INDIGENOUS TERRITORIES: KNOCKING AT THE GATES OF LAW

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Territoriality is one of the conceptual axes of the indigenous claims platform, not only in its nature of fundamental collective right, but as an essential existential dimension of every group. Hence, its legal treatment has underlying repercussions on these indigenous peoples’ ability to exercise the rest of the rights that they claim.

However, territoriality is one of the most conflictive issues in the effort to make interculturally compatible the western legal concepts that steer American States with a real and, therefore, reasonably fair description of what, in practical terms, an indigenous group’s habitat entails for its normal development.

These difficulties will obviously disappear as soon as indigenous peoples (specific, with own name) are recognised their right to free determination. The concept of territory would then remain on the margins of civil law’s property problematic and there would just be the question of arbitrating procedures to peacefully resolve, with the highest degree of justice, the territories designated as each group’s habitat and to specify, as applicable, the relationships between the territories and the national territory that houses them.

Nonetheless, for the time being (and in order to subsist until the negotiation scenes turn more favourable), the reality is that indigenous peoples’ rights to their lands have no other option but to integrate into western legal frameworks which, far from providing appropriate solutions in describing the relationships, values and feelings that link indigenous groups to their natural environment, these legal frameworks are imposed on reality in a prescriptive manner, distorting it and often producing ethnicide conditions.

This threatening imposition of law on reality will most probably drive indigenous peoples toward erratic and unsustainable positions, including in the short term.

Is this the role of law in modern societies? Should law continue to be the domination tool that has always been in America or limit itself a role geared towards the dynamic resolution of conflicts of interests based on a specific society’s acceptable values at a given point in history?

The territoriality problem affecting indigenous peoples rattle in a political stage such as ours. The Germanies were unified but the Achuar or Yanomami territories remain divided without anyone having consulted them on the matter. Colonies are a thing of the past, but any governor who happens to be in office has the power to decide which indigenous lands will be at the service of oil multinationals. The globalised world promotes free enterprise whilst indigenous peoples are deprived of every opportunity to freely control and manage their means of production.

How long is it possible to keep hiding the fact that it is in the present, and not just in the past, that the permanent conquest of America and the continuous genocides of American peoples is taking place?

The legal recognition (and, obviously, de facto respect) of the indigenous peoples’ territoriality can help to rewrite, at least partially, the history of America. Do the conditions for this re-composition exist?

1) Indigenous peoples have an inalienable right to self-determination as well as to try to generate an environment of their own, particularly in regard to the legal concepts that define their existential dimensions. Indigenous peoples are currently backed by defined proposals from which to innovate rights without denying the existing legal framework, but using it to recreate a new one based on interculturality.

2) If nowadays differences and diversity are recognised as main sources of innovation - and the legal branch is no exception to this - indigenous peoples could contribute in a decisive manner towards renovating obsolete legal concepts.

3) The recognition of multiculturalism that currently dominates America’s Constitutions calls for legal intercultural processes where coexistence is not a question of mere tolerance but a negotiated reflection of a mutual recognition and value between cultures.

Hence, what are the difficulties preventing the cancellation of historical debts with native peoples? To what extent is law to blame? In any conflict scene it is common to find representing lawyers blaming the legal system for all the injustices to which indigenous peoples are subjected. These peoples can negotiate a ‘light’ relationship regulation with an oil company but they cannot oppose an oil company entering their territories because the law prevents it. They can get as far as acquiring land titles to larger or smaller areas of their territories but they cannot become proprietors of the natural resources found in them because, as far as
The contract of property is a fundamental aspect of western legal systems. It is a critical element in the legal framework that governs the transfer and ownership of property. The contract of property is an agreement between two or more parties that defines the terms and conditions of property ownership. This agreement is typically formalized through a written document, known as a deed, which outlines the rights and obligations of the parties involved.

In the Western legal tradition, the contract of property is based on the idea of free will and personal autonomy. This means that individuals have the right to enter into agreements that are mutually beneficial to them. The contract of property is also an important aspect of the legal system because it allows for the peaceful resolution of disputes over property ownership.

