Chapter

Decolonizing Indigenous Law: Self-Determination and Vulnerability in the Mapuche Case

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Abstract

In the present essay, the author—and Mapuche, at the same time—critically analyzes the construction of the Mapuche people as a "vulnerable human group" under the International Human Rights Law and then, according to decolonial option, proposes a hypothesis: if the indigenous people are vulnerable, by definition, to claim the right to self-determination, in the Mapuche case, it is an oxymoron.

Keywords: indigenous peoples, Mapuche, modernity, decoloniality, human rights, vulnerability, victimhood, right to self-determination, racism

1. Introduction

Today, Art. 1 of "Indigenous Act," No. 19.253, recognizes nine "Chilean" indigenous peoples. Among these, the Mapuche stand out not only because they have the highest population but also because of their claim to self-determination, which they have been carrying out under the current legal paradigm of the International Human Rights Law (IHRL), specifically, based on the recognition of this right made by the ILO Convention No. 169 (1989), United Nations Declaration on the Rights of Indigenous Peoples (2007), and, lately, the American Declaration on the Rights of Indigenous peoples (2016), normative triad that constitutes the "right to autonomy or self-government" in the context of "Indigenous Law," scilicet, the set of national and international norms dictated to regulate the cultural, environmental, and patrimonial peculiarities of the native peoples.

After the "invention" of America [1], the Indianous Law came to define Indigenous subjectivity. At present, this task has been entrusted to the IHRL; hence, the indigenous are born and die under the logical and conceptual scheme of human rights. This has brought certain benefits because intercultural policies have made it possible to review the historical situation of indigenous people and advance in the recognition and enjoyment of certain rights, even when these are cultural or "folkloric" kind. In the case of political rights, on the other hand, the said recognition and enjoyment has not been successful, especially when what is claimed is territorial control, self-government, and self-determination.

The purpose of this essay is to give an account of the current state of autodeterminist Mapuche's claim, reminding the reader that perseverance in this juridical argument, under scheme of Indigenous Law, will not lead to either an internal autonomy or, much less, an external sovereignty. From the "colonial difference" [2]

brought about by modernity and my Mapuche-Chilean "border" position, I propose to advance in the construction of a proper, local, and pertinent discourse on the situation of the Mapuche-Chilean as a way to advance toward the decolonization of Indigenous Law and, definitely, that the Chilean State recognizes and validates the Mapuche as a sovereign people, politically, legally, and territorially. For this, my essay is divided into two sections. Into the first, entitled "The indigenous people as a vulnerable human group," I review the main subjectivity assigned by imperialism—from the colonial category of "amentes" to the current classification of "vulnerable"—always under the assumption that the Indigenous people are disabled. In the second section, the title corresponds to the hypothesis offered by this essay—"Mapuche self-determination, an oxymoron?"—since, under the current legal configuration, it becomes a paradox, not because Indigenous Law itself and the Chilean courts deny it, but because the IHRL constitutes a paradigm of contemporary imperialism and the "coloniality of power" [3] under which not only political self-determination is closed, but even cultural is extremely limited.

2. Indigenous peoples as vulnerable people

2.1 The invention of America: the indigenous peoples and their status as "miserables of Castilla"

Indigenous peoples have been defined as those ethnic groups within the State that are characterized by a very long-term settlement within a given territory, an ancestral linkage with the land, and a high vulnerability to progress [4]. It is a very widespread definition: these people have a special connection with their ancestral territory, but these lands do not pertain to them.

In Chile, before their independence from the Spanish Crown, the Mapuche occupying the present territory were subjected to the draconian statute compiled under the label of "Laws of the Indies" norm that—on the pretext of protecting them—grouped them into "encomiendas" which were delivered to the Spanish "encomenderos" for their administration and care. Regrettably, both the "encomenderos" and the "general protectors of natives" abused the natives, forcing them to pay annual tributes, depriving them of all political representation, and providing, in fact, a slave trade despite the fact that the laws proclaimed their freedom [5].

