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The Theory of Recognition and Multicultural Policies in Colombia and New Zealand

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Abstract

This dissertation discusses recognition as a theoretical concept and a political practice. The thesis argues that currently, theories of recognition are conflated with theories of liberal multiculturalism, according to which recognition emerges through political practices that emphasise group-differentiated rights in plural societies. The thesis argues that in many cases, however, these political practices fail to realise the normative ideals of recognition theory. The argument is supported by an analysis of policies of ethnic recognition in two different geographical, political and cultural contexts: Colombia (indigenous people and Afro-Colombians) and New Zealand (indigenous people). The policies analysed in both cases broadly relate to land rights, political representation and welfare. The shortcomings and challenges arising from the policies of recognition in both nations are underlined by showing that, despite extensive legislation aiming at the recognition of the group at stake, misrecognition persists in both cases. These issues are then related to common theoretical objections raised against "identity politics". The thesis argues that these criticisms would be weakened if the concept of recognition remained distinct from theories of liberal multiculturalism and gave, at the policy level, an increased importance to deliberative practices.

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First and foremost, I wish to express my gratitude to my two supervisors, Associate Professor Katherine Smits and Doctor Stephen Winter. Kathy and Steve gave highly valuable feedback during the long process of writing this thesis and helped me to improve the quality of this project greatly. They were also always very friendly and approachable during these three years. Most importantly, however, I wish to thank them because they played a very important role in my intellectual development. They helped me become a more critical and self-confident individual and, because of that, I feel deeply indebted to both of them.

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Finally, I wish to thank the most important person for my daily inspiration, my daughter, Sofia Zahra Lam Pirsoul.

Contents

List of acronyms

ASI: *Alianza Social Indigena* (Indigenous Social Alliance)

AICO: *Autoridades Indigenas de Colombia* (Indigenous Authorities of Colombia)

AISO: *Autoridades Indigenas del Suroccidente* (Indigenous Authorities of the South-West)

AUC: *Autodefensas Unidas de Colombia* (United Self-Defenders of Colombia)

CRIC: *Consejo Regional Indígena del Cauca* (Regional Indigenous Council of Cauca)

CONPES: Consejo Nacional de Política Económica y Social (Nacional Council of Economic and Social Politicies)

FARC-EP: *Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo* (Revolutionary Armed Forces of Colombia—People's Army)

INCORA: *Instituto Colombiano de Reforma Agraria* (Colombian Institute of Agrarian Reform)

ELN: *Ejército de Liberación Nacional* (National Liberation Army)

EPS: *Entidades Promotoras de Salud* (health promoting entities)

EPSI: *Entidades Promotoras de Salud Indigena* (indigenous health promoting entities)

ILO: International Labour Organization

MAQL: *Movimiento Armado Quintín Lame* (Quintín Lame Armed Movement)

MIC: *Movimiento Indígena Colombiano* (Indigenous Colombian Movement)

OBAPO: *Organización de Barrios Populares y Comunidades Negras de Chocó* (Popular Neighbourhood and Black Communities from Choco Organisation)

PCN: *Proceso de Comunidades Negras* (Black Communities Process)

TPK: Te Puni Kōkiri

UN: United Nations

UNDRIP: United Nations Declaration On The Rights Of Indigenous Peoples

UNHCR: United Nations High Commissioner for Refugees

UNICEF: United Nations Children's Fund

Glossary

Cabildo: Indigenous authorities council.

Campesino: Peasant.

Consulta previa: Prior consultation.

Criollo: Creole

Iwi: Largest social unit in Māori society. It is often translated as "tribe".

Mana: Māori concept conveying the idea of prestige, power, authority and spiritual power.

Mana motuhake: Māori terminology for self-determination.

Mestizo: Racially mixed individual.

Mestizaje: Phenomenon of interbreeding between people of different racial origins.

Resguardo: Indigenous reserve/territory.

Rohe: Māori terminology for territory

Tino Rangatiratanga: Māori terminology for self-determination.

Tutela: In Colombia, a constitutional right that seeks to protect fundamental human rights when these rights are threatened by the action (or inaction) of a public authority.

Whakapapa: Māori term for genealogy

Chapter one: Introduction

Overview of the project

This project will investigate the notion of recognition both as a political concept and practice. The thesis will use New Zealand and Colombia, two states with strong bi/multicultural political agendas, as case studies to explore the theoretical implications of the theory of recognition and its implementation.

Recognition is a contested political concept. It is contested in two ways. The first debate over the term relates to its potential to improve or impede social justice. Some scholars have seen this term as a solution to all social injustices plaguing human society. Other scholars, however, criticise the concept for a variety of reasons. Many others have taken various positions falling somewhere between these two opposite poles. In this project, I will tackle this debate. However, the debate over the potential of recognition to further social justice will be subordinated to a second dispute: the dispute over the meaning of the term itself. It is obvious that one can only pass judgement on a concept if the meaning and scope of the concept has been clarified.

In order to understand the meaning of recognition, it is important first to review the literature dealing with the topic and understand what people meant when they were talking about recognition. Indeed, what is the object of recognition? Is it difference; equality; difference embedded within equality; culture; the *right* to be different or to have one's culture or identity respected; is it groups or individuals, or both? There are many variations in the meaning and scope of the concept among the many authors who assert the importance of recognition to increase social justice and each of them offers a different account of the theory.

I believe that the best way to clarify both dimensions of the debate is via a two dimensional analysis. On the one hand, the concept of recognition needs to be dealt with at a purely theoretical level. On the other hand, however, the theory of recognition cannot be analysed and understood without appeal to the real social experiences and legal implications informing a political order implementing policies influenced by the theory. Failure to do so would reduce recognition to an abstract concept devoid of any political pertinence.

Such analysis is important because contemporary political debates over multiculturalism, migrants, indigenous rights, secularism amongst others all relate implicitly or explicitly to the concept of recognition and political decisions influencing many lives are taken with a particular conception of recognition (either pro or con) in mind. These decisions are usually the result of intense debates, outcries and crises and have the power to reshape radically political orders and social mentalities.

I, therefore, propose to engage in a critical analysis of the concept of recognition and of its implementation through multicultural policies. I believe that these two level of analysis, taken dialectically, will mutually reinforce our understanding of both the theoretical concept at stake and of its implementation. This in turn will help to clarify the dispute over the potential social benefits or problems resulting from an emphasis on *recognition* as a key concept to advance social justice.

Methodology

Normative reconstruction, triangulation and inductive logic

In this thesis, I will go back and forth between theoretical and empirical analysis. In other words, I will revise the normative judgements that inform my theoretical framework by taking into account the findings of the empirical analysis and the theoretical framework will in turn clarify and increase the intelligibility of the empirical phenomena. The dialectical method using both normative judgments and empirical facts to reach conclusions used in this thesis closely relates to Axel Honneth's ideal (an ideal itself drawn from his reading of Hegel) of developing "a theory of justice as an analysis of society".[1] As Honneth explains, "we would do well to take up once again Hegel's endeavour to develop a theory of justice on the structural preconditions actually existing in society".[2] This means that political theory should be immanent and not detached from the normative claims and values, the "ethical life", informing a given society's institutions. Yet the goal of such endeavour is not merely descriptive. Indeed, the purpose of the investigation is not merely to reinforce and justify existing practices and institutions but

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[1] Axel Honneth, *Freedom's Right : The Social Foundations of Democratic Life*, trans. Joseph Ganahl (New York: Columbia University Press, 2014), 1.
[2] Ibid., 3.

instead "to correct and transform them" from within the existing ethical life informing society.[3] The point of this endeavour, what he calls a "procedure of normative reconstruction", is to demonstrate "the extent to which ethical institutions and practices do not represent the general values they embody in a sufficiently comprehensive or perfect fashion".[4]

In the case of the present thesis the provisional conviction informing my moral judgment about justice is that the denial of recognition, and/or the misrecognition, of particular identities impacts negatively the lives of the bearers of these identities and that remedial action is justified. As explained in the previous section, I therefore propose a critical analysis of the concept of "recognition" which, I argue, currently informs the "ethical life" of the societies I study in this thesis. The meaning and scope of recognition as well as its political implementation will, therefore, be opened to revision through this investigative process as I show the extent to which the ethical institutions and practices of recognition at stake in the case studies do not sufficiently represent the values they claim to embody.

Indeed, while I intend to clarify the understanding of policies of recognition as they are implemented in two different contexts, I also expect that such enquiry will allow me to clarify and revise some of the views held (pros and cons) about the theory of recognition. Analysing two states and three ethnic groups (which share strong similarities and differences) as case studies will help me to further triangulate information and, therefore, enrich the theory. By triangulating information I mean a way of cross-checking information coming from different sources in order to discover recurrent patterns which can be used to draw sounder conclusions.

This means that the thesis will mostly follow an inductive method. Indeed in this thesis I aim to derive general conclusions from specific observations. Following this method "the premises should provide some degree of support for the conclusion" and "such support means that the truth of the premises indicates with some degree of strength that the conclusion is true".[5] Such method, therefore, leads to conclusions which are more or less probable depending on the extent to which it meets the criterion of adequacy which can be described as follows:

> As evidence accumulates, the degree to which the collection of true evidence
> statements comes to support a hypothesis, as measured by the logic, should tend to

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[3] Ibid., 8.
[4] Ibid., 10.
[5] James Hawthorne, "Inductive Logic," in *The Stanford Encyclopedia of Philosophy (Online)*, ed. Edward Zalta (2016). Retrieved from https://plato.stanford.edu/entries/logic-inductive/ on 1/1/2017

indicate that false hypotheses are probably false and that true hypotheses are probably true.[6]

My major task will therefore be to accumulate as much strong evidence as possible to reach stronger degrees of probability. I will pay attention, however, to reduce potential constructivist and self-fulfilling prophecy phenomena by collecting evidence which both supports and challenges the main assumptions made in regard to the theory of recognition and its implementation. I will also engage in deductive reasoning , especially when dealing with theoretical principles, but this mode of reasoning will only play a secondary role in the thesis.

Case studies

This thesis will use New Zealand and Colombia as case studies. I have chosen to focus on these two countries for a variety of reasons. One of them is that the social reality of indigenous people within the English speaking world (the United States, Canada, Australia and New Zealand) and the indigenous people living in Latin American societies are usually not studied together. I intend to remedy this lack. But most importantly, my case studies choice can be justified because the two countries share two key characteristics which are beneficial to the triangulation method of analysis.

The first shared characteristic relates to the demographic status of the ethnic groups at stake. Latin America is the geographical area of the world most populated by indigenous people. In order to keep my comparative study consistent with New Zealand, it was therefore necessary to study a country where indigenous people are a minority. Indigenous people in Colombia represent approximatively 3.5% of the population. A country such as Bolivia with a majority indigenous population and an indigenous president would not have provided an adequate comparative framework since Māori are a demographic minority in New Zealand. Afro-Colombians also represent a demographic minority (approximatively 10% of the population) whose presence tends to be even more invisible than the indigenous presence despite its stronger demographic weight. Since the thesis focuses on the claims for recognition of minority ethnic groups which suffer from a long legacy of misrecognition, analysing the state of Afro-Colombians alongside indigenous people in Colombia is therefore equally relevant since 1) they have suffered similarly to indigenous people from European imperialism; 2) unlike other Afro-American peoples, Afro-Colombians are now the recipients of an institutionalised

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[6] Ibid.

recognition which mirrors very closely the institutional recognition offered to indigenous people (land rights and reserved seats in parliament among for example) and 3) it would allow me to discuss the state of an ethnic group usually left out by a literature narrowly focused on indigenous recognition. Moreover, since the thesis is not primarily concerned with the unique claims of indigeneity – defining who is indigenous is in fact already a matter of great scholarly debate – but instead with claims to recognition as such, an analysis of the state of Afro-Colombians will allow me to consider whether indigeneity grounds different claims to recognition from that demanded by other severely misrecognised groups and to draw sounder conclusions about institutional recognition and multiculturalism.

Second, and most importantly, both countries promote actively a model of institutionalised multiculturalism or bi-culturalism. The thesis will focus on the way recognition/misrecognition materialises through institutional practices. A state with a strong institutional framework promoting the recognition of ethnic minorities is therefore necessary. Colombia is one of the best (if not the best) case study in Latin America for this project because the Colombian state has developed the most extensive legal framework on the whole continent for the recognition of its two main ethnic minorities (indigenous and afro-Colombians) with the exception (arguably) of some states with a strong left-leaning agenda such as Venezuela and Ecuador (who do not recognise their afro-descendant populations). Colombia ranks the highest in Donna Lee Van Cott's classification of Latin American state promotion of Indigenous recognition through multicultural policies before Ecuador and Venezuela (her taxonomy uses similar criteria to Banting and Kymlicka).[7] Such recognition is assured through article 7 of the 1991 constitution which stipulates that the state recognises the ethnic and cultural diversity of the nation. This recognition materialises through policies such as reserved seats for representatives of the indigenous and Afro-Colombian communities in the democratic institutions of the state, increased territorial autonomy, and other policies aimed at the protection and promotion of their cultures. Colombia is therefore a great case study to analyse alongside New Zealand, which through its commitment to the Treaty of Waitangi and a number of progressive measures aimed at respecting and promoting this commitment (for example: reserved seats for Māori, Waitangi tribunal and Treaty settlements, te reo Māori promotion), should be considered a good example of settler-indigenous relations in the English speaking world.

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[7] Donna Lee Van Cott, "Multiculturalism Versus Neoliberalism in Latin America," in *Multiculturalism and the Welfare State*, ed. Keith Banting and Will Kymlicka (Oxford: Oxford University Press 2006).

The several shared characteristics between the two states will allow me to show many similarities in the mechanisms at play with regard to the way they treat their indigenous (and Afro-descendent) populations and how this treatment relates to a form of neoliberal multiculturalism developed by both nations. However, I will also keep in mind some of the key historical, geographical, economic and political differences between the two states, especially the role played by violence in Colombia. I believe that this complex interplay of similarities and differences between the two will allow me to draw sounder conclusions. Too many similarities would have led to a constructivist self-fulfilling prophecy phenomenon while too many differences would have weakened the potential of triangulation informing my methodology and therefore would have led to weaker conclusions.

Research material

The two dimensional nature of this work requires a careful analysis of two main types of resources. First, at a theoretical level, I identify and select the main scholars who have explicitly developed a political theory of recognition. While the defining line between theories of recognition and theories of multiculturalism is sometimes blurred, I will nevertheless pay attention to the difference between the two and will focus my attention on the former. Theories of multiculturalism are highly relevant to this project and will be an important part of my critical analysis but I will treat them as subordinated, and therefore secondary, to the theories of recognition. This is because theories and discourses on multiculturalism usually arise out of a primary reflection (which can be implicit) on recognition.

Second, the empirical analysis of social and political phenomenon at stake in this thesis will require the use of other types of resources. Legal documents such as constitutions and laws will allow me to analyse the institutional dimension of recognition in Colombia and New Zealand. Sociological and anthropological studies provide insights into the living conditions of ethnic groups. Living conditions include both the way these groups benefit or suffer from the current institutional arrangements but also how they politically articulate their claims for increased recognition as well as how they describe their current social situation. Statistics available about the groups at stake will also be useful tools to analyse the current social situation of these populations. Finally, I will use media coverage of some of the social and political issues related to the themes relevant to my analysis to illustrate situations and problems which statistical analysis alone cannot convey adequately.

Definitions: indigenous people; Afro-Colombians

The thesis will analyse policies of recognition aimed at three specific ethnic groups, two of which are indigenous people. Given that these policies offer certain material advantages to the individuals belonging to the group at stake it is important to define and draw boundaries between those who belong and those who do not belong to these groups. Yet, defining an ethnic group is not a simple matter, especially n countries with long histories of assimilation policies and intermarriage.

The problem of defining indigenous people appears clearly at the international level where controversies over the meaning of the term have informed debates for the past decades. Indeed, as Karen Engle noted, "most instruments have intentionally eschewed defining indigenous people" and according to her, "ILO 169 comes closest to offering a definition".[8] As I will explain later on, the International Labour Organization Convention concerns both tribal and indigenous groups and their identification is mostly based on cultural characteristics. Indeed, the Convention states that it applies to:

> Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or special laws or regulations[9]

And to

> Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country or [surrounding region] at the time of conquest or colonization or the establishment of present state boundaries and who […] retain some or all of their own social, cultural and political institutions[10]

The Convention also emphasises the importance of self-identification as a "fundamental criterion" for determining the groups benefiting from the Convention and interestingly for the case studies at stake in this thesis "people brought involuntarily to the New World".

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[8] Karen Engle, *The Elusive Promise of Indigenous Development : Rights, Culture, Strategy* (Durham: Duke University Press, 2010), 107.
[9] International Labour Organization, "C169 - Indigenous and Tribal Peoples Convention," (1989). Art.1
[10] Ibid.

The emphasis on self-identification reveals a tension between objective and subjective criteria to define ethnicity. Objective, even biological, criteria used to prevail. In some parts of the world such as New Zealand, blood quanta were used by the state to define who was and who was not indigenous. However, the association between biological criteria and racist ideologies has progressively discredited such an approach.[11] Cultural criteria then became a benchmark. Language use, customary practices, geographical location and relations with tribal authorities, for example, allowed the scaling of cultural belonging. Yet, given the acculturation process undergone by many descendants from indigenous populations such approach also showed its limits. Purely subjective criteria therefore came to play a more important role in defining indigenous people and self-identification through censuses has become the main tool to count indigenous people and other ethnic groups. This approach has nevertheless its own shortcomings as well. Indeed, "in a context in which being indigenous or tribal increasingly leads to rights, many groups would like to be considered indigenous or tribal" and therefore "they often treat self-identification as the sole criterion for inclusion, and they are often supported by scholars and advocates in this view".[12]

The definition of indigenous people developed in the Cobo report[13] is usually considered a more accurate definition as it intertwines identity and history. Cobo's definition relates indigenous identity to four factors: "subjection to colonial settlement, historical continuity with pre-invasion or pre-colonial societies, an identity that is distinct from the dominant society in which they are encased, and a concern with the preservation and replication of culture".[14] The Cobo definition also considers self-identification as well as recognition by other indigenous people as member of the group as criteria to define indigenous individuals.

For obvious pragmatic reasons, self-identification is the main tool used by states to establish statistics about the ethnic make-up of their population. Yet even self-identification as a sole criterion creates methodological issues since the way a question is framed can influence greatly

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[11] Tahu Kukutai, "The Problem of Defining an Ethnic Group for Public Policy: Who Is Maori and Why Does It Matter?," *Social Policy Journal of New Zealand*, no. 23 (2004).
[12] Engle, *The Elusive Promise of Indigenous Development : Rights, Culture, Strategy*.
[13] The Cobo report is a study of the problem of discrimination faced by Indigenous populations. It was submitted to the UN in the early 1980's. The report is available on the UN website: https://www.un.org/development/desa/indigenouspeoples/publications/2014/09/martinez-cobo-study/
[14] Paul Keal, *European Conquest and the Rights of Indigenous Peoples : The Moral Backwardness of International Society* (New York: Cambridge University Press, 2003), 7.

the outcome of a census. I will now present demographic data about the three ethnic populations at stake in this thesis.