In practice, the contract of property is used in a variety of situations, such as the sale of real estate, the transfer of ownership of personal property, and the creation of trusts. In each of these situations, the contract of property plays a critical role in ensuring that the rights and interests of all parties involved are protected.

The contract of property is also an important aspect of the legal system because it is a fundamental principle of property law. This principle is based on the idea that property rights are personal and cannot be violated without the consent of the property owner. This principle is essential for the protection of individual rights and the maintenance of a stable legal environment.

In conclusion, the contract of property is a critical aspect of the legal system that governs the transfer and ownership of property. It is based on the principles of free will and personal autonomy, and it is essential for the protection of individual rights and the maintenance of a stable legal environment. The contract of property is a testament to the importance of property law in the Western legal tradition.
patible with the indigenous concept of territory, and even place their lands at risk. This is the reason why indigenous peoples are permanently forced to modify the 'original version'.

For example, the right inherent in property to freely dispose of an object — the *ius abhendendi* — has forced the indigenous claims platform to integrate an exception - the inalienability guarantee - that is incompatible with the legal institution's essence. This objective, aimed at real estate property within a market economy offering legal protection geared towards guaranteeing credits, in the case of indigenous territory should be counter-weighted with an unseizable guarantee; the individual nature (subject-object relation) of the relationship between owner and property has forced the creation of a law subject, the community, which in the majority of cases is artificial and has broken each people's territorial management system into hundreds of pieces, very often spatially or politically unconnected.

And thus successively.

On the other side of the relationship, things are no different. In its nature of institutional mother of the western legal system and in order to continue colonizing unknown regions, property has been adopting increasingly hybrid and de-naturalised characteristics that threaten to explode the nature of the institution itself. In order to apply property to the case of indigenous peoples, it must accept a collective property that is not joint property or any other recognisable means of property; tenure methods that shift, depending on each case, between the collective, the individual or the supra-collective (political, religious); spaces belonging to everyone and no one; a generalised right of use over goods belonging to an unspecified proprietor, including of a spiritual or psychic nature; rights of past and future generations where the current subject is restricted and obliged. All in all, something totally alien to the property institution in its orthodox essence (outside of which legal institutions seize to be what they are to become something else).

These are headaches for legislators and politicians who, in the end, settle on giving up and reducing the whole issue to the civil code, in a desperate prescriptive imposition of a unique legal reality that is far removed from the multicultural concept that many Constitutions offer American countries.

If denying current multiculturalism were simply a question of burying one's head in the sand, it would merely be interpreted as a useless solution to the problem. But the truth is that it goes far beyond. It is to pretend that a given culture represents what is natural and others what is abnormal, and to justify impositions on indigenous' primitivism. Everything that contradicts the system or the values that it responds to is rejected.

When this occurs, law seizes to be an instrument for regulating social realities and becomes an instrument of repression for the powerful. And others will outweigh the need to temporarily resign themselves, or the other alternative of exercising pressure through the means at their disposal. It is a continuation of America's violent history's land struggles.

On another front, we do not believe that this uniformity intention will have any real effects on legal diversification. On the contrary, it increases it and muddles it. On the one hand, the difficulties involved in adapting a legal institution to a social world that is ignorant of it, produces new hybrids and adaptations that are periodically renounced and recreated into new adaptive formulas, without completely abandoning the old familiar institutions while maintaining some of the new creations that have proved useful.

On the other hand, the verification of the mock-up's inadequacy forces legislators to gradually reformulate new transitory laws that manage to leave something behind during their time in force.

Disagreement does not produce uniformity. In order to evade the 'otherness' of a specific institution which, with due tolerance and mutual understanding could coexist with state institutions without impairment to either party, one witnesses the birth of a multiplicity of new laws that threaten to kill the institutions on both sides of the intercultural relationship.

Western law has centred its task on the efficient regulation of social relationships between people according to common values, principles and needs. However, it is proving to be incapable of articulating relationships between people and societies who do not share those links, although they do share the need to live together. It is then that the affirmation of the superiority of a specific social sector's values occurs, especially the values coming from, or who have aligned themselves with, the exogenous mentality.

