# Indigenous self-determination: A comparative view from the conceptions and practices of indigenous peoples.

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**ABSTRACT** This text seeks to enrich the understanding of the processes of indigenous self-determination, its specific forms of exercise and the spaces of relationship with states, based on a comparative analysis of different processes of indigenous self-government and autonomy. Our intention is to provide new analytical perspectives which, connected to in-digenous realities and experiences, and within the framework of a debate that allows for a broadening of democratic conceptions and practices, have an impact on two major areas of theoretical and political discussion: 1) the right of peoples to self-determination, and 2) the state's articulation of the plurality represented by indigenous realities. To this end, the text is structured in three stages: first, it presents an overview of the concept of self-determination in the light of the indigenous demands of recent decades; second, it analyses seven experi- ences of self-determination that propose different internal configurations and ßameworks for relations with the state; and finally, it establishes some axes of comparison between these cases, with the aim of broadening the ßamework of analysis regarding the possibilities and limits of self-determination and the construction of plural democracies.

**keywords** self-determination; autonomy; indigenous peoples; collective rights.

**abstract** This text seeks to enrich the understanding of indigenous self-determination processes, their concrete forms of exercise and the spaces of relationship with the States, based on the comparative analysis of different experiences of indigenous self-government and autonomy. Our intention is to contribute new analytical perspectives which, connected with indigenous realities and experiences, and within the framework of a debate that allows for the broadening of democratic conceptions and practices, have an impact on two major areas of theoretical and political discussion: 1) the right of peoples to self-determination, 2) the articulation of the State with the indigenous peoples, and 3) the right of indigenous peoples to self-determination, and 4) the right of indigenous peoples to self-determination.

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of the plurality represented by the indigenous fact. To this end, the text is structured in three moments: first, a review of the concept of self-determination is presented in the light of the indigenous claims of recent decades; second, seven experiences of self-determination are analyzed, which propose different internal configurations and frameworks of relationship with the State; and finally, some axes of comparison between these cases are established, with the aim of broadening the framework of analysis regarding t h e possibilities and limits of self-determination and the construction of plural democracies.

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# 1. Indigenous self-determination: by way of introduction

## 1.1. Persevering self-determination

The practices, analysis and proposals on the right to self-determination of indigenous peoples go back a long and wide way. The first clear identification of indigenous peoples as subjects of rights and specifically, as peoples, of the right to self-determination, began, at least,[1] with the so-called "Martinez Cobo Report", that is, the "Study of the problem of discrimination against indigenous populations" by the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities. In this report, published in 1986, it is clearly stated that "It is beginning to be understood that indigenous peoples have their own national identity based on historical realities that transcend the phenomena of mere solidarity in the face of discrimination and exploitation[2]

1. Although, if we wish, we can go back to the so-called "First Declaration of Bar- bados", which is now 50 years old. In it, a group of Latin American anthropologists agreed on a first call to advance in the recognition of the collective rights of indigenous peoples: "We reaffirm here the right of indigenous populations to experience their own schemes of self-government, development and defense, without these experiences having to adapt or submit to the economic and socio-political schemes prevailing at any given time. The transformation of national society is impossible if these populations do not feel that they have in their hands the creation of their own destiny". This Declaration is derived from the Symposium on Interethnic Friction in South America, held in Barbados on January 25-30, 1971. The document can be found at: http://www.servindi.org/pdf/Dec_Barbados_1.pdf (last visited July 15, 2021).

2. E/CN.4/Sub.2/1986/7/Add.4, para. 265.

determination in its multiple forms is, consequently, the fundamental precondition for indigenous populations to be able to enjoy their fundamental rights and determine their future, while preserving, developing and transmitting their ethnic specificity to future generations.

On the one hand, this extensive journey implies a wealth of experiences, reflections and political and normative advances. On the other hand, it also entails a certain exhaustion derived from its questioned capacity to slow down the pace of dispossession, the weakening of collective structures, the violation of rights or, directly, the processes of ethnocide, if not genocide.

Thus, after the enormous impetus provided by the approval in 1989 of Convention No. 169 on Indigenous and Tribal Peoples of the International Labor Organization (ILO), or the chain of constitutional recognition undertaken in Latin America throughout the 1990s, there was a certain disenchantment at the beginning of the 2000s. Toledo Llancaqueo pointed out at that time: "everything indicates that the period of advances in the recognition of the rights of indigenous peoples and soft reforms in Latin America is over. Such processes were part of ins- titutional adjustments, constitutional conjunctures or openings and pacts...".Ł

There were then a series of symptoms of the aforementioned end of cycle. Among them, we could highlight the obvious weakness and lack of enforceability of the recognitions, which would be evident, for example, when compared to international regulations on free trade, protection of private investment or intellectual property for commercial purposes, through a regulatory framework that openly ignores the scope of indigenous rights such as prior consultation of indigenous peoples, the guarantee of access and distribution of natural resources, the protection of biodiversity or traditional knowledge. This regulatory asymmetry was built hand in hand with the hegemony of the thesis of liberal multiculturalism, i.e., a very successful theoretical construction (as it was soon translated into regulations and public policies) capable of displacing the debate on social justice and, at the same time, deactivating the most transformative scope of the

3. Ibid., numeral 269.

Ł. Toledo Llancaqueo, "Las ßonteras indígenas de la globalización", 6.

cultural justice, by ultimately maintaining the hierarchy of (formally pretended) individual autonomy vis-à-vis collective self-government.[5]

After this period of stagnation, the approval of the United Nations Declaration on the Rights of Indigenous Peoples in September [20076] and the constitutions of Ecuador (2008) and Bolivia (2009) provided a new impetus that has served to reopen debates, broaden the horizons of proposals and redefine some of the demands regarding indigenous rights and, in particular, the forms of realization and development of their self-determination as peoples. In this sense, and despite the limitations on indigenous rights also imposed during the so-called progressive cycle in Latin America (for example, in the aforementioned cases of Ecuador and Bolivia),[7] in recent years we have witnessed a new revitalization of the political protagonism of the demands for indigenous self-government. Proof of this can be found in the central role that is once again being played by indigenous self-government demands.

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5. Undoubtedly, the debate is complex and it is unsatisfactory to dispatch it in such a schematic manner. Nevertheless, let it serve at least as a statement, as a critical approach to theses which, despite implying a break with the cultural monism most deeply rooted in the nation-state project, were very careful not to go beyond the basilar elements of liberal-individualist thought. This issue is summed up by Will Kymlicka's proposal for a distinction between "external protections" and "internal restrictions" in his famous book *Multicultural Citizenship. A Liberal Theory of Minority Rights*. This debate should be joined by questions such as those of Nancy Fraser, and the need to articulate social and cultural justice in a transformative way, as proposed in her text "From Re-distribution to Recognition. Dilemmas of justice in the 'post-socialist' era"; Boaventura de Sousa Santos, with his multiple critical contributions to the statocentric and monocultural horizon of hegemonic law, collected in works such as *Critical Legal Sociology*; or Silvia Rivera Cusicanqui, with her incisive criticism of the currents of postcolonial thought, in texts such as "Ch'ixinakax utxiwa: una reflexión sobre prácticas y discursos descoloni- zadores" (Ch'ixinakax utxiwa: a reflection on decolonizing practices and discourses), to indicate only a few possible references within a long list of contributions.

6. The incorporation of the right to self-determination was one of the most controversial aspects of the long and complex process of negotiations that led to the adoption of the Declaration in 2007. In fact, the discussions surrounding the right to self-determination - the resistance of States to its explicit incorporation and the insistence of indigenous movements to maintain it - are one of the reasons that explain the more than 25 years that separated the first drafts prepared within the framework of the United Nations Working Group on Indigenous Peoples and the Declaration finally adopted on September 13, 2007, by the UN General Assembly, with 143 votes in favor, 11 abstentions and the significant dissenting votes of the United States, Canada, New Zealand and Australia.

7. There are different analyses in this regard. Among them, we can cite: Aparicio Wilhelmi, "Estado, organización territorial y constitucionalismo plurinacional en Ecuador y Bolivia" (State, territorial organization and plurinational constitutionalism in Ecuador and Bolivia).

the debate on self-determination, autonomy and self-government in the United Nations mechanisms on the Rights of Indigenous Peoples, with several recent reports that address the issue monographically,[8] or with a resurgence of academic research that incorporates an important presence of indigenous voices directly involved in processes of autonomy building.[9]

It should be noted that, despite the ups and downs of the domestic, regional and international legal and political context, the conceptions and practices of indigenous self-determination have managed to maintain a constant vitality. Thus, despite serious threats to their rights and the weak effectiveness of these rights, indigenous peoples have generally very rarely failed to maintain not only their claim to self-government, but also, and above all, have persevered in autonomy as a shared and creative practice, not least because autonomy is an essential expression of their identity, of their continuity as human groups.