Māori in New Zealand

In New Zealand individuals who self-identify as Māori and can claim Māori ancestry are classified as Māori. There is, however, "no formal process by which to verify an individual's background".[15] Self-identification is therefore usually the criterion informing current statistics in New Zealand.[16] According to a 2013 census, "One in seven people (598,605 or 14.9 percent) usually living in New Zealand in 2013 belonged to the Māori ethnic group".[17] Most Māori (86.0 percent) live in the North Island, and just under one-quarter (23.8 percent) live in the Auckland region.[18]

Indigenous peoples and Afro-Colombians in Colombia

In Colombia, self-identification based on culture or physical features is the criteria to define indigenous and Afro-Colombian ethnic groups. According to a 2005 census, 3.4% of the population identified as indigenous while 10.6% identified as Afro-Colombians, *Raizales* and *Palenqueros* (two Afro-Colombian subgroups).[19]

Most Indigenous people live in the mountainous areas of South-Western Colombia but important communities also live in the North on the Guajira peninsula and in the Amazon. Afro-Colombians mainly live on both the Pacific and Caribbean coasts. Both groups are also increasingly present in big cities such as Bogota and Cali because of forced displacement.

Complexities of relations between state and non-state actors

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[15] Kukutai, "The Problem of Defining an Ethnic Group for Public Policy: Who Is Maori and Why Does It Matter?."

[16] http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-maori-english.aspx retrieved on 2/01/2017.

[17] http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-maori-english/population.aspx retrieved on 2/01/2017

[18] http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-maori-english/location.aspx retrieved on 2/01/2017

[19] DANE, "La Visibilización Estadística De Los Grupos Étnicos Colombianos." Retrieved from the official Colombian statistics website, https://www.dane.gov.co/files/censo2005/etnia/sys/visibilidad_estadistica_etnicos.pdf on 2/01/2017

In this thesis, I will mainly focus on the relations of recognition between states and minority ethnic groups. This emphasis is justified by the scope and aim of the project. I do, however, acknowledge that other political actors play important roles in the current socio-economic and political state of affairs of indigenous and other minority ethnic groups. Indeed, many non-state actors impact such groups either positively or (more often) negatively such groups. For example many indigenous groups receive support from "outsiders". These outsiders can be international NGOS, foreign academics, other indigenous groups from other continents and international organisations such as the UN. Besides these arguably positive influences, a number of negative influences also impact the lives of indigenous and other minority ethnic groups, especially (but not only) in developing countries: powerful corporations seeking to exploit natural resources; armed groups and criminal organisations; competing ethnic groups; global financial trends.

My focus will be on state/minority group relations but I will have to take into account the impact of these other actors. This is particularly true when these other actors have created close relations with the states at stake in this thesis. If a state allows a mining company to extract natural resources from indigenous territories or let global markets influence or even direct the course of recognition policies, the "external" influences are still part of the broader relations of recognition between the state and the ethnic groups seeking recognition.

It is also the case that intergovernmental organisations such as the UN or International Labor Organization have the potential to influence domestic policies. These intergovernmental organisations have in fact played an important role of advocacy for indigenous people in the past decades and are partly responsible for an increased awareness of the need to recognise and protect indigenous cultures worldwide.

International law framework

As I explained in the previous section, some major non-state actors play an important role in the relations of recognition between states and indigenous people. Among these actors, some intergovernmental organisations have the power to influence state policies and have developed international documents to ensure the recognition of indigenous people. Here I succinctly present the two main international documents used by indigenous advocates to influence state policies.

International Labour Organization Convention 169 (ILO 169)

In 1989, the International Labour Organization, a UN agency, produced Convention 169 on Indigenous and Tribal Peoples in order to break away from the previous international trend towards assimilationist policies. The document is legally binding on the states that ratify it. To this day, except for a few exceptions such as Spain, The Netherlands, Norway and Nepal, only Latin American states (in fact most of them) have ratified the document. Canada, the United States, Australia and New Zealand have not. The success of the Convention in Latin America can be explained by a number of factors amongst which the constitutional reforms, the expansion of constitutional justice and an increase in the privileged status given to international human rights treaties are the most important.[20]

ILO 169 is a major binding international document that recognises collective rights for indigenous people and emphasises the importance of cultural preservation. For example, the Convention stipulates that "the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals".[21] It calls for governments to "respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, […] which they occupy or otherwise use, and in particular the collective aspects of this relationship".[22] The document further sets the requirement that:

> The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.

One of the core features of the Convention is the promotion of participatory rights for indigenous people. It obliges governments to consult with indigenous people whenever economic, legislative or administrative measures undertaken may affect them. While the

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[20] Christian Courtis, "Notes on the Implementation by Latin American Courts of the Ilo Convention 169 on Indigenous Peoples," *International Journal on Minority and Group Rights* 18, no. 4 (2011).
[21] Art 5
[22] Art 13

Convention "imposes real and substantive negotiations with the peoples concerned" it does not however establish a right of veto for indigenous peoples.[23]

ILO 169 is doubtlessly an important international document because of its binding dimension and is often used by indigenous rights advocate in Latin America to legitimise their struggles. The Convention has been used to motivate decisions made by the Inter-American Court of Human Rights and has led the Constitutional Court of several Latin American nations to invalidate legislative and administrative acts which did not comply with ILO 169. This happened in an increased climate of judicial activism in the region. For example, "in a recent case of the utmost institutional importance, the Colombian Constitutional Court brought this doctrine one step further by *declaring a congressional statute unconstitutional* for lack of adequate consultation with the indigenous and Afro-Colombian communities potentially affected by it".[24] Interestingly, because of its scope extending to "tribal peoples", the document has been used by Afro-descendent communities in Colombia to legitimise their claims.[25]

The Convention is nevertheless also criticised because no indigenous peoples participated in the discussions leading to its draft which is ironic since the text emphasises the importance of consultation with indigenous people for designing policies which may affect them. It is also criticised for not including the concept of "self-determination" in the text.[26]

United Nations Declaration on the Rights of Indigenous People (UNDRIP)

In 2007, the United Nations adopted the Declaration on the Rights of Indigenous people. Unlike ILO 169, indigenous people were actively involved in the process of drafting the document. The process took over 25 years to be completed because of the intense negotiations taking place between indigenous representatives and UN representatives. The Declaration was endorsed by a majority of 144 states while four states voted against the document: Australia, New Zealand, Canada and the United States. Colombia abstained along with ten other countries. All states finally endorsed UNDRIP: Australia and Colombia in 2009, New Zealand, the US and Canada in 2010

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[23] Athanasios Yupsanis, "Ilo Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries 1989–2009: An Overview," *Nordic Journal of International Law* 79, no. 3 (2010): 439.

[24] Courtis, "Notes on the Implementation by Latin American Courts of the Ilo Convention 169 on Indigenous Peoples," 449.

[25] Engle, *The Elusive Promise of Indigenous Development : Rights, Culture, Strategy*, 113.

[26] Ibid., 108.

Unlike ILO 169, the UN Declaration recognises the right to self-determination for Indigenous people. Article 3 states that "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development".[27] Self-determination in the case of indigenous peoples nevertheless has to be understood in its weak form and does not allow them to secede from present states and claim statehood. The Declaration also promotes consultation processes between indigenous people and their government and guarantees indigenous people's cultural and intellectual property.

One of the weaknesses of the Declaration is that, unlike ILO 169, the UNDRIP is a non-binding document. Therefore, "nations that adopt the Declaration are independently responsible for enacting domestic legislation and policies that comply with the Declaration standards".[28] This means that the implementation of the Declaration depends on the goodwill of the governments in place.

Self-determination

The concept of self-determination will be a key notion in this project. The meaning of this concept is, however contested. In this section I discuss the plurality of meanings of the political notion of self-determination. Self-determination for a people has been usually understood as independence and the existence of a state delimited by internationally recognised borders over which a people is sovereign. This understanding of self-determination is usually described as "external self-determination" and became a progressively recognised collective right that reflected changing views over colonisation in international law in the two decades following World War Two.[29] The territorial dimension of this understanding of self-determination is strong.

As mentioned in the previous section, the right to self-determination for indigenous people was recognised in several international documents such as UNDRIP. However, as Paul Keal

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[27] Art 3

[28] Julie Rowland, "The New Legal Context of Indigenous People's Rights: The United Nations Declaration on the Rights of Indigenous Peoples," *American Indian Culture and Research Journal* 37, no. 4 (2013): 142.

[29] Ingrid Barnsley and Roland Bleiker, "Self- Determination: From Decolonization to Deterritorialization," *Global Change, Peace & Security* 20, no. 2 (2008): 123-29.

explains, "the meaning given to 'sovereignty' in discourses of indigenous sovereignty is […] clearly different from the one it has in international relations [and] does not entail secession and statehood; it could be established and exercised within existing state structure".[30] This weaker understanding of the concept of self-determination is usually referred to as "internal self-determination".[31] When talks over indigenous recognition and their rights to self-determination first took place, states were reluctant to discuss the possibility of recognising the indigenous right to self-determination because they feared for their territorial integrity. Reducing self-determination to internal self-determination was, therefore, a requirement for states to agree with the provisions of UNDRIP. It should be noted, however, that this limitation on the right to self-determination was "tantamount to creating two distinct rights of self-determination for two different kinds of peoples: all peoples, on the one hand, and indigenous peoples, on the other".[32] In other words, colonised people such as African people could create states on their own (or, to be more correct, could be independent within states (mostly) artificially created by the colonial powers) but other colonised people such as the indigenous Mapuche of Chile (who did have a recognised state from 1641 until the 1880's) could not.

While it is true that contemporary indigenous discourses over self-determination rarely seek the establishment of independent indigenous states and favour "internal" self-determination[33], this political phenomenon is plausibly mainly due to states' pressure to soften the self-determination language during the drafting process. Indeed, as Mauro Barelli argues, "indigenous peoples have reluctantly spelled out their repudiation of secession as a means to exercise their right of self-determination".[34] Indigenous people adapted their political strategies to this reality and the concept of self-determination increasingly became synonymous with "the right of a collectivity to determine its future, be it political, economic, cultural or any combination of these factors".[35] Self-determination, therefore, became an increasingly deterritorialised concept and other aspects of self-determination were emphasised. As I will

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[30] Paul Keal, "Indigenous Self-Determination and the Legitimacy of Sovereign States," *International Politics* 44, no. 2-3 (2007): 296.
[31] Mauro Barelli, "Shaping Indigenous Self- Determination: Promising or Unsatisfactory Solutions?," *International Community Law Review* 13, no. 4 (2011).
[32] Ibid., 417.
[33] James Anaya, "The Right of Indigenous Peoples to Self-Determination in the Post-Declaration Era," in *Making the Declaration Work : The United Nations Declaration on the Rights of Indigenous Peoples*, ed. Claire Charters and Rodolfo Stavenhagen (Copenhagen: IWGIA 2009), 185.
[34] Barelli, "Shaping Indigenous Self- Determination: Promising or Unsatisfactory Solutions?," 418.
[35] Barnsley and Bleiker, "Self- Determination: From Decolonization to Deterritorialization," 131-32.

show in this project, because of this fluid understanding of self-determination, in some cases, successful business entrepreneurship can become a sign of indigenous self-determination.

The definition of self-determination that will mostly inform my normative claims – when dealing with the concept of self-determination in relation to the ideal of recognition – is the aforementioned definition of a group's right to determine its future. It will, therefore, offer a certain amount of flexibility and will also entertain the possibility of theorising forms of self-determination that do not require territorial control. This definition will give an important role to the democratic dimension of self-determination. However, contra proponents of an extra-fluid model of self-determination that stipulates that the right to self-determination can be reduced to a group's capacity to "buy" its freedom from within a free-market economy, I will assert that the territorial dimension retains some (potentially great) importance and that such importance varies with geographical, demographic and political context.

Grappling with the concept of self-determination will allow me to highlight tensions between individual and group-focused recognition. Policies of recognition tend to focus on group rights but, in the end, it is always the individuals who belong to the groups that benefit from recognition. Understanding the extent to which group-focused recognition enables, or sometimes impedes, individual recognition will be a key theoretical challenge in this project.

Social suffering

This project deals with the misrecognition experienced by minority ethnic groups (or, more precisely, by the individuals that belong to these groups) in multicultural societies. The theory of recognition emphasises the experience of suffering arising from misrecognition and the effects of non or misrecognition are often referred to as social suffering in political theory. Furthermore, much of the literature dealing with the social injustice experienced by indigenous people also often describes their experiences using the notion of suffering. In this project, I will therefore use the theoretical concept of social suffering to describe the negative social experiences lived by the ethnic groups at stake. Social suffering will be used as a clue highlighting the potential existence of social and political problems. The concept of social suffering has been used in medical anthropology but its definition and the metrics used to identify it are not always clear. In this section I will attempt to clarify the meaning of social suffering, discuss ways to measure it, and underline the political significance of the concept.

In their introduction to *Social Suffering* Kleinman, Das and Lock state that "social suffering results from what political, economic, and institutional power does to people" and "is shared across high-income and low-income societies, primarily affecting, in such different settings, those who are desperately poor and powerless".[36] According to them, social suffering is thus a type of suffering which is caused by particular social conditions. It plagues the life of the subalterns and can be caused by obvious, visible, extreme, well defined events such as genocides or it can be caused by the less obvious, less visible and ongoing ""soft knife" of routine processes of ordinary oppression"[37] such as alienating labour conditions or ongoing contemporary colonisation in settler state societies. It is of course problematic to use a single term to describe extreme experiences such as genocides and less extreme experiences such as long-time unemployment. Bourdieu's differentiation between daily suffering (*petite misère*) and traumatic suffering (*grande misère*) could be used to differentiate the two sets of issues but in this project I will use a unified concept of social suffering.[38] I believe that keeping a unified concept of this phenomenon is more appropriate because if we could reasonably argue that extreme traumatic experiences belong to an altogether different phenomenological register than daily, less visible, types of suffering, the division between the two types of experiences should, however, not be understood as a sharp analytical one but instead should be thought of as pertaining to a broad spectrum of negative social experiences. It could also be added that the legacy of these extreme experiences do in fact lead to long term daily suffering and play a major role in their genesis.[39]

Kleinman, Das and Lock also argue that social suffering is a phenomenon that breaks the barriers between disciplines and requires a rethinking of the well-established dichotomies between the social and the individual, the objective and the subjective. Indeed social suffering can be defined, at the same time, as both an individual and a collective phenomenon since it is experienced by individuals who all experience it subjectively to a different level and in their particularity but who also share a core of similar negative social experiences as other members of a particular group do (ethnic or religious groups, gender, profession). This means then that

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[36] Arthur Kleinman, Veena Das, and Margaret M. Lock, *Social Suffering* (Berkeley: University of California Press, 1997), ix.
[37] Ibid., x.
[38] Lois McNay, *The Misguided Search for the Political* (Cambridge: Polity, 2014), 34.
[39] This is particularly true for the experiences of colonisation. See for example the research on the historical trauma suffered by indigenous people in the Canadian context. Cynthia Wesley-Esquimaux and Magdalena Smolewski, *Historic Trauma and Aboriginal Healing* (Ottawa: The Aboriginal Healing Foundation, 2004); James B Waldram, "Healing History? Aboriginal Healing, Historical Trauma, and Personal Responsibility," *Transcultural Psychiatry* 51, no. 3 (2014).

the concept is primarily concerned with collective phenomena because even if it is subjectively experienced at the individual level, its *causation* is social.

In other words, social suffering can be witnessed through very objective conditions such as extreme poverty but it also appears in a wide range of subjective phenomena such as internalised racism leading to low self-esteem and damaged subjectivities. Social suffering cannot be studied as a set of purely economic, social, political or health issues. Instead its analysis requires an in depth investigation in the interplay between these dimensions and the causality links between them.

According to Renault, social suffering should be understood as a mode of problematisation rooted in this particular form of human experience.[40] In other words, paying attention to social suffering is a methodological choice that aims at highlighting issues with the socio-political order. Therefore, from a political perspective, the matter is not so much to describe what social suffering qua social suffering is. Such a task would be more philosophical in nature and would necessitate a phenomenological approach. Instead, the aim is to describe what it relates to, what the social causes behind it are. In order to assess a society through this tool-concept, social suffering therefore needs to relate to certain identifiable social pathologies. Observable factors usually used to describe social issues can therefore be used to identify social suffering, for example: material living conditions (for example: quality of housing, income); mental and physical health (for example: depression, suicide, morbidity) and other social factors such as violence exposure, spatial segregation or perceived discrimination. The severity of these factors, the resilience of those subjected to it and the general cultural framework can all alter the perception and experience of suffering linked to these social dysfunctions. However, these factors can all be used to determine the existence of social suffering even if it is acknowledged that social suffering itself will always remain unquantifiable. Again, the key aspect which differentiates *social suffering* from suffering is its social dimension. Identifying the social causes responsible for the suffering is therefore a necessity for a pertinent political use of the notion of social suffering. Indeed, social suffering "is not a general, existential type of experience but a social one" which relates to issues of power and social control.[41]

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[40] Emmanuel Renault, *Souffrances Sociales. Philosophie, Psychologie Et Politique* (Paris: Editions la découverte, 2008), 64.
[41] McNay, *The Misguided Search for the Political*, 33.

In this project social suffering will, therefore, be defined as a collective phenomenon, experienced by individuals in connection to a group identity, identifiable through a set of observable indicators and rooted in objective social conditions. Indeed, "social suffering is a politicized category in so far as it highlights the intrinsic connection between experiences of misery and deprivation and structural inequality".[42] It is, therefore, the social, and therefore political, dimension of the concept that is central to its definition. Renault emphasises the political significance of the notion of social suffering as part of his critical theory framework and, more specifically, of his social philosophy method which stipulates that a critical theory of society should start from the experience of injustice of those subjected to unjust social conditions in order for it to be relevant.[43] It can be argued that the critical and political dimension of an analysis of social suffering lies in the fact that this particular type of abnormal[44] suffering is generated by the social order and plagues the lives of some particular groups more than others. Therefore, Renault rhetorically asks: "since suffering is unequally distributed in society, and since it is produced by given social situations supported by particular social groups, might it not be considered that a critique of suffering can be part of a critique of social injustice?".[45] According to Renault, not only does the social order unequally distribute painful negative social experiences but it also invisibilises these experiences and this invisibilisation plays a key role in the reproduction of these very same inequalities.[46] Making visible the experience of injustice and domination of particular individuals or groups would therefore represent a step in the direction of social transformation.

As I explained earlier, identifying the social causes responsible for the suffering is key to a pertinent political use of the notion of social suffering. Indeed, "a critique of social suffering should aim to identify the social structures that produce suffering"[47] and, therefore, in order to underline what is genuinely social in the phenomenon of social suffering, a critique of social suffering needs to analyse the political and institutional processes responsible for this negative

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[42] Ibid., 21.