These reflections are enough to understand that when indigenous peoples claim land ownership they do not place the accent on the property institution's essential characteristics or on the values that it represents to a market economy (freedom of action for the proprietor, individualization of labor, etc.) Even less so on the economic repercussions that go hand-in-hand with the institution (divisibility, alienability, free market, credit guarantees, etc.) What they do salvage from property are the defence mechanisms that the absolute nature of the right grants them, its exclusivity and its perpetuity. However, a major paradox emerges when these faculties — conceived for the purpose of building the individual's empire (homo faber, homo economicus) over an object, whose main characteristic is its ability to circulate within the market — are applied to such different law subjects and objects, as in the case of indigenous peoples and their living spaces, producing the antithesis of their essence, given that they are claimed precisely to stop the object's free circulation and to reaffirm its unavailability.

Hence, property is the centre of private power, a concept incompatible with indigenous peoples' idea of their habitats. Although it is true that inside an indigenous group's habitat specific rights (exclusive or otherwise) can be temporarily or permanently assigned to specific individuals or groups, these rights are never
enous territorial property and to facilitate free expression of these peoples’ will, arbitrating legal channels to enable them to take the opposite path, should that be their wish.

Scope and characteristics of territoriality

The characterisation of this new concept of indigenous territoriality should be consistent with its objective, which is no other than to allow the historical and cultural continuity of original peoples and to return to them the development options denied to them throughout five centuries. A territoriality understood as a conceptual metaphor and defined in miserable terms does not generate anything but the prolongation of the conquest and the denial of the multiple possibilities that Andean countries, such as Peru, have to offer in terms of diversity and cultural wealth.

From this point of view it is necessary to conceptually clarify some aspects:

- What spaces are integrated in the indigenous territory? What and who defines this?
- What natural resources are incorporated and in what way?
- What are the characteristics that will define, in practical terms, this relationship within the multicultural legal system?

Although very briefly, we will review the types of problems likely to present themselves.

a) Definition of indigenous territories - scope

Various criteria have been used to define indigenous territoriality. The ideas and the ways reflected in different legislations have evolved at an alarming speed in the last few years, from the primitive conception of the Bolivian paternalist family plot or the Peruvian vision’s communal tenure, maintained for eighty years (in the case of the highlands, and twenty-five years in the Amazonian one), which centred the ‘community’ as a territorial space complete in itself.

The new conceptions of indigenous territoriality widen their focus, designing new figures such as indigenous municipalities, original communal lands, or ethnic territories - including dual-nationals - gradually approaching the concept claimed by indigenous peoples that attempts to identify an ethnic group and a territory. On another front, and as we will see later, these conceptions are increasingly detaching themselves from the characteristics of private property and leaning towards political concepts, or better still, towards public law conceptions of this special indigenous territoriality. However, we should concentrate on that specific territoriality, the one corresponding to a group. Communal property would be the conclusion to an internal structuring process of a group’s territorial uses, specific components of an autonomous territorial administration system. From this point of view, the options have been diverse:

- Criterion for original territoriality. Takes the right and the territorial delimitations back to the pre-Conquest period. It does not lack legal foundations, given that the right to conquer is no longer acceptable. Indeed, if as result of the conquest’s force, the lands of original peoples were incorporated and subsequently, after shaking off the invader, became independent again, the territorial situation generated under the conqueror’s control should revert back to square one or, at least, be subjected to consultation and an agreement process with the original peoples. Although recognising its vindictory and historical justice nature, we consider this an unviable criterion, at least through peaceful means.

- Criterion for traditional occupation. Although similar to the one above, it is much more realistic and, in fact, has been assumed by modern legislations, including the ILO 169 Convention, which incorporates it as one of its alternatives. It entails claiming and defining as ‘own’ the territorial spaces that are in the collective memory of current generations and that are still recognised as the natural habitat of the group in question, whether completely under the group’s control or subjected, in past years, to encroachments and dismemberments. This conception additionally requires the definition of precise territorial restitution processes. The United Nations’ Declaration project contemplates this last point in its article 27. Its generalised application could lead to uncomfortable social situations. However, depending on the circumstances, this could be a fair alternative, particularly in cases of groups recently deprived of their traditional territories as a consequence of specific conjunctural policies (an extreme example is the case of indigenous lands that were handed out to friends of drug-dealing, pro-coup militaries in Meza’s Bolivia) or procedural irregularities.