## 1.2. The pandemic as a mirror

As we have been able to experience in the course of 2020, the main strategy of the States to enßance the spread of the COVID-19 pandemic has consisted in trying to minimize social interaction through the closure of their external ßows and the limitation of movements within their internal ßows, which has involved an intensive deployment

8. In this regard, the annual reports to the UN General Assembly presented in 2018 and 2019 by the former Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tau- li-Corpuz, have addressed the rights to self-government, autonomy and self-determination of indigenous peoples: in 2018, in a more prospective manner and focusing on self-government (Tauli-Corpuz, A/73/176), and in 2019 with a report on the right to self-determination, and its expressions in the form of autonomy and self-government, where various specific cases are analyzed and a series of recommendations are issued to States (Tauli-Corpuz, A/74/149). On the other hand, since 2019, the Expert Mechanism on the Rights of Indigenous Peoples has been preparing a monographic report on the right to self-determination, the first since the adoption of the 2007 Declaration, which will be presented at the end of 2021 to the Human Rights Council, although the draft report is already available (https://undocs.org/es/A/HRC/EMRIP/2021/2).

9. See, for example, the book *Autonomía y autogobierno en la América diversa*, which collects and analyzes recent experiences in thirteen countries of the Americas. Available at: http://autonomiasyautogobierno.com/.

of the capacity for political and territorial sovereignty still available to States in today's world. As has already been pointed out, this type of isolation and confinement measures are by no means a historical novelty, but have been the main non-pharmacological strategy for combating the spread of the many epidemics and diseases that have affected mankind throughout its history.[10]

Unlike Western societies, which are more prone to forgetfulness and less aware of their own ßagility within the biophysical order of the planet, indigenous peoples have not needed expert voices to remind them of the historical impacts of epidemics and diseases. The collective memory of indigenous peoples is marked by the traces of virulent epidemics that have decimated their populations, caused in many cases by colonization processes and unilaterally imposed contacts, as is the paradigmatic case of the conquest of America, in which new viruses and diseases brought by the Spanish acted as a sort of microbiotic ßente that paved the way for the process of military colonization.[11] On the other hand, several studies have shown how other recent pandemics, such as the one caused by the H1N1 influenza virus in 2009, had a much greater differential impact among indigenous populations.[12] Likewise, the presence and severity within indigenous territories of various infectious diseases, partially or completely eradicated in other latitudes, continue to pose a major threat to the social reproduction and survival of many indigenous societies, which must cope with such diseases from a structural position of health insecurity, material relegation and increasing environmental degradation.

Given this accumulation of past and recent experiences, it is not surprising that the reaction of many indigenous peoples to the expansion of COVID-19 anticipated that of national governments, setting in motion different "self-determined protection mechanisms "[13] that imply strategies of indigenous territorial sovereignty deployed autonomously from the States.

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10. See, for example: McMillen, *Pandemics* or, Snowden, *Epidemics and Society.*
11. Cook, *Born to die.*
12. La Ruche et al., "Ue 2009 pandemic H1N1 influenza and indigenous populations".
13. IGWIA, "Ue Indigenous World 2021," 15.

Let us look at examples of this, taken from some of the experiences of indigenous self-development that will be analyzed in this text.

In the Gunayala comarca of Panama, the Guna General Congress, the highest body of this pioneering experience of indigenous autonomy,[1Ł] decreed the suspension of tourist activities in its territory, which it put on hold, and organized a "humanitarian corridor" to enable the safe return of urban Guna migrants to their communities.[15] In Bolivia, the authorities of the Charagua Iyambae Guarani Autonomy, the first indigenous autonomy recognized in the Plurinational State of Bolivia,[16] formed an emergency committee that decreed the "encapsulation" of the autonomy and organized rotating controls on access roads to their territorial jurisdiction.[17] The *Orang Asal* (indigenous peoples) of Malaysia also opted to withdraw deeper into the forests, "not only to isolate themselves but also to secure subsistence food".[18] In the P'urhépecha municipality of Cherán, Mexico, the Rondas Comunitarias, formed in 2011 as a community self-defense mechanism against organized crime, took charge of blocking access to the municipality by setting up barricades.[19]

All these examples demonstrate, to begin with, the dynamism and resilience of indigenous peoples, capable of dealing with changing situations based on their own realities, community structures and accumulation of socio-organizational experience.[20] Secondly, these types of self-protection mechanisms represent, in themselves, a concrete expression of the exercise of the collective right to self-determination of indigenous peoples. This was pointed out by the current United Nations Special Rapporteur on the rights of indigenous peoples, José Francisco Calí Tzay, who in a special report on the impacts of COVID-19 among indigenous peoples reminded States of their obligation to "respect the autonomy of indigenous peoples

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1Ł. Cf. Martínez Mauri, *La autonomía indígena en Panamá.*

15. Martínez Mauri, "La autonomía indígena en tiempos de pandemia", 12-13.

16. Morell i Torra, "La construcción de la Autonomía Guaraní Charagua Iyambae".

17. Morell i Torra, "La Autonomía Guaraní Charagua Iyambae en tiempos de emergencia".

18. IGWIA, "Ue Indigenous World 2021," 287.

19. Fuentes et al., "El autogobierno P'URHÉPECHA de Cherán".

20. Aparicio Wilhelmi, "COVID-19 y derechos colectivos de los pueblos indígenas".

to manage the situation at the local level", providing the material and financial means to do so, and explicitly included the restriction of "movement in and out of their communities" as part of their right to self-determination".[21]

The broad catalog of self-determined indigenous responses to COVID-19, of which we have presented here only a small sample,[22] illustrates, in short, the timeliness and relevance of the discussions surrounding the scope and concrete expressions of the right to self-determination of indigenous peoples, and also reveals the need, even the urgency, of repositioning the question of self-determination, autonomy and sovereignty at the core of the theoretical debate, which is both political and practical, on the rights of indigenous peoples.

## 1.3. Indigenous self-determinations in dialogue

This is the objective of the present text: to enrich the understanding of the concept of self-determination -and others such as "autonomy", "self-government" or "sovereignty" belonging to the same semantic-political field- from the collective ideas and practices of indigenous peoples. Assuming that concepts take on meaning(s) through social practice, situated experience and the sedimentation of multiple historical processes, our intention is to contribute, as far as possible, an "indigenous perspective" that, based on concrete praxis in different indigenous spaces, allows us to rethink and, in the end, decolonize and undo the abstraction of concepts that are often used far from their concrete realizations and material conditions of possibility. This also seeks to go beyond the conceptual genealogies that obviate contributions and influences that do not come from the Western political-legal tradition, or from a certain way of interpreting such tradition.

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21. Cali Tzay, A/75/185,13-15.

22. In this regard, the latest annual report of the IWGA, *Indigenous World 2021,* can be consulted, as well as a section of its web page dedicated to indigenous impacts and responses to COVID-19: https://www.iwgia.org/es/noticias-alerta/noticias-covid-19.html. For the Latin American context, the various reports prepared by the Regional Indigenous Platform in response to COVID-19, available at: https://indigenascovid19.red/.

In this sense, this article contributes new theoretical and analytical perspectives that, connected with indigenous experiences and aspirations, seek to influence both the reconceptualization of the notion of self-determination, as well as the concrete forms of political relations and territorial articulation between indigenous peoples, States and other private actors present in indigenous territorial spaces, seeking to contribute to the debates on forms of recognition of pluralism and systems of territorial organization of power.

Although this text is written by four hands, many of its contributions reflect collective discussions on indigenous self-determination developed within the framework of the research project "Self-determination and sovereignty of indigenous peoples: atlas of a study in an interdisciplinary and comparative perspective", made up of ten researchers from different academic centers with long experience in different indigenous contexts.[23] The space for interdisciplinary exchange opened up by the project has made it possible to bring together diverse experiences of indigenous self-determination covering different geographical regions (Caribbean, South America, Southeast Asia and sub-Saharan Africa) and presenting different frameworks of relations with the States, as well as varying degrees of development and internal institutionalization. While this monographic section groups together eight other articles in which each of the different experiences of indigenous self-government that have been analyzed within the framework of the project are examined in depth, this article proposes a synthesis and comparative analysis of these experiences, seven in total, providing empirical and unpublished data emerging from the field research carried out by each of the researchers who have been involved in the project.[24]

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23. The project "Self-determination and sovereignty of indigenous peoples: atlas of a study in interdisciplinary and comparative perspective", funded by the Institut d'Estudis de l'Au- togovern de la Generalitat de Catalunya, has been developed at the University of Girona between 2019 and 2021, under the direction of Marco Aparicio Wilhelmi and the academic coordination of Pere Morell i Torra. The project has brought together the following researchers from different academic centers in Spain and Latin America: Isabel Inguanzo, Mònica Martínez Mauri, Cristina Enguita-Fernàndez, Alejandra Durán Castellanos, Asier Martínez de Bringas, Rocío del Pilar Moreno Badajoz, María Inés Rivadeneira and Victor Tricot Salomon.

2Ł The authors of this article thank the entire team of researchers of the Project for their contributions to the different experiences of indigenous self-determination analyzed in this article, while assuming full responsibility for the errors and shortcomings that our analysis may contain.

