Territory: political theory and indigenous claims. An essay on the coloniality of territory

Nicole, Ophelia

UNIVERSITÉ DE GENÈVE
GENEVA SCHOOL OF SOCIAL SCIENCES
Department of Political Science and International Relations

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Ophelia Nicole-Berva

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Introduction

Territory has always been at the heart, if not the origin, of many conflicts. Indeed, territory is a power issue: the one who is its sovereign can, more or less at her own discretion, decide on how a region is to be used. The fact of "owning" a territory, i.e. having "territorial rights" rather than a property right, allows not only material actions (colonization, (re)organization of the space, agricultural management, etc.) but also normative actions (political system, legal doctrine, social norms, etc.).

It is therefore obvious that conflicts which involve political claims around the same territory raise sensitive questions: Who is the most legitimate in these claims? What instruments should be used to judge this? Are the historical aspects valid or obsolete? Should normative criteria be included, such as which entity will propose the best management of the territory? Is there a fundamental right to the territory?

The field of political theory of territory is certainly the one that strives most methodically to answer these questions. In short, it critically aids in answering two fundamental questions: Who is the legitimate claimant for a territory, and what are territorial rights? These are the "who" and the "what" questions.

These theoretical explorations are relevant because they make it possible to "test" conflicts in the light of the position defended by the author and thus use this to determine who, in the end, should be entitled to a particular territory.

In most cases, conflicts between two entities are explored, most often between two states, and sometimes between a region/a group and a state.

Yet one of the most frequent cases of territorial claims is emerging from indigenous peoples. All around the world indigenous peoples are claiming the right to settle in a particular territory, to live according to their traditions and thus to have self-determination in the face of the state in which they live. In the majority of cases, these peoples do not aspire to secession or to a total lack of contact with non-indigenous society.

In this sense, the territorial claims of the indigenous peoples seem to me to be very interesting for the study of the political theory of territory. Their demands may seem more "moderate" than those of secessionist entities and yet they often face a refusal from the central state.

I would therefore like to understand why the territorial demands of indigenous peoples are given little consideration and even less satisfaction. My objective is not so much to answer this question with practical examples as with theoretical research.

In concrete terms, my research question is as follows: How can indigenous territorial claims be taken into account and satisfied through political theory of territory?
This question underlies, of course, that I consider the territorial claims of indigenous peoples to be, in principle and for the purpose of this work, totally legitimate and that they deserve a satisfactory answer. In an attempt to answer my research question, I will proceed in three steps.

First, I will elaborate more precisely on what I mean by "indigenous peoples". I will discuss the issue of definitions in order to show the different aspects that highlight what makes them different from non-indigenous society, rather than defining who are indigenous peoples. This "difference" is not there to divide but to underline the need to think of the categories of analysis from another angle. This part also allows me to distinguish indigenous peoples from other social groups calling for differential treatment such as national minorities. Finally, I will specify the geographical area on which I focus.
In the second section, I examine the current political theories of territory. By discussing the theories already present, I can "test" their willingness to hear and satisfy indigenous territorial claims.
Faced with the resulting dissatisfaction, I will propose a critique of the political theory of territory based on the reconceptualization of the notion of territory itself. This is the content of the third section and the core of the work established in this paper. Indeed, the argument of my work is that the theoretical conception of territory is the result of events and practices linked to colonization, in its territorial, economic, political, juridical and social forms. It is necessary to question the construction of this "modern" territory, in order to take into account and satisfy claims emerging from marginalized groups, in our case indigenous peoples. In that sense, we are facing a conceptual or epistemological conflict, where the prevalent conceptualisation – supposedly neutral or taken for granted – annihilates what comes out of its borders.
Therefore, to deconstruct the concept of territory, I will use the decolonial theory borrowed from Latin American critical thinking. In this way, I propose the concept of the coloniality of territory, which combines historical, legal and moral aspects in order to "rebuild" the notion of a territory since the colonial event, which I believe is fundamental to understanding the place of indigenous peoples today.
In conclusion, I recognize that we are facing an urgent political problem with the lack of implementation of the right to self-determination of indigenous people and the constant threat to their territorial autonomy. However, I argue that in the long run, we will have to rethink a political theory of territory sensitive to the coloniality of territory and indigenous inputs.

Section 1 – Indigenous peoples as political actors

In this first part, I discuss the definition of "indigenous" or "indigeneity". This part is important because it allows me to both limit and focus my thinking on a type of actor. I am therefore not claiming a global theorization, which would answer all cases, but rather an intervention in the field of the political theory of territory in the light of a specific case. Indeed, I think that the political theory of territory could be enriched by indigenous land claims, because they challenge its current version.

In addition, the proposed discussion shows the complexity of territorial disputes when the definitional contours of one of the parties are unclear. This shows how much the ontological position can influence the resolution – or lack thereof – of territorial disputes.

Finally, this discussion highlights state interventionism – or at least its potential – in defining the subject and, consequently, the one it confronts. This power in establishing definitions indicates the unbalanced relationship between a state and part of its citizens.

Indigenous claims for territory – But who is indigenous?

The development of this work is driven by the case of indigenous peoples claiming for territory. The cases that initially motivated my interest mainly took place in Latin America, where the indigenous movement took place in the end of the 20th century (Bengoa, 2016: 18). However, indigenous peoples are present on every continent and their relationship to the world as well as their claims can take various forms. In this work, I depart from cases and literature principally from the Americas and, to a minor extent, Australia. It means that what is happening in Africa, Asia and Europe is very little, if at all, discussed. This choice is utterly subjective, motivated by personal interest as well as the richness of the literature and critical thinking regarding the Americas and Australia. I don't pretend that the analysis I propose in this work could be applied to any place, so this is why, although my work is more a theoretical one than a case-analysis one, I feel the need to make the context of this writing more precise.

In the Americas and Australia, the claims to land or territory are extremely strong and present a certain complexity. For instance, the repartition of territory and its use has been historically modified by colonization, whether external (from Europeans powers) or internal (from the early nation-state). It has led to the elimination, the reduction, or the displacement of many communities auto-defining as indigenous peoples. More recently, the interest of private actors or industries for lands occupied by these communities reinforced the vulnerability of these territories, reducing their purpose to a productive one.

The conflicts that indigenous peoples are confronting usually imply the presence of one or two other actors: the state within which they geographically reside and/or the industries. This means that the majority of the territorial disputes would include economic interests, usually related to access to natural resources, energy production or urbanization. For instance, in Latin America, what is at stake is the issue of extraction/extractivism (or *extractivismo*). Hydrocarbon extraction or mining have "triggered the most contentious arguments between the state, the private sector, and social movements over the territorial, environmental, and human implications of their expansion" (Bebbington, 2009).

Indigenous communities are also often affiliated to environmental causes, and thus supported by ecological activists. This is not without problems, as green projects or industries as well as environmental law sometimes jeopardize indigenous interests[1].

Fairly enough, one could argue that it is not exclusively indigenous communities who face displacement, threat of being expulsed from a place, and institutional decisions about the territory they live in. This is correct, but indigenous claims for land are long-standing claims, conflicting not only at the local level but regional or national; their claims also represent a clash of values or meanings and purpose of territory; even though each indigenous people has different concerns, claims for territory occur in many places and different contexts around the globe. This situation makes the study of indigenous territorial claims particularly relevant, both in terms of the diversity of cases (and therefore of concrete sources) and the recurrence of some arguments and counter-arguments.

Although for some readers it can be clear to see what kind of groups I mean with "indigenous peoples", it might be more difficult at the time of giving a clear definition of "indigenous", notably to differentiate these peoples from other types of minorities and non-indigenous people in general. This part thus aims at: i) presenting what has been made at the international level for indigenous rights in order to frame a working definition; ii) pointing out the risks of a fixed definition; iii) and pointing out the risk of a definition which is too vague. Through this discussion we will see that there is no single position, which leads to a definition dead end. Despite this, I will present my position for the rest of this work in the light of these difficulties.

[1] See for instance Kastrup (1997) who underlines how environmental law and indigenous special rights can enter into conflict, for instance he says: "In many cases, the adoption of protective measures targeting indigenous values will conflict with the preservation of the environment and its fauna and flora. Practices such as hunting, religious ceremonies, and harvesting of natural resources, will certainly conflict with international environmental documents that call for the protection of endangered species and the forests". More importantly, in my view, is the amalgam between indigenous' interests and environmental or green interests. For example, the development of green markets – notably in the production of greener energy –, tourism (usually called, *eco*tourism), but also the creation of national parks in order to preserve nature can lead to the displacement of indigenous populations (see Gilbert's report for IWGIA – International Work Group for Indigenous Affairs (2017)).

The quest for a definition: The international community

The first attempts to define "indigenous peoples" emerged inside the international community, as a necessary condition to make the implementation of indigenous rights successful. Legal tools were developed although the question of definition remained a headache for stakeholders. I quickly review here the major steps in this field before focusing on the debate on the definition.

Broadly, the international community's reflection on the status of indigenous peoples and their rights began within two fields: in labour law (through the International Labour Organization (ILO)) and in the field of Human Rights (through the United Nations Commission on Human Rights) (Bengoa, 2016: 200).

This led to a first text, Convention No. 107 (1957) on Indigenous and Tribal Populations in Independent Countries. It emerged from a preoccupation within the work space, i.e. the working conditions of indigenous people, and the aim of the ILO was then to protect their working conditions (Bengoa, 2016: 203; ILO, 2013: xi). This first version was later criticized, first and foremost for its consideration on indigenous communities. In effect, they appeared as groups that had to "integrate" or "assimilate" into the national community and that they were going to disappear. In the context of Latin America, Carmen Diana Deere and Magdalena León (2001: 232-233) confirm that: "The dominant national ideologies in Latin America in this period upheld economic modernization and racial *mestizaje*, and the concepts of integration and assimilation were accepted by advocates of indigenous rights from both the right and left: Indians were to be transformed into peasants and citizens".

Faced with this inadequacy and contextual changes, another text was adopted in 1989, Convention No. 169 concerning Indigenous and Tribal *Peoples*[2] in Independent Countries. The process of adopting the Convention was much more inclusive, with many indigenous and tribal peoples participating in its revision process between 1987-1989 (OIT, 2014: 6-7). The vision of the indigenous peoples changed radically and their place in contemporary societies as well: "Instead of considering indigenous peoples as temporary societies, doomed to disappear, it assumes that indigenous peoples constitute permanent societies." (Deere & León, 2001: 233).

Plus, Thornberry (2002: 44) notes that the "move from the vertical and hierarchical narratives of 1957 (advanced/less advanced) towards a horizontal, equality-with-difference approach is consonant with the move from 'populations' to 'people'". Indeed, this change is noticeable and has two important repercussions.

[2] My emphasis

First, the concept of "people", in international law, is inherently related to the right to self-determination, that is, the right to govern oneself (Bengoa, 2016: 203). This vision effectively sustains the paradigm shift on the "temporality" of indigenous communities, passing from temporary to permanent societies (Deere & León, 2001: 233).

Secondly, the denomination of "indigenous peoples" allows to separate definitively the indigenous issue from the issue of minorities[3], "insofar as indigenous people appeared with collective rights explicitly recognized, an issue that did not occur with minorities[4]" (Bengoa, 2016: 204).

In addition to this significant change, the basic tenets of the Convention also reflect the evolution of the discourse about indigenous peoples. The two basic postulates are: (1) "The right of indigenous peoples to maintain and strengthen their own cultures, ways of life and institutions" and (2) "Their right to participate effectively in decisions that affect them"[5] (OIT, 2014: 8). The first postulate makes clear the will to favour the uses and customs of these peoples and the second refers to the existence of burdens limiting the effective equal participation. For instance, there are "numerous cases where indigenous peoples, and in particular women, do not have recognized citizenship or identification documents, which would allow for their participation in elective processes" (ILO, 2013: 18). The right to participate is also closely related to the process of consultation, in which indigenous peoples have to be consulted before any decision (like national legislation) that would affect them or their land (ILO, 2013: 12).

This Convention appeared as a "threat" for some nation-states, notably because of the recognition of "peoples" who have the right to "self-determination": "For many constitutionalists, in Chile for example[6], the Convention would undermine the political unity of the State, by implying a recognition of the existence of a diversity of origin and present in society[7]" (Bengoa, 2016: 204).

Despite the retention of some countries, this Convention was "reinforced" by the United Nations Declaration on the Rights of Indigenous Peoples adopted on 13 September 2007 by the United Nations General Assembly (OIT, 2014: 10). This Declaration has 46 articles on the rights of peoples at various levels. The preamble notes the recognition of the rights of these

[3] It is not to say that indigenous peoples don't constitute a type of minority within a nation-state, either numerically or socially in the case they would be higher in number, but that their status might have different characteristics and thus that their claims might require a different approach

[4] My translation

[5] My translation

[6] ILO Convention 169 was ratified by the Chilean Congress on 15 September 2008.

[7] My translation

peoples, their political, economic, and social structures, their traditional cultures and practices, and their history and philosophy, among others.

These international tools are completed by others such as the World Conference on Indigenous Peoples (WCIP) since 2014 or the Permanent Forum on Indigenous Issues since 2000 (first meeting in 2002).

All these tools, meetings, conferences and declarations concern peoples who can be recognized as "indigenous" and thus presuppose a tacit agreement on who can be concerned by this international acknowledgment and the implementation of special rights. Thus, what contains this tacit agreement? And is there really unanimous support for it?

One of the key documents for the definition of "indigenous peoples" is the study of Jose Martínez Cobo (1986), Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. His report is concerned with the definition of indigenous populations and is still a point of reference when speaking about this issue (Bengoa, 2016: 13, footnote 1; Torrecuadrada García-Lozano, 2013; Thornberry, 2002; Scheinin, 2005: 5; Corntassel, 2003). From his study a working definition has emerged, and two points appear of high importance: the historical continuity and the self-identification as indigenous, also called "group consciousness". The working definition is as follows:

> "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.
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> […]
>
> On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference." (Martínez Cobo, 1986, para. 379-381)

In the beginning of the definition, there is a clear reference to conquest and colonization, meaning that these events are important for indigenous peoples: there is a before and an after. The terms "pre-invasion" and "pre-colonial" acknowledge the fact that indigenous territories were *invaded* and that the patterns of colonialism and colonization were at work (Gonnella Frichner, 2010: 10, para 22). Plus, it acknowledges that indigenous peoples were effectively there before foreign settlers, which contradicts the rhetoric of terra nullius and underlines the wrongdoing of the Doctrine of Discovery, as we will see in the third section. It supposes that indigenous peoples have a history, culture, language, or traditions that were existent before colonization, and this is precisely what distinguishes them from colonists and their descendants.
The second paragraph refers to a subjective feature of self-defining oneself as indigenous, self-identifying with a particular group and the reciprocal recognition from such group. In Martínez Cobo's definition, there is no need for an external, non-indigenous, recognition or definition of indigeneity.
The International Labour Organisation also follows a wide-ranging definition, mixing these "subjective" and "objective" criteria (ILO, 2013: 2). The former criterion is the one just stated before, the idea of "self-identification as belonging to an indigenous people".
The objective criterion, in the definition guidelines of the ILO's document, contains two elements. The first is the fact that indigenous people are descendant from populations "who inhabited the country of geographical region at the time of conquest, colonization or establishment of present state boundaries" (ibid.). This is very close in nature to Martínez Cobo's "historical continuity". Note that the crucial historical element is the fact of invasion or colonization, it is not said that indigenous peoples are the ones who "were there first" (as this is indeed a dead end debate). The second element is that indigenous people still "retain some or all of their own social, economic, cultural and political institution, irrespective of their legal status" (ibid.). Again, this is very similar to Martínez Cobo's definition.
As these two examples show, the work that has been made at the international level serves to give some foundations. The framework is large enough to include many "types" of indigenous peoples, but its flexibility also allows individual countries to select what serves their interests, which means that it is left to their "discretionary powers" (Kastrup, 1997).
More than a fixed definition, we have seen that it is more about approximations, elements or features. The absence of a strict definition proves the absence of unanimous agreement between the parties, but it also raises the question: is such a definition desirable? This is certainly were the debate lies and it is worth mentioning the pros and cons.

The risks of a strict definition

The term 'indigenous people' is a category encompassing more than 370 millions people[8] (ILO, 2013: xi). The aim of a definition is to propose a description in front of which one has to conform to fit it; a definition doesn't allow subversion, instability, or change. This is one of the challenges we have here: a definition seems necessary for the implementation of rights (following the external/international/national recognition), but a single definition contains two dangers: i) a practical risk of exclusion and ii) a theoretical risk of homogenization/essentialization.

I think there is firstly a risk of exclusion for the simple fact that too thin of a definition might deny some peoples the status of "indigenous people". To give an example, if people have to live in their ancestral territory and have the mastery of their indigenous language to be recognized as "indigenous", it would deny the complexity of many situations. Indeed, it would exclude people who have either been chased from their land or who had to migrate to another place. It would exclude people who were educated in schools where indigenous language had no place, either in the teaching program, or in personal interactions. A strict definition with specific requirements would deny some people their rights and protections, and such a definition might just "conform to state-centric, bureaucratic decision-making practices, which are antithetical to most indigenous belief systems" (Corntassel, 2003).

Secondly, I think that there is a risk of a parallel processes of homogenization and essentialization. These two weaknesses act simultaneously on the external and internal representation of who is indigenous.

On the one hand, there is an issue of homogenization. At the external level, speaking about "indigenous peoples" leads to consider that all indigenous peoples are defining themselves the same way, but also dealing with the same issues, confronting the same burdens, claiming the same rights, and so on. It suggests that all indigenous peoples are the same, fighting for their recognition, in a position of challenger in front of a nation-state. Typically, it would equalize indigenous peoples from different parts of the world despite their numerous differences[9].

[8] In this section about the definition, I do not replicate the distinction and the debates between the terms 'indigenous' and 'tribal'. For such a discussion, see Thornberry (2002) or ILO (2013).

[9] For instance, in its report, Miguel Alfonso Martínez (1999) says that the notion of 'indigenous peoples' is to be understood differently between the regions and more precisely between, on the one side the Americas and Australasia, and, on the other side, Asia and Africa (Thornberry, 2002: 34). According to Corntassel (2003), the report "attempts to point out that given the different colonial and treaty-making contexts in Africa and Asia versus other regions of the world, peoples in Africa and Asia should pursue their rights as 'minority' populations rather than 'indigenous'" (Corntassel, 2003). This distinction is judged as "erroneous" by Corntassel (2003) but it still underlines that the claims linked to indigeneity and indigenous rights can take various forms depending on the historical background.

Secondly, at the internal level, it considers that all members of the community share the same interests and claims expressed at the public, political, and institutional levels. Simply put, it leaves no place for internal contradictions, disagreements or splits both inside a community and among different communities. For instance, it fails to take into account gender issues that get across indigenous peoples as any social group[10].

