of those who are framed by (and reclaim) such identities. Second, and relatedly, Mexican political thought has shown that the demands for justice pressed by indigenous peoples cannot be merely taken as calls for cultural equality in pluralistic states or for control over cultural goods which are seen as essential to a group's conception of a good. They are always and ultimately about holding the settler colonial state to account and making it responsive towards the enduring historical injustices meted out to indigenous peoples. This is the case even when indigenous peoples' demands seem to be focused on a cultural good such as land. Land becomes the catalyst for broader and more systematic claims about the historical and current marginalisation,

oppression and exclusion of indigenous peoples, and this is why struggles around land quickly escalate into fights against settler colonialism. Third, Mexican political thought brings into stark relief the pivotal role which settler colonialism plays in shaping the identities and struggles of indigenous peoples by showing that settler colonial contexts cannot and should not be treated as the same as merely 'multicultural' societies. Fourth, grassroots political thinking shows an advantage over multiculturalism, namely it is able to address the question of indigenous rights. Multiculturalism is largely silent in this regard, but the history of settler colonialism provides the necessary background to put the claims of indigenous peoples against the settler colonial state in their proper light. For instance, it shows why self-determination as non-domination is important and how its linked to land, something which multiculturalism is unable to due its focus on culture, the lack of attention to historical inequality, and the context in which the claims emerge which is one where the indigenous peoples are no able to claim any right over land.

The dialogue which I have sought to set up throughout the thesis, as probably all dialogues are, is incomplete. What it is missing is the voice of indigenous people

themselves.[463] Although I have drawn on some specific indigenous activists such as Marichuy and Lupita in my analysis, I have not been able to give indigenous political thought its due. Indigenous political thought is a rich, extremely insightful and heterogenous tradition which deserves proper attention and focus, and probably a thesis of its own.[464] In this thesis, I limited myself to analysing theorists who (with some exceptions) do not belong to indigenous

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[463] Interestingly, in a very recent article, Daniel Sharwin challenged the very idea that comparative political theory as it stands and with its commitment to the deparochialisation of political theory can productively engage with indigenous peoples' thought, and he warned against any quick application (see 'Comparative political theory, indigenous resurgence, and epistemic justice: From deparochialization to treaty' in *Contemporary Political Theory*, forthcoming). I cannot assess the merits of Sharwin's argument here; nor do I seek to use it as a justification for the lack of inclusion of enough indigenous voices in my work of comparative political theory. Suffice it to say that I share with Sharwin the intuition that an encounter with indigenous voices needs to proceed cautiously. Given the way in which, as a Mexican PhD student, I am deeply implicated in the structures of Mexican settler colonialism, I recognise the importance of engaging with Mexican indigenous peoples' voices but also how this is not something that I could do lightheartedly.

[464] In addition to Coulthard's work, see, for instance, Alfred Taiaiake, *Peace, power and righteousness: an Indigenous Manifesto*, Oxford: Oxford University Press (1999); Kouslaa Kessler-Mata, *American Indians and the Trouble with Sovereignty: a Turn Towards Structural Self-Determination*, Cambridge: Cambridge University Press (2017); Sheryl Lightfoot, *Global Indigenous Politics: a Subtle Revolution*, Oxford/New York: Routledge (2016); Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States*, Durham, NC: Duke University Press (2014).

tribes in order to unravel how they have approached indigenous peoples' struggle for emancipation. That being said, like every authentic dialogue, the one which I have started does not want to say the last word on the matter. Quite the contrary, it is an open-ended enterprise which hopes to attract more participants over time who can even more radically challenge some of its conclusions.

Indeed, how indigenous political thought, and especially Latin American indigenous political thinking, could unsettle, enrich and/or complement the theoretical and normative arguments developed throughout the thesis is one future line of research which my thesis opens, and which I hope to embark on in the future. This line of research could (and should) be pursued in dialogue with indigenous scholars. Following the principles of the dialogical approach and being aware of my own positionality as a non-indigenous Mexican scholar, I plan to collaborate with indigenous political theorists and work together with them to understanding what indigenous rights mean in settler colonial contexts. Conducting this line of research with indigenous scholars is crucial in many respects. In particular, it would overcome one of the main limitations of this thesis, which, as already mentioned, primarily focuses on two intellectual traditions, multicultural political theory and Mexican political thought, which have both been deeply engrained in the structures of settler colonialism. As mentioned in the Introduction, both traditions of political thought emerged in settler colonial contexts as ways to theorise the claims raised by the indigenous peoples (and, in the case of multicultural political theory, cultural minorities more in general). Moreover, some authors working within these two traditions, and especially within multicultural political theory, seldom reflect on how the settler colonial context shapes the claims of indigenous peoples and the specific obligations of the state. In general, neither tradition is an expression of indigenous experiences, nor should it be regarded as a replacement for indigenous accounts.