It is known that, once installed in America, the conquerors denied humanity to the indigenous people. Later, they were considered human beings, although abject, almost beasts, because in the opinion of the Europeans, the natives were simply "amentes" since psychological or cognitive abilities of them were clearly diminished, a policy that endorsed the extermination, only appeased for the mercy of a sector of the Catholic Church, specifically through the discourse of the activists like Fray Bartolomé de las Casas or Francisco de Vitoria [6]. Even so, both agreed on the need to provide them with tutelage, for that reason the Catholic Church became the classic protector and defender of the indigenous people, in the Latin American context, and the Indianous Law granted them the legal status of "miserable of Castilla," assigning them "patrons" because, despite recognizing own political organization and own law, the Europeans said that the Indians were not able to self-determine, and, therefore, facing the hegemonic law, they were "relatively incapable" [7].

2.2 Republican Chile: indigenous are equal citizens (but incapable)

Chile declared its independence from the Spanish empire in 1810, and, along with it, it freed itself from that hegemonic law. For the indigenous peoples who

occupied this territory, however, the situation worsened because, henceforth, they had to submit to the yoke of the new Chilean elites that—as heirs of the European cultural imaginary—began the stage of "internal colonialism" [8]. It is somewhat paradoxical to assume it, but despite the conquest or "invention" of America, the Spanish empire continued recognizing some ways of self-government for Mapuche people, specifically in the title "Of the Indians of Chile," included in the "Digest of the Laws of Kingdoms of the Indies" (1680). After the formation of the Chilean republic, however, Mapuche's Law came to be considered as a mere "indigenous custom." This sovereign law—validated and respected by the Spanish empire—was victim of the modern Chilean "epistemicide," because the validity and application of this custom was subject to the decision of the Chilean legislator.

Art. 1146 of the Chilean Civil Code prescribes: "All person are legally capable, except those that the law declares incapable" and, subsequently, in Art. 1447 lists those people considered incapable. And although neither at the time of its coming into force (1857), nor now, this Code has expressly declared the indigenous as incapable, the truth is that different Chilean laws have prohibited indigenous people from carrying out certain legal acts—in particular, alienating their lands—hence it has been affirmed that it is one of the "most notable disabilities" [9].

Chile, after the advent of the republic, even recognized the indigenous constitutionally, benefiting them with equality, freedom, and ability to exercise their legal rights and obligations, even though the latter was extremely limited, particularly with regard to the autonomy of the will and the possibility of selling their lands, an issue that continues to this day as a mark of the historical treatment as incapable. On this, Chilean legal scholars criticized in his opportunity the equality of rights granted to the natives, because it was harmful for them, they were easily deceived and granted contracts of sale of their land for ridiculous prices, or they were not paid [5].

However, that disability has not only been considered in free traffic of goods and services but also into Chilean criminal law. In this sphere, indigenous peoples have been declared inimputable due to their "amencia," that is, it is assumed that they have a psychological, social, or economic inferiority that prevents them from adapting to the normative requirements imposed by the modern State and ratified by the "Ingenious Act" and Chilean criminal code. This is an extremely controversial issue at the time of its practical application, because it is influenced by legal issues, both in substance and form. However, the "essentialist" construction of indigenous peoples—which "internal imperialism" continues to do up to now—turns out to be decisive, since it is assumed that they continue to live in barbarous and uncivilized conditions and, therefore, are unable to comply the standards of civilized, Christian, and Western conduct set by the IHRL [10].

As a corollary to this section, we can affirm that currently in Chile, in order to manifest consent and validly bind themselves before the law, people must be fully able. The legal disabilities, on the other hand, can be physical or biological, as well cognitive or psychological as it happens, for example, with deafness, muteness, or dementia. Some are congenital, but there are also supervening ones, considering also those of human ontogenesis as occurs, for example, with childhood and old age. Probably, the historical explanation for this would have to be sought at a time when subjective rights were considered "able-do" faculties, in other words, that human rights could have as many rights as their physical and mental capacity allow [11]. However, other disabilities have been included in Chilean legislation, linked to race, gender, or working population. In fact, this was the case until 1943 with the so-called civil death that prevented the individual who issued religious solemn vows to retain or acquire ownership of things. The same happened until 1989, because the Civil Code declared married woman incapable; only with the enactment of the Act

No. 18.802 was it possible to eliminate this impediment, despite the fact that it will continue to doubt their full legal capacity [12].