On the other hand, there is an issue of essentialization. At the external level, indigenous peoples are expected to correspond to the definition that was elaborated. It actually reduces them to "be" a definition and suffer the associated prejudices: a position of subjugation, of victim, but also a 'romanticisation' of them as rural and peaceful peoples. A fixed definition would also set them as non-dynamic groups, relying on static values. Secondly, at the internal level, members of the community are first and foremost *indigenous*. It obviously limits individual agency as a human being and favours being part of a community, it seals their identity in one case, sweeping away the complexities of their own subjectivism, evacuating the plurality of identity. For instance, it fails to understand that "indigenous" can be just a part of the personal identity, next to other self-identification criterion[11].

Therefore, theoretically, a strict definition seems to be binding. This is also the case from a legal point of view, where a certain level of abstraction seems necessary in the human rights system (Thornberry, 2002: 57). This vagueness, or flexibility, reflects the dynamics of the law, and thus if we want to acknowledge the dynamics of indigenous peoples as any human group, a bit of adaptability is needed. A guiding definition or a few criteria have to be able to understand both new forms of indigeneity (for instance its urbanization[12]) and tackle other issues (access to university, political representation, etc.).

I have proposed a few arguments on why a too strict definition is dangerous: it is exclusive, homogenizing and essentializing. Therefore, should we simply forget about the principle of any definition?

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[10] For instance, the work of Deere and León (2001) shows how the access to land and property in Latin America, notably through the agrarian reforms and legislations, are unfavourable to indigenous women (and women in general).

[11] In the case of indigenous women, the article of Aura Estela Cumes (2012) points the fact that both the patriarchalism and the colonialism have reduced these women to their indigeneity. In the same vein as postcolonial scholars have criticized the liberal and white category of "woman", she underlines the heterogeneity of the identity of indigenous women: "Humanizing indigenous women can help us understand that they are not equal as we sometimes want to see them, that they are not a homogeneous group and that they do not have the duty to think in a single line" (My translation).

[12] In the case of the Mapuche people living in Chile, 70% of their population is living in an urban area; this goes against the representation of rural and isolated indigenous people. The outcome is thus the "creation of a new category of Mapuche, the urban Mapuche as such, the *warriache*, now openly distinct from the "rural" Mapuche, or *lelfünche* (*lelfün*: countryside)" (Boccara, 2002).

The risks of a wide definition

But why is definition so important? It is perhaps and partly because of the link between definition and self-determination. Indeed, the definition can be seen as a necessary element for self-determination. For instance, although the Convention n.169 of the ILO (1989) doesn't "include a clause on the right of self-determination" (Scheinin, 2005: 7), the text is entirely based on this principle (Kastrup, 1997). Therefore, peoples claiming such principle have to be recognized as entering into the category of "indigenous people" if they want to be legitimate within the international, non-indigenous, law. It might be impossible for an indigenous people to make its claims legitimate about self-determination if their self is not recognized as ontologically valuable and valid by either the international framework or a specific country's legislation. This is where a crucial point appears: the state subjectivism. Since states are supposed to locally complete the international measures requires to engage with specific context and issues, they may privilege non-indigenous interests.

Therefore, although a flexible and open definition leaves place for subjectivism and plurality for indigenous peoples, it can also be seen as a way for the states to restrict the scope of the definition and therefore make access to international rights more complicated (Torrecuadrada García-Lozano, 2013). The very implementation is also at stake, as noted by Martin Scheinin (2005: 13): "[…] The international community – which still today is primarily constituted of states – will not grant far reaching rights to indigenous peoples unless the scope of application of the legal concept of indigenous peoples is at least reasonably precise". The definition thus appears as a necessary evil for the access to rights and their implementation.

If the principle of self-definition or self-determination is important in any discussion on "who is indigenous", it has to be a reciprocal process to be successful. If one defines herself as indigenous, or if a people defines itself as indigenous but there is no external recognition of this identity or category, it cannot lead to any rights or consideration. Schematically, to be effective, the self-determination is only possible when the claim of self-definition meets the external, non-indigenous, recognition.

Hence, despite the positive effects of the legal tools for indigenous peoples, the effectiveness of the right of self-determination is still limited by its own conception. This position is defended by Mark F.N. Franke (2007) through a critical reading of the notion of "self-determination" in the context of indigenous rights. In his view, the notion of "self-determination" is first to be understood in its colonial roots: he goes back to the European colonial law since the 1500s to show how the self-determination principle for indigenous peoples was limited by their ability to govern and organize themselves as a people (Franke, 2007).

Second, the self-definition and self-determination principles cannot exist without the state's approval: "The state may be morally obligated to hear the appeals of all groups claiming the [indigenous] status, but it is under no obligation to accept all appeals. The right of definition remains de facto with states" (Franke, 2007). This means that all the international tools on indigenous rights are useless if these peoples are not recognized as such. Therefore, the principle seems to reverse itself. The idea of "self-determination" and thus the importance of subjectivism in the definition of 'indigenous' is just one part of the coin, and apparently the weakest. Hence, for Franke (2007), the problem lies in the very conception or ontology of the *self*: if the 'self' indigenous peoples are claiming is not understandable in the state's terms, it cannot politically exist. Although he recognizes the positive impact of international tools such as the declarations from the UN or ILO, he shows that to enjoy the status of indigenous, some must be willing to make concessions:

> "If it is the case, then, that any indigenous peoples wish to engage in processes of self-determination that questions the validity of the state as the fundamental organising principle for their lives and the lives of all other peoples on earth, on the basis of the [UN] Declaration, there is no room for them to be recognised as groups deserving of the rights set out in the document or as groups that may be recognised as selves in the world." (Franke, 2007)

This is why he concludes that the declaration is "incompetent to deal with the ethical claims of indigenous people" and asks for alternatives for the 'self', notably outside of the state's ideal. By attacking the notion of the 'self', Franke (2007) implies that all social and legal constructions following the colonial version of the self won't fit indigenous claims: the problem is deeper than a definition.

Let me do a quick parallel with the broader purpose of this work, which is to suggest a change in political theory of territory in order to take into account territorial claims from indigenous peoples. With Franke explaining that the problem lies in the very notion of 'self', I think that (part) of the problem of the work presented here lies in the very notion of 'territory'. One can build a political theory of territory, but if this theory doesn't question the *territory*, it won't offer such a radical change in front of rival theories. Every theory that bases itself on the idea that territory is merely a parcel of land under the jurisdiction of a political entity as a state fails to see how territory was historically and politically built in order to respond to *specific* functions required by *specific* forms of authority. I will suggest, in the third section, another conceptualization of territory that tackles a supposed neutrality of the concept.

Partial conclusion: Indigenous peoples as political actors

I hope that the conflicting understanding of the term "indigenous" is now clear: on the one hand, the vagueness of the definition (or its flexibility) is favourable as it makes the category non-exclusive. It allows new forms of indigeneity and a diversity of meanings and ways of defining oneself as indigenous. On the other hand, the uncertainty of who *is* and who *is not* indigenous can be seen as a way to reinforce the power of States in front of indigenous peoples living in the national territory: "Unfortunately, the discourse over defining indigenous peoples has thus far been dominated by concerns of host states within international forums while de-emphasizing indigenous goals of political, cultural, economic and social autonomy" (Corntassel, 2003). Indeed, for indigenous people their "indigeneity" is obvious and not something needing proof, and all this debate about definition can be just seen as a way to deviate the discussion and delegitimize their claims.

Therefore, I understand the term "indigenous" at the encounter of different elements that can reflect partially or completely different peoples. Thus, more than a concrete definition, it is the confluence of different elements or features through which someone or a people could both self-define as indigenous and be recognized as such from an external point of view.

As a conclusion on the definition debate, I think it is better to take it as a tool than an end. For instance, according to Bengoa (2016: 15), "indigenous" is also a *social construction* as any other identity. This characterisation shows how one can appeal to the "indigenous" category in order to establish a field of action, to differentiate oneself from others, to demand specific rights or to be recognizable and recognized. More importantly, the category "indigenous" is to be understood, in my opinion, as a *political* category. Considering indigenous peoples as political actors makes their claims for territory fundamentally political (in a broad sense), and that they finally refer to a question of justice.

Logically then, this categorisation allows me to assess political theory of territory for the interest of indigenous peoples as political actors. It is also clear that, for the exercise of that work, I consider indigenous claims to territory legitimate. The political characteristic is necessary here to contrast principally with a "cultural" characteristic – that is obviously also existent, but less appropriate for the aim of this work. Finally, to be clear, I need to make explicit two contextual guidelines of my work. I rely on indigenous peoples who live in a nation-state and who don't aim at any statehood, as it represents the majority of the cases (Franke, 2007). Secondly, I rely principally on literature and cases from the Americas and, to a lesser extent, to Australia.

After the discussion on the necessity and desirability of definition, I am not sure of the usefulness of giving my own (as it would be a mix or a reformulation of previous ones). Historical continuity, self-identification, the event of colonization, the importance of territory, the traditions and customs, and the distinctiveness from the non-indigenous people are criterions that I judge reasonable. Obviously, and for the aim of this work, I especially think of indigenous peoples in their relationship to land, which has been strongly disturbed since the colonization (not to say that before it was peaceful and devoid of territorial conflict, on the contrary).

If we go back to the relation between territory and indigenous peoples, I have said that colonization, land-use, access to resources, development, and nature preservation are indeed territorial issues affecting indigenous peoples' lives and this is why I want to look at what political theorists can propose to this particular actor. To assess this, I will focus on current political theories of territory, reviewing different approaches with the case of indigenous peoples in mind.

Section 2 – Current political theories of territory

In political theory, territory has recently been at the heart of various contributions discussing territorial disputes. Many authors signal that this interest is recent though, and that its potential is wide (Kolers, 2009; Elden, 2010; Banai and Moore, 2014; Moore, 2015). For instance, Margaret Moore, who wrote *A Political Theory of Territory* (2015), says at the very beginning of her work that territory is "one of the most undertheorized elements in political theory" (Moore, 2015: 3). Another scholar of the field, Avery Kolers, confirms that territory "remains a major blind spot of contemporary political philosophy, as marginalized now as ever" (Kolers, 2009: 2). Stuart Elden (2010) even says that "political theory lacks a sense of territory; territory lacks a political theory", exhorting us to work on it. What has been especially discussed is the justification of the very existence of territorial rights *per se*, then leading to other issues (for whom, what for, and why).

The idea of territory is also simply missing from some major works in political theory. For instance, there is no "territorial dimension" in Rawls' theory of justice, although it often constitutes a point of reference in contemporary (liberal) political theory (Simmons, 2001; Kolers, 2009: 9; Moore, 2015: 4). However, territory is highly relevant in political theory, notably at the normative level, as Banai and Moore (2014) put it: "As political theorists, we cannot help worrying about the normative questions: is territory good or bad, right or wrong? That is: how does territory and the various conceptions thereof affect rights, freedom, justice, and equality?" The questions they raise here also stress the domino effect of a political conception of territory in many fields. The one that is of our interest here is political theory and, when speaking about territory, scholars usually focus on two major questions.

The first is the "who question", namely asking: "Who has territorial rights?" Theorists can be schematically divided between statist and non-statist, the latter favouring national or cultural groups as legitimate claimant to territorial rights.

The second question has to do with the content of these rights, asking: "What is the content of territorial rights?" Once the holder of territorial rights is defined, the idea is to explore what it really means, in practical terms. There can be many, but three major territorial rights are commonly discerned[13] (Miller, 2011; Stilz, 2011; Moore, 2015: 4). The first – and maybe the most important as the two others could directly derive from it – is the right of jurisdiction[14].

[13] A. John Simmons (2001) speaks about five claims: jurisdiction, control and use of resources, right to tax, control movement across the border and right to "limit or prohibit 'dismemberment' of the state's territories".

[14] It is also the "most important" in the academic discussion, as scholar usually focus their interest (explicitly or implicitly) on the right of jurisdiction (Van der Vossen, 2015; Nine, 2008; Stilz, 2011)

More precisely, it is the right to "make and enforce law throughout the territory in question" (Miller, 2011). The second right is concerned with what the territory contains, that is (natural) resources. It supposes that the holder of territorial rights has the power to control and use such resources. Finally, the third right concerns the movements inside the territory, more specifically of goods and people (ibid.).

The diversity of territorial rights (and the disagreement on their number) renders this second question even more complex, because we could acknowledge that the legitimate claimant to territorial rights is actually only legitimate for *some* of these rights. It means that there can be many legitimate claimants, but at different levels (for instance an autonomous region in a national state).

It is logical then that to have any territorial rights, one first needs to be recognized as a legitimate claimant. In this work, I focus only on the first question as I raise the issue of the legitimacy of specific actors for contemporary political territory: are indigenous peoples legitimate claimants to territorial rights?

To see how political theorists answer, I review the main approaches in political theory of territory. In that sense, this part forms the literature review of the work. However, as none of these theories will prove to be fully appropriate for indigenous peoples, I also make comments to deepen the analysis.

I depart from Locke as he often constitutes a point of reference. However, whereas Locke was elaborating around the concept of property rights, contemporary authors are more concerned with territorial rights. Indeed, property rights concern individuals and their relationship to an object – such as land. Territorial rights, by contrast, are concerned with land or territory as an object of *collective* rights. Therefore, political theorists are interested in demonstrating how a group, a people, a community, a nation or a state is able to claim and obtain such territorial rights. The territory is the physical place in question, and it is where all these rights are supposed to apply.

Another final detail when speaking about a territorial conflict, is that it should not only be understood as a quest for the holding of territorial rights, but also as a conflict for a *particular* territory[15]. Territorial rights can be exercised in any territory, but people claim the exercise and the possession of such rights for a place in particular.

[15] According to Moore (2015: 6), land is on the one hand a universal good (because everyone has an interest in it) and, on the other hand, land is a highly particular good (because everyone has an interested into a *specific* or *particular* territory). In her view, it is because of this particularity that rights to land and territorial conflicts are "especially problematic". See also Stilz (2009) who, from a statist point of view, confirm that "any successful

In this section, I'll thus review the main approaches around "territory" in political theory. In discussing these views, I assess and comment on the following three questions: i) Who, according to this theory, is the legitimate claimant of territorial rights? ii) What is the conception of territory sustaining the argument? iii) Is this account able to take into account indigenous claims?

I discuss about Lockean accounts; statist accounts; cultural-national accounts; and finally, I discuss about Margaret Moore's recent work. I read these approaches with the three questions in mind, in order to see if current political theories of territory can take seriously indigenous claims to territory.

Lockean and neo-Lockean accounts – The legitimate claimant labours the land

When it comes to legitimate access to land or territory, one of the first theorists is John Locke (Simmons, 2001; Van der Vossen, 2015). In John Locke's Second Treatise of Government (1690), his thoughts on property (chapter V) start from the assumption that the earth has been given by God to humankind as a "common". This point of departure is important because the task of Locke is therefore to explain how a *common* property can become a *private* property and not how something *unowned* – as some scholars have defended – becomes one's property (Shrader-Frechette, 1993). He therefore places the right to private property before the existence of any juridical apparatus that would regulate property rights (Shrader-Frechette, 1993; Miller, 2011). This is where one of the weaknesses of Locke's theory lies, because in order to agree with him, one has to accept the assumption that property rights can exist in the "state of nature" and therefore "outside of civil society" (Miller, 2011).

It is true that Locke doesn't refer to territorial rights, although Miller (2011) speaks about an "implicit theory of territorial rights". The holder of territorial rights is the state, and the interest of Locke's theory is to understand how a state becomes the holder of such rights. The standard reading of Locke concludes that state territorial rights are the result of the gathering of property owners and their tacit consent to state authority[16].

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theory of territorial rights will have to explain not just why a state might have a right to some piece of territory somewhere in the world, but more importantly why it has a right to control a *particular* piece of territory".

[16] Counter-analysis exist though. For instance, Van der Vossen (2015) considers this view of Locke as "idiosyncratic" and argues that "the submission of property by subjects is neither necessary nor sufficient for a state's territorial rights", calling for a more complex reading. See also the proposition of Nine (2008) of a collectivist account of Lockean rights, by contrast of an individualistic one. Whereas the latter correspond to the standard reading (property owners join to form a state that then obtains territorial rights), the former consider that "the state, a collective, can directly acquire rights to land without prior reference to property rights or to individual consent" by meeting two Lockean conditions to acquire such land, namely the fact to change the land (labouring it) and that this relationship to the land is "morally valuable" (the fact that this labour gives value to

In Simmons' words (2001), "Lockean rights of jurisdiction… derive from individual rights of use or property", which means that if property owners join to form a political community, they automatically delegate their property to the authority of this commonwealth and thus consent to such authority (Shrader-Frechette, 1993; Miller, 2011; Miller, 2018). There is a sort of analogy between individual property rights and territorial rights of the state, a position that is not at all unanimous.

My interest in Locke is less on the distinction between property rights and territorial rights than on the *access* to such rights. Locke is especially important to analyse contemporary discourses on land, as many actors refers to arguments on labour, efficiency, and valuing.

Let us go back to the very argument of Locke on access to property. He starts from the assumption that people have property of their body, and that it is by "mixing" their labour with something (land, for instance) that this something becomes their property. The common thus becomes private through labour and labour constitutes the "sole ground of original private property" (Simmons, 1992: 242).

Indeed, for Locke, the legitimate claimant to private property is the one who *labours the land*, who has this special relationship with the land through an involving of oneself. In Locke's words:

> "Though the earth, and all inferior creatures, be common to all men, yet every man has a *property* in his own *person*: this no body has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his *labour* with, and joined to it something that is his own, and thereby makes it his *property*. It being by him removed from the common state nature hath placed it in, it hath by this *labour* something annexed to it, that excludes the common right of other men: for this *labour* being the unquestionable property of the labourer, no man but he can have a right to what that is one joined to, at least where there is enough , and as good, left in common for others." (Locke, 1980 [1690]: §27)

Locke also establishes a limit, namely "the Lockean proviso" that ensures the sufficiency and the quality of what is left when someone makes something from the commons her property. More generally, the labour theory of Locke is based on four features (need, efficiency, desert and the theory of value) but scholars tend to base their analysis not on all of them (Shrader-

land). Therefore, the state's possibility to acquire *territorial rights* mirrors the conditions for an individual to acquire *private property*.

Frechette, 1993). For instance, according to Miller (2011), Locke's grounds for property acquisition are need and labour only. Need is the fact that "people have a right to the natural resources that they need to take in order to sustain life and fulfil other basic interest" and labour is the action through which things are transformed and made one's property (Miller, 2011). Indeed, the act of labouring is an act of *valuing* something (Shrader-Frechette, 1993), and therefore giving value to an object would legitimate its possession. This is interesting because it may suppose that before the human's intervention, this special thing was valueless. It also supposes that the only logical use of land is indeed to *be used*, because otherwise it is a loss.
We have no space here to develop all the debate and analyses around Locke, but what is important is that there exists, in his view, a *right way* to make use of land – or territory.