- Criterion for current occupation. This criterion can define the Chilean legislation option. It leaves a lot to be desired, given that it accepts, without revision, the fait accompli policy. It can have two versions, one more generous than the other. Occupation can be conceived in an extensive manner, covering a group’s current and real territoriality, exactly how it was left after the historical events, with or without a prior regularisation process (the OAS’s project or the Peruvian Act DL no. 20653 could be considered an example although, in this case, limited to communal territorial spaces) or using more restrictive criteria, limiting current occupation to farming spaces or other specific economic uses (a tendency insinuated in the new Peruvian Land Act no. 26505.)
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In conclusion, the agreement must be in accordance with the provisions of the contract.
b) Determining the natural resources inherent in the territorial notion

As we can see, indigenous territoriality implies a rational whole that should be adequately reflected in its legal characterization. Territorial integrity is consubstantial with the economic function, the ecological condition, and the subjective perception of the law subject as well as with the very physical nature of the asset. Any alteration to this integrity modifies the very nature of the territory and undermines the quality of the right recognised to indigenous peoples.

We emphasise that this concept is clearly reflected in international legal texts specifically conceived for describing the real nature of indigenous territorial rights (i.e., the ILO 169 Convention, the United Nations’ or the OAS’s projects). In those cases where these texts are of a binding nature and have been ratified by the adhering country, internal incompatibilities with the rest of the legal framework should be resolved without altering the essence of the recognised right. The indigenous territory is not the sum of the natural resources that it contains, which are susceptible to appropriation or economic relationships. Its essence is based on the integration of physical and spiritual elements that link a natural space to a specific group.

Nevertheless, contrary to what occurs with new legal entities that are given a clearly different treatment in reflecting their nature – as is the case of intellectual property – the indigenous territory has not yet been accepted as a new and modern legal institution with its own particular characteristics. On the contrary, attempts are made to adjust it to models designed by the legal system to describe realities that have nothing to do with a territoriality consubstantial with an indigenous group – a reality that is much more akin to the concept of fatherland rather than to the concept of a piece of real estate.

In this sense, the concept of indigenous territory collides with the very notion of economic assets described in civil legislation (susceptible to imposed rights, objectively and subjectively individualised) as well as with the concessionary formula applied by this part of the world’s legislation on natural resources.

Indeed, the cultural values of western law centre the social function of assets on their commercial circulation whilst striving to offer alternatives to multiply the frequency of this commercial movement. To do this, it allows different uses to be made and different rights to be applied to the same object, thereby stimulating the market and making the economy more dynamic.

On another front, despite their recent adoption of liberal tendencies, South American States maintain a traditionally statist position in regard to their natural resources. In this sense, the State reserves rights over assets that, naturally and legally, constitute an integral part of the principal asset (i.e., forestry resources, fauna, waters and its concomitant elements, etc.)

As a result of a combination of both the above positions, a legal stratagem is employed to separate, contrary to nature, integral parts of a real estate by applying different legal systems to its different natural components, with the State re-serving control over some of these components, thus empowering it to assign their uses as well as their specific, and generally opposed, rights amongst different subjects.

In the case of indigenous territories, this way of perceiving the nature of the asset denaturalises it and deprives it of meaning. This is the reason why indigenous peoples claim a special legal treatment as well as new legal definitions which, by having their own specific content, will not force indigenous peoples to perform logical juggling acts to adjust their reality to institutions created for regulating other institutions.

Native peoples are having serious problems in trying to peacefully enjoy the use of their territories because of the State’s insistence on practising this legal dismembering of the integrity of indigenous territory, something that could give rise to extremely unfair situations (including genocides: see the case of the Ashaninka groups affected by timber concessions or the multiple cases of ethnocides caused by mining, oil and gas operations in indigenous lands throughout the world.)

The disintegration of indigenous territories in a constellation of rights over their different natural components is incompatible with the very economic and social function of the territory and, indeed, with the rights to identity, free management, development and other fundamental rights associated with, in its individual exercise, respect towards the spiritual and cultural integration of a people with their territory. In the case of Amazonian territories, this vision is also inadequate with the ecological nature of the tropical forest. Let us briefly analyse these three aspects:

1) Legal institutions should allow the integration of a human group’s cultural values with specific efficiency principles for a convenient regulation of human relationships and to satisfy social needs.