The extraordinary plurality of indigenous peoples and of the ways of politically expressing indigeneity, as well as the semantic breadth of the concepts of self-determination and autonomy, are reflected in the great variability existing among the experiences of self-determination that we are going to relate, opening the range of comparison not so much, or not only, to regimes instituted with certain closed attributes, but to different types of situations and open possibilities, which we can classify into three types:

a) Situations in which the exercise of self-determination by indigenous peoples has found, by different means, spaces of legal recognition within the States and has crystallized in regimes of indigenous political and territorial autonomy. Such is the case of four of our case studies: i) the Gunayala comarca in Panama; ii) the Cha- ragua Iyambae Guaraní Autonomy of the Plurinational State of Bolivia; iii) the island states of Sarawak and Sabah of the Federation of Malaysia; iv) the municipality of C'herán Keri in the state of Michoacán, Mexico.

b) Situations in which, although there may be spaces for relations with the States and some legal recognition of indigenous peoples, self-determination is expressed in forms of exercise and construction of de facto autonomy, without waiting for effective recognition by the State. This is the situation of the Sarayaku people in the Ecuadorian Amazon, a case in which, despite certain constitutional advances in the area of indigenous peoples' rights, the obstacles to their implementation have given rise to autonomous exercises of autonomy in the form of self-protection of rights.

c) And finally, there are situations in which, although self-determination can be expressed in practices of self-organization at the community level, it is, above all and still is, above all, a demand, a political project, a horizon of possibility. This is the case of the Mapuche people in Chile, one of the few Latin American states that does not recognize indigenous existence in its Constitution; and of the Mbororo people of Cameroon, a Peul pastoralist people who, as we shall see, have only very recently begun to (re)think and (re)organize themselves collectively as an "indigenous people".

# 2. Self-determination and autonomy: towards a reconceptualization from the indigenous experience.

## 2.1. Conditions and notions of self-determination

"Self-determination", "self-determination", "self-governance", "autonomy". These are terms that have been capturing the essence of the demands of indigenous peoples for at least the last four decades, in multiple forums and through different forms of expression. Such terminological breadth leads us to different nuances, genealogies and historical trajectories, although, at the same time, they delimit the same field of theoretical-political discussion that refers to some of the principles, practices and institutions that have shaped the contemporary international order and the forms of internal organization of those who constitute its main actors: the States. Indeed, every practice and every political or legal recognition - or rejection - of collective self-determination places the State in one of the neighbors of the relationship.

However, at the same time, and this is precisely what constitutes the subject of this text, it is essential to consider the way in which the subject of self-determination conceives its scope, its meaning, rehearses the limits of this freedom, not only imposed by the State itself or by other powers, but also, as the other side of the coin, derived from the collective weaknesses themselves.

Verónica Gago accurately picks up on this when she points out that "the pluralization of neoliberalism by practices coming 'from below' allows us to see its articulation with community forms, with popular tactics of life resolution, with undertakings that feed informal networks and with modalities of negotiation of rights that make use of this social vitality".[25] Such practices reveal "the heterogeneous, contingent and ambiguous character in which obedience and autonomy dispute, inch by inch, the interpretation and appropriation of neoliberal conditions".[26]

25. Gago*, La razón neoliberal,* 18.

26. Ibid.

Thus, the fields of reflection transcend the horizon of statehood and public international law to incorporate much broader areas of normative reflection on the possibilities of human collectivities to organize themselves, relate to each other and influence those elements that shape their present and mark their collective future. For this reason, we consider it essential to approach the concrete way in which such processes develop, in which such balances and imbalances come together.

From there, we propose to go beyond the framework derived from state recognition o f the margins of self-government of, in our case, indigenous peoples, to focus rather on their aspirations and practices, as a re-signification that decenters and broadens the conceptual boundaries of state law.
-and international - and of statehood. Of particular note here is James Anaya's perspective, which "de-statizes" self-determination to situate it in a cross-cultural perspective of human rights (also collective) that incorporates non-Western philosophical sources. Specifically, Anaya states that "self-determination is based on the precepts of freedom and equality that can be found rooted, over time and space, in different cultural traditions throughout the world".[27] Therefore, continues the same author, "international human rights texts that affirm self-determination (...) point to fundamental values of freedom and equality that are relevant to all human groups in relation to the political, economic and social configurations in which they live". Thus, "under a human rights approach, the attributes of statehood or sovereignty are, at most, instrumental to the realization of these values, they are not the essence of the self-determination of peoples. "[28]

Even further, there are numerous references to the way in which concepts taken almost univocally as products of liberal modernity have also become traditions of native peoples subject to colonial domination - and, with it, to colonial historiography. Iris Marion Young picks up on the strength of the federal experience of the original peoples. In reference to the federation of five Iroquois nations (Mohawk, Oneida, Onondaga, Cayuga and Seneca), with elements that would later be taken up in the construction of the United States of America: "What federalism meant was

27. Anaya, "El derecho de los pueblos indígenas a la libre determinación", 198.
28. Ibid.

for the Iroquois was the assumption of self-determination for the member nations, as well as a commitment to the other five nations and a willingness that any issues could be considered for decision-making at the federal level. "[29]

For these reasons, not only do we find ourselves with different terminology, but also each of these terms is polysemic, since, as Araceli Burguete points out in a recent interview:

Each social reality is appropriating this conceptual package, but all this conceptual package enters into a box called decolonization. Decolonization, or rather the other way around, the right to self-determination means decolonization, recovering self-determination through autonomous procedures and autonomous rules, through agreements with the State, which recognize the autonomy of a subject.[30]

In any case, with such formulas, indigenous peoples, in their unmentionable diversity, have identified and translated into the political and legal terms of the dominant culture forms of protection of the material conditions of their own existence, as culturally differentiated peoples. Therefore, from a legal point of view, we can conceive of the self-determination of indigenous peoples as an instrumental right for the realization of the right to collective life, the right to their own existence, to their own cultural identity.

Thus, given the linkage of self-determination to international human rights instruments, first, and then its adoption in the United Nations Declaration of 2007, peoples have chosen to highlight their demands in terms of self-determination in international forums or at particularly notable political moments, such as

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29. Young, "Hybrid Democracy," 241 (own translation). In a similar vein, Graeber stresses that "The colonists who came to America, in fact, found themselves in a unique situation: having largely fled the hierarchy and conformity of Europe, they encountered an indigenous population far more dedicated to the principles of equality and individualism than they had hitherto been able to imagine; and they then proceeded to exterminate them to a large extent, even adopting many of their customs, habits and attitudes": Graeber, *Mene Neven Pas a Pest* (own translation).

30. Interview with Araceli Burguete in the context of the current Chilean constituent process. Published by the electronic magazine *Me Clinis*, July 9, 2021.

This may be in the context of constituent processes or major constitutional reforms. In other contexts, and clearly when it is a matter of claiming their own practices and achieving some kind of respect -at least a mere non-interference- from the State, or State protection against threats from private powers, it is more appropriate to use the terms "autonomy" or "self-government".

To a certain extent, and as a rough conclusion, autonomy would be conceived rather as a practice "from below", and links, in its different forms of realization, with spaces of continuity and resistance to colonization in its successive phases. We could point out, in this sense, that the notion of autonomy can be understood as a particular expression of self-determination, as a concrete form of exercising this right, but it has a much more porous meaning and is closely linked to particular socio-political and historical contexts: there are a multitude of "autonomous" arrangements and pacts - which, moreover, can vary over time - between States and different territorial actors.

Indigenous autonomy or autonomies therefore tend to have two distinct dimensions: a more public dimension, which can result in the institutionalization of different forms of territorial self-government with different mechanisms of articulation and relationship with the States, but also a more daily and experiential dimension, which is inscribed in the course of the community life of indigenous peoples: it is constantly debated, thought and redefined from the indigenous realities themselves.

Another aspect to consider in this proposal for understanding is the need to conceive of indigenous autonomy beyond the recovery, recognition or "conservation" (a concept used in the 2007 United Nations Declaration) of "their own" institutions. In this sense, when we speak of "own institutions" (a concept that appears, for example, in the legal definition of "indigenous peoples" set out in the Martínez Cobo Report mentioned above), it should be noted that this is understood in terms that are not exclusively historical, i.e., as those institutional systems that, often in an overlapping and overlapping manner with pre- and/or post-colonial state institutions, have maintained their validity despite the processes of colonial dispossession and dispossession.

If they are "proper institutions" of indigenous peoples, it is because they have considered them "appropriate" for the self-government of their collective life, as they are the result of conscious and chosen processes of self-institution.[31] In the same way, therefore, "proper law" does not necessarily refer to "ancestral law" derived from uses and customs, but also incorporates rules of coexistence that innovate, that are updated and develop their own, appropriate normative framework.

Beyond the greater or lesser continuity with existing institutions, or the opportunity to "re-create" ancestral forms as a factor of legitimacy in the political dispute with the (supervening) State, indigenous autonomy would not differ from what Castoriadis defines as an explicit act of social self-institution,[32] and in this way we must insist on situating the experiences of indigenous self-government on a contemporary plane, of "other modernities",[33] and even of vanguard, of different experiences and forms of re-democratization of collective life.

A constellation of institutional experiences, government structures, jurisdictional mechanisms and indigenous decision-making logics are formed, which appear as expressions of "demodiversity "[3Ł] or forms of "hybrid democracy "[35] that propose alternative frameworks to the liberal traditions of European origin and allow for the reformulation of the practice (and the very conception) of democracy.

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31. Anaya, *Indigenous peoples in Intennational Law,* 82.

32. For Castoriadis, the core of the "revolutionary project", that is, to build an "autonomous society", would be based on the "permanent and explicit self-institution of society, that is, a state where the collectivity knows that its institutions are its own creation and that it is capable of seeing them as such, of taking them up, of transforming them", quoted in Svampa, *Debates latinoamenisanos*, 329.