If we go back to the first of the three questions, namely "who is the legitimate claimant to territorial rights?" we find that from the Lockean view it is the state. Locke was indeed focused on property rights as primary rights and therefore concerning individuals. The state is the consequence of the gathering of property owners, but it is the legitimate holder of territorial rights. For Locke, we have seen that the legitimate owner of private property has to complete the task of labour, make a good use of resources and land, and be sensitive to the Lockean proviso. We can then reasonably assume that such *good use of land* should also guide and approve a state's use of its territory. In that sense, there is a moral requisite to fulfil to pretend to have either property rights or territorial rights.
The second question is on the conception of territory, and therefore, what does a Lockean conception of territory looks like? There is no clear definition, but land is determined to be someone's property. Territory is thus looked at through the lens of property, as it emerges from it.
Finally, the third question was to decide whether Locke's account is useful for indigenous territorial claims. It is not, and for many reasons: his focus on private property – and not collective property; the need for land to be productive and efficient (in the production of resources or economically speaking); the presumed lack of value of land when not "laboured"; and contextual features of his thought that clearly disapprove indigenous use of land. Indeed, authors such as James Tully, who mainly focus on Canada, have underlined the link between the liberal thought of Locke and the justification of dispossession, notably on the base of their conception of agriculture and property (May, 2016: 173; Tully, 1995: 71-74). This is also stressed by Ana Stilz (2009), who reminds that Locke "argues that only populations with certain property regimes – private property in land put to agricultural use – actually have title to

sovereignty over the territory, thus invalidating the titles of indigenous peoples with non-sedentary, non-agricultural, or collectivist property regimes".

In the third section, I will show how Lockean accounts persist in current political discourses driven at delegitimizing indigenous territorial claims, use of land or territorial presence.

Statist accounts – The legitimate claimant is a state

As the name makes clear, the statist view sustains that the legitimate holder of territorial rights is the state. The statist view – or the legitimate state theory – is a good transition from Locke as the Lockean account also considers the state as the ultimate holder of territorial rights. However, whereas Locke and neo-Lockean accounts would consider the institution of private property prior to the state (and therefore its territorial rights), statist accounts – following Kant (Stilz, 2009; Stilz, 2011; Miller, 2011) – consider the opposite. The state's jurisdiction is not derived from its people's property rights, because state jurisdiction has to come first (Stilz, 2009). In her reading of Kant in order to justify a statist view, Anna Stilz (2009) rejects Lockean's consent theory to a state that would be the result of people joining under its authority. In my opinion, there is something of a "resignation" in the statist view that appoints the state as the only plausible holder of jurisdictional authority over a territory: "For Kant, the state is not an institution to which we must consent in order to be bound by it: instead, it is a necessary condition of our standing in a rightful relation to others" (Stilz, 2009). The attractiveness of such an approach precisely resides in the idea of the state as arbitrator (or as a 'guardian', to take Stilz's (2011) metaphor) that would establish the same rights and duties for all, without the necessity of the people's consent: "Only states can claim territorial jurisdiction because only they can promulgate and enforce a unitary, public, and objective criterion of rights, especially property rights, that binds everyone in a given area, thereby overcoming the problems of unilateral interpretation and assurance" (Stilz, 2011). Such state jurisdiction allows the establishment of private property and regulates its access, its transmission etc. In that respect, for the statist view, the state has a right to territory – not in the sense of property but in the sense of authority – and not individuals or groups.

Once again, territorial rights emerge with the existence of the state, and there is hence no other legitimate holder before the establishment of a state institution (Moore, 2015: 107). What both Moore (2015: 90) and Miller (2012) note is that this approach can't explain why a particular state has an attachment to a particular territory. This is however on the "desiderata list" of Stilz's (2009) statist view, that a theory of state rights to territory "should be able to show how jurisdictional rights connect the state to a *particular* territory".

Therefore, how does she answer to that?

Still following Kant, she says that the connection between the state and a particular territory can be explained through two features: convention and authorization. By convention she means a kind of *external* approval or recognition: "The boundaries of a particular state's territorial jurisdiction correspond to the boundaries of recognition of its legal system" (Stilz, 2009).

The authorization relies on a kind of *internal* approval or recognition, more precisely from the people living inside this territory. By a democratic process of representation, the state is approved. She says: "It is thus the state's special relation to that territory's population that confers territorial rights upon it: it represents this *particular* people" (Stilz, 2009). In sum, the attachment problem is, according to Stilz, only a question of external and internal approval[17], and is therefore more related to political institutions or legal systems and private persons. Nevertheless, it precisely speaks about the relation between the state and the people (this *particular* people as she writes), but the territory doesn't seem to be in the package. Therefore, it helps to enunciate how a legitimate state can persist on a territory thanks to the relation with its people – and maybe (if even) secondly thanks to the relation between its people and the territory they live in. Given her analysis, I agree with Moore and Miller's concern about the absence of the relation between the state and the territory itself (and not the people living in it).

Taking the same methodology as before, I ask the three questions that are useful for this work. Firstly, who is the legitimate claimant for the legitimate state theory? With no surprise, it is the state. Secondly, what is the conception of territory in this view? Again, it is a bit vague; territory is just the place of application of territorial rights – held by the state. There is no consistent conceptualization of the territory, neither justification nor development of the particularity of territory. People live in a territory, that makes them "particular" and thus the state has a relation with this people in particular. The territory is the place where this relationship is taking place and therefore the territory is seemingly the place where jurisdiction and authority apply.

Finally, is this view useful for indigenous claims? Clearly not, as it cannot establish other kind of entity than state as the legitimate holder of territorial rights.

[17] Interestingly, this resemble to Van der Vossen (2015) analysis of Lockean theory of territorial rights. Indeed, he says that: "(1) States can gain the right to rule over a territory by exercising justified political power within it. When they do, the people who remain in these areas thereby give them their tacit consent. (2) The boundaries of these areas are settled primarily by international treaties. Through entering into such treaties, sovereigns obligate themselves to refrain from exercising political power within each other's territories". This looks like Stilz's internal and external legitimacy of the state's territorial rights but, as her analysis, doesn't explicit the special relation to *this* territory in particular.

Nationalists accounts – The legitimate claimant is a nation or an ethnogeographic community

Nationalist accounts may be considered as the dominant account of territorial jurisdiction in political theory of territory, notably because it completes liberal theory by connecting better a particular land to a particular state (Stilz, 2011). It clearly distinguishes itself from Lockean and statist accounts, is sensitive to cultural difference, symbols and meanings, and seems thus, at first sight, friendly to indigenous claims.

Here, I focus mainly on two authors: David Miller and Avery Kolers. The first is a well-known nationalist theorist and the second developed a political theory of territory around the idea of "ethnogeographic community".

Put briefly, these approaches link culture, land and jurisdictional claims. David Miller has theorized such a view, saying that in order to have territorial rights, a group has to be in a "transformative relationship to land", which counts with material (cultivation but also urbanization for instance) and symbolic transformation (more related to history or traditional practices which have succeeded in particular places within the territory) (Miller, 2012). More generally, the cultural-nationalist view sees the relationship between a group and a land as "symbiotic": "The people who inhabit a certain territory shape the land that they occupy; their culture is mixed with the physical characteristics of the land, and the physical characteristics shape the culture that they develop" (Moore, 2015: 82). This relation to the land then leads to an "attachment" between the group and its physical space, which, ultimately, "becomes a crucial feature of their group identity" (Moore, 2015: 83).

What is fundamentally different from statist accounts is that territory or land is taken seriously and is part of the defining characters of the legitimate claimant to territorial rights. Their conception of the holder of territorial rights is therefore much more friendly to indigenous interests; in that sense, it is worth explaining both Miller and Kolers' theorisation of who should have territorial rights.

David Miller and the nation

For Miller (1995: 22-25), a *Nation* is the legitimate claimant to territorial rights. He considers five features in order to define such a group. I will report them here and compare it directly with elements of the discussion on the definition of indigenous peoples:

1) A nation shares beliefs and its members recognize each other as part of that nation.
   This feature echoes both the "group consciousness" and "acceptance by the group" of the definition of Martínez Cobo (1986, para. 379-381) and the criterion of self-identification of the ILO (2013:2).
2) The identity of the nation is based on historical continuity.
   The historical continuity is also a very important aspect Martínez Cobo's and ILO's definitions, who precisely places the continuity between the pre- and post-colonial societies.
3) This identity is "active", which means that members "do things together, take decision, achieve results, and so forth" (Miller, 1995: 24). It supposes intermediates who work in the name of the nation or represent it; Miller exemplifies it with "statesmen, soldiers, sportsmen" and contrast it with "passive identity" like a Church that would just follow an external "will" and doesn't decide for itself.
   This element could corroborate with the idea that indigenous peoples have the right to follow their own institutions (political, economic and social) and transmit their language, knowledge and so on. What Miller says also seems related to a power of self-determination of deciding for the nation, however we know that many indigenous peoples don't benefit to their full right to self-determination.
4) The nation is related to a particular territory, or "a particular geographical place". This element is important as it is the connector between the nation and the state.
   This element is also recognized in the definition we have seen, referred to as the importance of "ancestral territories" for transmission. If territory is part of the definition of the legitimate claimant, it would therefore logically support the right to territory and territorial rights to indigenous people as it is both "founder" and "receiver" of identity.
5) The members share what Miller calls a "common public culture", that notably serves to distinguish the nation from other peoples.
   As for the "active identity" (3), this could be related to the array of institutions specific to indigenous peoples. It also matches with the definitions we have seen as both Martínez Cobo's and ILO's definition refer to their difference with non-indigenous societies.

The proposition of Miller is quite interesting, furthermore because he doesn't consider the state as the "primary possessors of rights" but more as a structure able to exercise them (Miller, 2012). While his definition of "nation" dates back to 1995, in 2012 he designates indigenous peoples, along with nations as the "most plausible candidates" for territorial rights (ibid.).

However, according to Stilz's (2011) comments on the nationalist account, the state is still the ultimate entity to have a right to territory. She refutes nationalist views notably because they are not able to express how nations acquire territorial jurisdiction in the first place. For instance, she criticizes the focus on the collective – the nation – in the role of transformation of the land (through material and symbolic action): "'The nation' does not mix its labor with these objects in any sense except metaphorically. So why shouldn't the individuals who actually labored on the objects in question gain private property rights in them? What generates a collective right?" (Stilz, 2011). This position is due to Stilz's profound scepticism on the idea of "collective agent, of people acting in terms of their group identity" (Moore, 2015: 84). Another argument of Stilz (2011) against Miller's position is the "group over-inclusive criticism" (Moore, 2015:84). Stilz (2011) takes the example of the Cuban community in Little Havana in Miami to ask if, in virtue of their cultural similarities that could qualify them as a 'nation', it would have territorial rights. Through this example, she wants to show that too many groups could claim territorial rights if we would strictly apply Miller's conception. Although Miller did distinguish immigrant groups from nations, Moore also underlines the vagueness of this distinction (Moore, 2015: 85-86). Plus, according to her, Miller fails to distinguish between, on the one hand "shared cultural features" and, on the other hand, "shared political identities", elements that are therefore mixed in the five features defining a 'nation' (Moore, 2015: 80). Moore gives the example of the United States and Canada: they may share the same culture, but they do have a different 'political identity'. In that case, it is the "political" element (still to be defined) that differentiate two nations, and not (only) a cultural element (like language, or the common public culture).

In my opinion, Miller's account can be useful as long as it would allow us to think more than one nation into one state, i.e. the possibility of a *plurinational*state. It implies to refuse the fact that a nation undeniably ends up being represented by a 'state' and force us to imagine non-state structure able to self-determine and have territorial rights in virtue of "being a nation".

However, from our empirical cases of indigenous peoples – who precisely join the imperfect international broad definition of "indigenous" – we would still need to pass from this category to "nation", which may add long discussion on their correspondence.

Avery Kolers and the ethnogeographic community

Avery Kolers departs from the concept of "ethnogeography"[18], a term that refers to a "culturally specific conception of land" (Kolers, 2009: 3). It is from this concept that he "derives" the kind of group that can claim a territorial right (and be legitimate to receive them): "the ethnogeographic community", which means, a community that may hold a "culturally specific conception of land", to retake the previous definition. Kolers's account is a bit vague and makes reference to many concepts (attachment, plenitude, country), but what I find relevant with his account is his "critical" move. Although he admits to mainly rely on the liberal political thought (Kolers, 2009: 6) and notably nationalists accounts (Kolers, 2009: 82), he sustains that there exist different conceptions of land – meaning ontologically and in its use – and that one cannot just take *one* conception to be universal. In fact, he builds his theory "against" mainstream theories; according to him, there exist a "Anglo-American ethnogeography" that prevails among theorists and which fails to understand the relational value of land which links the people and their habitat: "The Anglo-American ethnogeography, as embodied in Locke, Dworkin and nearly every mainstream Anglophone political theorist in between, treats land as the passive object of human activity and ignores all forms of value that are not easily priced on the market" (Kolers, 2009: 64). He wants to put emphasis on the relationship between a group and its land, the fact that the value of land is only perceived "through economic or instrumental activity" (Kolers, 2009: 59). In order to be an "ethnogeographic community" and thus to have a right to territory, a group must fulfil two conditions (Kolers, 2009: 67):

1) Share the conception or ontology of land
2) Having a relationship with the land, more precisely that they have "densely and pervasively interacting patterns of land use"

These conditions are precisely referring to the more global "cultural specific conception of land" and remains a bit unclear. A first limit that I see for indigenous peoples resides in the "passiveness" of part of his analysis.

First, I go back to the fact that people have to share the ontology (or conception) of land to constitute an ethnogeographic community. I think the explanation he gives describes an overly "passive" ontology, whereas I argue that indigenous communities make their views on land explicit – more "active" in that sense – as it often constitutes the basis of their claims. The argument of Kolers is as follows:

[18] He borrows the expression from Blaut (1979) who "uses the term to mean the study of various cultures' geographic beliefs, a kind of geographical ethnography" (Kolers, 2009: 59, footnote 14).

> "An ontology of land is shared either when people all accept and endorse the same conception of land – often because, once shared, it is treated as natural and not open for discussion or revision – or when people live as if they accepted and endorsed that ontology." (Kolers, 2009: 68)

In parallel, he states:

> "So an ethnogeographic community is not an associative group. But ethnogeographic communities are structured by concrete relationships that do not depend on ascription, either – they depend, rather, on the shared ontology of land and patterns of land use. Ethnogeographic communities exist even if unrecognized by their members or others." (Kolers, 2009: 91)

These two quotes give me the sensation that Kolers actually "reveals" to us that there are groups in society that share a certain vision of land and its use, that they share it, but are maybe not conscious or aware of it. However, thanks to their implicit consent to such ontology or use (although it might be a "dissident" one, i.e. not the Anglo-American one), it permits them to live their life as their want to. On this basis, I don't think that this vision would fit indigenous people, who, in my opinion, represent an extreme awareness on who they are in contrast with non-indigenous society.

When Kolers says that people treat "as natural" their conception of land, he seems to be speaking about cases where people are not threatened by competing ontologies. In that case, they don't have to be aware of it because it suits their way of life and their projects; they don't have to turn it into a strong claim or put emphasis on it as a distinctive character. The situation of indigenous peoples is different because they constitute a minority, both in number (not in all cases though) and as a "vulnerable ontology" bearer. Their ontology of land – and most of the time the use they intend to make – differ from the one of the states they live in; in that sense, they have to make explicit what their vision is, in order to make clear their position for further claims.

In sum, Miller and Kolers' accounts offer some good points to take into account indigenous claims (better said, that indigenous people could enter into their category, either of "nation" or "ethnogeographic community"). The best option seems to be the concept of Nation from Miller (1995) as it is more precise and as the elements corroborates with definitional elements of indigenous peoples.

For the second question, do Miller and Kolers have a specific conception of territory? Miller (2012) does not refer to such a definition as he focusses more on territorial rights, their distinction and legitimate holder. Regarding Kolers, territory is to be understood as a "good", that is both particular and universal. Therefore, a good theory must on the one hand be sensitive to claims referring to particular territories, but also limit such claims in their "spatial extension and in the types of behaviour they permit" in the name of its universality (Kolers, 2009: 10). More precisely, he defines territory as:

> "A geographical place controlled with a territorial demarcation strategy, where the boundaries are semi-permeable to humans and more or less stable, and the in/out of place rules have an organizing principle […] a further condition is that the organizing principle be juridical." (Kolers, 2009: 72)

Territory is therefore the place where jurisdiction applies, as we have also seen before. The advantage of Miller and Kolers' approaches is that they put emphasis on the relationship between people and territory, which gives more value to other subjective interpretations of territory. In other words, it means that they understand that some people, more than others, would infuse their territory with special meanings and that this gives a value which is not computable in economic terms.

Finally, is this type of analysis supporting indigenous peoples as legitimate claimants? I would say that broadly they are. I think that these approaches have two advantages.
The first is that they actually question what territory represents for peoples claiming a right to it. In that sense, there is a shift in the theoretical interest: the conception of territory itself is important to understand the context of emergence of claims and why they success or fail. Secondly, these approaches have a strong critical contribution as they designate the opponents: these mainstream theorists who all start from a supposedly neutral or universal conception of territory (and conceive state as the primary receiver of territorial rights).

In sum, David Miller and Avery Kolers help us in shifting the focus from the state to other legitimate groups and in that sense their contribution is a first step for theorising indigenous peoples as legitimate claimants to territorial rights, although in the end it is a state structure that exercises territorial rights. Indeed, if the state "emerges" from a particular group, therefore its territorial management and ontological conception of territory should reflect what the group believes. Nevertheless, the concept of the state as a homogeneous social unit has its limits due

to global mobility. I think we should detach ourselves from this unit of analysis. Indigenous peoples are an example of transnational social groups that can share a social position, history and demands beyond the borders of the state entity. In my opinion, the state is outdated for our analysis; it may be a framework, a protection or a limitation, but it should not be the only model or the institutional goal for any group that would like to obtain land rights.

Margaret Moore – The legitimate claimant is "a people"

Unsatisfied with precedent theories, Margaret Moore offers a non-statist theory. In addition, she also distinguishes herself from the nationalist view. Thus, she made place for her own vision that is profoundly political (in contrast, but not in opposition, with a cultural or institutional-statist theory).

Moore shows disagreement with placing cultural groups or state (even as representative of people) as fundamental right-holders. She offers a more political version of this account and more precisely that:

> "The territorial right-holders are groups or collective agents that are neither necessarily cultural nations, nor necessarily states, but are defined by their common political project and that seek to be institutionally organized either in a state or in ways less formal than states. They are collective agents with a shared political identity" (Moore, 2015: 79).