Even within the western legal framework, property, as institutions, is geared towards providing legal protection to a specific fact of social life (that of effective possession) and its raison d’être is its economic function to enable the asset to be of use to its proprietor.

Except that the social methods of use given to an asset and its utility can vary, subjectively and objectively, from one cultural group to another as well as from one ecological environment to another.

The economic function of land property in western systems (as mentioned above, geared towards commercial use), demands the specification of the object and the possibility of real appropriation. It refers to a specific piece of the earth’s crust, agricultural land destined to generating products and fruits, through man’s labour. It entails specific spaces, individualised through labour, mainly of an agricultural or livestock nature, where natural elements (wild fauna and flora) are given an accessory treat-
The cultural values embedded in indigenous knowledge differ substantially from those embedded in commercial values. This is because indigenous knowledge, generated through observation and experience, is closely linked to the natural environment and the communities living within it. It is a holistic and interconnected system of beliefs, practices, and values that are passed down through generations. In contrast, commercial knowledge is often created through scientific research and development, and it is more focused on short-term economic gain and efficiency. This difference in values and perspectives has significant implications for how we approach conservation and sustainability.

In the context of conservation, indigenous knowledge can provide valuable insights into the management of natural resources. For example, traditional knowledge about the local flora and fauna can help identify areas that are important for biodiversity conservation and guide the selection of appropriate conservation strategies. Indigenous knowledge can also inform the development of sustainable livelihood strategies that are sensitive to the local environment and culture.

However, the integration of indigenous knowledge into conservation efforts can be challenging. There may be conflicts between traditional practices and modern conservation strategies, and there is a need to develop frameworks for recognizing and valuing indigenous knowledge in decision-making processes. In addition, there is a need to address issues of ownership and access to knowledge, especially in cases where indigenous knowledge is at risk of being lost or appropriated by non-indigenous actors.

Despite these challenges, there is growing recognition of the importance of integrating indigenous knowledge into conservation efforts. This requires a shift in attitudes and approaches, and it involves building partnerships and capacities to support the participation of indigenous peoples in decision-making processes. By leveraging the unique perspectives and knowledge of indigenous communities, we can develop more effective and sustainable conservation strategies that benefit both people and the environment.
First of all, because in the Amazon the forest is valued for its canopy and the wildlife inhabiting its diverse ecological strata. From an ecological point of view, the thin layer of fertile soil is a secondary asset; even the fertility (transitory) of the floor depends on the forest's canopy. Human labour does not individualise the property; the industrial fruits and products are not the result of intensive farming. On the contrary, these tend to be natural fruits (as are the trees themselves) whose supply depends on careful handling and, very often, on disciplined consumption. What gives the forest its vigour is not labour, but non-alteration. If indigenous peoples are forced to intensify the agricultural use of their territories in order to legally defend their ancestral control (as has actually occurred on repeated occasions), their properties will gradually lose value and the forests their true potential.

If, based on specific agro-technical classifications, we wanted to reduce an Amazonian Indigenous group’s territorial rights to agricultural spaces, we would be surprised to find that not much more than 2% of the entire Amazon space is destined to agriculture or live-stock. In fact, the gardens destined to agriculture in groups like the Peruvian Aguarunas do not exceed a third of an hectare (which has enabled them to subsist without depredating). If an Amazonian indigenous territory was to become the size of its agricultural spaces (and this is the logic behind Peruvian law, which excludes forest floors and protection lands from indigenous territoriality) the expropriation would be absolute. On another front, its location and determination would be impossible: a garden is used for a short period of time. It is abandoned in the forest (becoming forest once again) and new small areas of forest are opened in lands with no other agricultural value besides the one given to it by traditional good practice. If every time that, in the indigenous Amazon, an agricultural area became forest once again it ended up in the hands of the State, indigenous territories would soon be reduced to a mere metaphor.