33. The contributions of Silvia Rivera Cusicanqui go in this direction, for example, when she points out that "in the face of rentier and predatory forms of tax coercion, the Katari-Amaru project was an expression of indigenous modernity, where political and religious self-determination meant a retaking of one's own historicity, a decolonization of imaginaries and forms of representation". Rivera Cusicanqui, "Ch'ixinakax utxiwa", 54.

3Ł. Sousa Santos, *Demodivensidad.*

35. Young, *Hybnid Demosnasy.*

## 2.2. Self-determination and autonomy

It can be said that self-determination has come to be seen as a "mother" demand, a space that encompasses the set of demands, i.e., responses to the various threats detected that jeopardize aspects necessary for their existence. Thus, territorial rights, the right to their own forms of political organization, of creating norms and resolving conflicts (the right to their own law), access to and disßute of natural resources, protection of their own knowledge and bio-versity, the right to prior, free and informed consultation, but also linguistic and educational rights, the right to health (their own health but also complemented by the public-state health system), etc., are all elements of self-determination which, depending on each case, may play a greater or lesser role. Even in cases involving indigenous rights claims that have no territorial dimension but are more personal, i.e., referring to members of indigenous communities that have been displaced and live in urban contexts, it is also possible to speak of forms of realization of self-determination, insofar as they claim their own forms of organization, of collective decision-making on their own affairs.

It should go without saying that the right of self-determination, by definition, can take a multitude of different forms. Thus, for example, as a concept of public international law, it is clear that self-determination encompasses the possibility of secession for the creation of a new State or for incorporation into an existing one. However, self-determination also implies the possibility of exercising different forms of self-government or autonomy within political organizations with which, consequently, some kind of relationship is maintained through the division of decision-making spheres (distribution of spheres of competence), spaces for negotiation and dialogue, and also for conflict resolution.

We know that, in practically all cases, indigenous peoples claim the recognition of - or materially exercise - forms of internal autonomy. This is due to multiple reasons: because the language of state sovereignty - as an expression of the modern state - is alien to them; because of the awareness of their own ßagility and convenience of having protection or support mechanisms beyond their own organizational forms; or even, in the case of indigenous peoples, because of their own lack of autonomy.

The few cases in which it could be pretended, due to the simple and plain awareness that the correlation of forces prevents possible yearnings for a state of one's own.[36]

Autonomy, understood as a form of internal manifestation of self-determination, can occur in turn in different degrees, that is, with a greater or lesser degree of self-government, as well as within the framework of different strategies. And this will vary enormously depending on a multitude of factors, among which we must highlight those that affect the very reality of the indigenous people in question, their numerical presence, their social and political presence, that is, their capacity to exert pressure, threaten and negotiate with the State. In this sense, it is necessary to analyze each reality from its own context.

It is interesting to see how often the practice of autonomy arises not only from attachment to one's own forms of organization and awareness of a differentiated cultural identity, but also, and to a large extent, as a result of the insufficiency or direct absence of the State as a collective organization capable of providing protection and guaranteeing the rights of its members. Or even further, because in many cases it is the State itself - its various institutions - that stands as the main threat, together with the private powers of the market, since it is the public-private alliance that drives the development of an extractive and predatory economic model that is incompatible with life in general, and especially with the existence of indigenous peoples.[37]

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36. Good proof of this can be found in the so-called Quito Declaration of 1990, in which indigenous representatives of the American continent stated that "self-determination is an inalienable and imprescriptible right of indigenous peoples. Indigenous peoples struggle for the achievement of our full autonomy within national frameworks. Autonomy implies the right of indigenous peoples to control our respective territories, including the management of all natural resources of the soil, subsoil and airspace (...) On the other hand, autonomy means that indigenous peoples will manage our own affairs, for which we will democratically constitute our own governments (self-governments)". First Continental Meeting of Indigenous Peoples "500 years of indigenous, black and popular resistance".

37. Indigenous peoples experience with particular intensity what Anglo-Saxon critical criminology has been defining for years as *State Conponate Cnime*, that is, the existence of a general social structure in which the state institutionality assumes the protection of large private corporate interests, to the point of confusing general interests with private interests, the public interest with the private-mercantile interest, generating a social harm (*sosial hanm*) that is not identified as legal harm, as harm to avoid or ßente to respond to. It is worthwhile to refer to White, "Regimes of Permission and State-Corporate Crime".

In any case, the struggle for autonomy develops differently in each context and has its own characteristics. As Luis Hernán dez Navarro points out, "there is no ideal autonomy regime, just as there is no ideal process to reach it. This demand for autonomy expresses a much deeper process: that of the recomposition of indigenous peoples as peoples".[38] Thus, the denial of the possible scope of self-determination of indigenous peoples is synonymous with the denial of their very condition as peoples. As is the case with all rights, the restriction of these rights is not so much, or not only, an affectation of the sphere of subjective self-ownership but, before that, it is a disregard of subjectivity itself, a restriction on the expression of such subjectivity that usually stems from the decision - more or less conditioned - of a subject with greater power with respect to a subject with less power, who is recognized as having a sphere of action - with at least formal protection - which, at the same time and in a marked manner, determines what is left out of such recognition.

For this reason it may be useful to take up again the distinction once proposed by Gustavo Esteva between the notions of "decentralization" and "decentralism": "while decentralization is premised on a notion of power that centralizes it at the top, in order to delegate competencies downwards, decentralism seeks to retain power in the hands of the people, to return human scale to political bodies, and to build, from the bottom up, mechanisms that delegate limited functions in spaces of concertation that regulate the coexistence of local units and fulfill for them and for the whole some specific tasks".[39] And therein lies the complexity of the au- tonomic debate: it is a struggle in which the political actors redefine themselves and their respective positions, altering the terms of an interrelationship full of imbalances.

The demands and practices of self-government, in this sense, adopt the forms that dialogue and conflict with the State and, in general, with the subjects with the most power, which are increasingly of a mercantile-corporate type. The conception of the claim and the practice of autonomy are therefore part of a resistance and of an always open process of social and political re-construction-construction, so that the demands that are made by the people are always part of a process of resistance and of an always open process of social and political re-construction-construction.

38. Hernández Navarro, "La autonomía indígena como ideal".

39. Ibid., 313.

at any given moment are formulated as "'umbrellas' that open political spaces for the historical construction, from the bottom up, of an autonomous style".[Ł0]

Autonomy is, in short, a relational, processual and relative concept, since it is constructed in relation to others ßront to whom autonomy is sought (the State, private powers, other collective subjects in dispute) and is never fully achieved: there is no "possibility of full autonomy, alien to the interdependence of relations of domination".[Ł1]

## 3. Self-determination in collective practice: case analysis.

As we have been insisting, indigenous self-determination is expressed in a very broad repertoire of organizational possibilities, forms of struggle and existential frameworks - autonomy being one of them - that reflect the extraordinary plurality of the indigenous, as well as the breadth of collective demands and practices that, in very different contexts, run through the open and disputed language of self-determination. If so far we have outlined some of the transformations and conceptual discussions of the ideas of self-determination and autonomy in the light of the indigenous claims of recent decades, in what follows we will focus these discussions on seven concrete experiences - which we deal with in this issue - in which self-determination is exercised, demanded and/or disputed collectively from the defining and irreducible pluralism of the indigenous fact.

The seven experiences that we are going to relate involve seven different States and propose different frameworks for dialogue-conflict and spaces for political, legal and territorial articulation with them. Most of the States, up to five, are Latin American: Bolivia, Chile, Ecuador, Mexico and Panama; while the rest, Cameroon and Malaysia, go beyond the Latin American regional framework to provide us with two contrasting experiences, both in terms of state-building processes and their relationship with these countries.

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Ł0. Esteva, "Autonomy and radical democracy," 314.

Ł1. Modonesi, *Subaltennity, Antagonėmo, Autonomy,* 45.

The company's own forms of understanding and ex- pression of indigeneity.

## 3.1. Indigenous autonomies with (uneven) state recognition

Four of the cases analyzed represent experiences in which indigenous self-determination is expressed in forms of political and territorial autonomy that, by different routes and to varying degrees of depth, have found spaces of recognition by state law, something that has impacted in different ways on the form of the state and its territorial structures.

### a) Gunayala indigenous region (Panama)

Although Panama is one of the few Latin American states that has not ratified ILO Convention 169,Ł2 it is home to one of the oldest legally recognized experiences of indigenous autonomy on the continent: the indigenous comarca of Gunayala, with a territorial jurisdiction covering 200 kilometers of Atlantic coast, including more than 300 islets where the majority of its more than 30,000 inhabitants live, distributed in 49 communities.Ł3

Although there are antecedents of recognition of the Guna territory from the last quarter of the NINETEENTH century, when Panama was still part of Colom- bia,ŁŁ one of the turning points for the consolidation of Guna autonomy was the armed uprising of 1925, which included the proclamation of an ephemeral "Guna republic.Ł5 As a result of the post-conflict negotiation process between Guna authorities and state agents, in 1938 a law (Law 2) granted the status of "comarca" to part of the Guna territory, guaranteeing collective land rights. In 1953, another legislative provision (Law 2) granted "comarca" status to part of the Guna territory, guaranteeing collective land rights.