A group of people sharing something political instead of a cultural/national group or a state is the good candidate for Moore. Thus, this is the base of her reflection and the answer to our first question: for Moore, the legitimate claimant for territorial right is a group that holds a common political project.

Secondly, what is the conception of territory in Moore's work? She embraces the jurisdictional authority view that conceives that territory is "the geographical domain in which (ideally) the people express their will though institutions" (Moore, 2015: 27). Interestingly, she says that this view is not relating to a single interpretation, as she distinguishes three different types of argumentations and therefore three different conceptions of legitimate claimant. These three conceptions summarize the approaches of political theory of territory: the cultural-nationalist view that puts emphasis on the role of the state to represent and ensure the continuity of the nation's values; the statist view, that considers territory as a necessity for the state to be effective in its functions; and finally her view, the self-determination view, that considers the collective self-determination as the base for territorial rights (ibid.).

Thus, we are facing the same view of territory as the place where jurisdiction applies, but with an interesting distinction on its interpretation.

Finally, is Moore's conception useful for indigenous claims? It seems that until now her definition is open enough to include such groups. There are indeed elements favourable to indigenous groups, but also conceptual limits. To make them explicit, it is interesting to see how she defines the "people":

> "I conceive of a 'people' as a collective agent that meets the following three conditions. First, they must share a conception of themselves as a group – they subjectively identify with co-members, in terms of either being engaged, or desiring to be engaged, *in a common political project* and they are mobilized in actions orientated towards that goal. Second, they must have the capacity to establish and maintain political institutions, through which they can exercise self-determination. Third, the people have a history of political cooperation together; we can identify objective and historically rooted bonds of solidarity, forged by their relationships directed at political goals or within political practices." (Moore, 2015: 50)

This definition raises a few comments when applied to indigenous groups. First of all, her definition is based on three political means: "political aspirations, political capacity, political history" (Moore, 2015: 53). This postulates a "politicisation" of the group that implies an array of political discourses and resources. The mandatory "political project" as part of the definition can be problematic; indigenous peoples have to form a social movement/political party or any politicized corporation in order to enter into dialogue with the state. It means that the claims must be made on the terms of the state, which are political. For instance, a community might ask for self-determination rights within a nation-state; however, their claims must refer to what is "political" in the eyes of the state. They have to translate their views on a "statist-language" in order to be heard.

The second condition, namely the capacity condition, might also be an obstacle. For Moore, an essential requirement is the territorial concentration, as it "is a necessary precondition for the exercise of territorial forms of collective self-determination" (Moore, 2015: 51). Although I agree with the logic of this condition, I think that it sweeps away a crucial element that some indigenous communities are facing. Some groups claim for parcels of land that are less and less populated. A first reason might be a strong migration to cities (looking for better life conditions; access to university or labour market, etc.), but it can also be the result of forced migration (dating from centuries ago but also currently happening). Plus, what do we do with people

claiming for ancestral lands from which they have been dispossessed? They cannot contend to its current occupation. And lastly, it simply ignores the case of nomad or semi-nomad groups. This "capacity requirement" is indeed important for the application of the right (where the self-determination principle applies for instance), but it fails to take into account such issues.

Finally, I think her last condition, the historical dimension, is highly relevant for indigenous peoples, as we have seen for instance with the definitional aspects. References to history in the broad sense (colonization, ethnic cleansing, restriction to reserves, stolen land, perpetual discrimination…) are part of the indigenous discourses to claim a right to a specific land and to the right to live in a sustainable environment.

The concept of "people", built on these three elements, is thus partly convincing. I think that it is more useful when linked to the question of *what* rights people are claiming. Moore further develops the idea of "collective self-determination" that justifies such a political conception of the legitimate rights-holder. For that reason, I particularly agree with the political history element, but I would take more flexibly on the common political project and the capacity requirement.

Summary of the theories

	Who is the legitimate claimant to territorial rights?	**What is the conception of territory?**	**Does it take into account indigenous claims?**
Lockean and neo-Lockean accounts	The state, that is subsequent to private property rights.	Territory is firstly property (at the individual level) and secondly the place where state's jurisdiction applies.	No, it goes against (use of land and state as the final rights-holder).
Statist accounts	The state, that is previous to private property rights.	Territory is the place where the state applies its jurisdictional authority.	No, it goes against (the state is the legitimate rights-holder).
Nationalist and ethnogeographic community accounts	A nation or an ethnogeographic community, which is then represented by a state.	Territory is the place where the nation/the ethnogeographic community applies its jurisdictional authority through a state's structure.	Yes, but some criteria are not adapted to indigenous peoples (passive ontology, too wide conceptions)
Self-Determination account (Moore)	A people, that then forms a state or a less formal structure.	Territory is the place where jurisdictional authority applies through a collective self-determination of the people.	Yes, but some criteria are not adapted to indigenous peoples (common political project and capacity requirement)

Partial conclusion: What's the problem?

In the first section, I have shown why indigenous peoples constitute a good challenge to contemporary writings on territory in political theory. I also said that I believe that their claims are legitimate, and that political theory of territory should be able to take them into account and give it more space. Some elements are relevant for indigenous peoples, but none of these theories are fully appropriate to defend an indigenous right to territory. Therefore, the problem is as follows: current political theories of territory are not able to take seriously and answer to indigenous claims to territory. It is relevant to tackle this issue because cases of indigenous peoples claiming territories (among other demands) inside a nation-state are happening in many places in the world, and potentially concern millions of people. On the pure theoretical level, indigenous claims and thoughts on territory are extremely challenging for our conception of territorial conflict and purpose and meanings of territory. I recognize that we are currently facing a political problem: indigenous rights are established, recognized and defended, but there are still burdens to the implementation of their right to self-determination and their territorial autonomy. We could propose practical tools to improve the implementation and limit the state's threat to indigenous peoples. However, in this work, I try to undertake the necessary deeper work on the epistemological issue of territory. I think it is essential to re-think a political theory of territory sensitive to current claims from indigenous peoples, as it may, in the end, also benefit other groups who aim at territorial sovereignty.

In order to propose the first move towards this enterprise, I suggest that we should start with the reformulation of the fundamental concept that structure its development: territory.

The conception of territory used by current political theorists of territory is not always straightforward, but one can find some clues in the definition of the legitimate claimant. It seems that in the great majority, territory is the place where jurisdiction applies, and this I believe is partly true. Nevertheless, it cannot only be that. Territory is conflicting: not only does it lead to wars for its "possession", but it also contains a conflict of meaning and purpose. Indigenous peoples are recognized to have a particular relation to their territory, and the way they use it is distinct from what the state would sometimes like to do (deforesting, extracting resources, intensive agriculture, urbanization, etc.). If we don't question *what territory is*, it implies that the purpose of territory is either unimportant (the legitimate right-holder decides) or taken for granted (the base to build a state or another jurisdictional structure). If territory is ontologically determined by the type of function it has to fulfil, this will tend to favour some claims over others.

In the next section, I propose to “unravel territory”, which means that I want to have a look at some common ideas about territory that shaped the way we think about it. My point is to make a proposition or a re-reading of “territory”. I suggest that the concept of territory has been politically and theoretically forged through colonization, taken as an encompassing and long-lasting process.

Section 3 – The coloniality of territory

Why is territory unquestioned? When we look at a map, we see a territorialized world, where every portion of land is mapped and divided between many countries. As every piece of earth has a name on it, one traditionally associates this particular territory with this specific state, making these two elements inextricably linked, if not merged. Thus, territory is pushed into the background and the focus lies on its "possessor": "The idea of states having control over, indeed rights to, territory is a standard background assumption, in political science and international relations, and in law" (Moore, 2015: 3). If the state has power on territory, we might instinctively address issues related to the concept of state, rather than to the concept of territory. Another reason why territory remains unquestioned is because it is seen as the place where thing *apply* or *happen* (law, authority, land managing, etc.) and thus, we tend to analyse the problem of what is *applied* (why the law is unfair, the authority illegitimate, the land managing unjust, etc.). Put differently, Elden (2010) notes that there is a lack of historical and conceptual study on the notion of territory, partly because: "It is often assumed to be self-evident in meaning, allowing the study of its particular manifestations – territorial disputes, the territory of specific countries, etc – without theoretical reflection on 'territory' itself".

In fact, territory is also the place where claims *emerge,* and territory can be precisely the *centre* of the claims. It leads then to analyse the territory as a dynamic place: different claims emerge from the same territory; the same territory can hold different meanings; these claims or meanings may enter into conflict between different entities living in the same territory (groups, nations, regions, states, to name a few).

Great examples are the struggles of indigenous peoples for territory or land. Their claims directly contest the territorial management held by the state or driven by the industries, and also the common perspective of territory, challenging statist-views of territory, economic only-purpose enterprise and supposedly national interests.

We have seen in the second section that scholars mainly focus on the "who" and the "what" questions. I argue that political theory of territory cannot fully answer positively to indigenous claims and that we might need to modify something. I also argue that there is a lack of reflection on the concept of territory itself. These two problems might therefore be linked: by reading critically the notion of territory and offering alternatives, another kind of political theory of territory could follow.

In this section, which contains my arguments for a re-conceptualization of 'territory', I will first discuss how territory is defined. I will then turn to my critical proposition: the modern political concept of territory has been shaped by European colonization in a broad sense. I will explain with three examples how territory was politically and ideologically designed in order to answer to specific demands. This analysis is influenced by the concept of 'coloniality' that I will present and therefore apply to the subject of territory.

What is territory?

We have seen in the first section that political theorists do have a conceptualisation of territory, but it is not always transparent and explicit. It is usually taken as a place where jurisdiction applies, but there is little discussion on it, except perhaps the recognition and understanding that some groups have a relationship to land that is not motivated by economic-only interests.

If we try to define territory, we are facing the same problem as with defining "indigenous peoples". However, defining territory and eventually "indigenous territories" is of high relevance in its role with indigenous rights (Gray, 2009: 17, 26).

A very simple way of defining the territory, by its etymology, is in itself subject to debate: is it more related to the Latin word *terra*, and thus strongly related to its translation 'earth'; or is it more related to the Latin word *terror* or *terrere*, which means 'to frighten' and thus holds a stronger political sense? (Paasi, 2003; Moore, 2015: 15) Although dictionaries and etymology are good points of departure, it cannot catch the range of meanings projected in the word "territory", notably because the ideas that surround this notion are contextual (Paasi, 2003). Indeed, territory must be understood in its context which implies to ask *when*, *where* and also *to what purpose*. Elden (2010) also support this view when he says: "Territory is a *historical* question; produced, mutable and fluid. It is *geographical* […] it is a *political* question, but in a broad sense: economic, strategic, legal and technical. Territory must be approached politically in its historical, geographical and conceptual specificity".

Territory is consequently so broad that it may be useful to understand how it interacts with other notions like land, property, terrain, landscape, etc. For instance, Stuart Elden (2010) differentiates between land, terrain, and territory. He defines land as a "relation of property, a finite resource that is distributed, allocated and owned, a political-economic question". Interestingly, land appears as a valuable exchangeable good, and at the heart of power struggles. To complete this view, the analysis of Gray (2009: 23,24) is also insightful as he relates the term "land" and "land rights" to a particular time in history. In fact, he explains that the Marxist

approach contributed to the use of the word "land", as covering both the "access to resources and territorial control", giving an economic interpretation to territory. These interpretations inevitably place land or territory at the heart of power struggles, and thus make them undeniably political elements. It contrasts with the definition given by Margaret Moore. Indeed, she also makes a distinction between three terms: land, territory and property[19]. In her view, land "refers to the portion of the earth's surface that is not covered by water" (Moore, 2015: 14). Land thus appears as something non-political (or pre-political) and much more of a geographical classification. It is only when she speaks about 'territory' and 'property' that political issues appear. As such, territory can be seen as the political version or the translation of land into the political domain. According to Moore, territory is deeply political but not autonomously: it is political because it is somewhere and somehow related to institutional or legal tools. Plus, territory is acknowledged as a political concept, but there is nothing to tell us what it contains, where it comes from or who defined it.

Therefore, territory is maybe best described in relation to other terms and when it is contextualized. What is also relevant for our purpose is that "territory" and "territorial rights" may emerge as an issue with the colonization and the constitution of nation-states. From an anthropological point of view, Gray (2009: 18,19) explains that the theoretical position adopted by "anthropologists, ethologists and lawyers" in the 19th century, divided societies in two groups. On the one hand, there were societies "based on kinship, on interpersonal relations" and, on the other hand, societies "based on territory and property". The former type was considered "as pertaining to a lower stage in the evolutionary ladder" (Gray, 2009: 19). This is also to be understood in the perspective of colonization as "this perspective fitted neatly into the colonial framework where states with territories were able to colonize and incorporate other peoples" (ibid.). This is the perfect transition as my core thesis in this work is that colonial events as well as colonial heritage in the broad sense have penetrated "territory" in order to be under the control of state and neglect other claimants of territorial rights. Hence, I propose to "read" territory through the concept of *coloniality* in order to show why it is necessary to have a deeper understanding of territorial historicity in the case of indigenous peoples, if we are willing to understand and satisfy their claims and rights to territorial rights.

[19] I won't deepen here the distinction between territory and property, but it is interesting to note that Moore (2015) defines property as "a complex collection of rights" (Moore, 2015: 15) that defines how one has access to and control over some objects and can exclude others. This way, contrarily to Lockean or neo-Lockean account on land, she considers that the territory precedes the property, as it is necessary to have a jurisdictional order to establish the rules concerning acquisition of property.

Territory seen through coloniality: A proposition

In this part, I wish to discuss three considerations on territory that definitively show the way we think about it. More precisely, through the history of conquest followed by colonization, I argue that the very meaning of what territory is and what purpose it sustains has been established. Words such as 'discovery', 'dispossession', 'efficiency', 'terra nullius' or 'government' form a particular semantic attached to territory, that puts it in a definitely passive role. If one wants to establish a political theory of territory, the concept itself has to be discussed. If we depart from a concept that is ontologically determined by the use it was made of, it will be difficult to find any exit from the different theories that have already been raised. In fact, I suggest we explore a bit longer the idea, concept and meaning of territory in order to be able to see that ontologically there are other possibilities. Indeed, to me it is too reducing to establish that territory is a "parcel of land under the jurisdiction of a state". It is too reducing in two ways. First, it doesn't question *how* territory *became* such a political issue and even more an institutional/jurisdictional object/subject. Second, it tends to limit our creativity to recreate the concept of territory in order to suggest other meanings and purposes of territory. In short, this section aims at unravelling territory through historical events and debates.

A word on coloniality

The concept of coloniality I use in this work is borrowed from Latin-American critical thinking. What does it mean? First, it is not colonialism, but it comes from it, it "survives it", to take Maldonado-Torres' words (2007). Whereas colonialism is a system where the sovereignty of a nation rests under the control of another nation (or an empire), coloniality "refers to long-standing patterns of power that emerged as a result of colonialism, but that define culture, labor, intersubjective relations, and knowledge production well beyond the strict limits of colonial administration" (Maldonado-Torres, 2007). Coloniality is therefore a long-term process as it took time to constitute and continues even after formal decolonization or independence. One of the most famous authors who used and expanded the notion of coloniality (*colonialidad*) is the Peruvian sociologist Aníbal Quijano[20]. According to Quijano, coloniality is made of two axes

[20] His article *Colonialidad y Modernidad/Racionalidad* (1992) is where he introduces for the first time the concept of coloniality (Bourguignon & Colin, 2014: 14). However, this concept doesn't come out of nowhere. The concept of coloniality as defined by Quijano follows the contributions of two authors. First, of the Mexican sociologist Pablo González Casanova who spoke about an "internal colonialism" to signify how colonialism persists in another form; second, the Bolivian sociologist Silvia Rivera Cusicanqui, who, from the notion of internal colonialism, would push for the "production of decolonised knowledge" along with indigenous intellectuals (Monasterios, 2008: 508). Unfortunately, Quijano doesn't seem to acknowledge their influence and,

that emerge in America, which he considers "the first space/time of a new model of power of global vocation, and both in this way and by it became the first identity of modernity" (Quijano, 2000). What are thus the two axes he proposes?

1. First there is a racial classification that appears between the conquerors and the conquered[21]. It supposes natural or biological differences to prove the inferiority of the conquered in order to allow the conquistadors to legitimate a relation of domination on the Other.
2. The second axis is about a "new structure of control of labor and its resources and products", namely capitalism.

These two axes are therefore going hand in hand, giving birth to a "systematic racial division of labor" (Quijano, 2000). They constitute the base of a new model of power, a global one, and "this model is at the heart of the modern experience" (Maldonado-Torres, 2007). The Modernity is indeed an important concept for the understanding and the study of coloniality. For this reason, a project called "Modernity/Coloniality" [22] emerged and represents what we call the decolonial approach. The working group Modernity/Coloniality criticizes the Eurocentric narrative of modernity and shows how the colonial dimension is linked to European modernity (Bourguignon & Colin, 2014: 1). This parallel between Modernity/Coloniality underlines that Western modernity could not exist without the coloniality of the non-Western: in the words of Walter Mignolo, coloniality is either the "darker side of the Renaissance" (1992) or the "darker side of Western modernity" (2011). Therefore, coloniality doesn't precede or oppose modernity, but they are two sides of the same coin.

The formation of the concept of coloniality is concomitant with the "discovery and conquest of the Americas" (Maldonado-Torres, 2007), event on which I will come back to later. Indeed, the group Modernity/Coloniality establishes the Spanish colonization as a crucial point in the development of this unequal relation (Bourguignon & Colin, 2014:1; Quijano, 1992). It argues

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as a consequence, these two scholars are less mentioned when speaking about coloniality. According to Monasterios (2008), this also reflect the academic "circuit of knowledge" that limit the reception of some contributions: "When their creators produce theory in situ, from the perspective of the subalterns, and independent of metropolitan connections, their contributions to current debates remain relatively unknown".

[21] According to Quijano (2000), the idea of race appears with the colonization of America.

[22] Modernity/Coloniality is a project, or a network, that started at the very end of the 20th century. It gathers together scholars working on critical thinking in Latin America. It then became Modernity/Coloniality/Decoloniality. It includes thinkers from different fields like sociology (Aníbal Quijano, Ramón Grosfoguel, Edgardo Lander), semiology (Walter Mignolo, Zulma Palermo), pedagogy (Catherine Walsh), philosophy (Enrique Dussel, Santiago Castro-Gómez, María Lugones, Nelson Maldonado-Torres) or anthropology (Arturo Escobar, Fernando Coronil) among others.

that since the symbolic date of 1492, a relation of power is established between Europeans and non-Europeans[23].