[43] Emmanuel Renault, *L'expérience De L'injustice. Reconnaissance Et Clinique De L'injustice.* (Paris: Editions la découverte, 2004).

[44] Renault argues that it is important to differentiate between a normal and an abnormal suffering. The former is part of the human condition (such as our experiences relating to human finitude) and apolitical while the second is engendered by pathological social conditions and is, in most cases, political (such as racial discrimination). *Souffrances Sociales. Philosophie, Psychologie Et Politique*, 43-45.

[45] "The Political Philosophy of Social Suffering " in *New Waves in Political Philosophy*, ed. Boudewijn De Bruin and Christopher F. Zurn (Basingstoke: Palgrave Macmillan, 2009), 163.

[46] *Souffrances Sociales. Philosophie, Psychologie Et Politique*, 28.

[47] "The Political Philosophy of Social Suffering " 163.

condition. Such an analysis would therefore broaden our understanding of what should be subjected to political investigation by showing that some dimensions of life which are usually understood as apolitical (such as suicide for example) might very well have political roots.

A serious obstacle to the use of the notion of social suffering in social sciences underlined by Renault relates to the epistemological difficulties arising from the need to understand or describe the phenomenon of suffering. Indeed, since the experience of suffering is a qualitative subjective experience, it could be argued that it is a phenomenon that can hardly be quantified. Renault recognises a certain inaccessibility and difficulty of representation of this psychological phenomenon. However, he argues that this difficulty should not be a reason to legitimise the silence of human sciences about the phenomenon of social suffering. Instead of disqualifying the possibility of studying social suffering based on this epistemological difficulty, Renault argues that part of the theoretical endeavour centred on social suffering is to develop means to express and render intelligible this particular negative social experience.

The epistemological difficulty does not pose a real problem if the social scientist does not attempt to develop a "full-blown theory of social experience" (the direction taken by Renault) but instead "reduces" social suffering to a series of symptoms of social pathologies (the direction, according to Renault, taken by Axel Honneth in his work on misrecognition). In this case, a reference to social suffering still offers the advantage of providing evidence of institutional failure while highlighting the necessity to analyse these situations whereby institutions do not fulfil their purpose, create frustration, suffering, injustice and become obstacles to self-realisation while avoiding the methodological and epistemological difficulties associated with Renault's model. In this case, the researcher can chose to focus on the more subjective dimensions of social suffering through in depth ethnographic work, discourse analysis and clinical studies but can also focus on the objective dimension and the identifiable factors related to social suffering. This can be done through the data collection and analysis of the symptoms of social suffering alongside an in-depth investigation of the hypothesised (institutional and political) causes of this phenomenon with the goal to establish causal relations between the two. While Renault's ambitious "theory of social experience" project should cover both dimensions albeit with a particular emphasis on the former, a model of social suffering "reducing" suffering to a symptom of social pathologies can chose, for methodological reasons, to focus on only one dimension (while acknowledging the existence of the other one) and the subjective dimension loses its epistemological primacy.

While acknowledging the significance of Renault's ambitious model, in this project, for methodological reasons, I will adopt the second model and focus on the objective dimension and identifiable factors of social suffering. This means that my analysis will pay a greater attention to statistical data and institutional mechanisms than to the lived experiences of the groups at stake in my research. This approach centred on available data and institutions is more appropriate for an outsider researcher than one centred on the lived experiences of individuals.

Chapters overview

Chapter two will discuss the theory of recognition. The chapter will start by establishing the Hegelian origin of the concept before discussing its relationship with the notion of identity, economic inequalities, and institutions. I will come to the conclusion that the concept of recognition is a critical political tool that emphasises equality, reciprocity and freedom.

Chapter three will discuss the relations between the theory of recognition and liberal multiculturalism and Will Kymlicka's theory of multicultural citizenship in particular. The chapter will also cover some common criticisms raised against identity politics and will demonstrate that these criticisms target much more the theoretical framework elaborated by proponents of liberal multiculturalism than the theory of recognition outlined in chapter one. The chapter will also briefly contrast multiculturalism and interculturalism.

Chapter four will relate the theory of recognition to deliberative democracy. The chapter will begin by outlining James Tully's theory of recognition with a particular emphasis on the deliberative dimension of his work. I then offer a brief overview of the key theoretical aspects informing deliberative democratic theory. I will particularly focus on Jane Mansbridge's systemic approach to deliberative democracy and on James Fishkin's deliberative polls method. The chapter also discusses inherent issues with political representation and will argue that sortition offers a number of advantages for promoting a more genuine representation of popular interests.

Chapter five will describe the policies of indigenous and Afro-descendent recognition that have been adopted by the Republic of Colombia. I will begin by offering a brief introduction to Colombian history before outlining the multicultural dimensions of the 1991 constitution. Then, I will firstly discuss policies of indigenous recognition and focus on land rights, political

representation, and welfare policies (in particular health care). Secondly, I will cover policies of Afro-Colombian recognition related to their land rights, political representation, and the preservation of their culture and protection against racism.

Chapter six will highlight some of the shortcomings and contradictions of the policies of ethnic recognition in Colombia. I will begin this chapter by presenting data demonstrating that indigenous and Afro-Colombian people experience disproportionate levels of social suffering. Then, I will show how most of the policies of recognition of indigenous people and Afro-Colombians failed to improve significantly the well-being of these populations and I will offer a number of explanations for that failure.

Chapter seven will discuss the policies of indigenous recognition in New Zealand. I will start this chapter with a brief overview of New Zealand's history. I will then discuss the importance of the Treaty of Waitangi and how breaches of the Treaty led to the creation of the Waitangi Tribunal and the adoption of a number of bicultural policies. Next, I will discuss some of the policies of recognition in more detail. I will start with policies related to Māori autonomy and control over natural resources. I will then discuss Māori political representation and policies related to differentiated health care for Māori (the Whānau Ora programme).

Chapter eight will underline some issues with the policies of recognition in New Zealand. The chapter will start with an overview of some socio-economic indicators related to the Māori experience of social suffering. Then, I will discuss issues related to New Zealand's bi-cultural model of recognition. I will underline problems embedded in policies of recognition related to Māori control over natural resources, their political representation and the ethnically differentiated health care programme aimed at improving Māori well-being.

Chapter nine is analytical and aims at reaching an equilibrium between theory and practice. This last chapter uses the theoretical frameworks discussed in the first three chapters to assess the policies of recognition outlined in chapters four to seven before using the case studies in order to retrospectively assess the theories discussed at the beginning of the project. The chapter is an attempt at reconciling ideal theory and the less-than-perfect implementation of theoretical frameworks of recognition in daily political processes. It argues that an increase in deliberative practices could serve as a corrective to multicultural policies.

Part I: Theoretical framework

Chapter two: The theory of recognition

Introduction

Over the past two decades, the concept of recognition has informed many debates in political theory and divided theorists into proponents and opponents of the politics of recognition. The internal tensions and conflicting views held by the proponents of the concept of recognition over the meaning of the idea itself have, however, remained understudied. Studying the different variations and dimensions of the concept of recognition could highlight and/or resolve some debates over its adequacy as a concept-tool to combat social injustice. Indeed, it seems rather problematic to subsume the political ideas of very different theorists under a single concept of recognition and then either praise or reject the concept as a whole. In this chapter, I want to account for the plurality of theories which relate to the concept of recognition and show that some of these theories, while usually conflated into a single category, offer very different remedies to social injustice. My goal is to critically confront these theories and to arrive step by step at a definition of the politics of recognition which gets the best out of the concept and can adequately be used as a critical theoretical tool to combat a wide range of contemporary social injustices.

The first theorists of recognition all established a paternity link between their politics of recognition and Hegel's famous lordship and bondage dialectic (also known as master-slave dialectic).[48] The master-slave dialectic is probably the best known passage in the *Phenomenology of Spirit.* In this part of his work, Hegel elaborates the idea that one's identity and self-consciousness needs recognition by another self to develop itself fully. Hegel states: "self-consciousness exists in and for itself when, and by the fact that, it so exists for another; that is, it exists only in being acknowledged".[49] In order to explain how to reach such mutual recognition, Hegel tells the reader a story staging a confrontation between two consciousnesses mutually denying recognition to the other and trying to prove their liberty to their opponent by

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[48] Even if it is a less accurate translation of the original German terms I will stick to the "master-slave" translation since it is most commonly used.

[49] Hegel, G. W. F. *Phenomenology of Spirit,* trans. A. V. Miller (Oxford: Clarendon Press, 1997), 111.

risking their life in a struggle to death. The struggle eventually ends when one of the two consciousnesses, afraid of losing its life, becomes the servant of the other. This leads to an asymmetric relation of recognition where the master is recognised by a consciousness which he himself does not recognise as an equal. The recognition is therefore unsatisfactory because it is not a mutual recognition taking place between equals. In the end, ironically, it is the dominated consciousness, the slave, which reaches the truth of its certainty through the experience of work.

At this stage, it is important to notice two things about Hegel's parable since it represents the theoretical foundation of the contemporary politics of recognition. First, the type of recognition advocated by Hegel in this passage from the *Phenomenology of Spirit* is a face to face, unmediated, recognition between potential equals. Hegel clearly saw unilateral recognition as a problem and the Hegelian ideal of recognition, therefore, advocates for *mutual* recognition as the only genuine form of recognition. *Reciprocity* is needed for the concept to be meaningful. Second, and most importantly, *what* needs to be recognised through a struggle for recognition is *freedom*. Each consciousness risks its life in order to prove their freedom to the other. This second point is crucial to critique the idea that struggles for recognition can be reduced to struggles for the recognition of some cultural aspects of one's identity. In this chapter I highlight the internal tensions that inform debates over the theory of recognition. I particularly focus on the relationship between recognition and the concept of identity; recognition and economic inequalities; and recognition and political institutions. The aim of this chapter is to offer a theory of recognition that goes beyond the common reduction of the theory of recognition to a theory of cultural recognition.

Recognition and identity

What is most important to deduce from Hegel's theory is that if the self's identity is the product of an intersubjective process, it also means that the "other" is, most importantly, potentially the cause of identity related issues. If the other can be the source of a positive image of oneself, it can also be the source of negative feeling about one's worth. This is the starting point of Charles Taylor's theory of recognition. In *The Politics of Recognition* Taylor starts from this intuition:

> The thesis is that our identity is partly shaped by recognition or its absence, often by the *mis*recognition of others, and so a person or a group of people can suffer real

damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves. Nonrecognition or misrecognition can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted, and reduced mode of being.[50]

Here, it is argued that if the other fails in his task of recognising adequately someone else's identity, the result of such a misrecognition – or nonrecognition in the case of total induced social invisibility – may be a psychological harm to the misrecognised identity. Stereotyped representations or demeaning images cause suffering to a subject. In some cases, it can even lead to a strong self-hatred which can then be used as a powerful tool of domination. Therefore, Taylor concludes that "due recognition is not just a courtesy we owe people. It is a vital human need".[51]

The emergence of a discourse on recognition led to the rise of a politics of identity. Taylor establishes the chronological development of the "politics of recognition" as paralleling the move from a "politics of universalism" emphasising "the equal dignity of all citizens" and therefore "the equalization of rights and entitlements"[52] to a "politics of difference".[53] Such politics of difference/recognition displaces the notion of discrimination. While the politics of universalism saw discrimination and injustice as related to a lack of equality before the law, the politics of difference relates discrimination and injustice to policies that deny the uniqueness of individual and group identities. If the politics of universalism demands equal treatment, then the politics of difference demands differential treatment because "with the politics of difference, what we are asked to recognize is the unique identity of this individual or group, their distinctiveness from everyone else".[54] Taylor is critical of difference-blind liberalism because, according to him, "the supposedly neutral set of difference-blind principles of the politics of equal dignity is in fact a reflection of one hegemonic culture" and therefore "the supposedly fair and difference-blind society is not only inhuman (because suppressing identities) but also, in a subtle and unconscious way, itself highly discriminatory".[55]

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[50] Charles Taylor, "The Politics of Recognition " in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann and Charles Taylor (Princeton: Princeton University Press, 1994), 25.
[51] Ibid., 26.
[52] Ibid., 37.
[53] Ibid., 38.
[54] Ibid.
[55] Ibid., 43.

Because of this strong emphasis on distinctiveness and the idea of an ideal collective or individual "unique identity", Taylor stresses the normative value of the concept of authenticity. According to him, the concept of authenticity – which he associates with German philosopher J. G. Herder – is a protection against conformity to a norm and other socially derived types of identification.[56] Authenticity means "being true to myself" and "if I am not, I miss the point of my life; I miss what being human is for *me*".[57] This means that an individual needs to focus on his originality, to articulate and discover it. An originality which, according to Herder, does not only apply to individuals but also to groups: Germans should not try to be like Frenchmen and Frenchmen should not try to be like Germans.[58] We can see how there is a tension at play in this ideal of authenticity between individual and group identity: what if "being true to myself" in fact means breaking away from the culture I was born in? This tension between individual and group recognition represents a key challenge for theorists who deal with the theory of recognition and, as we will see in the coming chapters, generate socio-political issues when the theory of recognition is applied through institutional and legal reforms.

Some models of recognition, such as Taylor's, therefore emphasise the identity-formation dimension of recognition and how identity relates to cultural matters. The fact that Taylor uses linguistic disputes in Québec as an example to illustrate his theory reinforces the "cultural" dimension of his theory of recognition. I consider such a narrow understanding of the politics of recognition as a "politics of cultural recognition". The reductionism of such an approach has been the target of many criticisms amongst which Nancy Fraser's has been one of the most systematic. Fraser underlines the reifying tendencies of such models of the theory of recognition. According to her, the identity model of the theory of recognition ironically creates misrecognition by promoting conformism and downplaying the importance of intragroup struggles over the meaning of a given identity. The result of such an approach is that it "masks the power of dominant factions and reinforces intragroup domination".[59] According to her the theory of recognition, therefore, reifies identities and tend to encourage "separatism, intolerance and chauvinism, patriarchalism and authoritarianism".[60]

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[56] Ibid., 28-32.
[57] Ibid., 30.
[58] Ibid., 31.
[59] Nancy Fraser, "Rethinking Recognition," *New Left Review* 3 (2000): 112.
[60] Ibid., 108.

To counter this negative effect of the theory of recognition embodied through the "affirmative remedies" of what she calls "mainstream multiculturalism", Fraser calls for deconstructive "transformative strategies".[61] Such strategies would not promote the recognition of identities as a cure for identity based injustice but instead would promote the deconstruction of identity based dichotomies as a solution to domination. Therefore, according to her, the solution to racism does not lie in the positive affirmation of Black, Latino or Arab identity but instead in the deconstruction of the White/non-White dichotomies. Fraser's criticism highlights some problematic dimensions of discourses promoting recognition but I argue that it is possible to understand the concept of recognition as a political concept free from reifying tendencies if we remain more faithful to Hegel's theory.

Emmanuel Renault endeavoured to clarify the relationship between Hegel and the contemporary concept of recognition. He argues that far from relating the notion of recognition to a positive reified and rigid identity, Hegel related the ideal and the value of recognition to the concept of freedom. According to Deranty and Renault, relating the concept of recognition back to its Hegelian root means considering identity as "pure" or "absolute" negativity and to consider subjectivity as "the absolute power of negation" meaning "the power to abstract from any particular identity, be it given by nature or society".[62] Even if such interpretation (which focuses on the meaning of recognition as theorized through Hegel's parable) of the master-slave dialectic downplays some aspects of Hegel's understanding of ethical life (*Sittlichkeit*), this conception of subjectivity as negativity has a major advantage. Indeed, understanding identity in such a way allows the theorist to be free from "the charge of reifying identity and groups"[63] and to relate the ideal of recognition to freedom instead of identity. Indeed, sticking to the Hegelian parable of the master-slave dialectic allows them to conclude that:

> What individuals want to have recognized in the struggle for recognition is therefore, strictly speaking, not so much their positive identity, rather it is their identity as negative, their freedom to posit their own identity. Recognition is claimed as a right to

[61] "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," in *Redistribution or Recognition? A Political - Philosophical Exchange* (London: Verso, 2003), 77.
[62] Jean-Philippe Deranty and Emmanuel Renault, "Politicizing Honneth's Ethics of Recognition," *Thesis Eleven* 88, no. 1 (2007): 105.
[63] Ibid.

self-empowerment, as the right to self-creativity and self-realization, not with the aim of entrenching fixed identities.[64]

It would therefore appear that a narrow use of the Hegelian parable, focused on cultural identity, is potentially misleading. Yet it is such an understanding of Hegel that dominates debates over recognition and the idea of a politics of recognition is often reduced to a politics of cultural recognition positing a positive identity as the stake of struggles for recognition. Such a conception is problematic and the ideals of freedom and reciprocity between equals are much more important from a Hegelian point of view. As we will see, this Hegelian dimension informs to a large extent Honneth's theory of recognition. This particular emphasis on freedom and non-domination as constitutive of the theory of recognition was also developed by other authors such as Robert Pippin.[65] Such a dimension is meaningful if we are to understand misrecognition as a form of imprisonment in a false identity resulting from having one's sense of identity either purely and simply denied or in other cases imposed and constructed from without.

Recognition and economic inequalities: Axel Honneth's overarching concept of recognition

Nancy Fraser identifies another potential issue with the politics of identity: the problem of "displacement".[66] She argues that theorists of recognition not only promote the reification of identities but also tend to reduce current injustices within society to cultural and symbolic matters and forget about structural economic issues and a whole range of social injustices related to the unfair distribution of wealth which results from the current neoliberal system. Her criticism of displacement was developed more systematically in her philosophical exchange with Axel Honneth. [67] In this debate, Fraser argues that there is a tendency to divide

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[64] Ibid., 107.
[65] For alternative understandings of the concept of recognition which are not reduced to cultural recognition and relate the concept back to Hegel see: Robert B Pippin, "What Is the Question for Which Hegel's Theory of Recognition Is the Answer?," *European Journal of Philosophy* 8, no. 2 (2000); Christian Lazzeri and Alain Caillé, "Recognition Today the Theoretical, Ethical and Political Stakes of the Concept," in *Recognition, Work, Politics: New Directions in French Critical Theory*, ed. Jean-Philippe Deranty, et al. (Boston: Brill, 2007); Fabian Schuppert, "Discursive Control, Non-Domination and Hegelian Recognition Theory: Marrying Pettit's Account(S) of Freedom with a Pippinian/Brandomian Reading of Hegelian Agency," *Philosophy & Social Criticism* 39, no. 9 (2013).
[66] Fraser, "Rethinking Recognition," 110-12.
[67] Nancy Fraser and Axel Honneth, *Redistribution or Recognition? : A Political-Philosophical Exchange* (London: London : Verso, 2003).

political movements into proponents of either cultural recognition or economic redistribution. But in her view, both paradigms answer only one special type of injustice and both should be embraced simultaneously. Fraser argues that people can suffer harm either because of economic injustice or because of a cultural injustice which takes the form of a depreciation of one's cultural (or ethnic) identity. Cases where only one type of subordination takes place are, however, very rare and the norm is instead what she refers to as two-dimensionality.[68] This means that a majority of subordinated groups suffer from a type of injustice which results from a complex interconnectedness between the two paradigms. For example, race is a two dimensional social injustice since immigrants or ethnic minorities are usually over-represented in the poorer strata of a population while at the same time that they are also constructed as culturally inferior to mainstream society.[69] Axel Honneth's work offers an alternative to Fraser's dualism.[70]

Honneth has focused most of his work on trying to unveil how the feelings of social injustice can result from a denial of recognition by establishing a typology of the different needs for recognition experienced by individuals. According to Honneth's theory, understanding individuals' need for recognition in turn helps us to understand how patterns of misrecognition or nonrecognition can emerge within society. According to him, there are three spheres of recognition that an individual needs to attain an adequate level of self-realisation.