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Ł2. https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_ INSTRUMENT_ID:312314:NO.

Ł3. Martínez, *La autonomía indígena en Panamá*", 25.

ŁŁ. Morales, "The 1870 Agreement between the Cunas and the Colombian state". Ł5. Martinez, *Indigenous autonomy in Panama,* 80-82.

16) would consolidate political autonomy by recognizing the General Congress of the Guna People, the body that articulates all the Guna communities, as the regional authority of the comarca; a path of legislative recognition that would open the way for the creation of four other indigenous comarcas between 1980 and 2000.Ł6

The legal recognition of Gunayala and the rest of the indigenous comarcas is not constitutional but legislative and specific to each comarca. Although the 1972 Constitution, amended four times, includes specific mechanisms for political participation and collective access to land for indigenous peoples.Ł7 it continues to maintain a unitary territorial structure without mentioning the concept of indigenous autonomy or the figures of the comarcas. Parallel to state law, Gunayala self-government is internally based on the normativity generated by the Guna people, the highest norm being the *Gunayan Igandummadwala* or Gunayala Fundamental Law, created in 1995 and revised in 2013.

## b) Guaraní Charagua Iyambae Autonomy (Bolivia)

Located in the Bolivian Chaco region, the jurisdiction of the Charagua Iyambae Guarani Autonomy, formed at the beginning of 2017, extends over an immense territory (more than 74,000 km2) although sparsely populated: some 40,000 inhabitants, distributed in more than 100 rural Guaraní communities that represent the majority of the population of an indigenous autonomy with a heterogeneous socio-spatial composition, as it also includes two urban centers of white-mestizo majority and several Mennonite colonies.Ł8

The Charagua Iyambae Guaraní Autonomy (hereinafter Charagua Iyambae), the first indigenous autonomy in practice in Bolivia.Ł9 arose from the activation from below of the possibilities opened by the new constitutional framework.

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Ł6. Ibid*,* 168-169.

Ł7. Cf. Funaki, "The implementation gap of indigenous peoples' rights," 71-72. Ł8. Morell i Torra, "Soon here we will be in charge," 132-136.

Ł9. As of May 2021, there are five indigenous autonomies in force in Bolivia, two of them (Charagua Iyambae and Kereimba Iyaambae) in Guaraní territory, in addition to some twenty autonomy-building processes in different stages of development. In this regard: Cameron and Plata, "La autonomía indígena en Bolivia", 146-149.

Bolivian Constitution of 2009. Along with a series of democratic reforms connected through the idea of "refounding" the post-colonial Bolivian State into a new Plurinational State,[50] the 2009 Bolivian Constitution recognizes the collective right to self-determination of indigenous peoples in terms very similar to those of the 2007 United Nations Declaration, which Bolivia would early on incorporate into law.[51] The constitutional recognition of indigenous self-determination is channeled through a new regime of indigenous autonomy, the Autonomía Indígena Originario Campesina (AIOC), whose effective conformation within a state territorial structure composed of four levels of autonomy (departments, regions, municipalities and AIOC) is subordinated to the fulfillment by indigenous organizations of a series of prerequisites and onerous bureaucratic procedures.[52]

Although the political scope of the AIOC is very limited with respect to the demands for indigenous self-determination expressed during the constituent process,[53] and encapsulates the scope of indigenous autonomy within previous territorial divisions of local scope (such as municipalities), at the same time it opens new spaces for collective self-institution, raising the possibility of imagining new forms of government based on indigenous institutions. This space for self-institution would be taken advantage of by the Guaraní organization of the former municipality of Charagua, which in 2009 activated through a referendum the process to convert the municipality into an AIOC. Thus began a long and complex process of institution-building, which would not culminate until early 2017, after the approval through a second referendum of the new autonomous statute of Charagua Iyambae, which includes a new post-municipal institutionality conceived from the Guaraní perspective.[5Ł]

### c) Municipality of Cherán (Mexico)

The case of San Francisco de Cherán presents a particular and novel path both in terms of the indigenous repertoires of collective mobilization, which combines

50. Sousa Santos, *La nefundasión del Estado en Aménisa Latina.*

51. This is Law No. 3760 of November 7, 2007. Bolivia also ratified and approved as law (Law No. 1257 of July 11, 1991) ILO Convention 169.

52. Cf. Tomasselli, "*Autonomía Indígena Oniginania Campesina in Bolivia*".

53. Cf. Garcés, "Ue domestication of Indigenous Autonomy in Bolivia".

5Ł. Morell, "The construction of the Charagua Iyambae Guaraní Autonomy".

direct action (self-protection of rights) with legal action (litigation), as in the forms of state recognition of indigenous autonomy, which, in addition to the constitutional framework, or rather, as a way of making this framework effective, is a jurisdictional type of recognition.

Indeed, it should be recalled that the Mexican Constitution has undergone various reforms that have led to the broadening of the scope of recognition of the collective rights of indigenous peoples. In 2001, a wide-ranging reform was undertaken as a result of the so-called San Andres Accords, the result of negotiations between the Zapatista Army of National Liberation, whose uprising on January 1, 1994 was key to the momentum of the indigenous movement (and not only in Mexico), and the federal government. This reform affected constitutional articles 2 and 115, and included the recognition of the right to self-determination of indigenous peoples, although in a dimension limited to territorial autonomy within the municipal sphere.[55]

The reform carried out in 2011, by virtue of which Article 1 was modified to clearly incorporate a clause linking it to international human rights treaties, has (or should have) the same relevance, if not greater relevance. Consequently, and as far as indigenous peoples are concerned, the obligation to fully guarantee the rights contained in ILO Convention No. 169, or those derived from the interpretation that the Inter-American Court of Human Rights has been making on the way in which the rights contained in the Convention should be interpreted in order to guarantee the collective rights of indigenous peoples, is clearly constitutionalized.

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55 The 2001 reform was based on a consensual text proposed by a commission created for this purpose (COCOPA, the Commission for Concord and Pacification), although the final result departed significantly from the starting point. This is clearly seen in the wording of Article 115, whose initial drafting proposal spoke of respect for the "exercise of self-determination of the indigenous peoples in each of the areas and levels in which they assert their autonomy, which may include one or more indigenous peoples, in accordance with the particular and specific circumstances of each federal entity". Article 115, last paragraph of the third section, in accordance with the reform, establishes, on the other hand: "the indigenous communities, within the municipal scope, may coordinate and associate in the terms and for the effects provided by law". However, it must be said that article 2 of the Constitution, with reforms subsequent to 2001, contains a broad recognition, and includes the pluricultural composition of the Nation "originally sustained in its indigenous peoples".

Such is the normative context through which the autonomy process of Cherán, a municipality of 18,000 inhabitants with a P'urépecha majority, located in the forested highlands of the Mexican state of Michoacán, should be read. The process began in April 2011 with a popular uprising that sought to stop the dramatic harassment of organized crime, with ramifications in both state institutions and the logging business.[56]

Initially, the uprising focused on guaranteeing the security of Cherán's inhabitants and the protection of its forests through collective self-defense measures, such as the replacement of the local police by self-organized security forces integrated into community decision-making spaces, revitalized as a result of the uprising. The reactivation of collective deliberation and decision-making mechanisms soon led to a comprehensive questioning of the entire system of municipal governance and political parties, proposing its replacement by a "communal government" based on P'urépecha "uses and customs". In a paradigmatic experience of "counter-hegemonic use of law",[57] simultaneously with the activation *of* forms of collective self-government as opposed to state government structures, the community proposed a strategy of jurisdictional litigation to obtain the recognition *of* the communal government before the next convocation of elections in Michoacán.

In November 2011, the Electoral Tribunal of the Federal Judiciary (TEPJF) issued a landmark ruling,[58] invoking the direct applicability of international human rights treaties ratified by Mexico (including ILO Convention 169) incorporated into the 2011 reformulation of Article 1 of the Federal Constitution.[59] The resolution of the TEPFJ not only legitimizes the election of the municipal authorities of Cherán by "usos y costumbres", something already assumed in the constitutions of other Mexican states,[60] but, for the first time, it also assumes as part of the right of the indigenous people to vote by "usos y costumbres", something already assumed in the constitutions of other Mexican states.

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56. Aragón, *El denesho en insunnessión*, 53-58.

57. Ibid.

58. This is Ruling Sup-Hdc-9167/2011, dated November 2, 2011, available at: https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-JDC-09167-2011- Inc1.

59. Aragón, "The Landscapes of Indigenous Self-Government in Michoacán," 640.

60. Since 1998, the state of Oaxaca has legally guaranteed that indigenous peoples may elect their municipal officials by "usos y costumbres", i.e., normative systems.