The work of Quijano on coloniality is also a reference for other critical analysis and reinterpretations. María Lugones (2007) was one of the first to appoint the gender bias of Quijano, as he was favouring 'race' as category of analysis over 'gender'[24]. Lugones (2007) thus calls not only for a gender perspective of the coloniality, but for an intersectional one: she analyses conjointly the concept of intersectionality with the work of Quijano in order to propose "the modern/colonial gender system".

Other authors then used the concept of coloniality to qualify other aspects of life: coloniality of being (*colonialidad del ser*) (Maldonado-Torres, 2007) or the coloniality of knowing (*colonialidad del saber*) (Edgardo Lander, 2000).

This concept seems therefore appropriate for my interest as well: territory. How can we think territory through coloniality?

The coloniality of territory

By stating that there is a coloniality of territory, I suggest analysing territory from a critical/decolonial perspective, inspired by previous work on the concept.

Firstly, I follow the proposition previously stated that coloniality started in 1492. It means that I understand the events of "discovery" and colonization as the beginning of the establishment of norms and values applied to territory. This is thus my historical and contextual point of reference to question territory from and through coloniality.

Secondly, I think that coloniality of territory is formed by distinct events, practices, principles or values. We have seen that to define coloniality, Quijano used two axes (racial classification and control of labour and production). In the same vein, I will also propose some contents of the "coloniality of territory". More precisely, I focus on three processes that constitute the coloniality of territory:

[23] This is one of the differences with post-colonial studies. The decolonial perspective in Latin America starts with the colonization of the Americas and Caribbean, whereas postcolonial perspective would start later, in the 20th century, through the voice of authors from the previous French and English colonies. The consequence is that what is enunciated from a context and a place cannot always perceive the mechanisms of another concept: we thus mainly discern a geographical and temporal difference (Bourguignon & Colin, 2014: 3; Bhambra, 2014). For a longer discussion on the differences and similarities between the postcolonial and the decolonial approaches see Bhambra (2014) and also Mbembe, Mongin, Lempereur & Schlegel (2006).

[24] See for instance Quijano (2000): "In this way, race became the fundamental criterion for the distribution of the world population into ranks, places, and roles in the new society's structure of power".

1) First, the Idea and Doctrine of Discovery. It refers to both the idea to discover new territories (the imaginary around exotic, unknown places) and to the legalization of such idea (through the Discovery Doctrine).
2) Second, the Terra Nullius Principle. It also refers both to the idea that a land is empty (no one's land) and thus available for colonization and to its controversial use in legal acts.
3) Third, the Good-Practice Principles. It gathers two normative principles applied to territory: who is the *good* sovereign and what is the *good* use of land.

These three elements offer historical, legal and moral content on how the concept of territory has been shaped by European power in foreign territories and how this conception is still performing. The three elements are not independent; on the contrary they tend to overlap on each other. The expression of the coloniality of territory is the most tangible, in my opinion, in the indigenous claims to territory in front of a nation-state. Examples will be given, mostly in the part on the Good-Use Principle.

The discovery: Here is the New World

The idea of the discovery of America begins with the arrival of Christopher Columbus on October 12, 1492, on Guanahaní Island, renamed San Salvador by the admiral.

This event was the starting point of the Spanish conquest in the Americas. Although the word "discovery" was much criticized, it is still used in various contexts. In newspapers, history classes, art, or literature, it is not uncommon to come across the idea that Columbus discovered America and marked a historical milestone in human history (Restall, 2003: 2).

The political power of the historical production about Columbus and his journey seems evident. Columbus appears as the sole representative of the act and this rhetoric coincides with the general account of the European discovery and conquest of the Americas as the achievement of "a few great men" (Restall, 2003: chapter 1), obscuring the other actors of this venture. In the same way, his journey may appear exceptional, but in reality, it is an action among others within the "long process of expansion of the European border[25]" (Cruz Medina, 2017). In other words, some intellectual simplifications are crystallized in the name of Columbus and in the concept of the Discovery that help to the permanence of this narration.

[25] My translation

On the notion of "discovery", the work of Edmundo O'Gorman, *La Invención de América* (1958), allows us to demystify this myth. The author analyses the "discovery" as a production or an interpretation of what actually happened and thus does not speak of "the discovery of America", but of "the *idea*[26] that America had been discovered[27]" (O'Gorman, 2006 [1958]: 14). If we follow the author and understand the discovery of Columbus as an absurd thesis, and not as a historical fact, it allows us to ask: (1) To whom does the narrative of the discovery serve? (2) Through what elements is the idea of discovery elaborated and maintained?
Through these two questions, I will propose an interpretation on how an epistemological power was established globally and used to legitimize the settlement in new territories and control of people.

To whom does the narrative of the discovery serve?
The event of discovery involves two actors: the "discoverer" and the "discovered". The roles are not fixed, but interchangeable, depending on the point of view. However, in the rhetoric of discovery, Columbus usually has the representation of the "active" role of the relationship, whereas the American territory and its inhabitants have the role of the passive.
The problem with the binary discoverer-discovered of the act of discovery is that it does not account for an encounter, nor for the negotiations that marked the conquest and the colony. However, the "encounter of two worlds" is much more complex – and understandable – in its dynamic form, but it implies recognizing an active role for both actors in the encounter, that is, the discoverer and the discovered. Likewise, although the "discovery" marks the initial act of this encounter, it must be analysed as a long-term process, notably because of its consequences and its representation that changes with the time.
This is what Juan Pablo Cruz Medina (2017) maintains with the argument that discovery and conquest are processes that gave rise to the structure of "colonial" thought.
He conceives "the colonial" as the result of two concepts: experience and transformation. With experience, Cruz Medina (2017) refers to the transatlantic journey, but not as a single act. In fact, he places the "journey" in a more global context, that is:

> "As part of a broad context that sinks its roots in the European late medieval period and reached its splendour in the fifteenth and sixteenth centuries becoming the transforming matrix of the world. Reflection on this context makes it possible to highlight something

[26] My emphasis
[27] My translation

of capital importance for understanding the process of discovery and conquest: its medieval character.[28]" (Cruz Medina, 2017)

With the concept of transformation, the author refers to the encounters and exchanges between humans, ideas, and products that modified both Europe and America. In short, he privileges what he calls a perspective of "connected histories", in contrast to an exclusive Hispanic or indigenous historiography. From this point of view, "discovery" could be analysed as a mirror process: the discoverer is also the one discovered because he also appears "for the first time" in the eyes of "its" supposedly discovered.

In other words, a dynamic analysis, in contrast to a passive analysis (from a fixed gaze, whether Hispanic or indigenous) cancels the analysis from the discovery, favouring interconnectedness. It is therefore clear that the narrative of the discovery serves the one who tells it.

Through what elements is the idea of discovery elaborated and maintained?

The idea of discovery has to be understood in its context. The conquering desire cannot be understood only through "scientific" ambitions, but also through an imaginary about the "new territories". The unknown, mysteries, and myths (such as those of the Eldorado, the Earthly Paradise, the Fountain of Youth or the Amazons, among others) are found first in the "East" (Magasich & De Beer, 1994: 9). In the late Middle Ages, it is "India" that is associated with magical, strange, or marvellous places (Cruz Medina, 2017). It is only after the arrival of the Spaniards to the American continent that myths and hopes are transferred to this territory. Indeed, the journey, which involves some technical innovations, is nevertheless "linked to a purely low medieval imaginary, which will be decisive in the original vision that Europeans will build of America[29]" (ibid.).

In this sense, the imaginary conditioning about new territories is also transferred to their inhabitants. The will to establish a certain "scientific" knowledge (for example, mapping the world) is mixed with a cultural environment impregnated by religion:

"The discoverers of the New World lived at a time in history in which two visions of the universe were confronted: the prevailing idea was that the world and the then unexplored vast stretches of land and sea could be interpreted according to the affirmations of the Holy Scriptures; but at the same time, the first signs of an empirical and rational spirit typical of the Renaissance were manifested.[30]" (Magasich & de Beer, 1994: 21)

[28] My translation
[29] My translation
[30] My translation

The projection of myths could really only be directed to unknown places of the conqueror. The search for magical places coming from sacred books was an argument to "widen" the frontiers, that is to say to go always further, animated by a mystical ideal.

These myths fulfilled several functions: the projection of what could exist in distant territories, a constant motivation to find these magical places, but also the illusion that, although such a territory had not yet been explored, one knew what had to be found.

In other words, there was no place for the unknown, which may seem paradoxical: one wants to "discover" a place, but she already has a mystical representation of what she wants to find, of what *should be found*. This expectation vanishing the unknown from the discovery can be analysed as a strategic means of constructing one's own reality in an unimaginable place. It is the same thing that happens in artistic or literary representations: to describe something unknown, one resorts to a model that one knows.

As an example, we could cite Rubiés (2008) in his analysis of the representation of non-European peoples between 1500 and 1650. According to him, art and stories – written or oral – are ways to approach a subject first and then "domesticate" it. An engraving or a painting – like a text or a story – are the result of perceptions: it is an interpretation based on what one already knows, already dominates. One cannot analyse or represent a subject with unknown concepts: in this sense one always tends to "subvert" what she observes.

We could almost speak of the "Europanisation" of experience, that is to say that the European filter allows us to tell a story that happens in an unknown world, but with known terms. For example, in the first natural history of America, Gonzalo Fernández de Oviedo (quoted by Pagden, 1988: 31) refers to pumas as lions: that is, when faced with something he does not know, he puts a name that makes sense in his own environment. This serves to give meaning to his own experience, but also to coincide with the lexical and representative space of his readers. In my opinion, it can also be interpreted as a response to the fear of not knowing. In order not to lose its epistemological power, one appropriates the experience and relates it with a rhetoric of hers: "This mixture of the fantastic and the familiar involved a belief that the new could always be satisfactorily described by some simple and direct analogy with the old.[31]" (Pagden, 1988: 31).

The interesting thing with the first narrations is that, as explained by Cruz Medina (2017), they are placed in "an indisputably medieval matrix", in which the imaginary and the real are confused, giving rise to a "mystification" of what should exist in distant places:

[31] My translation

> "The chronicle of the medieval journey, which to the unsuspecting eyes of today's reader may seem like a simple fictional novel, was taken in its time as a real narrative that went beyond the field of literature to become a historical narrative, a true source of authority. Thanks to this, the imaginary became reality for a society that, held back by its maritime borders, had no opportunity to verify what the printed letter or the spoken word described.[32]" (ibid.)

This leads me to another observation: the cultural or contextual parameters of the discovery and beginnings of the conquest are politically charged. They are not just magical, fabulous stories, precisely because they were taken seriously; they guided the action and represented it at the same time:

> "It was inevitable that there would be mutual interactions between historical facts and creative literature, between the real and the imaginary, generating a certain confusion in the minds of all. In an unconscious way, Vasco de Gama, Columbus and other navigators and explorers took to the regions that they had discovered the beliefs of the Middle Ages, by which they were dominated; therefore these Argonauts returned with news of mysterious islands inhabited by Amazons and positive indications of the proximity of the earthly paradise.[33]" (Leonard, 2006 [1949]: 88-89)

The chronicles, the cavalry books (Leonard, 2006 [1949]) are examples of this "circle" of ideas that first acts in the thought of the conquerors and that rebounds in the collective imaginary.

In spite of the differences of epochs and stories, a parallel can be made with the analysis proposed by Edwards W. Said, in *Orientalism* (1978). Indeed, the political role of such an artistic production cannot be denied, whether in the times of discovery and conquest or under British imperialism. The text (a letter, a book, a chronicle, etc.) is the juncture of two forces: of the person who writes it and of the person who reads it. The text is therefore polysemous, despite the author's possible initial objective, and it is precisely what allows it to emerge as a political object/subject. All the travel accounts, the chronicles of the conquerors, but also of the different religious orders that arrived in America expose a reality at the same time that they contribute to its construction.

Despite the risk of anachronism, it seems to me that an analysis such as Said does with the East allows us to show the mechanism between political power and the literary sphere.

[32] My translation
[33] My translation

Ashcroft and Ahluwalia's (2001) book on Edward Said proposes a contextualization of his work in literary criticism. This vision of "textual power" opens up possibilities for an analysis of discovery and conquest based on the writings of the time:

> "The relationship between text and reader is something like the relationship of the coloniser and colonised. This power relationship may be unequal but it is a relationship, and one which makes untenable the principle that texts are separate from the worlds, or that the text is opposed to speech. Too many exceptions, too many historical, ideological and formal circumstances, implicate the text in actuality, even if a text is considered to be a silent printed object with its own unheard melodies. The text is produced by the world, a concert of the material forces of power in that world, and the situatedness of which it specifically speaks." (Ashcroft and Ahluwalia, 2001: 24-25)

Said poses the problem of what is considered political or not, that is, political knowledge as opposed to supposedly pure knowledge (Said, 2003 [1978]: 9). His work focuses on the so-called "East" and its "orientalization" by the West among other modes through literary production. In fact, for him, "even literary theory could not be separated from the political realities of the world in which it was written" (Ashcroft and Ahluwalia, 2001: 4). The productive role of discourses and ideas build places that correspond to such precepts. In the case of the East, he says: "Orientalism, therefore, is not an airy European fantasy about the Orient, but a created body of theory and practice in which, for many generations, there has been a considerable material investment." (Said, 2003 [1978]: 6). Thanks to Said's type of analysis, we can denote how the historical narrative contributes to social representations, but also at a theoretical level that is seen in the political conceptions of certain authors. If we go back to our case of the "discovery of America", tales of travel and conquest contributed to the construction of the European imaginary about the "unknown" American continent (among others) and, by extension, to the construction of a broader "Other".

Discovery discourse and epistemological power

We have seen that the narration of the discovery and the means used to pursue this imaginary system were well established. But what is the consequence of such a historical narrative in the conquering adventure and contemporary thought? In my opinion, it contributed to the epistemological power of Europeans on non-Europeans territories and peoples.

In fact, the epistemological power manifests itself in the fact that the discovery legitimates the existence. Indeed, the discovery of something gives the sensation that before, this "something" did not exist. It means that historically, this something "comes to life" – or is *allowed* to exist – once the discoverer states it as existing, that is, as *being discovered*. It appears as the revelation of something, whose function was precisely to be discovered:

> "[…] the evil that is at the root of the whole historical process of the idea of the discovery of America consists in the assumption that that piece of cosmic matter that we now know as the American continent has always been that, when in reality it has only been so since the moment it was granted that meaning, and will cease to be so the day when, due to some change in the current conception of the world, it is no longer granted.[34]"(O'Gorman, 2006 [1958]: 61)

The power of naming places (America) and people (Indians) are just small pieces of evidence of the epistemological power linked to discovery; what follows the discovery is the continuation of the exercise of such power through the imposition of a new order (social organisation, religion, land-management, etc.).

Returning to the initial questions about the discovery, now we can affirm that the objective of such historical narrative served to establish a relation based on epistemological power (the power to discover, the power to know, the power to establish, the power to name things and people, etc.) in order to serve the discoverers. We have seen that the idea of discovery was promoted and maintained notably through cultural and mythical aspects.

However, all this idea and imaginary around the fact of discovering also gave rise to a legal practice, the Discovery Doctrine. It is still of concern today as a practice that disadvantaged and still discriminates indigenous peoples (Gonnella Frichner, 2010; John, 2014).

[34] My translation

The legal application: The discovery doctrine

Discovering new territories is not just a utopia from the point of view of European explorers. It is also a political and legal instrument to manage the distribution of land among nations. Developed in the 15th and 16th centuries, the Discovery Doctrine was used to legitimize colonization, especially allowing a nation to claim sovereignty and governmental and property rights over a particular territory (Miller, 2010). The background of this doctrine is twofold: on the one hand there was "the idea of the Christian-European family" and, on the other hand, "the idea of civilization" (Dörr, 2013).

This doctrine defines the relationship between European nations, new territories and their possible inhabitants. The basic principle is that the European (Christian) nation that is the first to "discover" a territory obtains the "preemption right". It means that, if indigenous peoples actually reside in the "discovered land", this European nation is the only one that can buy the land in case the Indians sell it (Miller, 2010). What is interesting is that Indians would still "own" their land but would lose their sovereign and legal rights (Miller, 2010). At first, it allowed a nation to claim its sovereignty over a place by simply discovering it. However, the doctrine was modified, quite significantly, to allow other European nations besides Spain and Portugal to benefit from this doctrine. More specifically, France and England wanted to join the discovery game, but were limited by the earlier papal bulls that gave Spain many rights in the New World. In order to claim discovery and become sovereign, it was necessary to add some conditions that did not violate Spain's rights:

> "This new reading of Discovery was further refined by Elizabeth I and her legal advisers in the 1580s when they added a crucial new element to the international law. They argued that the Doctrine required that a European country had to actually occupy and possess non-Christian lands to perfect their Discovery title to discovered lands." (Miller, 2010: 18)

In that sense, the English would develop the concept of terra nullius. In short, for it to be valid, the claim to discovery had to be made in a territory that is terra nullius, which means that: i) it is unoccupied or ii) it is occupied, but it is not used properly, which allows the external European Christian nation to claim it (Miller, 2010: 21). I will come back on this on the next section.

Concerning the Doctrine of Discovery, one of the most cited examples is the case of the U.S. supreme court of 1823 *Johnson v. M'Instosh* (Dörr, 2013; Gonnella Frichner, 2010). It is considered as a "the source of the foundational principle of American property law" (Banner, 2005a: 178) and is telling about how the Discovery doctrine has been applied and how

indigenous peoples were considered in their relation to land. The case confronts the heirs of Thomas Johnson, who bought a land in Illinois in 1773 to natives, and William M'Intosh, who bought the same land, two years later, to the U.S. government[35]. Johnson's heirs filed a lawsuit in Illinois in order to make their property rights recognized and expel M'Intosh from the land. The decision of the district court was favouring M'Intosh, because they considered that the Indians had no authority to sell the land to private individuals and that therefore the purchase made by Johnson was invalid. The case went to the Supreme court, under Chief Justice John Marshall, and the decision was the same, but "rather than decide the case quickly and easily, however, John Marshall embarked on an extended discussion of the history of the colonization of North America, and a detailed elaboration of Indian property rights" (Banner, 2005a: 180). The ruling is based on the Discovery doctrine, which is presented by Marshall as such:

> "On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all; and the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency. The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity, in exchange for unlimited independence. But, as they were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements, and consequent war with each other, to establish a principle, which all should acknowledge as the law by which the right of acquisition, which they all asserted, should be regulated as between themselves. This principle was, that discovery gave title to the government by whose subjects, or by whose authority, it was made, against all other European governments, which title might be consummated by possession." (*Johnson v. M'Intosh*, 1823: 572-573)

It supposes that the rights acquired by Britain during colonization were "transferred" to the United States after the Declaration of Independence (1776) and the Revolutionary War (1775-1783). By relying on the discovery, he denies any property rights to the indigenous peoples, and instead attribute them a mere right of occupancy (Banner, 2005a: 181; Gonnella Frichner, 2010). Under Marshall's analysis, Indians are indeed the "rightful occupants" but cannot be the *owners* of the land: "Ownership was instead vested in the European nation by right of discovery,

[35] For a more precise summary, see Watson (2006).

and when European nations granted land to settlers, the settlers became the owners" (Banner, 2005a: 183).