The first is related to intimacy where an individual receives the *love* and *care* necessary to build *self-confidence*.[71] Respect for one's corporal and affective needs is the core of this sphere. Under modern democracies, issues of love and care are usually not seen as political matters. Under brutal regimes however, torture and rape as tools of domination are used for political purposes. This means that the sphere of intimacy can also take a political form. In fact, it could be argued that even under liberal democracies, this first sphere of recognition still does not always fulfil its purpose for all members of society since it is not unusual for modern

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[68] Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," 16-26.

[69] She later adds a third dimension of justice, alongside recognition and redistribution, the political but this addition does not change fundamentally the redistribution/recognition debate. "Reframing Justice," in *Adding Insult to Injury. Nancy Fraser Debates Her Critics*, ed. Kevin Olson (London: Verso, 2008), 277-83.

[70] Fraser's dualism was also criticised by Iris Young. Iris Marion Young, "Unruly Categories: A Critique of Nancy Fraser's Dual Systems Theory," *New Left Review*, no. 222 (1997).

[71] Axel Honneth, "Redistribution as Recognition," in *Redistribution or Recognition? A Political-Philosophical Exchange* (London: Verso, 2003), 138-39.

democratic states to confront high rates of domestic violence against women or racially biased justice systems which incarcerate members of particular ethnic groups on a large scale.

Second, the sphere of *law* describes the legal recognition of each individual as equal members of society protected by certain rights.[72] When a society grants its members legal recognition, it allows individuals to build the *self-respect* necessary for self-realization. Everyone is considered to have the same rights and consequently, in theory, the same chances to succeed in life. The universal dimension of this sphere of recognition is based on the shared capacity of human beings to be morally responsible and therefore to be accountable for their actions. Moral responsibility and autonomy ground respect for individuals and therefore lead to a legal system that preserves personal freedom and promotes respect.

This new trend of modernity which creates equality between individuals before the law leads to the "leading cultural idea" of "individual *achievement*" which constitutes the core of the third sphere of recognition.[73] If everyone is equal in the eyes of the law, it means that one's success or failure depends entirely on one's self. In this way, "the individual's social standing now became normatively independent of origin and possessions. The esteem the individual legitimately deserved within society was no longer decided by membership in an estate with corresponding codes of honor, but rather by individual achievement within the structure of an industrially organized division of labor".[74] While this idea represents the ideal of meritocracy, it also means that subjects became aware of their talent and contribution to society providing them with a sense of *self-esteem*. While equality before the law, and the respect built upon it, are universal, the type of recognition linked to achievement relates to individuals. This means that, if all individuals should be given an equal opportunity to feel esteem, such a feeling is not the result of a right. Instead it is the result of the individual's particular qualities and how such qualities benefit society.[75] It is what Peter Jones calls *merit recognition*[76] which is an *unequal* form of recognition based on qualities that exist independently of our recognition. In his words, "we give the meritorious our recognition, not their merit".[77]

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[72] Ibid., 139-40.

[73] Ibid., 140.

[74] Ibid.

[75] Simon Thompson, *The Political Theory of Recognition : A Critical Introduction* (Cambridge: Polity, 2006), 74-77.

[76] Peter Jones, "Equality, Recognition and Difference," *Critical Review of Internal Social and Political Philosophy* 9, no. 1 (2006): 32-34.

[77] Ibid., 33.

For Honneth, these three spheres of recognition correspond to three modes of denial of recognition which create deep psychological suffering and feelings of injustice for individuals. First, the violation of the body through the experience of rape or torture can harm the self-confidence of a subject.[78] Second, when a subject is systematically denied the legal rights accorded to other members of a society, he may lose his sentiment of *self-respect* as "he or she is not being accorded the same degree of moral responsibility as other members of society".[79] Examples include the case of inferior castes in India, African Americans in the US before the civil rights movements and women in the past being denied the right to vote. The third type of degradation that a subject can suffer is "one that entails negative consequences for the social value of individuals or groups".[80] As we saw, self-esteem – which is a necessary component of realised subjectivities – is the product of one's talents and contribution to society being recognised by other members of society. But, if in a given society, a "hierarchy of values is so constituted as to downgrade individual forms of life and manners of belief as inferior or deficient, then it robs the subjects in question of every opportunity to attribute social value to their own abilities".[81]An example of such denial of recognition is the experience of Muslim citizens in Western countries who feel that their way of life is always being looked down upon by the majority society. Muslims who are citizens in the west have the same legal rights as other citizens, therefore their feeling of injustice does not relate to the ideal of self-respect. Instead, if their way of life and their beliefs are always treated as inferior or less valuable, their feeling of self-esteem will be injured.

How could theories of recognition answer the "displacement" problem underlined by Fraser? Many theorists of recognition argue that their theories do answer a wide range of injustices related to economic issues and that problems of redistribution would be subsumed under the recognition paradigm. For example, using Taylor's theory, it could be possible to extend the equalisation of rights typical of a politics of universalism to the socio-economic sphere since "people who are systematically handicapped by poverty" can be seen as second-class citizens.[82] In other words, socio-economic disadvantages can contradict the politics of universalism (and then subsequently the politics of difference) as it creates inequality between people and

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[78] Axel Honneth, *The Struggle for Recognition : The Moral Grammar of Social Conflicts* (Cambridge: MIT Press, 1996), 132-33.
[79] Ibid., 133.
[80] Ibid., 134.
[81] Ibid.
[82] Taylor, "The Politics of Recognition " 39.

problems of distribution could be addressed in sufficientarian terms under the recognition paradigm.

Honneth goes further in giving theoretical primacy to the concept of recognition as he argues in favour of an overarching notion of recognition: all social injustice can be understood as a form of misrecognition. He argues that the injustice and disrespect felt by impoverished populations can relate to a particular form of disrespect – and therefore misrecognition – experienced by individuals and rooted in the economic structure of society. In other words, poverty can be experienced as misrecognition.[83] Such misrecognition could potentially relate to a problem in the relations of recognition within the sphere of law if we agree with Taylor about the necessity of a fairer socioeconomic distribution between citizens in order to create an equality of opportunity between people so that they have the same chances to succeed in life. We can imagine cases whereby redistribution would play this equalising role. For example, in some cases, policies of redistribution for disabled people could fall in that category if conceptualised as a compensatory mechanism aiming at decreasing the gap in social opportunities between fully able and disabled citizens.

Honneth, however, stresses the idea that issues of redistribution in the current socioeconomic order are instead usually linked to a problem of recognition within the sphere of achievement. In Honneth's words, "redistribution struggles are definitional conflicts over the legitimacy of the current application of the achievement principle".[84] For example, the current neoliberal economic order, understood as an order of recognition, through its ways of structuring the market, labour, and wages (among others), constantly undermines the social contribution of some parts of the population. A fairer distribution of wealth would therefore be seen as a sign of greater esteem for the social contribution of currently impoverished individuals.[85] If we follow Honneth's theory, when a sector of production or services providers goes collectively on strike for higher wages, these workers engage in a normative struggle against the current interpretation of what is considered as a positive social contribution and seek recognition for the value of their work as individuals.

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[83] Axel Honneth, *Disrespect : The Normative Foundations of Critical Theory* (Cambridge: Polity, 2007).

[84] "Redistribution as Recognition," 154.

[85] Ibid.

While recognising many advantages to Honneth's theory and his tripartite division of the human need for recognition, Christopher Zurn also highlights some difficulties and dilemmas with "Honneth's attempt to integrate a theory of distributive justice within the categorical framework of the theory of recognition" as such theory "risks either falsifying social reality or foregoing insightful practical guidance".[86] Indeed, if we take the job loss and poverty induced by economic dislocation for example, "it is unlikely that insufficient realizations of recognition principles are actually the single – or even a directly relevant – cause of economic dislocations" but instead such causes

> are to be found, rather, in variables specific to the political economy: global currency rates, globally disproportionate supply and demand, asymmetrical regulatory environments, global capital flows, stratified distributions of productivity-enhancing technologies, differential natural resources distributions, national and international interest rates, differential regimes of private property, and so on.[87]

Therefore, according to Zurn, "if we don't want to sacrifice empirical accuracy, then we might turn to Honneth's weaker version of the claim: a society's recognition structures have *a* determining influence in its division of labor and remuneration scales, but autochthonous economic mechanisms also play a large role".[88]

I believe that a way to save Honneth's theory from Zurn's criticism while at the same time recognising its limits is to accept that a number of economic phenomena are autonomous from recognition-based processes (see Zurn's list above) while keeping in mind two important things. First we should be mindful that many struggles which outwardly appear as redistribution struggles are indeed, as Honneth and Emmanuel Renault convincingly argue, recognition struggles.[89] For example, Honneth argues (basing his analysis on the language used by the subjects at stake) that workers going on strike are protesting because their working conditions are experienced as a form of disrespect for their professional identities. Workers attach a sense of dignity to their work and want their activities to receive due recognition as necessary components for the proper functioning of society. Second, we need to keep in mind

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[86] Christopher F. Zurn, "Recognition, Redistribution, and Democracy: Dilemmas of Honneth's Critical Social Theory," *European Journal of Philosophy* 13, no. 1 (2005): 91.
[87] Ibid., 115.
[88] Ibid., 116.
[89] Honneth, *The Struggle for Recognition : The Moral Grammar of Social Conflicts*, 166-67; "Redistribution as Recognition," 131-32; Renault, *L'expérience De L'injustice. Reconnaissance Et Clinique De L'injustice.* , 263-64.

that struggles for recognition should also always be considered as struggles for the conditions of possibility of recognition. This means that they are therefore also struggles against these autonomous structural economic phenomena which deprive individuals of the necessary economic conditions to establish the social conditions for genuine recognition to take place. Honneth would even say that our acceptance or passivity in face of the current economic structure which emphasises profit maximisation at all cost could still be considered as a matter of recognition since such system depends for its survival on some belief (and therefore recognition) in its "legitimacy" and "normative agreement".[90]

Before concluding this section on Honneth's model of recognition, I should mention that, while Fraser's criticism of the reification of identities by theorists of recognition could certainly apply to Taylor's model, it is difficult to see how Honneth's model would fall under such criticism. Indeed, as Zurn rightly notices, such criticism of Honneth's model of recognition and its assimilation to Taylor's is based on "a gross misreading of his project" and in fact "it is not the case that Honneth's theory of recognition always, or even frequently, demands that only groups' specificity and difference should be acknowledged and celebrated". [91] While I believe that the problems of "displacement" and "reification" do not apply to Honneth's theory, there are, however, two important interrelated issues with his model of recognition.

First, Honneth's theory, because of its emphasis on subjective feelings of injustice, does indeed make visible some types of injustice (especially all those invisible types of injustice that remain unarticulated and unexpressed even in the political sphere of new social movements) which Fraser's model of misrecognition understood as institutionalised relation of subordination (made visible through the demands of new social movements) would be unable to unveil. However, this model hardly takes into account the fact that, because of this very same emphasis on subjective feelings and experiences, some types of misrecognition might *also* remain unnoticed. Indeed, it is not difficult to see how Honneth's model would miss all these injustices which are experienced *unconsciously* and *internalised* by marginalised populations. The second main issue with Honneth's theory is his reduction of relations of recognition to intersubjective, "face to face", relations while in real life these relations are always mediated by institutions which shape and influence the relations of recognition between social actors. As we will see in the next section, these issues have not remained unnoticed. Fraser's model

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[90] Honneth, "Redistribution as Recognition," 255.

[91] Christopher F. Zurn, "Identity or Status? Struggles over 'Recognition' in Fraser, Honneth, and Taylor," *Constellations* 10, no. 4 (2003): 531.

interpreting misrecognition as *institutionalised* relations of subordination, through its emphasis on institutional mechanisms, offers the possibility to unveil some types of misrecognition which Honneth's model would not allow to unveil. French critical theorists have convincingly tried to retain the strength of Honneth's model while underlining and convincingly clarifying the two aforementioned difficulties.

Recognition and political institutions

As I explained in the previous section, Honneth centres his study on an analysis of subjective experiences of injustice. According to him, the relevance of studying forms of misrecognition or nonrecognition is due to the fact that "the negative emotional reactions accompanying the experience of disrespect could represent precisely the affective motivational basis in which the struggled-for recognition is anchored".[92] Honneth's project is therefore to explain political struggles for recognition by unveiling the psychological motivations which lead individuals to assemble and resist. This, however, reveals both a paradox and a potential issue with Honneth's theory. Indeed, as Renault argues, "suffering is an obstacle not only to freedom but to political participation".[93] Some authors, therefore, have criticised Honneth's simplistic understanding of political action. According to Lois McNay, for example, "on Honneth's subjectivist model, suffering is conflated with critical awareness of injustice that is, in turn, conflated with the emergence of agency".[94] Guillaume Le Blanc is also critical of Honneth's assertion that the experience of contempt is always accompanied by an awareness of misrecognition leading to a potential struggle for recognition. Instead, Le Blanc argues that such a relation between denial of recognition and political struggle is not guaranteed because the very tragedy of extreme social marginality is that in certain cases it negatively affects the conditions of possibility of political action by rendering the subject powerless and to a certain extent an unaware accomplice of the social injustice affecting his or her own life.[95] A phenomenological observation of the symptoms usually associated with social suffering does tend to confirm this thesis as they usually cover many self-destructive behaviours such as alcoholism, depression and suicide or the redirection of resentment and violence towards those sharing the same social

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[92] Honneth, *The Struggle for Recognition : The Moral Grammar of Social Conflicts*, 135.
[93] Renault, "The Political Philosophy of Social Suffering " 163.
[94] Lois Mcnay, "The Trouble with Recognition: Subjectivity, Suffering, and Agency," *Sociological Theory* 26, no. 3 (2008): 281.
[95] Guillaume Le Blanc, *Vies Ordinaires, Vies Précaires* (Paris: Éditions du Seuil, 2007), 213-17.

experiences. This does not mean that Honneth is wrong in establishing a causal link between the experience of disrespect and injustice and the notion of a struggle for recognition but instead that he has not analysed deeply enough the very consequences of his own theory exposing the impact of misrecognition on individual capacities to articulate this experience and turn it into a justification for struggle. While there is an undeniable link between negative social experiences and political action, such a causal link is far from necessary.

Another problem arises with Honneth's theory. Again, Honneth's intention was to analyse the psychological factors leading individuals who share a common feeling of social injustice to assemble and resist. However, such a move from the individual to the collective remains painfully undertheorised in Honneth's work. He does address this issue and explains the move from the individual to the collective by the existence of a "semantic bridge" but does not give much more information about this phenomenon and remains very vague about it. This issue in fact reveals a much more problematic aspect of Honneth's theory: for most of his work, Honneth remains at the individual and psychological level and does not move on to groups and political recognition in the public sphere. We can, therefore, consider his work to be more ethical than political. Such a problematic feature for a theory which claims to offer valuable theoretical tools for a critical theory of society can, however, be overcome by increasing the role played by institutions into his theory of recognition.

Fraser criticises the psychologism of recognition theorists that I highlighted above. She opposes a model of recognition that would relate misrecognition to "impaired subjectivity and damaged self-identity" and would be over-concerned with matters of self-realisation.[96] According to her, recognition should not be seen as a matter of self-realisation but instead needs to be treated "as an issue of *social status*". This means, in her words, "examining institutionalised patterns of cultural value for their effects on the *relative standing* of social actors".[97] She therefore calls her theory, the *status model of recognition.* Here, "misrecognition is neither a psychical deformation nor an impediment to ethical self-realisation. Rather, it constitutes an institutionalised relation of *subordination* and a violation of justice".[98] The result of such misrecognition is unjust as it prevents a class of culturally devalued citizens from achieving genuine equal participation in social life and such a phenomenon arises "when institutions

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[96] Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," 28.
[97] Ibid., 29.
[98] Ibid.

structure interaction according to cultural norms that impede *parity of participation* [emphasis added]".[99] She therefore sees the moral wrong at an external social level and not at an internal psychological one. Fraser's notion of parity of participation is important as it will support my argument in the next chapters. According to her, for all members of society to be able to interact as peers within society, it is necessary that they all have equal opportunity and in order to achieve this two conditions need to be satisfied. First, the *objective condition* which means that "the distribution of material resources must be such as to ensure participants' independence and 'voice'".[100] Second, the *intersubjective condition* which "requires that institutional patterns of cultural value express equal respect for all participants and ensure equal opportunity for achieving social esteem".[101] In other words, her concept of *parity of participation* aims at levelling people's chances to participate in politics. This is done by removing the prejudice people are victims of when they experience the position of subaltern whether that prejudice arises from economic inequalities or from a depreciation of their cultural identity.

As I have explained, Fraser is reluctant to base a critical theory on the subjective feelings of injustice and psychic harm experienced by individuals and her status model of recognition, by displacing the harm inherent in institutionalised patterns of social domination, and, therefore, by focusing on actions instead of effects, offers a more objective way of assessing societies. Indeed, as Christopher Zurn explains, "the status model is supposed to refer only to publicly accessible, and thus objectively verifiable, social structures".[102] While this represents a clear methodological pragmatic advantage to conduct research, the real strength of the argument according to Zurn is that the status model, by focusing on external social structures, is able "to handle instances of unjust subordination due to misrecognition that are nevertheless not noticed by some or all of its victims – that is, to handle the problem of false consciousness".[103] Frasers' emphasis on institutionalised patterns of social domination is also consistent with a theory of recognition that focuses on institutions as the main site of misrecognition.

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[99] Ibid., 12.

[100] Ibid.

[101] Ibid.

[102] Zurn, "Identity or Status? Struggles over 'Recognition' in Fraser, Honneth, and Taylor," 532. Zurn explains however that such an advantage is overstated because on the one hand, "external assessments of social subordination" are not necessarily fully objective and, on the other hand, it is untrue to consider that "identity models rely entirely on evaluations of subjective mental states to warrant recognition claims"

[103] Ibid., 533.