Regarding the indigenous people, on the other hand, this incapacity continues to affect us; for that reason, to consider ourselves fully autonomous or capable before the Chilean law is highly questionable. In fact this happens, for example, as a result of racism and discrimination that prevents us, among other things, access to good jobs even having merits for it: "socioeconomic inequality in Chile has had an ethnic and racial connotation," said a recent study by the United Nations Development Programme (UNDP). What is more, when categorizing surnames and social position—in people born between 1940 and 1970—"Aillapán" is one of the 50 surnames whose family does not have a single prestigious professional in this country [13].

In the legal sphere, the antecedents are diverse, beginning with that established in Art. 13 of Act No. 19.253, and by virtue of which it is limited to the natives to freely dispose of their lands [14]. However, the most important precedent comes from IHRL because it recognizes to indigenous peoples' "right to self-determination" and "self-government," but conditioning their exercise to respect human rights and fundamental rights was agreed internationally by the States. In a sentence, right to self-determination will be effective—only—"to the extent possible," as prescribed in Art. 7.1 of the ILO Convention No. 169.

2.3 The indigenous peoples as a "vulnerable" human group protected under the international human rights law

Through the twentieth century, the historic exclusion suffered by many groups of people came to be shored by means of the anti-discrimination law, identifying those groups "disadvantaged" or "especially vulnerable" to then propose new paradigms of coexistence through positive discrimination and affirmative action [15]. During the first years of the current millennium, however, the social sciences have turned to redefining the concepts of "vulnerability" and "vulnerable human groups."

The concept of vulnerability is not new to western law. However, its current understanding and complexity responds to a typically European development [16]. And although these terms are not explicitly recognized in the European Convention on Human Rights (1950) or in another regional instrument, the truth is that its theoretical elaboration has been received and promoted by various human rights organizations attached to the UN and has even been expressed in the European jurisprudence of national and regional courts [17]. Subsequently, it has also spread to Latin America and Chile, a country that often describes indigenous peoples as "vulnerable," language used not only in academic area but also by the courts, by the government, and, in general, by citizens [18].

One of the current world references of the thesis on "vulnerability," in the juridical field, is the American Martha Albertson Fineman. She says that all human beings are "vulnerable" and, thus, has tried to redefine the traditional operative concepts in anti-discrimination law, particularly, the liberal tendency that denies people their vulnerability, under the pretext of avoiding social stigmatization [19]. Yet, this thesis has received some critics that aim at the "universalization" of the vulnerability, because not all human experiences it in the same way [20], a question that Fineman has tried to explain. The problem, however, is that Fineman ignores that the state structures or "regimes" are constructed precisely to justify and validate inequities or "subordiscriminations," in order to justify the classic liberalism's calls for equality before the law for all peoples. Nevertheless, only recognizing and

transforming the systems—structures and relations—of power, like the State, can better respond to the typically "systemic" vulnerability.

According Fineman, human resilience is enough to overcome vulnerability's situations [21]. However, structural changes are neither influenced by this resilience nor even exercising a responsible and participatory citizenship. First of all, people should be treated as able of self-determination—individually or collectively—to organize themselves, to decide their future, and, just there, try to solve the situations of vulnerability that can affect them. Recall that in the basis of human rights theories, from political liberalism, underlies the widespread idea that not all human beings are holders of all rights, since only autonomous individuals can claim ownership and capacity to exercise their rights. In contrast, those who are disabled—voluntarily or involuntarily—to self-determine or lack economic or material sufficiency become dependent beings, that is, nonself-sufficient and, therefore, are justified to be deprived of the ownership of all or some of the rights or the ability to exercise them [22]. Special consideration deserves, in this point, the case of the indigenous peoples and the submissive relation that maintains with the western law, especially when Article 7.1 of the ILO Convention N° 169 recognizes self-determination, but only "to the extent possible."