The Amazon forests are ecological units whose elements (whether considered integral parts, accessories, natural fruits or any other legal denomination) are intimately interrelated. Any element lives for, in and from its relationships with other elements, including man who, in the case of indigenous peoples, undertakes (although with increasingly fewer chances) to exercise careful control over that natural arrangement. This is the reason why the ILO 169 Convention or the international texts’ projects of the new Indigenous Law, refer to the territory as habitat, alluding to this unit made up of an integral territory and a specific people that administers it based on ancestral coexistence. Any economic right granted that ignores this control will, undoubtedly, have negative effects on the real value of the territory and on the group inhabiting it.

do Attributes that should legally characterise an indigenous territory

In the last thirty years indigenous peoples have taken the initiative to establish a political platform to reflect the rights expropriated from them since the conquest, which constitute the fundamental base of their claims. Not only have they fought for international recognition of these rights, but these have been gradually filled with legal contents capable of reflecting the characteristics considered necessary for these rights to be effective, in terms of each group's historical continuity. It is important that any legislative proposal concerning indigenous peoples takes these characteristics into account, which truly define new legal institutions not contemplated in the civil legal system.

In the case of the territory, these characteristics, on the one hand, distinguish the indigenous territory from other, at first sight, similar legal institutions and, on the other hand, define a new institution with no precedents in the current legal system:

1) It is an absolute, exclusive and perpetual right. These property right characteristics of western legal systems are adopted because of the scope of their protection strength: one power against all and forever. As already mentioned, the similarity stops here, given that other concomitant points with this western concept of property are not very appropriate for characterising indigenous territoriality. In any case, these points acquire their own nuances when applied to indigenous territory:

- It is not an absolute or exclusive power attributed or recognised by the State to a specific individual or group, understood as a legal entity, capable of exercising all the rights included in the concept of property. The persons to whom the current right is attributed cannot, for exam-
1. The property of a compound that makes it a fluorophore.
3. A technique for detecting the presence of a molecule.
4. The process of exciting a fluorophore to produce light.
5. The emission spectrum of a fluorophore.
6. The absorption spectrum of a fluorophore.
7. The fluorescence lifetime of a fluorophore.
8. The quantum yield of a fluorophore.
9. The brightness of a fluorophore.
10. The sensitivity of a fluorophore.
The territory should legally consolidate all the methods of use, possession, management, access and administration that define the socio-economic relationship of the people with their habitat; the habitat is hence fundamental to a specific indigenous people.

The territory should respond to this global conception, therefore it must allow the exercise of all, stable or itinerant methods of territorial control within the scope with which that control manifests itself in reality. A territory fragmented in communal Islands, hacked or patched, with areas excluded from ethnic control for various reasons (ecologic protection, colonisation, etc.) is still not an indigenous territory.

The territorial right should embrace all the elements: surface, subsoil, forest canopy, waters and lakes, fauna and flora, genetic resources and the different ecosystems, regardless of their economic classification. A territory fragmented into a series of legally differentiated elements, with separate administration systems and a different executive body, prevents a people from exercising the necessary cultural and economic control.

Finally, the autonomy with which the territorial right of an indigenous people is exercised constitutes a defining element of indigenous peoples' territoriality.

**Autonomy and Indigenous Territory**

The debate over the applicability of indigenous peoples' right to free determination seems to have been decided some time ago. There is no significant reason to exclude indigenous peoples from the benefits of that peoples and nations 'natural right'. The difficulties are not of a conceptual but of an operational nature. The fear of endangering certain prerogatives (such as concessionary royalties) leads States to recur to arguments that, on many occasions, verge on paranoia. The 'a State within the State' argument is a classic one.

The majority of treaty writers insist that free determination is not a right in itself, but the condition, the prerequisite, for exercising the rest of a peoples' or nation's rights (the question of whether or not States are established is a possibility that arises as a consequence of that prerequisite). If certain rights are recognised to a specific group of peoples, as is the case of indigenous peoples, this prerequisite cannot be denied to them.

In the indigenous claims platform, this aspiration centres on the point that affirms the right to freely dispose of one's wealth and natural resources, as necessary elements for economic, social and cultural development. The fear of the possibility of separation, or similar claims, arising does not seem realistic. Furthermore, nobody is prepared to question the fundamental right of the States over a national unitary territory, and if the interested parties do not question it, we do not see the need to get into explanations that would divert us from the central issue.