Deranty and Renault develop a similar critique and argue that Honneth has not studied sufficiently the relation between subjectivity and institutions.[104] Indeed, according to them, Honneth analysed recognitive interactions outside the institutional context while they believe that "existing recognitive interactions are always structured by material conditions such as natural and artificial things, bodies and institutions" and that "the normative content of these interactions cannot be fully described independently of their material conditions".[105] This means that we should try to analyse not only how intersubjective relations between individuals shape one's identity (as Honneth did), but also how such identities are shaped by all the spaces of socialisation with which one interacts and which have a strong normative dimension. In the following, institutions will be understood broadly: "institutions are enduring regularities of human action in situations structured by rules, norms, and shared strategies, as well as by the physical world. The rules, norms, and shared strategies are constituted and reconstituted by human interaction in frequently occurring or repetitive situations".[106]

While it is true that Honneth did not focus his work on the institutional framework but rather on inter-individual relations of recognition, it would be unfair to say that the institutional dimension is completely absent in his work. This is particularly true with the aforementioned broad definition of institutions. In fact, as Renante Pilapil points out, Honneth does pay attention to the ways that the state can influence identity formation.[107] For example, Honneth argues that

> processes of institutionalized individualization consist of all those strategies encouraged by the state or ordered by other organisations that attempt to counteract the danger of communicative agreement on group – and class – specific experiences of injustice by either directly requiring or proving long-term support for individualistic action orientations.[108]

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[104] Ibid., 100.

[105] Ibid.

[106] Sue Crawford and Elinor Ostrom, "A Grammar of Institutions," *The American Political Science Review* 89, no. 3 (1995): 582.

[107]Renante D. Pilapil, "Disrespect and Political Resistance: Honneth and the Theory of Recognition," *Thesis Eleven* 114, no. 1 (2013): 57. In fact Honneth himself realizes this later on and admits that it should be corrected (Gonçalo Marcelo, "Recognition and Critical Theory today: An Interview with Axel Honneth" *Philosophy Social Criticism* 39, no.2 (2013): 211).

[108] Honneth, *Disrespect : The Normative Foundations of Critical Theory*, 89.

In other words, in our current socio-economic system, institutions are used to "dissolve the consciousness of social injustice"[109] which could be shared by groups of people through communication. Social suffering is, therefore, something kept private and individual and is not public or group related. This goal is achieved through policies which range from "social and political rewards for risk-taking to the administratively ordered destruction of neighbourhood living environment".[110]

Deranty and Renault argue that struggles for recognition take a stronger political turn when they move from the inter-individual relations of recognition to the relations of recognition between individuals or group and institutions framing the relations of recognition. In this way, they intend, in their own words, to "politicise" Honneth's theory of recognition. According to them, there are no political conflicts between individuals. Recognition theories only become political when they involve the public space, when they question the institutional framework which sets up the rules of recognition. Indeed, "it is only when individuals and groups are fighting against the denial of recognition produced by the institutions of social life that their struggle is political and that it really involves political normativity".[111] This statement could be criticised on the ground that some struggles happening within the private sphere between individuals are also deeply political but Deranty and Renault's goal here is to underline the importance of public institutions (and their capacity to define relations between groups) in shaping relations of recognition.

If it is necessary to analyse the role of institutions to understand how recognition takes place in a given society, a theory of justice cannot reduce itself to theorising a society where institutions allow positive, healthy, relations of recognition to take place between individuals. The reason is that these very institutions influence and form the relations of recognition. They can therefore create inadequate modes of subjectification and the social suffering related to these. Therefore, Renault argues that we should move from Honneth's *expressivistic* conception of institutions to one which also encompasses a *constitutive* concept of the relations between institutions and recognition. This means that institutions do not only express more or less pre-institutional relations of recognition[112] in which case "institutions constitute only the

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[109] Ibid., 90.
[110] Ibid., 89.
[111] Deranty and Renault, "Politicizing Honneth's Ethics of Recognition": 99.
[112] Emmanuel Renault, "The Theory of Recognition and Critique of Institutions," in *Axel Honneth Critical Essays: With a Reply by Axel Honneth*, ed. Danielle Petherbridge (Boston: Brill, 2011), 210.

conditions either of stabilization of the relations of recognition, or the perpetuation of the obstacles for their development".[113] Instead, they are also *constitutive* of these relations: they produce them and therefore have an impact on the production of identities. Institutions are not the neutral field of interactions for recognitive relations to take place in as they influence these very relations. Therefore a struggle against misrecognition or nonrecognition is always a struggle against institutions which are seen as the cause of injustices.

This emphasis on the role played by institutions in relations of recognition allows the reconciliation of Honneth's valuable insights with Fraser's understanding of recognition as status subordination embedded in institutionalised patterns of cultural values.[114] From a methodological point of view such a model of recognition allows the theorist to retain the ideas of contempt, distorted subjectivities and invisible injustices elaborated by Honneth but without founding a whole critical project on such subjective dimensions. Unlike Fraser's model however, it does not discard the psychological dimension of oppression altogether since psychological harm remains important since it is understood as a very real and important factor of social suffering.[115] Instead of a thorough rejection then, incorporating a constitutive concept of institutions in relations of recognition allows to encompass a study of these Honnethian aspects of recognition along with a strong emphasis on distributive issues (which both Honneth and Fraser's models claim to do) but from an analytical angle rooted in objective, identifiable institutional patterns and practices.

Taking institutions as the main focus of an enquiry into the misrecognition of colonised people is, therefore, necessary. It is important, however, to understand that the struggle for recognition of indigenous people from within the institutions established by colonial powers reveals a number of challenges. Frantz Fanon highlighted the problem of reaching recognition from within colonial institutions in *Black Skin, White Masks*. While the whole book can be read as a phenomenological description of the lived experience of misrecognition by colonised people, the last few pages of this work directly address Hegel's Master-Slave dialectic. In these last pages, Fanon argues that the Hegelian parable does not apply – in the real world – to the relations of recognition between colonisers and colonised people. Indeed, according to the genuine Hegelian model of recognition, recognition means *mutual* recognition and *reciprocity*

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[113] *L'expérience De L'injustice. Reconnaissance Et Clinique De L'injustice.* , 196.

[114] Fraser, "Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation," 29.

[115] I will not examine this aspect of social suffering in this project.

between equals and such recognition is the result of a *struggle* for freedom against the objectifying gaze of the other. However, as Fanon notices, with the end of colonialism, there is no more genuine struggle between the colonisers and the colonised people and instead of *winning* their recognition and *proving* their equality as the result of a struggle for freedom, the recognition is *given* to them by the master. As Fanon summarises it: "One day the White Master, without conflict, recognized the Negro slave".[116] Or a little bit further in the text:

> Historically, the Negro steeped in the inessentiality of servitude was set free by his master. He did not fight for his freedom.
> Out of slavery the Negro burst into the lists where his masters stood. Like those servants who are allowed once every year to dance in the drawing room, the Negro is looking for a prop. The Negro has not become a master. When there are no longer slaves, there are no longer masters.
> The Negro is a slave who has been allowed to assume the attitude of a master.
> The white man is a master who has allowed his slaves to eat at his table.[117]

The problem with such recognition is that it does not offer a mutual recognition between equals as described by Hegel but instead recasts the relations of domination under a new, in appearance more human, light. Fanon continues:

> The upheaval reached the Negroes from without. The black man was acted upon. Values that had not been created by his actions, values that had not been born of the systolic tide of his blood, danced in a hued whirl round him. The upheaval did not make a difference in the Negro. He went from one way of life to another, but not from one life to another.[118]

The fact that, in this case, according to Fanon, the colonised people have been acted upon from without means that they have been deprived of the transformative praxis offered by the reality of struggle and which from a Fanonian point of view is the only way for a people to break away from internalised relations of colonisation. Indeed, according to Fanon,

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[116] 169
[117] 171
[118] 171

the Negro knows nothing of the cost of freedom, for he has not fought for it. From time to time he has fought for Liberty and Justice, but these were always white liberty and white justice; that is, values secreted by his masters.[119]

Fanon's critical understanding of the decolonisation process is valuable to understand the current debates over the recognition of indigenous people and represents a real warning against some of the pitfalls encountered by current indigenous social movements struggling for recognition within settler states. Indeed, as Sonia Kruks argues:

> his warning, that the affirmation of identity can be liberating *only* in the context of a struggle also to transform wider material and institutional forms of oppression is still relevant today. To affirm, express, or celebrate one's identity is, as Fanon insisted, psychologically empowering. It is also, as Sartre claimed, a vital moral affirmation. But to affirm one's identity is not, in itself, to change the world.[120]

This reality and the consequent dangers of an empty recognition that would focus only on symbolic aspects of recognition within political institutions that remain colonial have been convincingly addressed by indigenous scholar Glen Sean Coulthard in his *Red Skin, White Masks. Rejecting the Colonial Politics of Recognition.*[121] In this book Coulthard argues "that instead of ushering in an era of peaceful coexistence grounded on the ideal of *reciprocity* or *mutual* recognition, the politics of recognition in its contemporary liberal form promise to reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend".[122] The reason why the ideal of recognition in its liberal form remains nothing but false promises for indigenous people, according to Coulthard, is that it has replaced a colonial rule based on state violence with a colonial rule based on the acceptance and interiorisation by indigenous people of *asymmetrical* and *nonreciprocal* forms of recognition.[123] Coulthard draws from Fanon's analysis of Hegel's master-slave dialectic to show that unlike Hegel's parable whereby both actors were in need of the other's recognition, in the contemporary colonial contexts "the

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[119] 172

[120] Sonia Kruks, "Fanon, Sartre , and Identity Politics," in *Fanon: A Critical Reader*, ed. Lewis R. Gordon, T. Deanan Sharpley-Whiting, and Renée T. White (Cambridge: Blackwell Publishers, 1996), 133.

[121] Glen Sean Coulthard, *Red Skin, White Masks : Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014).

[122] Ibid., 3.

[123] Ibid., 25.

"master" – that is, the colonial state and state society – does not require recognition from the previously self-determining communities upon which its territorial, economic, and social infrastructure is constituted. What is needed is land, labor, and resources".[124] Coulthard also notices that unlike the scene taking place in Hegel's *Phenomenology of Spirit*, the current relations of recognition do not happen in a face-to-face fashion but instead are mediated by a whole set of institutions and are multi-polar.[125]

Coulthard's realisation that the current politics of liberal recognition embodied through cosmetic multicultural policies elaborated by the colonial state can hardly replicate the Hegelian ideal of mutual recognition leads him to advocate for a politics of *self-recognition*. According to him, we can learn from Fanon that freedom does not naturally emanate "from the slave being granted recognition from his or her master" but rather that "the pathway to self-determination instead lay in a quasi-Nietzschean form of personal and collective *self-affirmation*".[126] This means turning away from the state and developing a whole range of anti-colonial practices which would help the colonised people to get rid of internalised colonialism and to develop new alternative indigenous subjectivities.[127] Accordingly, this politics of self-recognition would in fact be a type of politics of recognition reviving the genuine Hegelian root of the concept and would therefore be immune to the displacement and reification problems highlighted earlier.[128] The fact that Coulthard also advocates for a complete transformation of the whole institutional framework of society and takes into account the mediating role of institutions encompasses Renault's critique of Honneth's model of recognition. Finally, by emphasising the importance of political practices of self-affirmation which do not necessarily fit within the reduced political space offered by the master, Coulthard opens a door towards Tully's agonistic democratic practices (see chapter four).

I am sympathetic to Coulthard's Fanonian criticism of the politics of recognition and his theoretical framework will influence my advocacy for incorporating a deliberative dimension to practices of recognition in later chapters. I do, however, acknowledge one difficulty with this approach. Fanon's emphasis on the dimension of struggle as a psychological mechanism leading to self-liberation is a theoretical framework and lacks a strong empirical foundation. While it is plausible that in some instances struggling can be beneficial to subaltern identities

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[124] Ibid., 40.
[125] Ibid., 29.
[126] Ibid., 43.
[127] Ibid., 151-79.
[128] Coulthard replies directly to Fraser's displacement criticism. See ibid., 36-37.

in terms of raising their self-esteem and self-confidence, one should be careful and not generalise Fanon's theory to *all* individuals belonging to *all* groups in *every* single socio-economic circumstances. While this is true for all theoretical frameworks, I believe that this needs to be particularly emphasised with Fanon's theory as a theory emphasising the *requirement* of a struggle can potentially become oppressive itself.

Rethinking recognition

The above discussion demonstrated that *the politics of recognition* is far from being a homogenous phenomenon. Indeed, hidden behind the umbrella term of recognition lies many different (and sometimes contradictory) interpretations of the meaning of this concept and/or of the ways to implement it. The fundamental question to ask in order to clarify this concept is *what is to be recognised through a struggle for recognition*?

Both Taylor and Fraser agree on one thing: recognition is about recognition of a cultural (broadly defined) identity. According to such an understanding of the concept, a set of characteristics is ascribed to a given identity and the goal of a politics of recognition is to recognise these characteristics in order to combat the discrimination affecting those who identify with them. I have described such an approach as "cultural recognition". The two main charges levelled against this approach are that it focuses narrowly on the cultural dimension of social injustice while downplaying the economic dimension of inequality but also that it offers a simplistic and problematic account of identity. This second criticism usually highlights the potential reifying effect of recognition on identities and argues that a politics of recognition can in some cases increase injustice since, on the one hand, it forces intra-group minorities to conform to the majority norm and, on the other hand, since inequality stems from identity differentiation itself, it reinforces the root causes of domination. Following such argument, the cure to such injustice would therefore be the deconstruction of identity differences altogether instead of their celebration through a politics of recognition.

I believe that these charges are valid criticisms but only apply to a very narrow model of recognition such as Taylor's. I, however, advocate a very different model. Indeed, I demonstrated that the majority of models of recognition in fact go beyond (while encompassing) this narrow model. I want to emphasise at this point the importance of Deranty and Renault's statement when they claim that "what individuals want to have recognized in the

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struggle for recognition" is "their identity as negative, their freedom to posit their own identity" and that "recognition is claimed as a right to self-empowerment, as the right to self-creativity and self-realization, not with the aim of entrenching fixed identities".[129] This underlines the tension between the individual and collective dimension of recognition. Groups provide individuals with a form of attachment necessary for human flourishing but groups can also impose characteristics and behaviours on individuals. Recognition emphasises the importance of the social dimension of identity formation but the process needs to result from an autonomous endeavour. As I will show, this tension appears clearly in policies of recognition (for example "self-determination" rights) and creates practical and moral challenges.

I believe that this theoretical framework is well embodied by Fanon's appropriation of the Hegelian ideal of recognition: recognition is about the recognition of identity yes, but, under conditions of domination, recognition is first and foremost about the struggle against misrecognition, about the resistance to the heteronomous imposition of, and imprisonment in, the distorted identities imposed by the master. In a colonial setting (as in any setting informed by unequal relationships of power), there is very little room for "self-empowerment" and for "self-creativity and self-realization", even when "recognition" is granted because in this case the colonial subject is still "acted upon".

The struggle for recognition is therefore a struggle for freedom. Here the meaning of freedom relates to the ideals of autonomy and self-determination which define the humanity of a subject. It is a struggle against the dominating forces of the other to prove one's equality and humanity – and thus not primarily one's difference – and therefore against the objectifying gaze of the other in order to be what one wishes to be. In the colonial context a genuine struggle for recognition, or more precisely *over* recognition, is a struggle against recognition by the master which is after all always a form of misrecognition. Indeed, as Anita Chari argues "the struggle to be recognized by the colonizer actually perpetuates the oppression of the colonized, insofar as this struggle is a struggle to be recognized within the terms of a discourse that is dictated largely by the colonizer".[130] But this was never meant to be recognition in its philosophical Hegelian sense. Indeed, Chari also remarks that "the politics of recognition has taken a life of its own, far beyond Hegel's original ideas about recognition".[131]

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[129] While this understanding relates to individual identity an investigation into its applicability to group identities is necessary. This investigation will come later in the thesis.
[130] Anita Chari, "Exceeding Recognition," *Sartre Studies International* 10, no. 2 (2004): 110.
[131] Ibid., 111.

My point is to argue that while a cultural politics of recognition might indeed be ineffective or even to a certain extent reproduce social injustice, the Hegelian ideal of recognition remains a powerful tool to combat injustice and domination. Indeed, "the exigency of recognition does not necessarily lead to the modelling of demands within the language of a master from whom we would be waiting for recognition, it can equally lead to the transformation of the normative framework leading to the denial of recognition".[132] The politics of recognition should therefore be understood as a radical transformative political project. A genuine struggle for recognition is a struggle waged to transform the institutions responsible for (or perpetuating) the denial of recognition. But such a struggle also has an impact on political subjectivities. Indeed, "as Fanon argues, the oppressed colonial subject must undergo radical forms of political disidentification in order to be free, creating new forms of identity in the process"[133] and "hence, the struggle against colonialism not only transforms the colonial order of power, it transforms the colonized individuals themselves"[134]

What about the role of identity in struggles of recognition then? Is the concept of identity relevant at all to the notion of a struggle over recognition if such a struggle is mainly over freedom? I want to argue that identity is doubtlessly still relevant because, in the end, a denial of recognition is always based on the denial of a particular identity. It is because a subject belongs to a particular cultural or ethnic identity that he or she is victim of a denial of recognition. And it is *within* that identity that the struggle for recognition is waged. There is an undeniable difference between the Deleuzian or Foucaultian ideal of deconstructed or fragmented identities on the one hand[135] and the acknowledgement of a certain plasticity of identities on the other hand. The idea that identity should not be recognised as such but instead should be recognised as emerging from a struggle for recognition is in fact consistent with Honneth's tripartite model of the human need for recognition. Let us remember that recognition within the third sphere of recognition (sphere of achievement) is not an automatic right. It is only through one's actions that such level of recognition is granted. As Renault argues, in the Hegelian model of recognition, it is the freedom of the subject which is at stake, recognition is won through action. One proves his or her freedom through his or her agency as a free being.

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[132] Emmanuel Renault, "Reconaissance, Lutte, Domination: Le Modèle Hégélien," *Politique et Sociétés* 28, no. 3 (2009).
[133] Chari, "Exceeding Recognition," 115.
[134] Ibid., 120.
[135] Linda Tuhiwai Smith in fact argues that "fragmentation is not an indigenous project, it is something we are recovering from". Linda Tuhiwai Smith, *Decolonizing Methodologies : Research and Indigenous Peoples* (Dunedin: University of Otago Press, 1999), 97.

It would be condescending to recognise a particular identity without struggle, without having to prove one's worth and indeed, from a Hegelian perspective, "the value of recognition depends on the efforts realised to obtain it".[136] This emphasis on (political) action as a means of reaching increased levels of recognition will inform my discussion on the relationship between the theory of recognition and deliberative practices in chapter four.