Marshall had personal interests in this ruling (Banner, 2005a; Gonnella Frichner, 2010) and his decision permitted to secure the land titles acquired by westerners (Banner, 2005a: 184).

We have seen with O'Gorman how the discovery was an *invention*, and we can observe here the same gesture of the discovery doctrine as a *legal construction*. Watson (2006) considers that the ruling is "doctrinally suspect" and "historically inaccurate". Indeed, there is a mismatch between the historical facts and Marshall's interpretation in 1823: "During the colonial period the government had not granted land before it had been purchased from the Indians. A purchase from the Indians was in practice a *prerequisite* for a land grant" (Banner, 2005a: 183). Plus, if we consider that "Chief Justice John Marshall's claim of "universal recognition" of the doctrine of discovery is fictive" (Watson, 2006), the argument of the discovery as a legal construction appears stronger.

To conclude, I would like to anticipate a further feature that we will see in the following elements of the coloniality of territory (terra nullius and the good-use principles). In the Doctrine of Discovery, as in the other elements, there are implicit or explicit considerations on the "nature" of indigenous peoples, their "characteristics", "abilities" and so on that function as justification for dispossession. For instance, in the case of *Johnson v M'Intosh*, Marshall says:

> "… the tribes of Indians inhabiting this country were fierce savages, whose occupation was war and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and high spirited as they were fierce, and were ready to repel by arms every attempt on their independence" (*Johnson v. M'Intosh*, 1823: 590)

This quote shows that that land rights are also linked to the "type of people" who is residing on it. Indeed, when Europeans arrived in the New World, they were not just confronted to "new territories", but also "new peoples". They were thus wondering how they should behave with them, more precisely if their relation should follow international law. The answer to this would largely depend on whether the peoples in the American continent were recognized as precisely a "people" or not:

> "It is questionable whether the various forms of politically organized structures overseas, ranging from large, rigidly structured empires to loose tribal organizations, could be

> recognized as entities in international law, or whether, in view of their lack of Christianity – or in later years lack of civilization – their ability to act as legal entities should be denied." (Dörr, 2013)

Indeed, the international law concerns nations that represent the Christendom and thus non-Christian nation may fall under the Discovery Doctrine, better termed as the "Doctrine of Christian Discovery" (Gonnella Frichner, 2010: 5, para. 6).

This notion of Christianity, and later civilization, is of high importance because it was the base of both the opponents and the supporters of the sovereignty of foreign empires in territories they had "discovered". For instance, Vitoria, member of the Spanish Late Scholastic School, sustained that the Pope's authority could only apply in Christendom, and as America was a territory of pagans, its power could not apply (Dörr, 2013; see also Watson, 2006). The doctrine of discovery, still according to Vitoria, could apply to "non-sovereign territories", but this was not the case of America, which was "instead populated by peoples who had the rights of sovereignty and possession. Even the refusal of the Indians to accept Christianity did not give the Christians any rights of conquest or justification to wage war" (Dörr, 2013).

Therefore, the idea of discovery and its legal application, as well as terra nullius as we will see later, are intrinsically related to issues of sovereignty. The discovery doctrine as well as the terra nullius principle would legitimately apply only if the territory in question is non-sovereign or "empty" – in the sense of the absence of sovereignty as well. This pushes us to look further and ask: what is defined as "sovereignty"? What is, according to the European of that time, a "people"?

Obviously, these questions are answered *in comparison* to their own, Eurocentric society. European experience didn't become a model in an autonomous way, but by mirror or contrast to the Other – which was somehow found in America. This is in line with the questioning around the application of international law: it would apply to the relations with the Indians if they are recognized as a people, therefore first as a "Christian" people, and later a "Civilized" people. Interestingly, even if indigenous peoples were denied their sovereignty, the practices Europeans engaged in tend to evidence that their considerations were not that obvious. For instance, the fact that colonists signed treaties with indigenous peoples or were discussing on "just war" against them show that they were treating them as part of the international law system (Dörr, 2013).

If there is such a paradox between the consideration of indigenous sovereignty in some practices, but the effective use of the discovery doctrine to take possession of territories and submit indigenous peoples, it becomes clear that the Discovery acts as a perverse instrument of colonization. Plus, as its impact is still acknowledged and discussed nowadays (Gonnella Frichner, 2010; John, 2014; Miller, 2010), we can hence assess its "coloniality". For this reason, I have considered the idea of discovery and its legal doctrine as the first element of the Coloniality of territory. I will now turn to an adjacent notion, terra nullius.

The Terra Nullius Principle: This is nobody's land

The notion of terra nullius, meaning 'no one's land', is often discussed with the idea of discovery because it has also been used in order to justify dispossession. The term terra nullius can be seen as dual: it is the absence of people and/or the absence or interaction with land. We could say that it divides a place through the logic inhabited/uninhabited and laboured/not laboured.

One primary point relates to establishing terra nullius as unowned land can mean two things: first that there is effectively nobody on this land; secondly that there is someone, but that this person or group of people are not recognized as owning the land. It hence indicates the absence of property, and therefore of sovereignty (Fitzmaurice, 2007), that is to say that it leaves open the space not only for a physical establishment, but also for a political one[36].

A secondary point relates to terra nullius as the description of the use of land: it is the idea that "wild" or "insufficiently used" lands are empty lands that belong to no one and can therefore be appropriated (Hendlin, 2014). If the land is not laboured or modified it is terra nullius; but the notion of "labour" or "interaction" with the land is also defined subjectively.

In the case of indigenous peoples, this double narrative of terra nullius inhabited/uninhabited and laboured/not laboured has been disadvantageous:

> "The famous Lockean metaphors that mix labor with things encouraged the idea that because indigenous peoples did not engage in European style agriculture, they did not really own the land, but merely ranged over it. They could then be seen as not dispossessed, because they had never truly owner in the first place." (Lloyd, 2000)

[36] In contrast to the notion of territorium nullius, which applies to places where property "exists" but where sovereignty is non-existent, which leaves the possibility of establishing an external (imperial) sovereignty that nevertheless "recognizes" the establishment of local property (Fitzmaurice, 2007).

However, the idea of becoming the owner of something through use is not born with Locke; Fitzmaurice (2007) demonstrates a much broader contextual environment that allowed such an idea to be generated on a philosophical level, which will only be taken later under a legal gaze. According to him, this perception of property has to do with the relation between man and nature; that is to say that we are human when we exploit nature (to turn it into something that serves us). He refers, among others, to Francesco de Vitoria and more generally to the Greek philosophy, the Roman law, but also to the Bible to sustain that "the history of the legal arguments used to justify colonial dispossession follows the natural law heritage back through Vitoria, but it must be kept in mind that this history reflected broader movement in Western cultures". (Fitzmaurice, 2007).

Fitzmaurice's article on the genealogy of terra nullius has two important contributions. Firstly, it denotes the temporal difference between the "idea" of terra nullius and its "use", whether at a discursive or legal level[37]. Put differently, there is a discrepancy between the historical moment of dispossession and the denomination terra nullius; as a consequence, one could not speak of that as a doctrine of dispossession before the term was invented. In spite of that, Fitzmaurice (2007) maintains that:

> "Our understanding of the history of the law of colonial occupation would be very superficial if we did not attempt to understand how the idea of *terra nullius* was generated by nineteenth- and pre-nineteenth-century discussions of colonisation. *Terra nullius* was not born adult. It did not emerge spontaneously into the world."

Terra nullius can hence be taken as a useful term to capture both the norms declaring that a land is (un)inhabited and (not) laboured.

Secondly, its article shows that the term terra nullius is polysemic: it is not read only as a means of dispossession. In relation to these contributions, it shows how these arguments were transformed throughout history: the Salamanca school used this idea to delegitimize dispossession[38], while the interpretation of the Englishmen, two centuries later, inverts this proposal under colonial interests.

In other words, although the idea of terra nullius served to delegitimize certain presences and certain land uses, it also does not validate any European gesture of possession: "The idea of

[37] In addition, according to Fitzmaurice (2007), it is the term "res nullius" that was used first, and not terra nullius: "It was not until the eighteenth and nineteenth centuries that the term *res nullius* became reified as a doctrine of the law of the first taker in the law of nations regarding the status of conquered property (including property conquered in wars on the European continent)".

[38] This analysis is not unanimous, since Fitzmaurice positions himself in opposition to historians who, according to him, would have made an anachronistic analysis.

terra nullius, generated by the assumption that property lies in use, could be employed to demonstrate that neither property nor sovereignty could be established by flag-waving ceremonies and other such symbolic gestures." (Fitzmaurice, 2007). For instance, it corroborates with the idea that to possess the land, one must not only be present but also interact with the land, i.e. labouring it.

Another analysis of the idea of terra nullius is to consider it a fiction. Referring to Australia, Genevieve Lloyd highlights two fictions relating to the dispossession of the aborigines: first terra nullius and second race, i.e. "the idea of Aborigines as an inferior "doomed race", superseded by more highly developed, more enlightened Europeans" (Lloyd, 2000). These fictions, which invade the collective imaginary, reinforce each other, giving legitimacy to the colonial establishment in the face of a space that is "doubly empty": a space with nothing and no one (or no one who is recognized as a human being).

This approach correlates with what we have in conclusion of the discovery doctrine: considerations on "ontology" of indigenous peoples have been crucial in determining whether or not to recognize their ability to govern themselves and thus to own their lands. This has been especially striking during the colonization of Australia, where the aborigines were seen as inferior. In order to show the logics of terra nullius, I will thereby consider the example of Australia and show how the "empty land" was correlated with a low consideration of its actual inhabitants.

Legal application of terra nullius

In the colonial history of the British crown, Australia is a particular case. Indeed, Australia is the only colony to have been fully considered as terra nullius, while it had been abandoned by the middle of the 18th century in North America and was not used to later colonize New Zealand (Banner, 2005b). Plus, contrarily to other colonies, Australian lands were "obtained without being bought or leased for a fee" (Buchan & Heath, 2006).

The story began with James Cook, who is sent by the Royal Society in the South Pacific for scientific reasons and also mandated by the government to look for the "southern continent" (Banner, 2005b)[39]. If he found it, he had to either enter into contact with the inhabitants or, if it was empty, he had to seize it in the name of the Crown. In 1770, Cook and his crew land in Australia. Cook reported that the land "was sparsely populated, and Joseph Banks, the naturalist who was travelling with him, sustains that it was "thinly inhabited" (Banner, 2005b).

[39] For a more detailed account, see Banner, 2005b.

The question that arises now is to know when the "terra nullius" starts? If there are a dozen of persons on an entire continent, can we claim that this is terra nullius? On the basis of the little information provided by the ship crew, the British crown did not hesitate: "Britons believed that Australia was mostly empty […] lawyers in England and throughout Europe agreed that settlers had a legal right to occupy uninhabited land." (Banner, 2005b). Another element participated in this vision of emptiness: the consideration that the natives were in a "low level of development". This was also part of the testimonies of Cook and his colleagues: comments on their level of technology, on the absence of clothing, on the way they built their houses and most importantly the absence of cultivation (Banner, 2005b). This is a very important point, because the absence of European-like agriculture was equated with inferiority. The link between agriculture and property was made and if a population was not practicing this use of land it was considered "savage" and therefore "without society, sovereignty or private property" (Buchan & Heath, 2006). The role of thinkers like John Locke is undeniable on the normative imposition on the relation between a people and its land, making it valuable only through labour and private property (Hendlin, 2014; Lloyd, 2000).

However, when the Britons arrived in Australia after determining it was terra nullius, they were actually facing another reality. The continent was indeed inhabited, the indigenous peoples had a sense of property, they "were nomadic, but each within its own boundaries" (Banner, 2005b). There was an opposition to the terra nullius policy but it was impossible to dismantle, for a few reasons.

There was first this rhetoric of occupation/ownership, saying that it was the British who performed "the acts necessary to convert the occupation of land into ownership" (Banner, 2005b). We see here clearly a parallel with the discovery doctrine that sustains that Indians have a mere right of occupancy, but no right of property. Secondly, there was the idea that colonization would bring to these "primitive" indigenous peoples a bit of "civilization" (Banner, 2005b). Finally, as we have seen with the Discovery doctrine, there were personal interests at stake. Indeed, landowners in Australia had purchased their land from the Crown, and "to overturn the doctrine [of terra nullius] would be to upset every white person's title to his or her land. The result would be chaos – no one would be sure of who owned what" (Banner, 2005b).

In sum, on the basis of very little information, the British crown treated the Australian continent as terra nullius. Even when realizing that is was inhabited, the denigration of its inhabitant – at the limits of the ontologically human because at the lowest of the human scale – was a way to erase their presence. Their incorrect use of land and their need to "civilize" were arguments to

justify colonization. Accordingly, indigenous peoples in Australia were thus denied their sovereignty and land rights. This was successfully challenged in 1992 with the case *Mabo v. The State of Queensland (No.2)* in which the Australian Court overturned terra nullius (Buchan & Heath, 2006) and acknowledged that indigenous peoples had a system of law before the colonization and that thus had native titles. Although the ruling is certainly positive, the thorny question of self-government is still underlying. Buchan & Heath (2006) remind us that the Australian state is the result "of an act of colonization that proceeded as if other sovereignties were impossible" and that rejecting the policy of terra nullius "as implying an absence of sovereignty would undermine the very existence and authority of the Australian state".

We have seen with the discovery doctrine and the terra nullius principle that indigenous peoples have been denied their land rights and their sovereignty on the grounds of prejudices on their "humanness" and capacity to live as a society as well as of Eurocentric norms regarding the use of land. I will now turn to the last component of the coloniality of territory that precisely treat the questions of sovereignty and use of land.

The Good-Practice Principles: Territorial sovereignty and use of the land

The last component of the coloniality of territory that I propose in this work is what I call the "good-practice principles". In brief, it is about the supposedly sole and unique "correct" relationship to territory, both concerning how to govern it and how to use it. We have previously seen, with the Discovery Doctrine and the Terra Nullius Principle, that certain ways of using the land were not recognized as valuable and therefore this legitimated the appropriation of land by foreigners. The good-practice principles thus refer to the moral imperatives concerning the authority on a territory (i.e. the sovereignty) and the managing of the land (how it is used). I argue that these two overlapping factors happening with the colonization are still present nowadays, albeit in a different form. These two elements structure who has the right of authority on the territory and to what ends.

I will first review the question of sovereignty and take a particular example to make it less abstract. Regarding sovereignty, the 'good-practice principle' defines *who* is able to govern a territory. This is intimately related to the subsequent use of the land, as the one who manages the land must do it *well.* We will see that during the Spanish conquest, in order to legitimize foreign sovereignty on these new territories, the practice of the *Requerimiento* would become the way to gain such authority and deny indigenous peoples' self-government. Later, the

Valladolid debate will be proof of a profound questioning of the justice of the acts undertaken by the Spaniards.

Today, indigenous people are, in the majority of the cases, still denied their right to self-determination and their ability to govern themselves. I will exemplify it with the case of the Mapuche people in Chile who has been dispossessed of its ancestral land with the constitution of the nation-state. I will show that the historical reserves policy and the political treatment of the Mapuche contribute to legitimize the practical impossibility of their right to self-determination.

The second element is the use of the land, which includes what we should do with the land and to what ends. In that case, the 'good-practice principle' defines *how* the land should be used in order to benefit the greatest number (for instance the "nation's interests" or economic interests – which are usually overlapping). I will show through one case how Locke's thinking is still echoed in contemporary politics. More precisely, I will refer to a conflict in Peru, opposing a former President, Alan García Pérez (1949-2019), and indigenous peoples from the Amazon. We will see how neoliberal discourses discredit indigenous uses of the land in order to assimilate it and manage it for the "benefit of all".

I use here practical examples to show the link between theory and practice but also to evidence their effectiveness nowadays. These cases are obviously shortened and subjectively told. Nonetheless, I think they are insightful as they highlight conflicts between the state as an institution, the private sectors, industries, and indigenous peoples in their quest for both territorial sovereignty and their own use of land.

Good-practice principles (i) – Sovereignty: Justified domination

The first element treated is 'sovereignty', in the sense of the authority on a specific territory. It is related to the elements of discovery and terra nullius, in the sense that if the new territories were "discovered" and considered as empty or vacant, they were therefore available for appropriation and would fall under the regulation of the foreign empire.

In the history of conquest and colonization, indigenous peoples (or "Indians", "Amerindians", "Natives", "Aboriginals", etc.) were often submitted to an external political authority[40]. In the

[40] As already said, it is not possible to generalize the relationship between colonist and colonizer, and it should not be thought that colonization was a one-direction process. Indigenous people did fight, engage in trade and treaties and their legal system somehow "merged" with the colonizer's (on this last point, see Duve, 2017)

search for a legitimate authority on "new territories", two elements can be cited: the *Requerimiento*[41] and the Valladolid debate.

The *Requerimiento* is a legal act written in 1512 by the jurist Palacios Rubios and used for the first time the next year. In a nutshell, this text has made it possible to reverse the role between the colonized and the colonist – that is, the colonized became "the aggressor" – and, consequently, to legitimize a situation of just war for the colonist (see Mora Rodriguez, 2012: 60). This text can be considered as "one of the most extravagant legal productions of the modern era, both grotesque and monstrous, witnessing the perversion of a legal system pushed to the extreme" (Grégoire, 2017: 49). Concretely, this text was read to the indigenous peoples (a translation was usually provided) by a representative of the Spanish crown; the natives were forced to accept the Spanish authority in the perspective of their future evangelization (Grégoire, 2017: 49). The text first explains that God created the world and that he passes through popes and highnesses to express himself (Mora Rodriguez, 2012: 58). The act is indeed imbued with references to religion, however "evangelization does not appear to be the primary objective of territorial control [...] its role in the discourses of conquistadors and Crown authorities is only an ideological role[42]" (Mora Rodriguez, 2012: 74). In fact, if the natives refused, either by denying the authority of the Spanish Crown over their territory or by obstructing the diffusion of the Christian doctrine, they were facing serious consequences. These are made explicit in the text and do not leave any room for doubt about the type of considerations that the Spaniards had about indigenous peoples:

> "And if you do not do so, or if you maliciously delay in doing so, I certify to you that with the help of God, we will enter mightily against you, and make war against you in every way and in every way we can, and we will subject you to the yoke and obedience of the Church and their Majesties, and we will take your persons and your wives and children and make them slaves, and as such we will see them and dispose of them as their Majesties command, and we will take your goods, and we will do you all the evils and damages we could, as vassals who do not obey nor want to receive their lord and resist him and contradict him[43]." (*Requerimiento*, cited by Zorrilla, 2006)

I think that is it clear, through these consequences, that the purpose of such an act was not so much to try to convince the Indians to submit, but rather to provoke a situation of just war for the Spanish Crown (Mora Rodriguez, 2012: 59; Zorrilla, 2006). In the end, the *Requerimiento*

[41] Mora Rodriguez (2012: 59) suggest that we could translate the word *requerimiento* as "summation".
[42] My translation
[43] My translation

and the question of sovereignty could seem a bit disconnected from the concept of territory; however, this legal text is actually an example of the practice of territorial dispossession. The *Requerimiento* is the perfect example of how the law of monarchy was taken from its "national" context to permeate the international realm: "This is the first time that Europeans will claim a special and unilateral right to land that does not belong to them and to the inhabitants who live there" (Mora Rodriguez, 2012: 58). In other words, the Spanish crown grants itself a right and consequently material and human resources (a territory and the natives) that it will combine for productive purposes. The *Requerimiento* finally shows the use of religion as a justification or even as a "divine mandate" in order to take these people out of their "barbarism". In fact, the clash barbaric/civilized, or wildness/culture is even more present in another element that justified the Spanish authority on foreign territories and people: the Valladolid debate.