The decision recognized the right to indigenous self-determination, recognized in the second article of the Mexican Federal Constitution, the structuring of the municipal government by uses and customs, recognizing as official authorities of Cherán the structures of collective self-government instituted during the uprising and setting an important jurisdictional precedent that was used by other indigenous communities in Michoacán and other Mexican states to form their governments according to uses and customs.[61]

**d) Sabah and Sarawak (Malaysia)**

Malaysia is an asymmetrical federal state with a political regime considered a "semi-democracy", until 2018 controlled by the same governing coalition.[62] As a result of the different colonial legal legacies and the different speeds at which the federation was built, the federal asymmetry is also reproduced in the democratic quality of each of the states and in their recognition of indigenous collective rights. While the territories of the Malay peninsula gained independence from Great Britain in 1957, forming the Federation of Malaysia, the island states of Sarawak and Sabah joined the Federation later (in 1963), through an agreement incorporated in the federal Constitution ("20-Point Agreement") recognizing broad degrees of political and territorial autonomy for these two states located on the island of Borneo.[63]

In addition to granting them a special autonomous status within the federal state structure, this 20-point agreement recognizes specific rights for the indigenous peoples of the two island states, both of which have a majority indigenous and non-ethnically Malay population: about 70% of Sarawak's population of 2.7 million is part of an indigenous people, collectively called *Dayak*;[6L] while in Sabah, almost 60% of its population is indigenous, collectively called *Dayak*;[6L] while in Sabah, almost 60% of its population is indigenous, collectively called *Dayak.*

own. According to Burguete ("La reconstitución de la asamblea en Oxchuc", 157), in 2019 this power was exercised by up to 73% of the 570 municipalities in this state, giving rise to a great variability of elective procedures for the renewal of municipal public offices.

61. See, for example, the recent case of the tesltal municipality of Oxchuc, in the state of Chiapas, analyzed by Araceli Burguete in "La reconstitución de la asamblea en Oxchuc".

62. Case, "Semi-Democracy and Minimalist Federalism in Malaysia".

63. Hutchinson, "Malaysia's Federal System."

6Ł. IGWIA, "Ue Indigenous World 2021."

3.8 million inhabitants identify with one of the 39 ethnic groups or *anak negeni* in this territory.[65]

The legal framework for the recognition of indigenous rights (*sustomany nights*) in Sabah and Sarawak, contained both in the federal constitution and in the secondary legislation of each state, accommodates the exercise of indigenous autonomy by recognizing *sustomany lands*, as well as specific indigenous courts and laws, although this formal recognition has significant implementation gaps in practice, especially in the context of increasing extractivist pressures in recent years.[66] In any case, the degree of formal recognition of indigenous collective rights in these two territories, one of the highest in the entire Southeast Asian region,[67] contrasts with the lack of legal recognition of indigenous peoples or *Onang Asli* in Peninsular Malaysia, revealing the existing asymmetries in indigenous rights within a state that has not ratified ILO Convention No. 169 and that has not ratified the Convention.No. 169 of the ILO and, although it voted in favor of the UN Declaration, has not translated it into domestic legislation to make it enforceable, as demanded by Malaysian indigenous organizations.

## 3.2. Autonomy beyond, against or in spite of the State

If the four experiences presented so far represent forms of the exercise of indigenous self-determination that have found variable and unequal fits within the legality of the State, in the three cases presented below indigenous self-determination is exercised or disputed from outside the State and its law, at least for the time being: either because the State has decided to actively disregard indigenous demands for autonomy, or because the indigenous peoples themselves understand that the exercise of their self-determination should not be channeled through existing legal mechanisms, or because of a combination of both situations.

65. The most numerous ethnic groups in Sabah are Dusun, Murut, Paitan and Bajau. In ibid.
66. IGWIA, "Ue Indigenous World 2021".
67. Inguanzo, "Indigenous Peoples' Rights in Southeast Asia.

### a) Town of Sarayaku (Ecuador)

As is well known, the Ecuadorian Constitution of 2008 is one of the emblematic norms of the so-called "new Latin American constitutionalism", whose characteristics, among other aspects, include notable advances in the recognition of cultural diversity and the collective rights of indigenous peoples. Moreover, in the Ecuadorian case, as in the case of the Constitution of Bolivia (2009), the definition of the form of State includes its plurinational character as a concept used to overcome the reference to pluriculturality, a common term in Latin American constitutional texts reformed throughout the 1990s. Thus, "in contrast to the descriptive understanding of the existence of different cultures, characteristic of multicultural constitutionalism, plurinationality would lead to transformations in the institutional and legal structures of the State".[68]

In development of this approach, the Ecuadorian Constitution of 2008 establishes in its Title V a territorial organization that distinguishes between regions, provinces, cantons and rural parishes as "decentralized autonomous governments". It also provides for the creation of other types of distinct territorial realities, "special regimes" for territories with "environmental, ethno-cultural or population characteristics", including "indigenous territorial districts". Article 257 provides for the possibility of creating such districts, "which shall exercise the powers of the corresponding autonomous territorial government, and shall be governed by principles of interculturality, plurinationality and in accordance with collective rights.

It is true that the 2008 Constitution chooses not to allude to indigenous specificities when determining the competency framework, the formation procedure and the configuration of the institutional framework of the indigenous constituencies. It should be interpreted that such specificity would be covered by the right "to conserve and develop their own forms of coexistence and social organization, and of generation and exercise of authority, in their legally recognized territories and community lands of ancestral possession" (art. 57.9 of the Constitution). However, with regard to its implementation, the

68 Aparicio, "Estado, organización territorial y constitucional plurinacional en Ecuador y Bolivia", 125-126.

The processes initiated for the creation of indigenous territorial constituencies have shown strong resistance from the State, due to the technical and procedural difficulties imposed especially by the National Electoral Council (in charge of organizing the popular consultations) and the Constitutional Court (which must validate both the conditions of the consultation and the Autonomy Statute).[69]

The construction of the Sarayaku people's proposal for self-determination is inseparable from the long process of struggle of this Kichwa people of the Ecuadorian Amazon against the advance of oil extractivism within their territory: 135,000 hectares on which five communities or *ayllus* are settled, with a total of some 1,400 inhabitants.[70] In 1996, barely five years after the legal recognition of the territorial rights of the Sa-Rayaku, the Ecuadorian state granted a concession to the Compañía General de Combustibles de Argentina for 200,000 hectares of forest, affecting 60% of the Sarayaku territory and other indigenous communities without any kind of prior consultation process.[71]

One of the Sarayaku's strategies of struggle in defense of their territory and ways of life threatened by the alliance between transnational capital and the Ecuadorian State, which even used the armed forces to facilitate the work of the company, was through litigation, taking their case to the Inter-American human rights system.[72] In 2012, the Inter-American Court of Human Rights (IACHR) issued a judgment in favor of the Sarayaku people, condemning the State of Ecuador for violation of, among others, the right to free, prior and informed consultation (para. 187).[73] Although this is a

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69 Nor has the executive branch been willing to facilitate this: Executive Decree No. 1168, of June 4, 2012, requires an initial resident population of at least ten thousand inhabitants, of which at least two thousand must be domiciled in the new parish (art. 26.a), in order to constitute new rural parishes. This makes it impossible to establish rural parishes, which could be the first step towards the subsequent creation of indigenous territorial districts in many indigenous communities that do not usually have such a population.

70. Cf. https://sarayaku.org/tayjasaruta/pueblo-originario-kichwa-de-sarayaku/.

71. Melo, "Ecuador: Sarayaku".

72. Cf. Melo, *Sanayaku ante el Sėtema Intenamenisano de deneshos humanos.*

73. I/A Court H.R., *Kishwa Indigenous People of Sanayaku v. Esuadon*, Judgment of July 27, 2012 (available at: https://corteidh.or.cr/docs/casos/articulos/seriec_245_esp.pdf). See also: Melo, ibid. 34-55.

transcendental sentence, which represents a legal, political and moral victory both for Sarayaku and for the indigenous movement as a whole in the struggle against extractivism, has been systematically disregarded by the State.[7Ł] It is within the framework of this long and unresolved conflict that we must situate Sarayaku's option to ignore the, on the other hand, limited legal possibilities opened for the development of indigenous autonomy since the approval of the 2008 Constitution, which reinstated the figure of the Indigenous Territorial Circumscription (CTI), present in the previous constitutional framework, as a renewed space for indigenous self-government.[75]

Thus, in contrast to other Kichwa communities in the province of Pastaza, which have chosen to explore the ECI route,[76] Sarayaku has decided to build its own self-determination proposal, beyond state processes, their legality and language. The proposal would be systematized in the *Kawsak* Sasha-Living *Forest* Declaration, adopted by the Sarayaku General Assembly in 2012 and updated in 2018,[77] a document where an innovative conception of the right and its titular subjects is deployed that goes beyond androcentric conceptions to include a rich array of living beings that are part of the Sarayaku ontological system.[78] The Declaration establishes the Sarayaku territory as free of all types of extractive activities, placing the Sarayaku's own socio-organizational forms at the core of a process of autonomous construction explicitly opposed to state logics.

**b) Mapuche people (Chile)**

One of the many challenges that the current Chilean Constitutional Convention will have to face will be to put an end to what in terms of constitutionalism

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7Ł. This was evidenced by the same IACHR in the 2016 visit to supervise compliance with the judgment, where the non-compliance with several reparation measures was noted, cf. IACHR Court, *Case of the Kishwa Indigenous People of Sanayaku vs. Esuadon*, Supervision of compliance with judgment, July 22, 2016, available at: https://www.corteidh.or.cr/docs/supervisiones/ sarayaku_22_06_16.pdf.