Honneth's tripartite division of recognition can help us to understand the inner tension proper to the concept of identity emerging from such a theory of recognition centred on the ideal of freedom. Recognition within the first sphere of recognition is the necessary condition for any subject to develop the healthy psychological framework allowing subjects to be self-determining agents. The question of the relation between freedom and identity arises in the interplays between the second and third spheres of recognition whereby genuine recognition means recognition of a universal and a particular. The subject needs to be recognised as a moral self-determining agent (universal - sphere of law) but embedded within a particular identity and set of characteristics (particular – sphere of achievement). However, this latest dimension will lose its value if it does not result from the choice and agency of a self-determining agent and is instead merely the result of the heteronomous imposition of a reified identity (either from outside the group or from within the group). This later statement also safeguards the theory of recognition against the charge that recognition would allow intra-group oppression since recognition within this sphere needs to result from an autonomous process. Indeed, it would be incoherent to grant recognition for a given "achievement" taking the form of a particular cultural characteristic if such characteristic was not the result of the subject's freedom. No recognition could be granted without satisfying this condition. This is why the *struggle* dimension is important as it allows proving to the other that what is meant to be recognised is worthy of recognition. Only so will recognition be genuine and not condescending. Again, the most fundamental aspect for a characteristic to be recognised is that it is the result of the subject's freedom as a self-determining agent. Let me give a common example in order to illustrate my point. A Muslim woman willing to wear her hijab at school, university or on the work place in France should be recognised if and only if her particular characteristic is the result of a free-choice. However (and this is the most important aspect of this example), denying her recognition in that specific case would mean denying her capacity to act as an autonomous and free agent. Self-determination is, therefore, key to understand

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[136] Renault, "Reconaissance, Lutte, Domination: Le Modèle Hégélien," 29.

recognition but it goes both ways: the dominating external forces need to recognise a self-determining subject free to make her own choices without the negative influence of the dominating force but the subject, on the other hand, in order to be recognised, need to prove that he or she is a self-determining subject.[137] This understanding therefore also allows the politics of recognition to offer an "exit option" to members of groups.

All the aforementioned characteristics of a theory of recognition that remains faithful to the Hegelian parable of the master-slave dialectic show that the theory of recognition was not meant to become a theory reifying identities and reduced to the promotion of cultural rights within plural societies. According to this understanding, the theory of recognition might therefore also be useful to deal with social issues usually treated as economic issues. Indeed, it could be argued that because of his understanding of the concept of recognition which remains more faithful to Hegel's ideal, Honneth's belief that the concept of recognition alone can be a solution to all types of social injustice, including apparently overt economic injustice, is legitimate. Indeed, in the weaker version of Honneth's theory of *redistribution as recognition* (whereby some economic mechanisms are autonomous from the overarching recognition principle), economic exploitation can easily be interpreted as a denial of recognition. The other's worth and value as an equal partner in society is depreciated and non-reciprocity arises within a social order understood as an order of recognition where wealth distribution is considered as an indicator of recognition. In cases of extreme economic exploitation or marginalisation, misrecognition does not only inflict harm to the subject's honour and feelings of achievements but the freedom to act as free agent and autonomy of the subject is also radically undermined. In the stronger version of Honneth's claim (whereby recognition is the only principle organising every aspect of social life), and supported by Renault's theory of institutions, society fails to offer the necessary conditions for relations of recognition to take place and struggles over recognition against the institutions responsible for the conditions experienced are legitimised because they represent the only way for those suffering from such a system to be recognised.

Before continuing, I should note that the emphasis on self-determination offered by this model of recognition should not be understood as merely focused on guaranteeing some negative form of liberty akin to toleration nor does it understand the evil of economic exploitation solely as a

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[137] The metaphysical claim made by Hegel that freedom resides in detachment from biological life is not relevant to this discussion.

problem related to the low-wage worker (or unemployed)'s restriction of choice and action due to poverty. Instead, what makes the theory of recognition different from other theories of justice is its emphasis on the importance of the non-material and non-quantifiable dimension of human life expressed through the concept of identity. Of course freedom can be restricted or even disappear because of gross maldistribution of goods or discriminatory laws (still matters of recognition) but the theory of recognition broadens the horizon of injustice by arguing that the denial of a given identity's worth is also highly restrictive of freedom as it forces people to conform to a particular dominant and alien authority's identity to avoid feelings of shame and disrespect. In this case, the experience of loss of freedom is not restricted to the material dimension of life but to the totality of human life as it forces people to deny what they *are*. In this sense, and according to Hegel's theory, a struggle for recognition is a struggle for honour resulting from a moral wound since the denial of recognition is seen as producing wounds of the spirit which can lead to what Hegel calls "the greatest revolt of the spirit".[138]

Conclusion

In this chapter I advocated for a model of recognition that emphasises the importance of equality and reciprocity in relations of recognition. This model promotes freedom as the key feature to be recognised through struggles over recognition while identity plays a secondary role. Struggles over recognition are primarily defined as struggles against misrecognition (or the denial of recognition) since misrecognition is a denial of freedom. Such a model consider redistributive issues as issues of recognition since 1) they can be interpreted as the result of illegitimate relations of recognition happening within Honneth's third sphere of recognition or 2) when they are the result of purely structural economic phenomena they are interpreted as phenomena impeding the conditions of possibility for recognition to take place. Following a constitutive understanding of the relations between institutions and recognition, this model relates struggles over recognition to struggles against the institutional framework responsible for the denial of recognition or misrecognition. In chapter four, I will argue that such struggles need to be fought within institutions promoting deliberative practices to take place in order to allow freedom and equality to be demonstrated. In the next chapter I will argue that the theoretical framework of recognition tends to be conflated with a closely related, yet different,

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[138] Renault, *L'expérience De L'injustice. Reconnaissance Et Clinique De L'injustice.* , 36.

theoretical framework when it is embodied through political practices: the theory of liberal multiculturalism.

Chapter three: From Recognition to Liberal Multiculturalism

Introduction

For many political theorists (especially in the Anglo-American literature), the theory of recognition is part of a wider body of research and debates over multiculturalism. In the work of many American, Canadian and British scholars, it is difficult to differentiate between the theory of recognition and liberal multiculturalism. Both sets of theories target identity-related issues and have become part of what is commonly referred to as "identity politics". This phenomenon has not happened in "continental philosophy" (mainly France and Germany). Authors such as Axel Honneth and Emmanuel Renault, for example, do not discuss issues of multiculturalism and group-differentiated rights as such. Liberal multiculturalism represents a theoretical framework that aims to develop the abstract theoretical dimension of the theory of recognition with the goal of offering practical guidelines to create a more just political order in multicultural societies. In other words, liberal multiculturalism embeds recognition in political practices and has become the primary influence over policy making processes in diverse societies that decide to recognise their diversity (such as Colombia and New Zealand).

In this chapter, I discuss liberal multiculturalism. I present liberal multiculturalism as a theory of group rights (with an emphasis on Will Kymlicka's theory) and outline some common arguments (mainly Brian Barry's) raised against such a theoretical framework. I then argue that there are both similarities and differences between the theory of recognition (especially its Franco-German variant) and liberal multiculturalism and argue that the former is less likely to fall victim to the detractors of "identity politics" than the latter. I finish the chapter by further differentiating between multiculturalism and interculturalism because the second concept is commonly used in Colombia.

Multicultural Citizenship: a theory of group-differentiated rights

Will Kymlicka is one of the leading theorists in the field of liberal multiculturalism. He argues that "the state unavoidably promotes certain cultural identities, and thereby disadvantages others".[139] Contra theorists who argue that liberalism is necessarily hostile to social

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[139] Will Kymlicka, *Multicultural Citizenship a Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 2000), 108. Charles Taylor makes a similar argument.

heterogeneity, Kymlicka argues that liberalism is compatible with the recognition of cultural membership and that it accommodates difference.

Kymlicka argues that the protection of cultural plurality is a requirement of liberalism in culturally plural societies because cultural membership is essential to autonomy and increases citizens' freedom.[140] The ability for a citizen to keep her culture of origin and the feeling of cultural belonging related to cultural identity, are important aspects of freedom providing people with a sense of self-respect.[141] Cultural membership shapes our autonomy as we derive our context of choice from our cultural belonging. Social plurality also increases our exposure to different conceptions of the good and individuals should be free to move from group to group and have a "right to exit" in a *liberal* multicultural society. Given the importance of cultural membership and pluralism to the liberal project, Kymlicka, therefore, offers a liberal framework that advocates for the just treatment of minority groups and the protection of their cultures through two main types of "group-differentiated rights". [142]

Kymlicka distinguishes between *self-government rights* (related to distinct national groups, or *societal cultures*, living within the border of a state) and *polyethnic rights* (related to *migrant identities* in their host societies). The former category covers principally the right to territorial self-determination and can be implemented through various forms of federal arrangements. The second category covers the protection of cultural distinctiveness for minority ethnic groups against the assimilationist tendencies inherent to the necessary process of integration within the host society. In the case of polyethnic rights, public funding of cultural practices as well as changes in education curriculum and minor legal accommodations (such as those related to dress code) can help minority groups to retain their cultural identities and to integrate into the wider political community. Self-determination rights are, however, not legitimate for this group.

According to Kymlicka, both national and ethnic minority groups can also claim special representation rights within the political structure of the state. This can be achieved through reserved seats for minorities within the legislature and making political parties more inclusive of different identities. According to Kymlicka, there is, however, a tension between self-government rights and special representation rights since "the right to self-government is a

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[140] Ibid., 75-105.
[141] Ibid., 89.
[142] Ibid., 26-33.

right against the authority of the federal government, not a right to share in the exercise of that authority".[143] Therefore, "the logical consequence of self-government is reduced representation, not increased representation".[144] This argument applies particularly to strong forms of federalism leaning towards secessionism. If a group desires less involvement from the federal state in its affairs and wants increased autonomy, it should, in return, be less involved in the affairs of the state. However, federalism is a two way street and as long as the federated entity retains some attachment to the federal state, it should still have a say over matters that are shared by both decision making levels.

Given these theoretical developments, multiculturalism is usually understood as a theory of "group rights". Bhikhu Parekh argues that it is a mistake to believe that only individuals can bearrights and he claims that collectivities are "independent entities making autonomous claims of their own".[145] According to him, groups can acquire collective rights in two ways.[146]

> Individuals might pool their rights together or alienate them to the collectivity; we might call these *derivative collective rights*. The rights of trade unions, clubs, and so on are of this kind. Secondly, collectivities might acquire their rights *sui generis*, by virtue of being what they are and not derivatively from their members. We might call them *primary collective rights*. The rights of medieval towns to self-government including the levy of taxes, exclusion of outsiders and the right to make representations to the king, the rights of Christians and Jews to self-government under the Ottoman empire, and a tribe's right to its sacred sites and traditional esoteric knowledge fall under this category.[147]

Primary collective rights are subdivided into two kinds of rights. First are the rights that can only be exercised by individuals as part of a given group such as a Muslim's right to time off for prayer from his employer. Parekh calls this type of right *individually exercised collective rights*.[148] Second are rights that only apply to collectivities as such. For example, the right to self-determination only applies to collectivities qua collectivities. Parekh calls these

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[143] Ibid., 143.
[144] Ibid.
[145] Bhikhu Parekh, *Rethinking Multiculturalism : Cultural Diversity and Political Theory* (New York: Palgrave Macmillan, 2006), 214.
[146] Parekh does not adopt Kymlicka's distinction between two types of cultural minorities.
[147] Parekh, *Rethinking Multiculturalism : Cultural Diversity and Political Theory*.
[148] Ibid., 215-16.

collectively exercised collective rights.[149] Many factors can justify these rights and the legal accommodations they promote in order to safeguard particular cultural characteristics. Parekh lists the following justifications: the moral importance of the community for its members; the necessity of these rights for the group's existence as such; the various group insecurities and issues related to their integration into the mainstream society; the systemic historical oppression; the enhanced ability for different groups to make a unique contribution to the wider society; the requirement of these policies for the group's functioning and the contribution to its members as such.[150]

Arguments about group-differentiated rights are common in the literature on "recognition" as well. Charles Taylor argues, for example, in favour of federalism and argues that a certain level of group-homogeneity is required for democratic rule.[151] James Tully (whose theory I discuss in the next chapter) also originally offered a theoretical framework that emphasised group identity. His use of a sculpture, "the Spirit of Haida Gwai", representing different types of animals, mythical creatures and a human (different identities) on a canoe (a shared polity) was a metaphorical source of inspiration for his political theory work revising constitutionalism in an "age of diversity".[152] I will return to these similarities between the theory of recognition and liberal multiculturalism later in the chapter but, first, I wish to underline some common criticisms raised against multicultural liberalism because these critiques might explain some of the shortcomings of the policies of recognition in New Zealand and Colombia.

"Up the Creek in the black Canoe":[153] critiques of multiculturalism

The identity turn in political theory received criticisms from some egalitarian liberals and neo-Marxists who interpreted this theoretical development as a treason against their (amongst other) ideals of equality. Here, I focus on the liberal criticism of multiculturalism and particularly (but not only) on Brian Barry's charge against identity politics. Barry does not share the idea that "difference blind liberalism" inherently creates injustice for minorities. According to him, "if

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[149] Ibid., 216.
[150] Ibid., 217-18.
[151] Charles Taylor, "The Dynamics of Democratic Exclusion," *Journal of Democracy* 9, no. 4 (1998).
[152] James Tully, *Strange Multiplicity : Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).
[153] Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Harvard University Press, 2001).

liberalism is indeed blind to cultural differences, we should not assume immediately that this must be a fault: it may in some circumstances be precisely what is required".[154] The problem, therefore, would not be "difference blind liberalism" but precisely the fact that the so-called liberal political systems in the West are still *not* difference-blind. Here, I underline and unpack five main criticisms, some of which overlap with Nancy Fraser's arguments against "recognition" in chapter one. My aim is to offer a critical framework that can be used to analyse the political practices at stake in Colombia and New Zealand.

 First is the *reification issue*. This issue was already mentioned when discussing Nancy Fraser's criticism of the theory of recognition in chapter two and is key to some of my further arguments. It relates to the idea that "identity politics" simplifies the complex notion of identity and divides society into discrete, well-defined, groups. Her criticism was in fact, however, more targeted at theories of multiculturalism than at theories of recognition such as Honneth's (I will come to these differences in the next section).[155] Brian Barry targets the same issue but more specifically focuses on theories advocating group-differentiated policies. Barry is highly critical of the idea that one's ancestry or environment at birth should determine one's way of life and be a justification for group-differentiated rights. He considers Tully's metaphor about "the Spirit of Haida Gwai" as problematic because it reduces the different occupants of the canoe to different species. In Tully's analogy, biology (in many cases nationality or culture) is a key determinant of identity. Barry does not suggest that Tully's intention was to reduce the quiddity of identities to mainly genetic features but sees in this metaphor a strong relationship to counter-enlightenment romantic nationalist ideas emphasising the ties between a *Volk* and its *Geist*. According to Barry, this emphasis is problematic from a liberal egalitarian perspective.[156] Some critiques on the left such as Richard Ford further argue that this emphasis on reified tradition also strangely turned an inherently progressive project into "an essentially conservative project of cultural preservation and a fetishism of pedigree and tradition".[157]

The critique of reification can lead to a critique of the notion of group rights as such. Barry argues that the notion is theoretically problematic because in the end group-differentiated rights

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[154] Ibid., 64.
[155] This explains the strange exchange between the two authors who seem to be talking about different things when they talk about recognition.
[156] Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* 258-64.
[157] Richard Ford, "Beyond "Difference": A Reluctant Critique of Legal Identity Politics," in *Left Legalism/Left Critique*, ed. Wendy Brown and Janet E. Halley (Durham: Duke University Press, 2002), 48.

still benefit individuals (as members of groups) and not the groups qua groups (Kymlicka would in fact agree with that statement). Even differentiated policies related to deprivation are still not "group policies" and remain universalistic in nature because, in the end, "different people receive different treatment in accordance with their needs, but everybody with the same need receives the same treatment".[158] Barry also points at the difficulty of defining group membership as both under-inclusivity and over-inclusivity create problems. Under-inclusivity might leave very similar people "outside" of the group and create injustice for those who do not benefit from a particular policy despite their ties to the identity at stake while over-inclusivity discredits the pertinence of the group-differentiated policy in the first place.

Second is the *displacement issue* also mentioned in the previous chapter. Barry echoes Fraser's concern over identity politics' disregard for deeply unjust economic issues such as wealth concentration and increased worker immiseration.[159] Again, this criticism applies only to some theorists of liberal multiculturalism and recognition. Honneth and Renault's theories are mainly focused on issues of misrecognition related to economic deprivation and this criticism hardly applies to their theoretical framework. Even other theorists such as Taylor do raise concerns about economic deprivation as part of their theory of recognition. We will see with the case studies whether or not this criticism highlights some problems in practice.

Third, the "*divide and rule issue*" refers to a potential fragmentation of demands for justice under particularistic claims. The result of this phenomenon would be the weakening of a more radical, united, front of marginalised groups. Barry argues that

> The proliferation of special interests fostered by multiculturalism is, furthermore, conductive to a politics of 'divide and rule' that can only benefit those who benefit most from the status quo. There is no better way of heading off the nightmare of unified political action by the economically disadvantaged that might issue in common demands than to set different groups of disadvantaged against one another.[160]

This issue is particularly relevant when access to natural resources is at stake. It is not uncommon to see various disadvantaged groups fighting over access to a particular natural resource and/or territory and, therefore, looking at each other as competitors over resources while the entity currently controlling (the central state for example) the resources use these

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[158] Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* 114.
[159] Ibid., 63-64.
[160] Ibid., 11-12.

conflicts to maintain the status quo. For example, as we will see in a later chapter, in Colombia, impoverished indigenous and non-indigenous peasants who share the same socio-economic conditions are now competing over access to arable land because of land redistribution mechanisms that favour indigenous people. This phenomenon is also at play in New Zealand where conflict between and within Māori tribes over financial settlements has a divisive impact.

Fourth is the *moral relativism* issue. Barry is wary of the cultural relativism which, according to him, informs much of the debates over identity politics. He rhetorically asks: "how could anybody seriously imagine that citing the mere fact of a tradition or custom could ever function as a self-contained justificatory move?".[161] Respect for one's culture, in itself, cannot serve as justification and Barry highlights some theoretical inconsistencies with such line of argument. It is common sense that a culture depending on violence for its survival, for example, needs to change.[162] It is also unclear why change, as such, is considered a bad thing or why it would necessarily endanger a culture since cultures are not static but constantly evolving and change might be a positive thing and help a culture flourish.[163] Great civilisations thorough history have grown through contact with other cultures, not isolation. Of course, the changes that altered indigenous cultures as a result of colonisation were extremely negative but they resulted from coercion and violence, not from contact and exposure to new ideas and ways of life as such.