2.4 Victimhood: a strategy for recognition and enjoyment of indigenous rights

Also linked to vulnerability—and in the context of the IHRL—is the phenomenon of "victimhood," that is, the legitimacy that certain people have to access the recognition and enjoyment of certain benefits as forms of State reparation after violations of their human rights are committed, generally, by agents of the State.

On the juridical sphere, the situation of victims has historically been approached from the perspective of civil law and, also, of criminal law. However in the political sphere, this happened during the twentieth century, linked to the so-called processes of "transitional justice" and where, the victim became a construction not only legal, but also historical, social, cultural, economic and political wide and with a precise objective: to establish the criteria or legal requirements so that people who qualify as victims can access repair plans and, in general, government assistance [23].

Currently, vulnerability is determined by "human embodiment" [24]. Previously, it had been argued that for the contemporary moral economy, the body and its suffering were extremely useful when it came to claiming and accessing the rights offered by the capitalist democracies. There is no doubt that this "politic of suffering" is extremely useful for those States that, without to change their structures of exclusion and discrimination, manage to respond to the claims of groups historically violated, indemnifying them and reintegrating them into their citizenship, although that yes: under the condition of "victims" [25, 26]. Certainly, we must not forget that if one or several people are recognized as victims, this may imply to enjoy a series of benefits [27], demonstrating why "victimhood," in the context of transitional justice, turns out to be extremely useful to the time to negotiate and generate repair programs. Moreover, this strategy of victimhood is being useful to those convicted of crimes against humanity who, claiming their status as "victims," demand respect for their human rights and the possibility of opting for prison benefits [28].

However, as I will explain below, despite the fact that "victimhood" entails certain benefits, this strategy is ineffective and even paradoxical when it comes to claiming self-determination and self-government, in the context of the IHRL. At least, in case of Mapuche people.

3. Self-determination into Mapuche's claims: an oxymoron?

3.1 The international human rights law as a paradigm of modernity/coloniality

In addition to the individual perspective, the modern theory of human rights is inexorably determined by questions relating to the national sovereignty of States. However, in the case of indigenous peoples, and their right to self-determination, these issues are often ignored. And although the "Indigenous Law" has been outlined, during the last decades, as an autonomous discipline within the IHRL, it is pertinent to remember that the concern for situation of them, arose due to the terrible working conditions in which they was, and not for questions of sovereignty. It was the International Labor Organization (ILO) that in 1921 began to show concern and to study —from the labor perspective, not the political perspective— the situation of indigenous workers. This is confirmed by one of the main antecedents to the "right to self-determination," included in ILO Convention No. 169, that it does not pretend to be a basis for declaring the indigenous self-government.

The human rights are often understood as a set of faculties and institutions that, in each historical moment, specify the requirements of human dignity, freedom, and equality, which must be positively recognized by the legal systems legal issues at national and international levels [29]. Paraphrasing to Costas Douzinas, we must ask ourselves the question: Are indigenous people "completely" human or, in contrast, are they only "partially" human, with very limited rights? This question is not trivial, especially assuming that the concept of "humanity" was defined by Eurocentric modernity, heir to that Athenian-Roman citizenship: masculine, white, plutocratic, heterosexual, and so on. And of course, the barbarians —and among them the indigenous— have gradually been integrating ourselves into this "humanity," despite the fact that this membership continues to be an imperial arbitrariness, decided from Europe or the United States [30].

Now, I will do analyze the classic criticisms against human rights. However, in a lot of them it is possible to discover arguments that would allow us to move toward the "decolonization" [31] of indigenous law, demonstrating why it is an oxymoron that indigenous peoples rely on the same colonial grammar to achieve their political self-determination.