One of the ways to exercise free determination is through autonomy, a viable faculty within integrated national contexts. Legal dictionaries define autonomy as 'the faculty possessed by, or recognised to a population or entity to manage without foreign trusteeship specific interests of its internal life, which can give rise to the creation of own institutions for the spaces in which this internal life is developed' (Raúl Chanamé, *Diccionario jurídico moderno*, Ed. San Marcos, Lima, 1995).

Autonomy is implicit in the ILO 169 Convention in the above terms. Consequently, it has been introduced into various constitutional texts, such as the Peruvian (which describes it as a partial detachment of powers, specifically centred on economic, administrative, territorial, labour and organisational aspects), or the Nicaraguan (which undertakes to issue a regulatory law). In Bolivia, Colombia, Paraguay and others, recognition is implicit in the right to self-regulation.

Autonomy is an uncontroversial concept for those who fear independencies because, by definition, it is applied to peoples within States and entails a legal and regulatory relationship between the autonomous entity and the central State. It specifically expresses the nature of the relationship between central power and its social, cultural and territorial components. It is a way of organising political pluralism in a society built in a multi-ethnic manner.

Although autonomy, as self-government, will be specifically treated at a later stage, it is worth anticipating now that, for indigenous peoples, autonomy is fundamentally based on territorial maintenance, in its material and symbolic aspects. Without a defined level of autonomous control over the territory and its natural resources, autonomy is reduced to mere words. The territory, defined in terms of its objective, to guarantee the historical-cultural continuity of a people, embodies a specificity associated with feelings of belonging and identifying with a group, feelings that encourage a people to develop cultural dynamics capable of reaching high degrees of efficiency in its economic, social and cultural development.

Backed by an adequate recognition of territorial rights, reinforced with firm external guarantees and internal autonomies, the American indigenous peoples panorama could begin to see the light of day.

a) Minimum content of indigenous territorial autonomy

The territorial autonomy of indigenous peoples is defined on the basis of:

- Autonomous control of the lands and natural resources. Autonomy implies externally recognised competence to self-regulate a specific area.
The problem of how to incorporate these emotional influences into the nation’s political system is a complex issue. By understanding the role that emotions play in shaping political decisions, policymakers can work towards creating a more inclusive and effective political system.

Incorporating emotions into the political process involves recognizing the importance of emotional intelligence and empathy in political leadership. Politicians who are able to connect with the public on an emotional level are more likely to gain support and influence decision-making processes.

Emotional intelligence is a key component of effective political leadership. It involves recognizing and understanding one’s own emotions and those of others. By being able to manage emotions in a healthy and productive way, political leaders can make better decisions and create positive change.

Empathy is another critical component of emotional intelligence. It involves being able to put oneself in another’s shoes and understand their perspective. Politicians who are empathetic are more likely to develop policies that benefit a wide range of people.

Incorporating emotions into the political process also requires acknowledging the role that propaganda and manipulation play in shaping public opinion. By working to create a level playing field and ensure that all voices are heard, policymakers can create a more democratic and just political system.

Overall, incorporating emotions into the political process is a complex and challenging task. However, by recognizing the importance of emotional intelligence and empathy in political leadership, policymakers can work towards creating a more inclusive and effective political system.
It would seem that the general answer to this is silence and acceptance that these interests are untouchable. Whenever oil is found, everything else takes second place - including the livelihood of a people.

If the reasons for these control reserves are founded on important national interests, we should be able to see what important interests have been enhanced through these exploitations. Human dignity? Healthy environment? National protection? Balanced growth? Any of the ones constitutionally defined as of high interest? - reason and foundation of the delegation of power to the State by its citizens.

Just to touch on the question of national growth, we should point out that, for example, in Peru the Districts along the northern border, where oil was extracted during a period of 30 years, have all been officially categorised as 'extremely poor'. That, after 30 years of extraction, the company has transferred its rights, without any civil servant having claimed compliance with the exit plan or supervised environmental damage. That the River Tigre has been left incapacitated for meeting the needs of the population and that the Quechua and Achuar groups of the region have been left traumatised by the experience. Today only remnants of the nature that was remain, and a sad feeling of abandonment is palpable both in the environment and the people.