If qualitative judgements about values and norms take place it means that cultures can be assessed based on common, universal standards of judgments. Charles Taylor covers this issue in his *The Politics of Recognition* and argues against ethnocentrism and in favour of giving all cultures the benefit of the doubt about their equal worth before informed judgments can be made.[164] While rejecting ethnocentrism (usually understood as eurocentricism) is a positive step both towards equality between people and a more objective expression of reality, it does not mean that cultural relativism is the answer. These theoretical reflections contradict the tendency criticised by Barry to consider that all cultures are equally valuable and reinforce the idea that some practices in some (if not all) cultures could be changed in order to improve the

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[161] Ibid., 253.
[162] Ibid., 257.
[163] Ibid., 256.
[164] Taylor, "The Politics of Recognition ".

culture itself.[165] Besides, Kymlicka also argues that illiberal cultures may change through contact with liberal cultures in a multicultural setting.[166]

The fifth type of criticism departs from the liberal critique of Brian Barry and offers a different type of argument. What I call the *pacification/normalisation issue* relates to the tendency of legal recognition through multicultural policies to co-opt disadvantaged groups and is articulated by Wendy Brown. She argues that,

> while rights may operate as an indisputable force of emancipation at one moment in history […] they may become at another time a regulatory discourse, a means of obstructing or coopting more radical political demands, or simply the most hollow of empty promises.[167]

Further, she rhetorically asks:

> When do rights sought by identity "for itself" become "in themselves" a means of administration? When does identity articulated through rights become production and regulation of identity through law and bureaucracy? When does legal recognition become an instrument of regulation, and political recognition become an instrument of subordination?

For Brown, politicised identity is both the product and reaction of *ressentiment*. Here, ""reaction" acquires the meaning Nietzsche ascribed to it: namely, an effect of domination that reiterates impotence, a substitute for action, for power, for self-affirmation that reinscribes incapacity, powerlessness, and rejection".[168] How can differentiated rights policies reiterate impotence and reinforce powerlessness? According to Brown's neo-Nietzschean and Foucauldian critique these policies reduce disadvantaged groups to powerless subjects in need of state assistance for their wellbeing and development. Legal battles informed by grievances about the past replace affirmative political actions oriented towards the future and absorption within oppressive institutions replaces the radical transformation of these institutions. Differentiated rights policies become yet another tool of governmentality increasing state

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[165] Even if the culture does not change, however, differences in value between cultures does not mean differences in treatment.
[166] Kymlicka, *Multicultural Citizenship a Liberal Theory of Minority Rights*, 152-72.
[167] Wendy Brown, *States of Injury : Power and Freedom in Late Modernity* (Princeton: Princeton University Press 1995).
[168] Ibid., 69.

power while decreasing the political agency of the subjects of these policies. As I will show in later chapters, Brown's critique can be related to the co-opting tendencies of differentiated right policies. The co-opting dimension of these policies tends to result in a decrease in activist forms of protest and in a weakening of more radical demands for social changes.

Using the terminology of the theory of recognition, the struggle for recognition, and its transformative effects on both subjects and institutions, is replaced by administration and cooption within the existing institutions. In this scenario, left multicultural legalism becomes a barrier to critique and radical societal changes and becomes part of governmentality techniques.[169] This line of argument is similar to Coulthard's uses of Nietzschean and Fanonian ideas to criticise indigenous "recognition" in Canada (seen in Chapter one).

By normalising and institutionalising demands for recognition through a set of differentiated rights, states would pacify marginalised groups and undermine their capacity for self-affirmation. What such criticism misses, however, is that the theory of recognition does not require states to institutionalise demands for recognition through differentiated rights but could, instead, create an institutional framework that allows, and create a space, for disadvantaged groups to engage in self-affirmative actions and assert their power. I will return to this idea in the next chapter.

Similarities and differences between recognition and multicultural theories

I now wish to point to similarities and differences between recognition and multicultural theories. Since there is no united theory of recognition or liberal multiculturalism but instead a constellation of more or less similar theories of "identity politics", the following paragraphs will take both sets of ideas as ideal types representing two poles along a continuum of theories. Will Kymlicka's theory represents the multicultural liberalism end of the continuum and Axel Honneth's theory represents the recognition end of it. Many theorists (for example Taylor and Tully) fall in between these two poles.

There are obvious similarities between the two sets of ideas. Liberal multiculturalism and the theory of recognition both recognise the importance of respecting people's identities and that

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[169] Wendy Brown and Janet E. Halley, "Introduction," in *Left Legalism/Left Critique*, ed. Wendy Brown and Janet E. Halley (Durham: Duke University Press, 2002).

disrespect towards identities represents a form of oppression that reduces freedom and can lead to a lack of self-respect and a wide range of psychological and socio-economic issues. Both sets of ideas emphasise the fact that many people experience marginalisation because of their identities and that many political claims are, therefore, raised in identity terms.

There are also important differences between liberal multiculturalism and the theory of recognition. The theory of recognition is less concerned with rights and more with processes of subjectification. Or, more specifically, rights are normatively evaluated based on their impacts on individual subjectivities. The purpose of rights is to create the conditions of possibility for recognition to take place. Of course, sometimes, the affirmation of a right is itself a form of recognition. These rights are the rights that establish equality between citizens (Honneth's second sphere of recognition). At other times, however, rights only secure the conditions of possibility for recognition to arise but recognition itself will depend on the recipient's agency and "struggle". This particular aspect of the theory of recognition answers Wendy Brown's concerns over the "left legalism" embedded in many theories of multicultural liberalism as it emphasises the importance of action and decreases passivity. It creates a theoretical framework that is less accommodationist and opens the door for an increase in the importance of social and political praxis for those engaged in a struggle for recognition.

At the core of the tension between multiculturalism and recognition lies another theoretically complex issue: the tension between group rights and individual rights. The theory of recognition is not a theory of group rights nor a theory of individual rights. It is a theory that is in constant tension between the group and the individual. In a Hegelian fashion, the theory of recognition underlines the fact that individual freedom is always related to social belonging but not reduced to it. The theory of recognition represents the *Aufhebung* between group rights and individual rights. This is why Honneth argues that individual freedom always depends upon social and political institutions organising intersubjective relations but also that these institutions presuppose and require the realisation of individual freedom to function properly.[170] Because of this complex relation between individual freedom and group belonging, the theory of recognition is immune to Barry's (and others) criticism about identity reification but also immune to problems of "divide and rule". While group belonging is a key factor for individual freedom, it is not a determining factor. Group belonging is subordinated to individual freedom and, therefore, individuals are free to change, exit and criticise particular

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[170] Honneth, *Freedom's Right : The Social Foundations of Democratic Life*.

norms within and across groups. Identities are not reified. Adopting this more flexible approach to group identity also means that it allows individuals to identify with more than one identity at once and, therefore, also offers an increased possibility for inter-groups cooperation.

Finally, the criticism related to "moral relativism" also hardly applies to the theory of recognition. Rainer Forst argues that the theory of recognition goes beyond the recognition of rights embedded in a legal system of recognition and emphasises the fact that demands for recognition must be intelligible and appeal to norms that are justifiable to the other side of the struggle, if recognition is to go beyond mere formal legal recognition and instead materialise through mentality changes. He argues that "a critical theory of (in)justice has to be first and foremost a critique of the existing relations of justification (or of 'justificatory power')".[171] In other words, Forst highlights the fact that current systems of injustice rely on the prevalence of particular norms within society and these norms materialise through institutional frameworks because of their "justificatory power". Altering these norms is necessary to reach genuine institutional transformations but altering these norms also means that claims for recognition need to be, to a certain extent, validity claims. In other words, recognition is reached if the non or misrecognised identity can prove that the denial of recognition is unjustifiable. On the other hand, a normatively and/or empirically baseless struggle for recognition is most likely condemned to fail. For example, a group of young white French people claiming to be the descendants of a vanished Mesoamerican civilisation could not be recognised as such and there is no social injustice in such denial of recognition. Here the issues of both "left legalism" and "moral relativism" are covered but the problem of finding criteria to assess the validity claims of struggles for recognition arise. This is, however, the very nature of political disagreement and the place where political struggles naturally occur. In the next chapter I advocate for a theory of recognition that aims to answer this issue.

Again, the above analysis was based on an understanding of both sets of theories as ideal types. There are overlaps between the theories and some authors adopt aspects of both liberal multiculturalism and the theory of recognition. It is important, however, to underline these differences. The analysis of the case studies will show that political problems arise when the theory of recognition is implemented as a theory of liberal multiculturalism. Solving these problems requires taking these differences into account.

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[171] Rainer Forst, "First Things First: Redistribution, Recognition and Justification," *European Journal of Political Theory* 6, no. 3 (2007).

Multiculturalism and interculturalism

Given that the concept of interculturalism is commonly used in Colombia to describe race relations, I will now offer a brief overview of the debate that opposes multiculturalism and interculturalism. Interculturalism arose as a corrective to some features of multiculturalism and it could be argued that, in some aspects, its ideals are closer to theories of recognition. In theory, interculturalism criticises the segregationist and reificative tendencies of multiculturalism by promoting the value of dialogue and interaction between cultures while rejecting assimilation. Interculturalism is also less concerned with *preserving* cultures than with letting them *evolve* and its proponents, therefore, argue that intercultural practices are less susceptible to moral relativism than multicultural ones. Because of all these differences, interculturalism is considered better for social cohesion and creating a shared sense of national identity than the divisive policies of liberal multiculturalism.[172] In short, interculturalism would be immune to the criticisms raised in the previous section and would offer a theoretical framework that respects differences without reinforcing them.

Meer and Modood argue that these theoretical contrasts are not persuasive because they "ignore how central the notions of dialogue and communication are to multiculturalism".[173] To make their point, they appeal to Taylor's 1992 essay on recognition and its emphasis on the dialogical construction of the self that underlines the importance of dialogue in multicultural theory. While they are correct in pointing out the importance of the text in the development of theories of multiculturalism, I wish to underline that their justification precisely appeal to a text dealing with *Hegelian recognition*. They therefore reinforce my thesis that we ought to differentiate between recognition and multiculturalism despite the important continuity and overlaps between the two types of theories. I agree with Meer and Modood when they argue that the *theories* of liberal multiculturalism offer a number of arguments in favour of dialogue and against relativism and social fragmentation but I believe that the intercultural critique is relevant when it raises concerns over the *practices* and *policies* influenced by multiculturalism. It is important to note that there is a difference between academic arguments and theories of multiculturalism and their implementations in political systems. One of the goals of this thesis

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[172] Nasar Meer and Tariq Modood, "How Does Interculturalism Contrast with Multiculturalism?," *Journal of Intercultural Studies* 33, no. 2 (2012).
[173] Ibid., 183.

is to highlight the gap between ideal theory and political implementation of policies of recognition.

Regardless of the theoretical debate between interculturalists and multiculturalists, the distinction between the two theories remains important because some (successful) policies in Colombia (especially in education and health care) are described as intercultural while New Zealand's policies of recognition are not described as intercultural but as bicultural (I will discuss the differences between multiculturalism and biculturalism in chapter seven).

Conclusion

In this chapter I summarised the arguments both in favour and against group-rights and multicultural liberalism. I also mentioned the concept of interculturalism and highlighted its interesting features. I suggested that the theory of recognition differs from the practice of multicultural liberalism in a number of aspects and argued that the differences between the two set of ideas could solve most of the criticisms levelled at recognition *qua* multicultural liberalism. These distinctions are not usually highlighted in current political theory debates. I argue, however, that these distinctions are key to reach a better understanding of "identity politics" and that, when taken into account, they may lead theorists to privilege different solutions to identity-related political problems.

Chapter four: From Multicultural liberalism to Deliberation

Introduction

In the second chapter, I mentioned the importance of a certain type of political action to secure levels of recognition that go beyond the formal levels of recognition that could be associated with Honneth's first and second spheres of recognition. In this chapter, I will argue that deliberative practices represent a form of action that could lead to higher forms of mutual recognition between equals while correcting some of the issues arising from political practices informed by liberal multiculturalism. Here, James Tully's work on the relationship between recognition and dialogue will play a key role. Tully underlines some problems with liberal multiculturalism-based recognition and argues in favour of changes in the norms of recognition arising rather from "the exchange of reasons in negotiation, deliberation, bargaining and dialogue".[174] Tully does not, however, explain how such engagement could look in practice. I will argue that Tully opens the way for a theory of recognition embedded in deliberative practices. I will, therefore, describe the project of deliberative democracy and explore its relationship with the theory of recognition. In other words, this chapter will argue that deliberative democracy could offer a corrective to multicultural policies in implementing the theory of recognition.

I begin the chapter with an overview of Tully's theory of recognition. I then describe the deliberative project with a particular emphasis on the systemic approach to deliberation. Next, I underline some important issues inherent to political representation from the theoretical viewpoint of the theory of recognition. Finally, I explain how deliberation interacts with relations of recognition.

Recognition and deliberation

James Tully's theory exemplifies well my argument about the importance of differentiating between recognition and liberal multiculturalism (even if these are not sharply distinct concepts but need, rather, to be understood as poles on a spectrum). David Owen argues that Tully's

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[174] James Tully, "Recognition and Dialogue: The Emergence of a New Field," *Critical Review of International Social and Political Philosophy* 7, no. 3 (2004).

theory of recognition has evolved over the years from "a critical mode of historical philosophy"[175] in *Strange Multiplicity*[176] that focused on the politics of *cultural* recognition (which, as we saw, is similar to liberal multiculturalism in many aspects) to an "*agonistic account of struggles over recognition*" which sees "struggles of recognition as a far broader category than struggles of cultural recognition".[177] If we follow this reading, James Tully would, therefore, have moved from a theory of recognition comparable to Taylor's theory of cultural recognition to a theory of recognition embodying aspects of Renault and Fanon's theories.[178]

In *Strange Multiplicity*, Tully analyses the demands informing the politics of cultural recognition and, while he acknowledges the diversity of demands composing such phenomena, he also underlines three shared characteristics of these political struggles. First, "demands for recognition are aspirations for appropriate forms of self-government".[179] Second, "is the complementary claim that the basic laws and institutions of modern societies, and their authoritative traditions of interpretation, are *unjust* in so far as they thwart the forms of self-government appropriate to the recognition of cultural diversity".[180] Third, they share "the assumption that culture is an irreducible and constitutive aspect of politics".[181] These three shared characteristics led Tully to claim that the politics of cultural recognition therefore "share a traditional political motif: the injustice of an alien form of rule and the aspiration to self-rule in accord with one's own customs and ways. Seen in this light, they are struggles for 'liberty' in the remarkably enduring sense of this term".[182]

Tully's goal in *Strange Multiplicity* is in fact to answer the question "can a modern constitution recognise and accommodate cultural diversity?"[183]. He, therefore, explores the links between modern western constitutionalism and cultural diversity. The crux of Tully's argument in this first major work is that the language of modern constitutionalism and its leading theorists

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[175] David Owen, "Tully, Foucault and Agonistic Struggles over Recognition," in *Recognition Theory and Contemporary French Moral and Political Philosophy: Reopening the Dialogue*, ed. Miriam Bankovsky and Alice Le Goff (Manchester: Manchester University Press, 2012), 91.
[176] Tully, *Strange Multiplicity : Constitutionalism in an Age of Diversity*.
[177] Ibid., 101.
[178] I believed that the theoretical gap between *Strange Multiplicity* and Tully's later work is not as wide as Owen describes it and that many of Tully's later ideas where already present (albeit maybe not so clearly) in *Strange Multiplicity*.
[179] Tully, *Strange Multiplicity : Constitutionalism in an Age of Diversity*, 4.
[180] Ibid., 5.
[181] Ibid.
[182] Ibid., 6.
[183] Ibid., 1.

represent the master's language and is hostile to cultural recognition. In order to prove this point, and by way of genealogical research, "Tully identifies seven features of this language that serve to exclude or assimilate cultural diversity".[184] But Tully also argues that this imperialist language, even if overpowering, was also always contested by subalterns and that, to a certain extent, this contestation made its way through contemporary constitutionalism. Thus, Tully sees the contemporary politics of recognition as a continuation of subaltern voices having an impact on modern constitutionalism. Indeed, Tully argues that contemporary constitutions could recognise cultural diversity if they were to be conceived as a way to accommodate differences between cultures. As Tully explains, modern constitutions "should be seen as an activity, an intercultural dialogue in which the culturally diverse sovereign citizens of contemporary societies negotiate agreements on their ways of association over time in accord with the conventions of mutual recognition, consent and continuity".[185]

These first considerations in *Strange Multiplicity* led Tully to develop a conception of the politics of recognition as practical struggles *over* recognition instead of theoretical struggles *for* recognition. Owen explains the difference between the two. Political struggles by individuals or groups are struggles for recognition when "the form and content of recognition is spelt out in terms of a theory of justice or, for critics of liberalism such as Taylor and Honneth, a theory of ethical life" and when such theories "include some accounts of how the goods specified by the favoured metric of equality (e.g. primary and secondary goods, resources, opportunity for welfare, etc.) are to be distributed".[186] But with the public philosophical approach of Tully, struggles waged by individuals or groups are understood as "struggles over recognition in which the form and content of recognition is governed by the conditions of public reasoning […] and the actual processes of deliberation and contestation in which citizens engage".[187]

In such a case therefore, for Tully,

> The central questions then become, first, how to develop institutions that are always open to the partners in practices of governance to call into question and renegotiate freely the always less-than-perfect norms of mutual recognition to which they are subject, with a minimum of exclusion and assimilation, and to be able to negotiate

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[184] Owen, "Tully, Foucault and Agonistic Struggles over Recognition," 96-97.
[185] Tully, *Strange Multiplicity : Constitutionalism in an Age of Diversity*, 184.
[186] Owen, "Tully, Foucault and Agonistic Struggles over Recognition," 101-02.
[187] Ibid., 102.

reasonably fairly without recourse to force, violence and war. Yet, second, participation in these open practices of dialogues (practices whose norms of recognition must also be open to negotiation) must also help to generate a sense of mutual understanding and trust among the contesting partners and an attachment to the system of governance under dispute, even, among those members who do not always achieve the recognition they seek.[188]

Tully's emphasis on the dialogical dimension of the politics of recognition has many advantages. First, it does away with the ideal of authenticity and therefore is immune to the criticisms over the reifying aspect of the politics of recognition. Indeed, according to Tully, the identities which are to be recognised in struggles over recognition are partly altered and created (or recreated) in the very process of deliberation over the norms of recognition.[189] In this way, Tully's understanding of the politics of recognition is very close to Renault's ideal of a politicisation of identity whereby "the weakened identity defends its normative potential by justifying its legitimacy against the tendencies questioning it"[190] while engaging in a self-reflective approach to reflect upon which aspects of the identity are essential and which aspects can be negotiated or transformed.[191] Tully also emphasises the importance of the fact that those engaged in such civic deliberation over recognition need to experience and accept their identities in the first person and that "if an elite determines them they are experienced as imposed an alien".[192] This is an important theoretical insight because, as we will see with the case of indigenous recognition in New Zealand, elites can play a negative role in relations of recognition. Second, Tully's model of recognition is also critical of the current "cultural recognition" paradigm embodied through the implementation of multicultural policies in liberal states. Indeed according to Tully,

> these attempts have generated further problems in theory and practice. The most powerful and vocal minorities gain public recognition at the expense of the least powerful and most oppressed; the set of rights tend to freeze the minority in a specific configuration of recognition; they fail to protect minorities within the groups who gained recognition; and they do little to develop a sense of attachment to the larger

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[188] Tully, "Recognition and Dialogue: The Emergence of a New Field," 85-86.
[189] Ibid., 93.
[190] Emmanuel Renault, *Mépris Social: Ethique Et Politique De La Reconnaissance* (Bègles: Editions du Passant, 2004), 133-34.
[191] Ibid., 139.
[192] Tully, "Recognition and Dialogue: The Emergence of a New Field," 92.

cooperative association among the members of minorities, occasionally increasing fragmentation and secession (the problem they were supposed to solve).[193]

Tully sees two main reasons behind such a failure. First, "the solutions are handed down to the members from on high, from theorists, courts or policy makers, rather than passing through the democratic will formation of those who are subjected to them. They are thus experienced as imposed rather than self-imposed".[194] This is a characteristic of liberal multicultural policies and will be illustrated in my discussion on ethnic recognition in Colombia and New Zealand. Second is the idea that "there are definitive and final solutions to struggles over recognition in theory and practice".[195] Here Tully criticizes the way theorists emphasize the dimension of reconciliation in the struggles for recognition instead of letting the struggle itself be part of the solution. Such an emphasis results in a potential process of reification of identities from without whereby identities are monolithic and separated by rigid boundaries instead of a political process leaving room for more plastic and dialogical identities to be constructed through the process of "identity politics" itself. Again, Tully also offers a model of recognition which is free from the "reification" danger elaborated by some political theorists. This second idea also underlines a potential for the co-option of political movements.