Considering the historicist critique, it is already possible to understand the refusal of western States—and, in our case, Chile—to respond to the main indigenous claims. In the other hand, Karl Marx did not consider this demand in his analyses; however, a rereading of their texts would predict that indigenous claims—in the key of human rights, not in terms of subjective rights as such—can never be satisfied, because the content and the positivization of these rights depend totally on the convenience of the bourgeoisie and its benefit, in the context of a neoliberal and highly individualistic economy. Even assuming that the reformulation of the principle of equality has made it possible to improve the relationship between the bourgeoisie and the indigenous peoples, we must not lose sight of the fact that this reformulation aimed at "equality of exploitation of the labor force" [32, 33]. However, it should be noted that both Marxism and capitalism constitute nemesis of the indigenous worldview, since both depend on the exploitation of the land and its natural resources [34].

It has been pointed out that human rights are the hallmark of modernity, an ideal habitat for the concretion of the liberal Kantian myth that speaks of a fully autonomous, invulnerable, cosmopolitan, multicultural, and tolerant humanity. Paradoxically, as postmodernist criticism points, during the twentieth century, there were more violations of those rights than in any of the preceding and less

enlightened times. However, it is forgotten that modernity began in the sixteenth century, precisely with the genocide and "epistemicide" against people who inhabited the American continent at that time [35]. Now, with regard to postmodern criticism, we should also make certain clarifications. It is possible to assume that human rights are a mark of postmodernism, although taking into account that most critics speak from Eurocentrism or "postmodern reason." For me, on the other hand, the International Human Rights Law is a paradigm of "modernity/coloniality," understanding "coloniality" as the dark and macabre side with which modernity has been operating historically. These are the political instrument—by excellence—of contemporary imperialism and for which it fights battles in its name, freeing people from regimes, practices, and barbaric customs, pontificating universal morality, and even breaking their own ethical standards. Contradictorily, these same principles of human rights and national sovereignty that have served the great powers to legitimize the new legal, social and economic order have served to evade the criticisms and questions on the flagrant violations of human rights that these same powers discuss.

On the other hand, as the configuration of IHRL depends on European and American imperialism, it can be said that there is no hope of self-government or self-determination for "non-Western" people [36]. Douzinas has explained it better by saying that the universality of human rights, although it was an invention of the west, today is used by the south and the east to access the distribution of the world product, trying to achieve a full coexistence between different peoples and the same participation in the enjoyment of the planetary wealth, when in fact the agreements of concessions of aid, ordinarily, only impose privatization, the market economy, and human rights as the gospel of liberation. In the case of indigenous people, history repeats itself: the imperialism offers a possibility of conversion, although not to Catholicism, but to neoliberalism and its representative democracy [26].

3.2 Mapuche self-determination: toward a decolonial turn

I am not going to ignore that the IHRL has been extremely useful when it comes to raising and justifying Mapuche demands. And although, since the beginning of the 1990s, "institutional" ways have been configured that distance themselves from those that claim "political violence," the truth is that there is no known Mapuche actor who tries to avoid the imperialist doctrine of human rights to support both their political and juridical plaint as such.

In my opinion, however, the Mapuche, in turning to the IHRL—as a political and legal basis for its national liberation strategy—errs, because self-determination, under that perspective, is only allowed for those issues that do not involve territorial control or sovereignty. The Declaration on the Rights of Indigenous Peoples UN (2007) recognizes in its articles 3 and 4: "Indigenous peoples have the right to self-determination." However, Art. 46.1 warns: "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any behavior against the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."

The Mapuche people do not exist beyond the IHRL. In other words, there is no possibility of self-determination beyond the limits set by imperialism in the matter of human rights. This is reaffirmed by Article 34 and 46.2 of Declaration of the year 2007, articles V, XXXV, and XXXVI of the American Declaration of Indigenous Peoples OAS (2016) and articles 8.2 and 9.1 of ILO Convention No. 169. From a

critical perspective, this type of writing should not be surprising since the establishment and interpretation of the Treaties, in the matter of human rights, always go under direction desired by imperialism, both global and internal [37]. It is a matter of reviewing, for example, the recommendations of the "Ruggie framework" (UN) that advocating respect for indigenous territorial control does not establish sanctions for States or companies that disobey their commitments in the area of extractive industry. In the Chilean context, on the other hand, the policies of returning land to the Mapuche people seek to repair the spoils suffered in ancestral territories, under a human rights approach, although responding only to those communities validated by the State—in attention to the homogenizing concept of "intermediate group" used by the 1980 Constitution—and without ever granting territorial control or self-government and, even, subtracting the said lands from the normal judicial traffic. The same concept "land" responds to a purely western vision—i.e., the land is indivisibly inserted into the broader concept of "territory"—and the criterion of Chilean jurisprudence remains invariable in this topic, mainly through the implementation of the "indigenous consultation" to which the Chilean State has been obliged when it ratified ILO Convention No. 169 [38].