Given the correlation of existing forces, indigenous peoples have no other choice but to accept the unavoidable and they fight for the proceedings in an effort to prevent further damage. But we are not aware of any mining or oil company that, in the extraction phase, has not deteriorated the indigenous territory to the extent of incapacitating it for its end use. This is why, despite this curious consensus of not being able to say no, we believe that, the most prudent, the rule, should be the opposite, i.e. the most sensible solution would be to only authorise an activity when the group agrees to it, when the activity is compatible with the end use of the indigenous territory, when the activity is backed by sufficient guarantees and when, in practice, these guarantees are truly met. If, in natural protected areas, certain dangerous activities that are incompatible with the finality of the area are prohibited - would it not be more necessary to establish such limitations when an entire people’s survival is at stake?

In any case, this is such a controversial issue! The interests at stake are so large (on both sides), and so powerful (on one side), that the debate becomes distorted and does not focus on what is legally at play: social prioritisation (reflected in the Constitution) of the national interests (it is worth remembering that the Peruvian Constitution stipulates, in its heading, that the protection of human beings and their dignity is the supreme objective of society and the State). The fact that oil happens to be in far-away lands (ultra-peripheries) and that the victims are indigenous peoples, prejudicially limits the responsibility of the criterion. We do not believe that, in order to allow the State to enjoy its royalties, people were willing to resign themselves to receiving poisoned water for their families or to being deprived of their nourishment, peace, health, etc. But this is what happens, and if in the eyes of the Constitution we are all equal, indigenous families have every right to protest about this fundamental rights abuse.

This is why we believe in the need to seriously consider the recognition of an effective autonomy for indigenous peoples that will enable them to enjoy their territories.

An initial incompatibility hindering a meeting point between the legal perspectives of the States and that of Indigenous Peoples is precisely, as we have mentioned earlier, the legal disintegration of nature’s elements, which is characteristic of State Law - as a system centred on the economic uses of the different resources. From the economic perspective of State Law, divisibility is essential; from the perspective of indigenous peoples’ personal experience, what is essential is a combination that encompasses, not just the integrity of the territory, but its identification with the people that inhabit it - the relationship that the ILO 169 Convention characterises as essential for the cultures and spiritual values of indigenous peoples. A space that cannot be interchanged with any other.

If this feature is recognised, and it defines de legal asset to be protected, it cannot be subjected to the disintegration of its integral parts (fauna, flora, sacred spaces, rivers, lakes) without risk of destruction, deterioration or alteration of its essence and its finality.

There is no doubt that the uses of the water, fire-wood, timber or the resources of the forests are, in themselves, of vital importance to indigenous peoples, but we base ourselves on the hypothesis that, among indigenous peoples, these represent much more than a mere combination of resources. From the indigenous perspective, water, living beings and forest resources are not just material, but symbolic elements, specifically linked to the integral habitat that maintain the subjective feelings of property, identity and dignity, as well as the cultural dynamics of the people, under cultural control.

The basis of the local interests is not limited to the conservation of the natural resources or their sustainable use which, admittedly, is vital to their historical continuity, but it centres, to a greater extent, on the level of control that the inhabitants can maintain over an area - the territory - conceived as a territorial remnant safeguarded not only from depredation but also from external conquest.

Without doubt, the forests, lakes, rivers, streams, hills, waterfalls, nature’s forces, rivers, fauna and flora that make up the territory, constitute the most important reference to the collective identity of the different families, communities and other indigenous territorial entities. We should remember that, in the Amazon, the forest, and not the floor, is the natural sustenance. To disassociate the treatment of forest, fauna, water and genetic resources from the space that they belong, is an attack similar to the one suffered by the Andean indigenous peoples during the conquest.
Notes

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1 The United Nations' Declaration Project already incorporates it without restrictions. When big words knock on international Treaties' doors, two things are for certain they will eventually enter and, when they do, they will have to pay an entry-fee.

2 The one that has gone furthest is Columbia's, but because of its categorisation (as territorial entities) not because of a precise definition.

3 An issue that the self-determination argument of the proposal debated in the United Nations centres on.

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