In the middle of the 16th century, the rightfulness of colonization and the status of indigenous peoples were at the heart of what is called the Valladolid debate. This case is specific to the Spanish Crown wondering about the situation of the people living in the territory they were conquering, but it is an insightful event as it more generally discusses the relationship between colonist/colonized. This debate was held in Valladolid, Spain, and involved two important actors: Bartolomé de Las Casas, a Dominican friar who is known for his defence of natives' rights[44] and Juan Ginés de Sepúlveda a theologist whose main theses "were sustained in the idea of "natural inequality" that existed between men, supported by Aristotelian thought[45]" (Lepe-Carrión, 2012). It is often thought that this debate is on the "nature" of the natives, more precisely to know if they "have a soul", but in reality, it is more about the legitimacy or the justice of the Spanish conquest (Mora Rodriguez, 2012: 45). In this sense, this argument is completely relevant for discussion in political philosophy as it explores what justifies political domination (Mora Rodriguez, 2012: 13). The position of Bartolomé de Las Casas is based on the equality between human beings (Keal, 2003: 91). He therefore sustains that "the process of domination of the new territories is contrary to the abstract affirmation of sovereignty" because the domination exerted by the Spaniards in the American continent is not only violent, but also illegitimate, as the natives don't "fall into the category of enemies" (Mora Rodriguez, 2012: 20). On the other hand, Sepúlveda was defending the war against the "Indians" (Keal, 2003: 91). His main argument was based on the dichotomy "civilization/barbarism": by designing natives as "barbarians" he could then deduce other justifications to condemn them (Keal, 2003:

[44] This position is not unanimous and Las Casas' argumentation has its limits, notably the fact that his position is coming from a "place of enunciation" that is conform to eurocentrism and Christianity (see Lepe-Carrión, 2012).
[45] My translation

91). For him, barbarism is the indication of inferiority of these people and, along with other arguments (type of society, government, use of land, customs, etc.), it indicates the incapacity of self-government of the Indians (Keal, 2003: 91). If we recall that Las Casas departs from the opposite presupposition (that all human beings are equal), we understand that the clash between Sepúlveda and Las Casas would also have a great impact on the possibility of self-government of indigenous people, and not only on the validity of the Spanish domination.

As we have seen with the *Requerimiento* and now with the justification of domination, the arguments are precisely made in order to validate ideas that support the interests of the Spanish Crown. This is what Las Casas tried to show: "Domination has an ideological character in that it produces discourses and ideas that seek to justify it" (Mora Rodriguez, 2012: 25).

These speeches, as we have seen in the previous elements (discovery and terra nullius) and will see with the next one (use of the land), highlight the alleged validity of colonial action. For instance, the clash "civilization/barbarism" is used first to justify the fact that the barbarian should be submitted and second that the civilized should "enlight" them (mainly through religion).

In conclusion, the element of sovereignty is important in the discussion about territory for two reasons. First, because the fact to take by force territories and subdue the people living on them is the best way to extend one's own sovereignty (Mora Rodriguez, 2012: 38). And logically, if one gets more sovereignty, another one must lose some. The natives, if judged barbarian, were afterward deprived of the ability to govern themselves as their own system of governance was not recognized as such. However, the Spaniards must have considered that indigenous peoples had a kind of sovereignty before their arrival, otherwise they wouldn't have searched so hard for justifications. They needed to precisely destroy this sovereignty – by discrediting it based on European and religious values – in order to make their own instead (Mora Rodriguez, 2012: 54).

Sovereignty today: Mapuche people and self-determination

Through the *Requerimiento* practice and Valladolid debate, we have seen that indigenous peoples have suffered prejudices on their ability to govern themselves (self-determination) and, on this basis, were put under the control of a colonial power (the Spanish crown). The denial of self-determination goes hand in hand with the non-recognition of indigenous territories. The justification is based not only on the incapacities of the indigenous peoples, but also on the supposed organizational, cultural and religious superiority of the colonist.

The situation has changed over time and indigenous peoples nowadays have the formal right to self-determination. However, its practical implementation suffers lots of burden. To illustrate this recurrent issue, I will take the example of the Mapuche, in Chile[46].

Taking territories: Internal colonization in the name of the nation

Before the independence of Chile from the Spanish Crown, the Mapuche had established a number of agreements, including the Tratado de Paz de Quilín/Kilín, signed on 9 January 1641 with the Spaniards. It conferred a favourable status to the Mapuche, in particular through the recognition of and respect for the territorial boundary of the Bío-Bío River.

The loss of Mapuche autonomy in the territories of the region of Araucanía is the result of the "Pacification of Araucanía"[47], led by Colonel Cornelio Saavedra. The annexation of this region to the Chilean state – which became independent of the Spanish crown in 1810 – was the result of a long process of internal colonization[48] and let to the end of indigenous independence in 1883 (Le Bonniec, 2003).

Chile also signed treaties with the Mapuche, such as the Tapihue treaty (1925), which reaffirmed the border and its inviolability (Calbucura, 2012). Despite this, the idea of Mapuche territory returning "naturally" to Chile and being placed under the yoke of the nation-state predominated (Gavilán, 2002). It was this idea that motivated the violent action taken by the Chilean state in order include this territory into the national state. Moreover, the people living there were also expected to join the nation, and, therefore, to stick to its identity.

This process is what Calbucura (2012) denominates the "intellectual operation of dehistorizing the peoples[49]". I find this notion of "dehistorizing" particularly relevant because the erasing of one's history allows for the construction of another history. This strategic move is coherent with the will of Chile to build "its nation". From the point of view of realpolitik, indigenous peoples may constitute an internal threat to the State; it is certainly for this reason that the

[46] The Mapuche people (actually encompassing different branches) is currently living between the states of Argentina and Chile. A lot of its population are nowadays living in urban centres but their ancestral lands, and the ones they usually claim, are situated in the southern part of both countries, originally called Wallmapu.

[47] It is the term used in Chile to indicate the period that covers the wars between the nation-state and indigenous peoples; in Argentina, this period is called the "Desert Campaign" (Guevara et le Bonniec, 2008). These two denominations make it possible to understand how these southern territories are considered: for Chile, it is a question of pacifying and thus bringing peace to a region at war, and for Argentina, it is a question of conquering empty, "desert", and therefore supposedly uninhabited territories.

[48] In contrast to an "external" colonization as illustrated by the Spanish settlers. This terminology is also supported by Marimán (1992), who underlines the specific nature of this colonization: it occurs within a nation-state and on individuals who have the same individual rights as Chilean citizens.

[49] My translation

solution to the "indigenous question" required assimilation (Marimán, 1992; see also Bengoa, 1996: 329-330), anchored in a vision of "modernization" (Kowalczyk, 2013).

Another interesting point is the idea of terra nullius which impregnates internal colonization. This doctrine seems to have been first and foremost that of European settlers: "Their selective vision identified the land but did not register the people. They saw no one there, only a land ripe for the taking: a *terra nullius*." (Ray, 2007: 33). The same mechanism occurs with the establishment of nation-states. The negation of a settlement prior to the establishment of the Chilean State (the same applies to the Argentinian case) constitutes the negation of the substance of the people who actually lived there: its social structure, its language, its traditions, its way of life, its cosmovision, etc. (Bengoa, 1996: 329; Bengoa, 2002: 40).

If the idea of a terra nullius exists at the time of colonization, the confrontation on the ground is very different: "The idea of an "empty land" has been built and imagined in Santiago. The south without people and without properties was only a "virtual reality[50]" (Bengoa, 2002:50). Thus, it is because the Araucanía was indeed populated that its distribution had to be conquered and controlled for the sake of the nation-state. This approach is strongly inspired by the French and American revolutions. With them, the idea of all people being citizens, of forming a unique cultural community or the desire to make men "good", "free" or "educated" are part of the colonial ideology (Gavilán, 2002).

Controlling bodies: Reserves policy

The introduction of the *reducciones* (reserves) occurs rapidly after the loss of indigenous independence. The reserves are a way to "free 9.5 million hectares of formerly indigenous land, which was seized by the State and national and foreign settlers[51]" and accompany other territorial changes managed by the Chilean state like the establishment of cities, railway and roads constructions (Le Bonniec, 2003).

These reserves to which communities are assigned are part of the solution to the "Mapuche question". The Mapuche people is therefore divided into small communities (about 3000 between 1882 and 1919, including about 80,000 people) that have a right to their land (*título de merced*) assigned to the "leader" at the head of a group (the *lonko*) (Ray, 2007: 88). On the one hand, the *reducciones* were an economic instrument as they served to better map the territory and thus allow others to come and settle in order to "work the land that [...] the Indians

[50] My translation
[51] My translation

were unable to exploit" (Guevara and Le Bonniec, 2008). On the other hand, they constitute a political instrument for the state, a "transitional means" towards a future incorporation into the Chilean State (Marimán, 1992). The reserves constitute a geographical exclusion and a place of control. This implies a socio-economic exclusion that Bengoa (1996: 329) calls a "forced peasantry" (*campesinización forzosa*) which transforms the Mapuche from "herders-farmers" to "poor farmers" (Marimán,1992; Bengoa, 2002: 63).

To sum up, the "Pacification of Araucanía" and the *reducciones* policy constitute what Guevara and Le Bonniec (2008) call a "founding violence". They are evidence of the refusal of self-determination and territorial sovereignty. Plus, these two elements summarize a two-step colonial mechanism. First of all, it is an invasion and appropriation of space, of the land, in a desire to extend the nation-state. In a second step, the emphasis is placed on the management of the territory and its people, in particular by confining the Mapuche to defined areas. It is both a mechanism of assimilation and exclusion, of homogenization and internment.
These contradictory mechanisms are also imbued with the idea of "race" and rooted in a Darwinian vision of natural selection and species evolution (Bengoa 2002: 25). The principle of internal colonization contributes to this process where the Mapuche people represents another "barbaric", "wild", in the face of an image of a "civilized", "modern", homogeneous Chile. In historical consequence, the Mapuche have been denied their sovereignty as a whole and requested to "assimilate". This violence persists, but in other forms, for instance through legal instruments that deny and refrain the Mapuche claims.

Legitimising the oppression: Mapuche are terrorists

The Mapuche is currently the biggest indigenous people in Chile with 1'754 147 people (IWGIA, 2019: 144). On the legal level, the *ley indígena* (indigenous law) of 1993 is supposed to promote the rights of indigenous peoples in Chile like land property, health, education, access to land and water among other (Cloud & Le Bonniec, 2012). However, this law doesn't imply the recognition of indigenous rights in the Constitution as it was seen as a threat to the unity of the nation by the political and economic elite (Le Bonniec, 2003).
Moreover, the law ignores the concept of "people" and there is no reference to "indigenous territory", making the only valid territoriality the national one (Cloud & Le Bonniec, 2012). The right to land is a crucial issue in Chile, even more because the land grabbing of Mapuche lands does not stop: forestry companies "are holding almost three million hectares in territory

traditionally occupied by the Mapuche" (IWGIA, 2019: 151) and this is symptomatic of what happens to indigenous lands worldwide.

To try to counter the state blindness to indigenous rights, the Mapuche people started to get organized and multiply public protests in the end of the 90s, notably with the "Event of Lumaco" when three trucks loaded with wood owned by a forestry company were set on fire (Barbut, 2012). Since that date, the Mapuche are facing state violence, notably through legal instruments like the state's internal security law, anti-terrorism law or on the base of illicit association (Le Bonniec, 2003). Along with the legal mechanisms, the press as well as politicians tend to demonize Mapuche actions, notably by speaking of "Indian radicality" (Barbut, 2012) and by legitimizing the use of violence to contain protests. This repression is justified for the security of the state, but it is also a way to ensure that economic interests held through the exploitation of natural resources are safe. In sum, if the Mapuche become too insisting regarding their rights, they are exposed to high risks. If they could recover their ancestral land, the state would suffer economic loss and any tentative of presenting a homogenous and unique nation would fail. This situation of indigenous claims versus state and industry interests represent a clash on the understanding of territory. By not recognizing indigenous territories and by qualifying the Mapuche as terrorists, the Chilean state perpetuates historical injustices and leave little space for a significant change.

Good-practice principles (ii) – Use of the land: May it be worth it

We have seen in the first section (current political theory on territory) that Locke was one of the first political philosophers to write about land and territory, through the notion of property. We have also seen that some scholars were inspired by him and developed neo-Lockean accounts. What I intend to do in this part is to show how Lockean arguments are used in the "real life". Of course, I don't think that politicians or the industries consciously and openly follow Lockean precepts, but the speeches produced are very similar to the philosopher's arguments. Therefore, I will first present a few things about how Locke is related to colonialism and how his theory may allow the justification of territorial dispossession.

Locke was linked to English colonialism through different professional charges, for instance as secretary to the Lord Proprietors of Carolina and Secretary to the Council of Trade and Plantations during the 1660s and 1670 (Arneil, 1992). In addition to this, Locke had a collection of travel books in his private library that would give him a more "practical" or empirical insight into the colonies; however, he would use only the books that would fit with his own idea of American life and consolidate his own position regarding the continent (Arneil, 1996: 16, 23).

What is exactly the impact of Locke's thinking on colonization? Succinctly, Locke's approach on property would change the "rules" of access to property and, consequently, affect the access to land of indigenous peoples.

The first step of this modification is that Locke eventually separates *appropriation* from *conquest* through his theory based on labour (Grégoire, 2017: 9). It means that conquest (associated with the Spaniards) cannot be the unique factor of appropriation. In fact, until the end of the seventeenth century, the appropriation of land, and therefore the *property*, would be the result of *occupancy*, so one would just need to "be there" in order to claim the right on this specific territory (Arneil, 1996: 18). The contribution of Locke, through his *Two Treatises of Government* is to modify this conception by invoking "labour", or "agricultural settlement" as the preferred method of colonization (Arneil, 1992; Arneil, 1996: 18, 170). This proposition allows to get rid of two competitors: the indigenous people who would claim their land through occupancy, but also other colonial powers like Spain who would need more than discovery or occupancy arguments (Arneil, 1992). What is interesting here is the obvious delegitimization of indigenous people's right to *their* land, which warrants asking how Locke legitimized the dispossession act by the English.

This apparently small modification from occupancy to labour is actually very important in contemporary thinking, as noted by Grégoire (2017: 9-10) who considers that Locke's theory based on labour is one of the foundations of any liberal and democratic society. Moreover, he concludes that it "reveals an essential and often hidden feature of the political doctrines of the modern era: *the concept they elaborate may be emancipatory on European soil and, at the same time, instruments of domination and alienation on colonial soil*[52]". This discrepancy between what happens in Europe and in the colonies was also noted regarding the *Requerimiento* and the Valladolid's debate. We are again facing a dichotomy where Europe is expanding from its perspective, but also imposing a new order (in our case on territorial norms) in a place they don't know and in which their legitimacy to act in such a way is dubious.

The "improvement" in the use of territory – which means that indigenous should work as Europeans do – may thus imply the appropriation of lands by Europeans who conform to the labour theory. Therefore, we are facing a "theory of dispossession", where individual agricultural labour is the base of the access to property but also constitutes a cultural base (Mora Rodriguez, 2012: 84). This "cultural" aspect can be seen through the very little consideration on the use of the land made by indigenous peoples. Intimately related to the idea of terra nullius, Locke did not consider the use of land made by the natives as a valid one. In his text, he refers to "… the wild woods and uncultivated waste of *America*, left to nature …" (Locke, 1980 [1690], T II, §37), a sentence that clearly states his vision of America and its inhabitants (despite the fact that he never set foot there): a vacant place available for appropriation. Here thus comes the opposition between "waste land and the Indians versus cultivation and England" (Arneil, 1992). The use of "waste" does not only refer to the idea of vacant or empty lands, but also defines a land that has not by used the "good way" or that is "neglected" (Arneil, 1996: 142). Arneil (ibid.) also notes how the word "neglect" is revealing Locke's conception of a valid use of land: "It implies that one can judge, in the case of property which has been used by other people, whether they have in fact neglected the land and thereby made it nothing more than waste and available again for appropriation through the labour of other".

Finally, Locke's considerations on land, labour and property also presuppose the inferiority of indigenous peoples. By stating "in the beginning all the world was *America*," (Locke, T II, §49), Locke establishes a clear distinction between America and Europe. Despite believing in the equality between human beings, Locke considers America as an example of the "state of nature" in which *all the world* was before, meaning that his European society "left" this state.

[52] My translation

In that sense, the natives from America are considered inferior to Europeans, with lesser levels of social organization, and it also means that "there has been an evolution from the state of nature to civil society" which implies the predominance of Europe on American societies (Castilla Urbano, 2014: 53).

In conclusion, Locke's theory of property based on labour followed European precepts (agriculture, not spoil, individual labour) and also placed European people as representatives of these practices, thus legitimating their act of dispossession. On the other side, indigenous people where seen as living in their state of nature, which impeded them to compete or contest to the European form of land labour. The ideas that "*someone knows better than you*", patronising paternalism and the prevalence of "civilization" are, in my opinion, still existent today. This is what I will try to expose in the next section, referring to a specific case and making parallels with Lockean doctrine.

Use of the land today: Economic development versus indigenous rights

To illustrate the 'good-use principle' regarding the managing of the land, I refer to a conflict in Peru, opposing the government of a former President, Alan García Pérez, and indigenous peoples from the Amazon. I think this example is insightful for two reasons.