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As useful as a dialogue between multicultural political theory and Mexican political thought might have been to shed light on the condition of the indigenous peoples, both traditions would in turn benefit from an authentic and open-ended dialogue with indigenous political thought.

The potential of including the voices of indigenous peoples in such a dialogue can be immediately appreciated by having a quick glance at social media platforms such as Twitter, where a number of indigenous scholars and activists, such as Nick Estes, have stressed how multiculturalism and its philosophy are unable to accommodate the claims of indigenous peoples.[465] Moreover, engaging in a dialogue with indigenous political thought can overcome another problem which normative discussions about indigenous peoples have – a problem which is generally reflected in normative theorising: the 'comfort of the armchair', by which I mean that disconnection from reality which too often political philosophers exhibit and which is said to prevent them from gaining a deep understanding of the problems which they want to tackle. For instance, Jakeet Singh has argued that the concept of self-determination should be theorised from below, or from the perspectives of activists, to be fully theorised.[466]

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[465] In addition to Coulthard's account, see Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance*, Minneapolis: University of Minnesota Press (2017) for an interesting argument which focuses on the limits of multicultural policies and the need for indigenous peoples to stop looking for recognition from the state.

[466] Jakeet Singh, 'Recognition and Self-determination: Approaches from Above and Below', in *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics*, Avigail Eisenberg, Jeremy Webber, Glen Coulthard and Andree Boisselle (eds). Vancouver: University of British Columbia Press (2014).

In a similar vein but focusing on the issue of civil disobedience, Erin Pineda argued that political theorists engaging in the debate over resistance have failed to recognise not only how activists see the societies and international order which they fight against, but also how activism is a source of theorising in itself.[467] In settler colonial contexts (and arguably in other contexts where groups have been systematically oppressed and marginalised), theorising from below also importantly means including the voices of indigenous peoples and other oppressed groups in the very process of theorising.[468] A dialogue with indigenous political theory, set up through a collaboration with indigenous scholars, is a promising way to theorise from below important issues such as indigenous self-determination, the rights of vulnerable members of indigenous communities, and land.

Another line of research which this thesis hints at and which I hope to carry out in the future is a comparative political theory analysis of settler colonialism. Throughout the thesis, I have stressed the peculiarity of settler colonialism as a form of domination and zeroed in on the specificity of the Latin American experience. Settler colonialism is, however, not a monolithic and homogenous phenomenon and the conditions of injustice which it created arguably vary from one context to another. There is therefore a need for a project which looks at different settler colonial contexts and compares them. In particular, such a project could explore (i) the different justifications which politicians and theorists have given for settler colonial domination in different contexts and (ii) the ways in which activists have conceptualised its injustice and tried to resist it. This project should include not only the experiences and conditions of settler colonialism in states such as the US, Canada and

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[467] Erin Pineda, *Seeing Like an Activist*, Oxford: Oxford University Press (2021).

[468] For an interesting approach to excluded philosophical traditions, see Hooker, *Theorizing Race in the Americas*.

Australia, but also other contexts which have been comparatively neglected by political theorists. These contexts include not only Latin America, but also Asian countries such as Indonesia (a former Dutch colony), which has a population of 50-70 million indigenous peoples. In Indonesia, indigenous peoples face a number of injustices such as dispossession of land and legal punishment for protecting their territories; moreover, although it endorses the UN Declaration on the Rights of Indigenous Peoples, the Indonesian state does not recognise the category and identity of indigenous peoples.[469] A comparative analysis of different contexts of settler colonialism could reveal how the relation of domination between the state and indigenous peoples has been theorised in various ways and has taken many forms which are peculiar to specific realities. Political theorists have started to recognise the different dynamics at play in diverse colonial and imperial projects. For instance, Barbara Arneil has identified the important role which 'domestic colonies' – colonies created for fellow citizens deemed socially problematic (such as the idle poor and the disabled and mentally ill) and within the boundaries of the state – played in Europe and North America from the nineteenth century to the first half of the twentieth century. According to Arneil, domestic colonialism enriches and challenges existing accounts of colonialism and its injustice.[470] Others have started to look at some aborted projects of settler colonialism, for example British settler colonialism in India, to illustrate how settler colonial domination did not always entail the Atlantic model of dispossession of land and genocide but also involved

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[469] 'Indigenous peoples in Indonesia', IWGIA, accessed 14 September 2021, https://www.iwgia.org/en/indonesia.html

[470] Barbara Arneil, *Domestic Colonialism: The Turn Inward to Colony*, Oxford: Oxford University Press (2018).

designing different forms of racial exploitation.[471] A comparative analysis of different contexts of settler colonialism would therefore contribute to this burgeoning literature aimed at conceptualising the different forms of colonial and imperial domination to gain a full picture of colonial injustice and its legacy.

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[471] Onur Ulas Ince, Deprovincializing Racial Capitalism: John Crawfurd and Settler Colonialism in India, *American Political Science Review*, forthcoming.

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