75. Cf. Ortiz-T, "Autonomía indígena en Ecuador".

76. Ibid., 454-456.

77. Cf. https://sarayaku.org/wp-content/uploads/2017/01/1.Declaraci%C3%B3n-Kawsak-Sacha-26.07.2018.pdf.

78. Santi and Ghirotto Santos, "Kawsak Sacha-Selva Viviente", 156-160.

compared to Latin America, the constitutional lack of knowledge of the existence of indigenous peoples is an anomaly, despite the fact that they represent almost 13% of the total Chilean population, of which up to 79% are Mapuche, with more than 1.7 million people self-identified as such in the last census of 2017.[79]

The stubborn denial of indigenousness by the Chilean state, one of the last South American states to ratify ILO Convention 169 in 2008,[80] is explained both by the hegemony of a national self-representation that contrasts white European heritage with indigenous and mestizo heritage81 and by the history of the construction of the modern republican state through military conquest, political subjugation and territorial plundering of a part of the southern territory of present-day Chile, the Araucanía or *Pallmapu* in the Mapuche language, which until the end of the NINETEENTH CENTURY managed to maintain itself as an independent territory thanks to centuries of Mapuche resistance.

In this context, which refers to a clear situation of internal colonialism with respect to the Chilean State,[82] marked by open conflict and both police-military and judicial repression, the demand for self-determination and autonomy, which began to be explicitly articulated at the end of the 1980s within a Mapuche movement that was constitutively heterogeneous and with a certain tendency towards identity 'fragmentation', takes on a character of its own that inserts it, more clearly than in the case of other Latin American indigenous peoples, within the languages and genealogies of struggle of the anti-colonial and national liberation movements,[83] takes on a character of its own that inserts it, more clearly than in the case of other Latin American indigenous peoples, within the languages and genealogies of struggle of the anti-colonial and national liberation movements.[8L] Although, as some of its intellectuals critically recognize, there is still no unitary Mapuche autonomy project,[85] several of the organizations that make up the Mapuche movement place the notions of self-determination and autonomy at the center of their discourses and repertoires of collective action.

79. INE, Síntesis de resultados Censo 2017, 16.

80. https://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_ INSTRUMENT_ID:312314: NO.

81. Waldman, "Chile.

82. Mariman, *Awkan tañi müleam*

83. Ibid., 80 et seq.

8Ł. Naguil, "From race to nation, from land to country"; Mariman, *Self-detention*.

85. Mariman, "The key political ideas of the Mapuche people".

either understood as theoretical underpinnings of conßontational practices (such as the "seizure and recovery of lands" owned by white-Creole settlers that the Coordinadora Auracano Maello has been deploying since the beginning of the century) that reject the institutional path and the pact with the State; or as demands for the recognition and transformation of the Chilean State in a plurinational and intercultural sense. Such demands resound again within a Constituent Convention with a Mapuche presence (and presidency), called to find some kind of resolution, perhaps autonomous, to the "Mapuche question".

### c) Mbororo people (Cameroon)

In Cameroon, the category "Mbororo" identifies an ethnic group that is part of the large Peul ethno-linguistic bloc, dispersed over a vast territory that covers the entire Sudano-Sahelian area as a result of the long process of migratory journeys, linked to the practice of transhumance that has historically characterized the way of life and subsistence of the Peul pastoralist groups, many of whom progressively settled in more delimited territories where they would become minority communities. Such is the case of the Mbo-Roro, who, having arrived from Nigeria, settled in present-day Cameroon very recently, between the end of the NINETEENTH and the beginning of the NINETEENTH CENTURY,[86] and currently represent up to 12% of the Cameroonian population - that is, more than one million people - settled in different regions of Cameroon, constituting a minority group in each of these regions.[87]

The combination of their late arrival in the country and their semi-nomadic lifestyle, although increasingly sedentary, have sustained a set of degrading representations of the Mbororo by the majority society, which stigmatizes the Mbororo as a "primitive" and "ex-traveler" people.[88] In fact, the very ethnonym "Mbororo" would have, in its etymological origins, pejorative connotations.[89] We find ourselves, then, before a case of reappropriation of the stigma and revaluation of a degraded identity.

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86. Pelican, "Mbororo Claims to Regional Citizenship and Minority Status in North-West Cameroon," 540.

87. Pelican, "Mbororo Pastoralists in Cameroon," 114.

88. Ibid.

89. Enguita Fernàndez, "Etnicitats, ßonteres culturals i categories fluïdes en un context global", 143.

The category "indigenous people" -whose translation into the American context is not free of controversy-[90] has been used to legitimize their demands for recognition and access to citizenship rights. This, in the context of a State that, despite the fact that in its 1996 constitutional reform it recognized "minorities" and "indigenous peoples" (*autoshtones*), has not ratified ILO Convention 169, nor, unlike the ILO and other UN agencies, legally assumes that the Mbororo and other indigenous peoples of the country are "indigenous peoples".

The process of Mbororo identity and political revitalization began in the early 1990s, in the context of the relative and rather cosmetic democratization of the dictatorial regime presided over by Paul Biya since 1982. It is in this context of political opening that Mbororo organizations are formed that explicitly assume and claim the Mbororo identity and ways of life. One of the main ones, MBOSCUDA (*Mbonono Sosial and Cul- tunal Development Association*), obtained consultative status within the United Nations System at the beginning of the present century, connecting the local claims of the Mbororo people with the language of the global indigenous rights movement.[91] Thus, although the claims of the Mbororo movement are not explicitly focused on self-determination and autonomy in their territorial dimension, but rather on socioeconomic inclusion and cultural recognition, in this case, the right to self-determination would be expressed in such an essential aspect as the possibility of self-defining one's own collective subjectivity freely and without external impositions. Indeed, as noted at the outset, if any arbitrary restriction of rights implies, first of all, a disregard for the very subjectivity of the rights holder (individual or collective), the reconstruction or subjective self-significance is the first step towards the defense and effectiveness of rights, beginning with the right to self-determination.

## 4. Conclusions in dialogue

The seven cases that we have presented, in a necessarily succinct manner, illustrate very different paths both in terms of construction and conception, and in terms of the way in which they have been conceived.

90. Cf. Hodgson, "Becoming Indigenous in Aßica".

91. Cf. Enguita Fernàndez, *Etnisidades en movimiento*.

of self-determination by the different peoples involved as well as in their relationship with the States and their legal systems. In the first four cases analyzed (Gunayala, Charagua Iyambae, Cherán, and Sabah and Sarawak), the legal recognition of certain spaces for the (limited and unequal) development of indigenous self-determination has led to autonomous arrangements with different frameworks within the territorial and legal architecture of the State. Only in one of these cases, that of Bolivia, is indigenous autonomy, also recognized as a collective right in the Constitution, explicitly incorporated as an integral part of the territorial organization of the State, whose redefinition as "plurinational" (art. 1 of the Constitution) is based precisely on the recognition of the plurality of "indigenous nations" pre-existing the Bolivian State and with the right to self-determination.[92]

On the other hand, in the other three cases, and without this implying that the degrees of indigenous self-government are less than in the Bolivian case, the recognition of spaces of indigenous autonomy emerges from specific processes that do not have an impact on the territorial constitution of the States: In the case of Gunayala, through a long process of bilateral political negotiation that has resulted in a specific autonomous legislative framework; in Cherán, as a result of a court ruling that, by giving effect to the right to self-determination recognized in the second article of the Mexican Constitution, recognizes *ex post* the legal legitimacy of a previously established indigenous government; or in the case of Sabah and Sarawak, as a legacy of the legal pluralism existing during the British colonial mandate (*susto-many lands, sustomany laws*), which is maintained as part of the federal pact (by aggregation, in this case) that led to the incorporation of these two territories into the Malaysian federation.

If this diversity of legal frameworks for indigenous autonomy and the different forms of state self-definition - federal in the cases of Mexico and Malaysia, "plurinational" in the Bolivian case, and as a "unitary republic" in the case of Panama - reveals anything, it is that the ultimate guarantee for the exercise of indigenous self-determination is not so much based on the form of the state as on the form of the state itself.

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92. The complete formula included in Article 1 of the Constitution is: "Free, independent, sovereign, democratic, democratic, intercultural, decentralized and autonomous Plurinational Communitarian Unitary Social State of Law". Once the Constitution was approved, Supreme Decree 48 established the formula "Plurinational State of Bolivia" as the new official denomination of the Bolivian State.

It is, above all, in the collective capacity of indigenous peoples to assert their autonomy in practice, using these spaces of state recognition, but going beyond them when necessary, or when state legality does not serve their collective interests.

In this sense, Martínez de Bringas warns of an "immanent tension" between "the emancipatory-critical dimension of indigenous autonomy and the legitimizing dimension of the forms of state governance",[93] alerting us to the risk of "emptying" the transformative potential of autonomy due to "its subsumption under the normative umbrella of the state".[9Ł] Far from being just theoretical lucubrations, this type of debate is part of collective political discussions within the indigenous societies themselves that have opted for, and achieved, spaces of state recognition of their forms of self-government.