First, because it shows how indigenous peoples are confronting both the state in which they live and the industries; although the focus is on the state-indigenous community relationship, it is clear that the private sector always has a role to play in the conflict. Indeed, as analysed by Boris Petric (2011), agrarian commodification is a transnational phenomenon that includes actors who operate at the global level (e. g. investors) and who could not do so without the cooperation of local elites. It is therefore necessary "to question the constitution of these transnational bonds that link elites at different scales from local to global" and not to point the finger at a single actor (ibid.).

Secondly, it carries an important moral aspect because it shows how indigenous peoples are criticized for their use (or "non-use") or *bad* use of the land. This observation therefore implies that a third party must intervene in order to rectify the situation and put in place a *better* use of this resource. In this sense, the state and/or industries appear as "saviours" for whom indigenous peoples themselves will later be grateful.

In my opinion, this analysis echoes a Lockean view on the use of land: it should be laboured and valuable on an economic perspective because it will benefit to all. This is why I thought it was also important to present Locke earlier in the first section as we surprisingly come across his philosophy in real-life examples.

The Initial situation: Developing the Amazon region

In 2008, the Peruvian president Alan García Pérez and the Congress legislated on a number of decrees, "twelve of which opened the Amazon region for development" (Arce, 2014). The government promoted neoliberal reforms with the aim of economically developing the country through the extraction of natural resources. The president García clearly stated that the Amazon was the place where most of the resources were. He also expressed his discontent with indigenous people, saying that they prevented from investment or job creation. He blamed their vision of property (actually, the absence of it) and their "non-use" of the land which he crystallizes into the expression "*el síndrome del perro del hortelano*" (translated as "The dog in the manger syndrome") (García, 2007). In short, from his productive perception, the fact that people would "just" live there without exploiting it was a mistake.

However, the development suggested by García would actually affect the way of life of indigenous peoples living in the Amazon. As representative of these communities, the AIDESEP (Asociación Interétnica de Desarrollo de la Selva Peruana)[53] asked the government to repeal these decrees that violated both the 1993 Peruvian Constitution and the ILO's Convention 169 (Hughes, 2010)[54]. To be precise, the indigenous communities complained on two points. Firstly, the decrees aimed at turning collective ownership of land into private property in order to extract resources; this was a direct threat to the "physical land, and in this manner they threatened the cultural identity of peoples who have dwelled on the Amazon for generations" (Arce, 2014). The second point refers to the exclusionary decision-making process, as indigenous peoples weren't consulted (ibid.).

No agreement could be reached between the two parties and the clash end up in a deadly confrontation between the indigenous communities and armed forces on the 5th of June 2009[55]. The opposition between neoliberal policies and indigenous rights is frequent when reviewing indigenous claims. It is intimately related to the opposition between "national interest" – of all citizens – and "particular interest" – of the indigenous people[56]. This presupposes that the general interest lies on economic development (job creation, exploitation of resources) rather than on the respect of indigenous rights. In our case, we can see this opposition through a series of three articles written by the former president Alan García between the end of 2007 and beginning of 2008 in the Peruvian newspaper *El Comercio*. In these articles, he exposes what Peru's problems are and how to cure them. According to him, the natural resources available are not legally titled, which means that there is no possibility of trade, foreign investments or creating jobs (Bebbington, 2009). The common thread of his articles is precisely the idiom "the dog in the Manger Syndrome" (*el síndrome del perro del hortelano*). Through this slogan, he aims at designing the cuprite of this "non-use", as the expression describes "someone who deprives others from something that they themselves have access to but are not using" (Arce,

[53] AIDESEP is a federation of different indigenous communities, representing more than 350'000 indigenous people from 1,350 different communities (Arce, 2014)

[54] These measures were also violating the United Nations Declaration on the Rights of Indigenous Peoples, for instance – among others – article 32/2: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources"

[55] To have a more detailed summary of the facts, see Arce (2014) and Hughes (2010).

[56] Bebbington (2009) is referring to this distinction made by García between Peruvian or the nation's interests and the indigenous ones by quoting one of his statement to the press: "Enough is enough. These peoples are not monarchy, they are not first-class citizens. Who are 400,000 natives to tell 28 million Peruvians that you have no right to come here? This is a grave error, and whoever thinks this way wants to lead us to irrationality and a retrograde primitivism" ("Presidente Alan García advierte a nativos: 'Ya está bueno de protestas,'" Peru.com, June 5, 2009)

2014; see also Hughes, 2010). In this case, he puts in confrontation people defending their territory with the rest of the nation: "Referring to an ancient fable, at times ascribed to Aesops, the analogy portrayed the selfish behaviour of Amazonians not willing to share what was needed by the rest of the country and its investment-eager entrepreneurs" (Larsen, 2019: 103).

The normative aspects of political speeches

I will review some fragments of one of his articles and analyse how it defines what is morally good to do with land, echoing somewhat Lockean arguments.

In his first article, called *El síndrome del perro del hortelano* (El Comercio, 28th of October 2007) he states:

> "There are millions of hectares for timber extraction that lie idle, millions more hectares that communities and associations *have not cultivated* and will *not cultivate*, hundreds of mineral deposits that *cannot be worked* and millions of hectares of sea to which mariculture and production *never enter*. The rivers that flow down both sides of the mountain range are a fortune that goes to the sea *without producing* electricity. In addition, there are millions of workers who *do not exist*, even if they do work, because *their work does not serve them* to have social security or a pension later, because *they do not contribute* what they could contribute by multiplying national savings.
>
> Thus, there are many *unused resources* that are *not tradable*, that *do not receive investment* and that *don't generate work*. And all this because of the taboo of overcome ideologies, by idleness, by indolence or by the law of the dog in the Manger who says: 'If I don't do it, no one should do it'.[57]"

Here the repeated use of the negative form underlines his vision of the land defended by indigenous and rural communities: it is a loss as it is not "used" and hence unproductive despite the availability of resources. He is morally condemning the indigenous people and other rural communities involved as "hindering the nation from advancing" (Larsen, 2019: 104). Indeed, in his opinion, the fact that the land is not used as it should be is also saying something about the indigenous people living on it:

> "García portrayed Peru's countryside as a space to be once again colonized in order to extract, and profit from, the natural resources embedded in the fields and forests thought of as occupied, if at all, by technologically backward indigenous and mestizo small-scale farmers and nomads who are, quite simply, in the way." (Bebbington, 2009)

[57] My translation and my emphasis

For him, the problem is not only ideological but also linked to the idea that the inhabitants of these unexploited areas are simply "lazy" or "idle". In this sense, he refers to the long-standing prejudice qualifying indigenous peoples as lazy or incompetent because they are not using the land how westerners would do.

Further in his article, he delegitimizes the vision of territory and the use of land of communities arguing that their geographical situation is the result of a previous foreign intervention to reduce them to the parcels at stake. He also follows a Lockean argument that sustains that thanks to 'his' (or the state) intervention, indigenous peoples – as well as the rest of the inhabitants of Peru – would be better off:

> " […] Demagogy and deceit say that these lands cannot be touched because they are sacred objects and that this communal organization is the original organization of Peru, without knowing that it was a creation of Viceroy Toledo to confine the indigenous people to non-productive lands.
>
> This is a case found throughout Peru, idle lands because the owner has no training or economic resources, so his property is apparent. The same land sold in large plots would bring technology that would also benefit the villager, but the ideological cobweb of the nineteenth century subsists as an impediment. The dog in the manger." (García, 2007)

Indeed, when he says that technology or more generally exploitation of these lands would benefit the inhabitants, he's following the idea that there exists a 'good', 'correct', or 'better' way to use the land that is true for everyone. He's relying on a kind of rationality linked to neoliberal exploitation of natural resources, leaving out any relationship to land and territory outside productivity. If we go back to Locke then, we find two similarities between the thinker of the 17th century and the former president of Peru.

First, the conception of the use of the land; second, the moral value of external intervention on "non-used lands". On the first similarity, Locke, in his will to legitimate European settlement in the New world, was establishing norms on what land is made for: "Locke stipulates that 'vacant land' is any land that is 'uncultivated' or 'unimproved'. The title to property in land is solely individual labour, defined in terms specific to European agriculture: cultivating, tilling, improving and subduing. Hence, land used for hunting and gathering is considered vacant […]" (Tully, 1995: 73-74). More than three centuries later, President García doesn't try to legitimate human settlement on the Peruvian Amazonia, but to legitimate the 'cultivation', 'improvement',

investment, extraction, deforestation, in sum the *development* in this region. For both Locke and García there is no place for a use of territory outside its economic performance.

Secondly, we find a similarity on a more moral aspect of their thinking. As we just have seen, García emphasizes all the good that could come out from exploitation of the Amazon region when he says "The same land sold in large plots would bring technology that would also benefit the villager" (García, 2007) but also all his references to the necessity of foreign investments in general for the 'development', against the poverty, for a better education, among others. In other words, people against this intervention are against the improvement of their country and don't go out of their "intellectual poverty" (García, 2008). According to García (2007), people concerned by the intervention in their territory are the eternal anti-capitalist, holding back liberal reforms, who change their ideological course of action over time: "And it is there that the old anti-capitalist communist of the nineteenth century disguised himself as a protectionist in the twentieth century and changed his T-shirt again in the twenty-first century to be an environmentalist. But always anti-capitalist, against investment, without explaining how, with a poor agriculture, a leap could be made to a greater development.[58]" (García, 2007).

In the case of Locke, we remember his proviso that says that for settlement or for the use of land, one should always leave enough and as good land for the others. However, in the case of indigenous peoples, the proviso doesn't seem to be required:

> "The reason for this proviso is that if appropriation adversely affects the Aboriginal peoples, their consent would be required, by the oldest convention of constitutionalism: *quod omnes tangit ab omnibus comprobetur* (what touches all should be agreed to by all). Just as Locke bypasses the convention of long use and occupation by invoking a criterion of labour partial to European agriculturalists, he bypasses the convention of *q.o.t* by an equally biased argument that the Aboriginal people are better off as a result of European settlement. Specifically, they will benefit from assimilation to the more advanced European state of constitutionally protected private property in land and commercial agriculture." (Tully, 1995: 74)

In Locke, foreign intervention is not only legitimized and allowed, but it is seen as necessary to improve everybody's situation. It is the duty of the "civilized" to help others acquire the best practices in labouring and managing land, following an economic and agricultural performance perspective. We are facing the same argumentation in the case of indigenous peoples and rural communities defending the Amazon region in front of the state and private interests. Indeed,

[58] My translation

how Larsen (2019: 110) sustains: "It thus became the moral duty to intervene quickly, as the dogs in the manger were keeping Peruvians from self-reliance (oil and gas projects stalled). The *Perro del Hortelano* was about internal and foreign forces against the common national good of the country". Therefore, it is morally expected, for the good of the country, to take back the territory in order to manage it in the *proper way.* If it has economical potential, it has to be exploited because in the end the benefits of economic development (i.e. creation of jobs, increase of national income, improving conditions of living etc.) offset its risks (deterioration of the environment, the quality of life of the inhabitants and evaporation of the symbolic space).

To conclude, in the case of these three articles precisely, and more generally about the discourses or opinions similar to Garcia's account, we can say that we are facing neoliberal discourses. What Larsen (2019: 106) sustains, in his slogan analysis of the confrontation between García and the Amazonian, is that we have to understand slogans as a "key political *dispositif*". He reads them under the light of neoliberalism and explains that slogans such as the 'dog in the manger' are part of the strategy that recall the aim of neoliberal development (Larsen, 2019: 108).

It also shows how this slogan captures a vision of who is against these reforms and therefore against neoliberalism: the 'dog in the manger', the lazy people or ideologists. It delegitimizes all their space of discourse. It is a way to designate the enemy, reinforce the clash between the "nation" and the people who don't cooperate and who would be therefore be seen as "anti-nation":

> "Slogans served to delegitimize the neoliberal "other" – NGOs, environmentalists, and indigenous leaders as utopian reactionaries, and thus simultaneously building legitimacy around top-down decrees as 'good conduct'[…] the moral drama thereby reduced complex politics to a question of selfish behaviour and a neoliberal government willing to act responsibly." (Larsen, 2019: 110)

Hence, by this strategic manoeuvre, the "good guys" who defend their territory and the environment in general from extractive practices end up being the obstacles to improving the quality of life of all citizens.

Partial conclusion: Imaginaries, legality and morality

In this last section I have tried to conceptualize the coloniality of territory. The discovery, terra nullius and the good-practice principles are elements crossed by social constructions, crystallized in legal practices and with normative power. My work was mainly based on literature and history from the American continent and Australia. With other inputs, we could certainly add other elements that contributed to the current political conception of territory.

The coloniality of territory should be understood as a critical move in front of the liberal political theories of territory, and also as a "tool" to read territorial conflicts.

Through the elements of the idea and doctrine of discovery, the principle of terra nullius, the "good" sovereignty and use of land, I wanted to show how historical events and political ideas have shaped the relationship we have with territory in today's day and age. My aim was to underline that our conception of territory as a mere space where jurisdiction applies and that is devoted to industrial production is not to be taken for granted but is the result of a power struggle around its conceptualization. In that sense, understanding the coloniality of territory as a tool makes sense for a case-by-case treatment which implies abandoning a global theory capable of responding to all cases of territorial disputes. For instance, being aware of the fact that colonial elements can benefit one actor or the other on a territorial conflict is necessary for territorial justice. Taking coloniality into account leads us to ask: are we facing a case where we treat the concept of territory for granted while it is its meaning that is disputed? Are we facing a case where one of the claimants has been colonized by the other? Has the claimant been displaced or reduced by the other? Is the claimant's vision of territory different from the dominant one?

Through the examples of the Mapuche people in Chile and of the indigenous peoples of the Peruvian Amazon, we see that we are facing territorial conflicts that are both political (who has the sovereignty on it) and epistemological (what does territory mean and to what use is it made for). So, what should we focus on? Should we aim at quick political answers and means or privilege epistemological arguments?

In my work I have departed from a political problem (indigenous peoples don't see their territorial claims satisfied), and I have tried to answer through political theory. It is true that what we see in real life are mainly political problems; for instance, some governments don't fully recognize or allow the implementation of the right to self-determination of indigenous peoples. Some governments threaten the territorial borders of indigenous peoples. These are concrete problems to which we could propose practical solutions in terms of active defence of indigenous rights and state sanctions. There are also concrete initiatives like participative

cartography or territorial delimitation, where indigenous and non-indigenous peoples collaborate.

However, I think that the two issues – political and epistemological – are linked, and I personally think that re-shaping the conception of territory would have more impact in the long run. In that sense, I argue that the "founding problem" lies at the epistemological level and that its translation into real life is unavoidably political.

If we thus work on the conception of territory, it would automatically imply political consequences. Whereas if we work directly at the political level (with new legal instruments, state sanctions, etc.) it may certainly improve the situation of indigenous peoples, but it would not question the validity of the territory as a place of state jurisdiction. If we accept the diversity of conceptions, we would enter in a much more reciprocal political process where indigenous peoples are taken as another actor, and not as an internal threat.

In sum, I believe that a true recognition of their rights can only be established with the acknowledgment of other approaches to territories. It doesn't mean that there is no place for neo-Lockean account on territory, but that this should not be the dominant one in practice.

I hope therefore that the arguments I have presented in this third section open the discussion on how we could re-think territory and to what ends.

I now turn to the global conclusion.

Conclusion

The trigger for this work was the territorial claims of indigenous peoples. I therefore began by defining who are these political actors that, through their struggle, shake up the traditional representations linked to the territory. The definitional question was thus the issue of the first section.

I then tried to respond, at a theoretical level, to the demands of these peoples. Through a literature review, I have shown the positive contributions, but also the limitations of current theorists.

In the third section, I presented the necessary theoretical intervention, which integrates the notion of coloniality with that of territory.

As a reminder, my research question was the following: How can indigenous territorial claims be taken into account and satisfied through political theory of territory? As said, the practical satisfaction would imply political means; but theoretically speaking, I proposed the coloniality of territory that is sensitive to colonial events that partly shaped the relationship between indigenous and non-indigenous peoples.

It can contribute to the theoretical satisfaction to indigenous claims because it has elaborated on the basis of their claims (and not from the top, through the ideal-type of the "legitimate claimant to territorial rights") and revealed the theoretical-political bubble of "liberal territory". Furthermore, it opens the way for epistemological arguments sustaining indigenous rights to territory: by recognizing other conceptualizations of territory, we accept that territory is not only the place where jurisdiction applies and production is made, but also where knowledge emerges, where language, ways of life, and traditions persist.

To definitively close this work, I would just like to mention some limitations as well as some options for further research.

One of the first limits of this work is the question of the impact of the coloniality of territory in the re-building of a political theory. It is not clear how the unravelling of the concept of territory would affect, concretely, such a theory, notably when framing the legitimate claimant (the "who" question) and the content of territorial rights (the "what" question). In that sense, it should be accompanied by a larger reflection on nation-state, plurinational state, self-determination, indigenous participation, representation, and knowledge.

A second limit is more methodological. First, I think it would have been a plus to include indigenous intellectuals. In the same vein, it would have been interesting to use more examples to show how complex the territorial conflicts are.

My last limit is on the focus on indigenous peoples. I have already stated some limits in the first section, but the fact of focusing on them tends to put their relationship to land in higher importance in comparison with other groups. For instance, what is also more discussed now is how should the territorial claims of afrodescendants be treated? Even if they don't fall within the definition of "indigenous peoples" – for instance because they were not there before the invasion and colonization – their history is also heavily linked with colonization, displacement, enslavement, violence, and denial of their rights. In fact, this last limit could also be the starting point for further research about the coloniality of territory, regarding non-indigenous groups that however maintain a strong relationship with territory.

Another way to pursue the research on the link between coloniality and territory would be a more empirical approach. In that perspective, a comparison of the treatment of indigenous peoples in different states, through the analysis of speeches, laws and political actions, could be useful to "classify" the practices. It would allow us to understand how states politically translate their considerations on territory and indigenous peoples and therefore see if the coloniality of territory is reflected somehow. This would serve to give some political answers to our issue.

Finally, a last proposition would be to work on the link between indigenous peoples and the nature's rights. One of the most important initiatives is the Rights of Nature Tribunal, which was first held in 2014, in Quito (Ecuador). In the court, people speak on behalf of the nature, in order to make the destruction of nature internationally visible. Indigenous peoples play a very important role in this initiative and the court – although not recognized by States – offers an alternative legal model where nature is a subject of law. It is therefore certainly an interesting way to link and strengthen indigenous interests.

As a conclusion, what I found both fascinating and disconcerting during this work was seeing that indigenous territorial claims can lead to so many different but adjacent topics. Therefore, I truly believe that indigenous claims to territory are stating more than the right to be on their ancestral territory; they encapsulate and denounce colonial history, (racial) discrimination, moral and legal domination and the current will to homogenize human experience and knowledge.

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