In Chile, the Mapuche people can only aspire to a "cultural" self-determination but, even so, tolerated in the "to the extent possible," as stated in Art. 7.1 of the ILO Convention No. 169. Thus, for example, the Chilean Supreme Court has recently ratified it, allowing the practice of rituals in ancestral lands—now occupied by other people—but immediately denying the possibility of recovering them[1]. Politically, and under the prism of post-dictatorial Chilean governments, Mapuche self-determination will be achieved through the dedicated parliamentary seats in the National Congress, with or without prior constitutional recognition. However, in my opinion, this only confirms to Chile like a "pluricultural" society, but not that the political self-determination or self-government of the Mapuche people will be allowed. And with that, as has been argued, the victorious revolutionaries and their legislators could be as tyrannical as their predecessors, and this has been the case in Chile, especially if we consider that, after the overthrow of Pinochet, the governments of "center-left" have imprisoned and killed more Mapuche than the right-wing governments. Finally—and although it is painful to assume it—although codification is one of the basic guarantees of fundamental rights, this does not guarantee love, respect, and affection toward others [26], and this has been demonstrated in recent years because, despite the sanctions and recommendations of international human rights organizations, Chile continues to apply a racist politic against the Mapuche people. Even, the Supreme Court has recognized this. It happened in 2016, when a Mapuche woman was imprisoned and forced to give birth while she was chained. On that occasion, the Supreme Court accepted an appeal for amparo in her favor, noting that the Chilean State discriminated doubly for being a woman and an indigenous person.[2]

In my opinion, Mapuche self-determination implies the reorganization and free administration of the ancestral territory but mainly to recover the lost nomogenetic capacity, independently of the relationship that may exist with the Chilean State toward the future. It is known that, at international sphere, the right to self-determination, for indigenous, has been configured from the 1980s. In the case of ILO Convention No. 169, this happened in 1989: "The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands

[1] Recitals 3 and 6 of the judgment, dated July 26, 2018, case N° 9021–2018, "Painepe con Sociedad Agrícola Las Vertientes Limitada."

[2] This jugment was delivered on December 1, 2016, in case N° 92.795–16.

they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development." However, Chile only introduced this Treaty into its internal legislation in 2008, a disdain that has characterized to governments that succeeded Pinochet, refusing to recognize the quality of the "people" of the Mapuche, precisely to avoid claims of self-determination a posteriori. In this sense, the opinion expressed by the Constitutional Court, in the year 2000, remains the rule: "(…) the expression 'indigenous peoples', should be considered within the scope of said treaty, as a set of persons or groups of people of a country who possess in common their own cultural characteristics, who are not endowed with public powers (…)".[3] The formula proposed by the Chilean State to relate to it is not that of sovereign political peers—as historically it was—but the one inherited from the Iure Belli: the victorious State of offering mercy to the vanquished and thus, acknowledging or not their past mistakes, conditions the Mapuche to dialog in a state of subjection, under the rules and standards set by the Chilean State itself in signature tune to the international "humanitarian reason" [39]. As a result, it will not be the international law of sovereign States that will elucidate the issues between Chile and the Mapuche people, but only the IHRL, regulations before which the Mapuche only acquire relevance in a context of vulnerability and victimization.