Thus, the decision of the P'urépecha inhabitants of Cherán to open a jurisdictional litigation strategy to achieve recognition of their forms of self-government was previously discussed and sanctioned through collective decision-making channels. According to Orlado Aragón, a member of the lawyers' collective that accompanied the community during the litigation process, what was sought "was to eliminate all traces of legal fetishism", proposing "an instructional use of the law to convert it, in a de-fetishized form, into another weapon of political struggle for the Cherán movement".[95]

Also in the case of Gunayala, one of the experiences of indigenous autonomy with the longest history and a long history of relations with the State, the exercise of indigenous autonomy is based both on state laws and on collective practices and indigenous norms that are not subsumed within Panamanian state law, but are nonetheless internally effective in the organization of autonomy and even in its relationship with the Panamanian State. Thus, despite the demands of the Guna General Congress, the Fundamental Law of Gunayala has not been ratified.

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93. Martínez de Bringas, "Autonomías indígenas en América Latina," 104.

9Ł. Ibid, 107.

95. Aragón, *El denesho en insunnessión*, 62.

as law by the Panamanian State, which continues to frame relations with Gunayala through Law 16 of 1953, "which does not contain the aspirations of the Guna people".[96] But although the Fundamental Law has not been assumed as state law, "the Guna authorities apply it in their territory 'de facto' (...) and in some indirect way the Panamanian government bodies recognize this internal regional law".[97]

In the Bolivian case, among the leaders and ideologues of the pioneering autonomous project of Charagua Iyambae, since 2017 an integral part of the territorial and institutional structure of the Plurinational State of Bolivia, there are also internal debates about the limits and consequences of this integration into the logic of the State, which have increased in the context of a regional experience characterized by strong dynamics of bureaucratization in its relationship with the State.[98] Aware of the risks of state "absorption" of their own forms of government, the promoters of the new government structure in Charagua Iyambae have opted to protect certain socio-organizational spaces from the rigidity of legal formalization and state recognition: such as their own justice systems, not systematized in writing in the autonomous Statute, thus seeking to maintain their flexible and essentially oral nature; or the *mbunuvisha guasu* (top leaders) of the Guarani "captaincies", which remain outside the new autonomous government structure, remaining part of the self-organized Guarani movement and not part of the public power of the Plurinational State.

In addition to revealing the indigenous capacity to weave strategies to relate to the State and its law on their own terms, these examples blur the too rigid dichotomies between indigenous autonomies *of fasto* or *iune,* drawing rather a variability of situations and relationships, changing, dynamic and, very often, also tense, that occur within certain legal frameworks, but also outside of them, allowing us to think of the combination of autonomous practices embedded in different legalities (state and non-state) and forms *of fasto* and *iune* autonomy within the same socio-territorial space.

96. Castillo, "Neggsed (Autonomy)," 326-327.

97. Ibid., 327.

98. Morell, "La construcción de la Autonomía Guaraní".

This way of understanding and constructing autonomy, which does not limit its horizons only to the state framework and its laws, but does not exclude the state completely and forever, is also observed in two of the cases in which indigenous self-government is constructed from outside the state legality: either because of an explicit and reflexive rejection from the indigenous world itself, as would be the case of the Sarayaku people in their option to build their own forms of autonomy from outside the Ecuadorian legal framework; or as a consequence of ignorance, if not persecution, by the State, as in the paradigmatic case of the Chilean State in its historical relationship with the Mapuche people.

With regard to the rich Mapuche organizational world, there are, as mentioned, different options and ways of understanding self-determination and autonomy, oscillating between those who understand that these are expressed in the political and collective conßontational praxis from outside the State and others who, without renouncing a discourse of self-determination and national vindication vis-à-vis the Chilean State, seek ways to fit in and do not renounce political participation within its institutions.[99] If in the Mapuche case we find different overlapping strategies of relationship with the State, in the case of the Sarayaku people, the commitment to build autonomy from their own normative frameworks does not exclude the use of State and inter-national law; Proof of this is the commitment to judicial litigation, or the invocation in the Kawsak Sacha-Selva Viviente Declaration of articles of the Ecuadorian Constitution of 2008, Convention 169 or the United Nations Declaration, in what can be understood as an interesting exercise of conceptual expansion and intercultural translation from the indigenous conceptions themselves.[100]

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99. An example of this is the Association of Municipalities with Mapuche Mayors, an organization that brings together Mapuche mayors from different municipalities in Araucanía and expresses the institutional political path towards self-determination, both from the municipal arena and seeking ways of dialogue with the State as an organization. In this regard, see Tricot and Bidegain, "Participación política institucional mapuche".

100. One of the rights of the Ecuadorian Constitution of 2008 that the Kawsak Sacha-Selva Viviente Declaration refers to, vindicates and, perhaps, deepens, is that contained in Article 71, which in a novel way recognized "Nature" or "Pachamana" as a subject of rights, something to which the Kawsak Sacha-Selva Viviente Declaration seeks to grant greater practical validity when it recalls that: "any person, community, people or nationality may demand the fulfillment of the rights of Pachamama". In Sarayaku, "Declaración Kawsak Sacha-Selva Viviente", 6.

On the other hand, it should be noted that the State is not the only actor with the capacity to regulate the possibilities of exercising indigenous self-determination; rather, in indigenous socio-territorial spaces, private powers act alternatively or in coalition with the States, and may have a high capacity for territorial sovereignty and socio-political regulation, along with other social and environmental impacts. This is true in practically all the cases analyzed, where, regardless of the type of political and legal relationship with the State and its institutions, there are private powers present in the territories inhabited and claimed as their own by indigenous peoples, especially of a business nature and dedicated to the exploitation and extraction of natural resources. We cannot be exhaustive here, but it is worth mentioning a few examples: The natural gas in Charagua Iyambae and the whole of the Guaraní territory of Bolivia, extracted both by private transnational companies and by the re- state-owned YPFB, which has become a central resource in the country's development model; the monoculture of palm oil and timber extraction that extends over a considerable part of the indigenous territories of Malaysia, whose activity was considered "essential" by the Malaysian government during the months in which it decreed a harsh quarantine;[101] or, to cite a business of a different nature but which also maintains an extractivist logic, the macro tourism projects that periodically stalk Gunayala and its neighboring territories, threatening the model of tourism controlled and self-managed by the Guna government itself.[102]

Likewise, as has been pointed out, in some cases, such as Cherán (Mexico) or Sarayaku (Ecuador), it has been precisely the growing encirclement of extractivism in its most extreme forms - in Cherán even in coalition with organized crime actors - that has motivated the institution of forms of collective self-defense that involve the deployment of own models of government and self-management that are also part of the right to indigenous self-determination.

Indeed, like any right, the collective right to self-determination has, on the one hand, a defensive facet, of resistance or counter-majoritarianism, which seeks to guarantee, in the face of various threats, the very survival of the collective, and on the other hand, the right to self-determination.

101. IGWIA, "Ue Indigenous World 2021".

102. Cf. Martínez Mauri, "El tesoro de Kuna Yala".

peoples as human groups endowed with a differentiated cultural identity that, among other aspects, is expressed precisely through their own forms of organization and government. But, at the same time, every right must seek to deploy a transformative dimension of the power relations that lie behind any threat to such a right, that is, any threat to a legitimate need or interest. Without transformation, without the rebalancing of forces or, plainly and simply, without weakening the subject (public or private) with more power, the resistance capacity of rights is condemned to be always insufficient, temporary, contingent.

It is therefore essential to pay attention to the understandings and practices of indigenous self-determination through which, beyond the joint defense of certain conditions of existence, a change in these conditions is sought in order to generate the possibility of (transformative) dialogue between cultures. Indeed, not every relationship between cultures is an inter-cultural dialogue, but only that which is established on the basis of the reciprocal recognition of the equal dignity of the subjects. Thus, the exercise of the self-determination of peoples is both the origin and the horizon of such a dialogue. Without prior recognition or, at least, an effective practice of self-government, it is difficult to find a collective subject, the indigenous people, with the capacity for dialogue. And this dialogue, in turn, must have as its objective the effective respect of such a right, whose forms of exercise should be determined precisely in response to the interrelation and balance of interests.

In this construction, which is always open, since dialogue is also conflict and conflict is a permanent engine of change, of historical process, some of the debates have led to the need to reconfigure the nature, the form of the State, in plurinational terms, that is, overcoming the established scheme of the nineteenth-century nation State. This is reflected in the Ecuadorian (2008) and Bolivian (2009) constitutions, and appears today in the Chilean constituent debates. We have not developed in this paper the scope of such political-normative configurations, but at this point, and by way of closure, it seems appropriate to highlight the scenario of possible transformation that moves between specific practice and general contestation. Thus, we believe that in the comparison between experiences of indigenous self-determination there is a fertile ground not only for each of the concrete, situated experiences, but also in terms of

of questioning and transforming political and social pacts on a larger territorial scale.

In short, as Iris Marion Young has pointed out, "the project of rethinking democracy for a postcolonial era benefits from a hybrid vision of the history of societies and governments that rejects traditional/modern, savage/civilized dichotomies.[103] It is therefore urgent to enrich the parameters of analysis and proposals based on the agendas and practices of peoples, from their interrelationship with complex, changing and inevitably plural state realities, through, again with Young, a decentered and relational notion of subjectivity and politics, necessary elements for a reconceptualization of self-determination and global governance.[10Ł]

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103. Young, *Hybnid Demosnasy,* 245.

10Ł. Ibid, 246.

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