Considering the Kantian autonomic proposal, we could argue that the Mapuche people are still in a stage of "tutelage" or "nonage." And in attention to this plan, we could say that when a person decides to become independent, abandoning the paternal or maternal lap, he can achieve it in different ways. So, you can live outside the family home but maintained by your parents. Others—more dignified, in my opinion—will realize their independence by accepting, in the beginning, small gifts or the impulse of their parents to achieve their definitive economic emancipation. Even, there are even people who claim their own self-sufficiency but without accepting any kind of family support, regardless of whether they break or retain the family bond that unites them. And using the analogy, we could see our relationship with the Chilean State in the same way because if self-determination is what we want, we must decide if we are going to break all political and territorial relations with Chile, if we are going to negotiate a personal status that identify us in the whole country, if a "plurinational region" will be defined, and so on. Precisely, that is the legal explanation why the relationship between the Mapuche people and the Chilean State is not governed by International Public Law, as it happens between sovereign States, and at the same time, it allows us understand the strategy that transforms the juridical or legal claims in "facts of political transcendence" [40], in order to access protection provided by the International Human Rights Law.

4. Conclusions

Bearing that what the Mapuche people want is a political self-determination, in attention to International Public Law, the autonomous movement should consider the following suggestions:

1. Define preliminary issues. From the reading, the analysis, and the praxis of the Mapuche autonomist movement, it is not possible to clearly extract what is the scope of the self-determination sought, the territory that will encompass, as well as the personal status that will define who can be considered "Mapuche."

[3] This text corresponds to the recital N ° 44 of the judgment issued on August 4, 2000, in case N ° 309.

2. Vulnerability. Taking on the above, whatever the option, it is fundamental that the Mapuche people abandon their self-identification with the "vulnerable human groups," promoted by the indigenists and human rights activists. There is no doubt that the recognition of a catalog of human rights for indigenous peoples has allowed their visibility at the international ambit, but it is true that this also perpetuated their dependence on current imperialism—external and internal—which in exchange for "cultural rights" exploits the indigenous ancestral territories, submerging in poverty the people who inhabit them and forcing the exodus to the metropolis; without going any further, in Chile, the vast majority of the Mapuche—about 70 or 80%—have been born and are currently living in Santiago. In my opinion, vulnerability is another symptom of the "coloniality of being" which, through racism and the taxonomy imposed by modernity, continues to perpetuate the classification between superior and inferior human beings.

3. Victimhood. It would be prudent, too, that the Mapuche will not continue using the policies of "victimhood," designed by the Chilean governments following the Pinochet dictatorship, since they only perpetuate a dialectic of violence and submission of the Mapuche people with respect to the Chilean State. Instead of empowering indigenous peoples, it ends up decimating them, dehumanizing them, atomizing their collective struggles through "clientelism," and exposing their situation through the "emblematic cases" that would apparently benefit an entire population, but in truth they only end up giving revenues to the people, activists, and Chilean political parties that are behind these claims. In my opinion, victim status is just a transitory situation. For the rest, remember that self-flagellation perpetuates the oppression [41].

4. Toward decolonization of the indigenous law. In the end, it is worth remembering that the law is one of the areas that has served most to regulate and impose the modern colonialism, which is why its development and control have always remained in the hands of the elites, who always seek to preserve their privileges, through the promotion of capitalism and representative democracy, as constitutive expressions of the "coloniality of power." That is why the emancipation of indigenous peoples is impossible without removing that "colonial matrix of power," without reaching a "second decolonization" [42] that puts us again before the dilemma: rebuilding a "negative or oppressive identity" that keeps us in the vulnerability and dependence or, instead of that, reconstructing a "positive or emancipatory identity" that leads us toward self-determination and a sovereign political existence.

5. Recovery of Mapuche's nomogenetic capacity. In general, for Latin America, it is affirmed that the indigenous' own law managed to survive, notwithstanding the "epistemicide" applied by European colonialism [43]. That's why within the movement for self-determination, there is a sector that interpellates the Chilean State to recognize what was agreed in various treaties signed between the seventeenth and nineteenth centuries, in which the Mapuche was considered as a free and sovereign people over their territories [44]. In other words, the survival of the obligations acquired by the pre-republican and republican authorities before the Mapuche people is raised, providing arguments in favor of the recognition of the nomogenetic capacity of the latter and legal pluralism in the Chilean legal system.

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