Tully offers a convincing argument in favour of a dialogue-based theory of recognition. He does not, however, fully explore the implementation of his theory as a political practice. In the remainder of this chapter, I will relate Tully's project to theories of deliberative democracy because most deliberative theorists share many concerns with him and, most importantly, explore multiple ways of institutionalising these practices. In the last chapter I will return to the question of the institutionalisation of the theory of recognition through political practices.

The deliberative project

First, I need to highlight that deliberative democracy should not be confused with direct democracy or civic republicanism and is compatible with representative democracy. Deliberative democracy does, however, increase dramatically citizens' opportunity to participate in decision making processes. While deliberative democracy requires radical

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[193] Ibid., 90-91.
[194] Ibid., 91.
[195] Ibid.

changes in the political structures of our current societies, it does not embrace the idea of replicating Athenian style democracy to our contemporary world whereby all citizens would be compelled to engage in political discussion.[196]

Mansbridge et al. argue in favour of a systemic approach to deliberative democracy. My discussion of deliberative democracy will largely be influenced by that model. They describe a deliberative system as follows:

> A *deliberative* system is one that encompasses a talk-based approach to political conflict and problem-solving – through arguing, demonstrating, expressing, and persuading. In a good deliberative system, persuasion that raises relevant considerations should replace suppression, oppression, and thoughtless neglect. Normatively, a systemic approach means that the system should be judged as a whole in addition to the parts being judged independently. We need to ask not only what good deliberation would be both in general and in particular settings, but also what a good deliberative system would entail.[197]

According to them, "the ideal of a deliberative system, then, is a loosely coupled group of institutions and practices that together perform the three functions we have identified – seeking truth, establishing mutual respect, and generating inclusive, egalitarian decision-making".[198] Deliberative democracy performs three main functions: epistemic, ethical and democratic. The *epistemic* function (seeking truth) depends on the proper functioning of the deliberative system. In such systems, the participants need to justify their positions by providing reasoned arguments, so that, in Habermas' words, "no force except that of the better argument is exercised".[199] Participants need to nurture these reasoned capacities and education plays an important role in the well-functioning deliberative society. Furthermore, it should be noted that what counts as a "good argument" could itself be the stage of a struggle over recognition since "epistemic injustice" (the fact that the validity of some knowledge, views and opinions are

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[196] Amy Gutmann and Dennis Thompson, "Why Deliberative Democracy Is Different," *Social Philosophy and Policy* 17, no. 1 (2000): 177.

[197] Jane Mansbridge et al., "A Systemic Approach to Deliberative Democracy," in *Deliberative Systems : Deliberative Democracy at the Large Scale*, ed. John Parkinson and Jane J. Mansbridge (Cambridge: Cambridge University Press, 2012), 4-5.

[198] Ibid., 5.

[199] Jurgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975), 108.

devalued because of the identity of those expressing these knowledge, views and opinions) needs to be overcome if the epistemic dimension of deliberative democracy is to be fulfilled.[200]

Of course, it is not reasonable to expect all participants to make informed decisions and to argue their views in all fields of life. A deliberative system, therefore, has to rely on experts at different levels.[201] Yet, as Mansbridge et al. argue, "delegation to experts can promote citizens ignorance, with highly negative consequences for the deliberative system as a whole. In addition, experts themselves can be biased. The world in which they communicate can be deeply self-referential".[202] Delegation to experts can also undermine the expected mutual respect arising from deliberation between equals and the democratic dimension understood as the rule by the people. A systemic approach to deliberative democracy sets in place checks and balances at the different levels of decision-making. This means that experts would be subject to deliberative processes between their peers but would also be evaluated by other spheres of deliberation which would hold the experts accountable.

The *ethical* function of deliberative democracy relates to the ideal of mutual respect embedded within a deliberative system. Gutmann and Thompson relate mutual respect to the notion of reciprocity which is a key element of deliberative democracy.[203] However, such an ideal can only arise if "members recognize one another as having deliberative capacities".[204] Deliberative democracy is therefore founded on the premise of radical equality between citizens understood as rational agents capable of argumentation. This minimum level of recognition corresponds to Axel Honneth's second sphere of recognition. I suggest that the relation between deliberative democracy and mutual respect should be understood in dynamic terms: the presumption of equality works as a foundation but the process of deliberation itself can demonstrate this fundamental equality and therefore reinforce the mutual respect that is just formal at the beginning of the process.[205] The ethical dimension of deliberative democracy is, therefore, closely related to intersubjective relations of recognition.

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[200] Paul Giladi, "Epistemic Injustice: A Role for Recognition?," *Philosophy and Social Criticism* (2017).
[201] Mansbridge et al., "A Systemic Approach to Deliberative Democracy," 13-17.
[202] Ibid., 14.
[203] Gutmann and Thompson, "Why Deliberative Democracy Is Different."
[204] Joshua Cohen, *Philosophy, Politics, Democracy : Selected Essays* (Cambridge: Harvard University Press, 2009), 22-23.
[205] For the idea of demonstrating equality see Jacques Rancière, *Aux Bords Du Politique* (Paris: Gallimard, 1998).

The *democratic* function (egalitarian decision-making) relates to the ethical and epistemic functions. If citizens recognize one another as having deliberative capacities and the only legitimate coercive force is the force of "the better argument", anyone has the capacity to play a role in the decision-making process. Unlike most contemporary political systems, where wealth and status are key factors to increase one's decision making power, a deliberative system would be mainly based on the capacity to offer legitimate arguments. Such a system would be democratic if it was embedded in a relatively egalitarian society where access to education and basic material needs were guaranteed equally to all citizens.

Another key dimension of deliberative democracy is its impact on subjectivities. As Joshua Cohen argues, such a system will "shape the content of preferences and convictions as well". Indeed, "assuming a commitment to deliberative justification, the discovery that I can offer no persuasive reasons on behalf of a proposal of mine may transform the preferences that motivate the proposal".[206] This means that participants committed to a deliberative process need to be ready to reassess their ethical and political views if compelled by the burden of evidence. This aspect of deliberative democracy is directly related to the theory of recognition as identities engaged in a struggle for recognition through deliberative means, therefore, both shape and are shaped by the struggle in a dialectical manner.

The problem of representation

Deliberative democracy requires an engagement with the notion of representation because, unless a deliberative institution is designed in such a way as to allow the participation of all citizens in deliberation about all political matters (which no serious model envisions),[207] representatives are still part of the political process. According to Sunstein, "the point of group representation is to promote a process in which those in the enclave hear what others have to say, and in which those in other enclaves, or in no enclave at all, are able to listen to people with different points of view".[208] While it is fairly obvious that the point of representation is to have someone speak and take decisions on your behalf, whether or not that goal materialises is

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[206] Cohen, *Philosophy, Politics, Democracy : Selected Essays*, 26.
[207] Ackerman and Fishkin's "Deliberation Day" comes the closest to that ideal but is not, in my opinion, a viable nor interesting model as it would be highly expensive and would restricts deliberations to a one day event before each election.
[208] Cass Sunstein, "The Law of Group Polarization," *Journal of Political Philosophy* 10, no. 2 (2002): 192.

a much more complex issue. Here, I will limit the theoretical problem of political representation to the phenomenon of group representation through "descriptive representation", meaning that "representatives are in their own persons and lives in some sense typical of the larger class of persons whom they represent. Black legislators represent Black constituents, women legislators represent women constituents, and so on".[209] The idea of descriptive representation is consistent, and even embodies, some aspects of liberal multiculturalism (it was part of Kymlicka's theory of minority rights) and/or the theory of recognition.

Jane Mansbridge balances the costs and benefits of descriptive representation. The first problem she identifies with descriptive representation relates to the difficulty of choosing criteria that will justify the representation of some identities and not others given that the number of identities claiming some level of difference from the rest of the polity is virtually infinite.[210] Should women and minority ethnic groups require descriptive representation? What about immigrants, homosexuals, religious communities and the unemployed? Even if we narrow the criteria down to disadvantaged groups we still possibly encounter a very high number of different identities. The second problem with descriptive representation is linked to the first and is related to the phenomenon of essentialism and reification of identities underlined in the previous two chapters. Mansbridge explains that

> the greatest cost in selective descriptive representation is that of strengthening tendencies towards "essentialism," that is, the assumption that members of certain groups have an essential identity that all members of that group share and of which no others can partake. Insisting that women represent women or Blacks represent Blacks, for example, implies an essential quality of womanness or Blackness that all members of that group share. Insisting that others cannot adequately represent the members of a descriptive group also implies that members of that group cannot adequately represent others.[211]

Mansbridge is also wary of the potentially reduced accountability and phenomenon of "blind allegiance" emerging from descriptive representation.[212] The descriptive characteristics of the representatives could secure the vote of a particular group by making the members of that group

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[209] Jane Mansbridge, "Should Blacks Represent Blacks and Women Represent Women? A Contingent "Yes"," *The Journal of Politics* 61, no. 3 (1999): 629.
[210] Ibid., 633-34.
[211] Ibid., 637.
[212] Ibid., 640-41.

think that their interests are being represented even if the representatives are self-serving and/or incompetent.

Despite these costs, Mansbridge argues in favour of descriptive representation because, according to her, the benefits outweigh the costs. She posits, however, that the costs and benefits of descriptive representation always fluctuate depending on context and that policies of group representations should be opened to fluidity, dynamism and change.[213] She underlines four main benefits to descriptive representation. First is the enhanced communication arising from descriptive representation. In some cases, the members of a group will be more likely to interact with their representatives if they feel a shared sense of identity with them and vertical communication between representatives and constituents will be improved. Second, more horizontally, "a descriptive representative can draw on elements of experiences shared with constituents to explore the uncharted ramifications of newly presented issues and also to speak on those issues with a voice carrying the authority of experience".[214] Here, the representative knows what her constituents want and need because she "experienced" their lives. She is "one of them". Third is the construction of new social meaning. Here, descriptive representation targets the "second class citizen" phenomenon arising when particular groups have a long history of being excluded from the sphere of political power. By allowing descriptive representatives to play a role in the political decision making process, the state normalises the fact that members of these groups are also able to rule and be involved in the political system of the state like any other members of society. Fourth is the enhancement of "de facto legitimacy". Manbridge explains that "seeing proportional numbers of members of their group exercising the responsibility of ruling with full status in the legislature can enhance de facto legitimacy by making citizens […] feel as if they themselves were present in the deliberations".[215] This feeling reinforces the legitimacy of policies as it creates the feeling that one's voice has been heard, even if through the voice of a representative. In regards to the theory of recognition this fourth aspect raises an interesting question: can recognition be secured through a proxy? I shall return to this question in the last chapter.

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[213] Ibid., 652.
[214] Ibid., 644.
[215] Ibid., 650.

Sortition and deliberative polls

Given that some level of representation is required in our contemporary political systems but that representation creates some potential problems of distortion, some scholars suggest that a certain level of sortition in selecting political actors could offer a good alternative to self-selected representatives.[216] This method could be applied to different levels of decision making and target a wide range of issues depending on the demographic, social and political circumstances. Sortition embodies the ideal of radical equality between people and can be traced back to some aspects of Athenian democracy. This democratic ideal is usually considered unpractical for our contemporary large scale and complex societies but a number of political scientists are working on methods to materialise this ideal in contemporary socio-political settings. Here I will focus on James Fishkin's work.

James Fishkin explains how our current democratic systems face many limitations. He is particularly wary of the public's manipulation by elites and of its misinformation about policies. He emphasises the idea that the general public, *if placed in the right conditions*, is able to take valuable informed political decisions. He differentiates between deliberative (or "refined") public opinion and raw public opinion. The first is the public opinion arising from a deliberative process after it has been tested and exposed to competing arguments. The latter refers to public opinion that has not gone through this process and can be manipulated more easily. This second type of opinion results from "mass democracy" institutions that focus on mass participation without paying much attention to the quality of participation.[217] For example, referenda embody this form of mass, yet unrefined, political participation. On the other hand, "elite deliberation", is undemocratic and, as it "filters" public opinion, is likely to distort the views of the public it is supposed to represent. It is deliberation for the people, not by the people.[218] Deliberation within parliament between political elites falls in this category and can appear harmless but the consequences of this phenomenon can be much more negative when "identity entrepreneurs" cover the voices of their constituencies and seek to impose their own agenda on them. This is a real danger inherent to contemporary policies of recognition.

To answer these democratic issues, Fishkin has developed the idea of "deliberative polls", a political methodology that takes sortition seriously. Deliberative polling combines random

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[216] James Fishkin, *When the People Speak: Deliberative Democracy & Public Consultation* (New York: Oxford University Press, 2009).

[217] Ibid., 14.

[218] Ibid., 73.

(scientific) sampling with deliberation. The way this process works is as follows. First, an issue is identified.[219] A random sample of a given population is then created. The participants are assigned randomly to small discussion groups and meet for one, two, or even three days. They are given carefully designed, balanced and vetted material to begin the deliberation. Then they go back and forth between their small discussion groups and plenary question and answer sessions with experts in order to reassess their views and come up with new questions. At the end of the process their findings are recorded and used to enlighten public debate and/or guide policy making processes.[220]

Fishkin applied this deliberative polling method many times and in many different geographical/institutional settings including in countries without a well-established multi-party democratic system such as China. Fishkin and his team recorded the results of deliberation to track changes in opinions and attitudes. A number of findings are worth mentioning. First, people do change their views significantly after the deliberative process. Fishkin and his team tracked changes in policy attitude across nine national deliberative polls between 1995 and 2004 in samples ranging from 238 to 347 and taking fifty-eight indices into account. "Of the fifty-eight indices 72% show statistically significant net change comparing the answers on first contact with the answers at the conclusion of the deliberations".[221] Second, those seemingly disadvantaged by a lack of education do not show any major handicap in the deliberation process. The explanation is that people are more likely to learn and perform well if they feel that their endeavour will have an impact. The distribution of talk during the discussion also shows that non-whites, females and less educated participants talk more than highly educated white males.[222] Third, opinions do not tend to move in a direction favourable to the most advantaged but instead in favour of the disadvantaged.[223] This is, partly, because, in David Miller's words

> preferences that are not so much immoral as narrowly self-regarding will tend to be
> eliminated by the process of public debate. To be seen to be engaged in political debate

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[219] A set of criteria needs to be established to define which issues deserve attention. Again, the criteria would be circumstantial. The issue does not need to be of concern for the whole population to deserve this type of democratic attention and, in fact, in many cases would arise from minorities' concerns. A minimum number of signatures on a petition could be used as a threshold to trigger a process of deliberation.

[220] Fishkin, *When the People Speak: Deliberative Democracy & Public Consultation*.

[221] Ibid., 134.

[222] Ibid., 130.

[223] Ibid., 108.

we must argue in terms that any other participant could potentially accept, and 'It's good for me' is not such an argument.[224]

Fourth, extreme positions tend to decrease through the process of deliberation and mutual respect increases in cases of "deeply divided societies".[225] This last aspect is very important if one of the motivations behind deliberative democratic initiatives is to improve relations of recognition in a society with a long history of conflict and injustice between different groups. These results need to be taken with a grain of salt because more experiments would need to be conducted for concluding empirically convincing predictable patterns. They do, however, point in an encouraging direction and I will return to this aspect of democratic theory in the last chapter.

Deliberation and recognition

In this section I wish to return to the strong relation between deliberative democracy and the theory of recognition highlighted at the beginning of the chapter. The relationship between public action/speech and recognition was already highlighted by Hannah Arendt in the 1950s. She argued that recognition is best secured through *action*. Arendt describes action (and its close companion, *speech*) as a political praxis expressing the distinctiveness of an agent and her insertion in the human world. In her words,

> Speech and action reveal this unique distinctiveness. Through them, men distinguish themselves instead of being merely distinct; they are the modes in which human beings appear to each other, not indeed as physical objects, but *qua* men. This appearance, as distinguished from mere bodily existence, rests on initiative, but it is an initiative from which no human being can refrain and still be human.[226]

The anthropological assumption behind Arendt's claim (which is heavily influenced by Aristotle) is that public action is constitutive of our identity as human beings. Note, however, that, for Arendt, it is the *individual* who engages in action and through this action, discloses

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[224] David Miller, "Deliberative Democracy and Social Choice," in *Debating Deliberative Democracy,*, ed. James Fishkin and Peter Laslett (Hoboken: Wiley-Blackwell, 2003), 189.
[225] For this last point, however, Fishkin bases himself only on one experience involving a debate over education between Catholics and Protestants in Northern Ireland.
[226] Hannah Arendt, *The Human Condition* (Chicago: Chicago University of Chicago Press, 1958), 176.

her identity and secures recognition from others. It is, therefore, uncertain how effective political representation can be in reaching recognition: can I feel that my identity is recognised in the polity if someone who shares that identity succeeds in her struggle for recognition? I explained earlier that descriptive representation could improve the de facto legitimacy of policies by giving the impression to the represented group members that their voice is heard through their identification with their representatives. It could be argued that this phenomenon can be replicated with recognition. Direct participation would, however, most likely avoid some of the pitfalls of an approach emphasising recognition through the voice and action of an elite amongst the group members. With deliberative democracy, people would need to be engaged directly in the deliberative process and this would have a direct impact on their subjectivities. They would increase their knowledge of political affairs and improve their self-confidence while avoiding the possible side-effects of passively letting others speak on their behalf (which means that those speaking on their behalf might not genuinely represent their interests). These aspects are important for the theory of recognition because it may help individuals forging the self-respect and self-esteem required for the development of a well-functioning person. Such approach would, however, require to re-conceptualise deliberative democracy as "a site for the construction and transformation of citizenship" emphasising the fact that "in deliberation, citizens are made as well as realized" instead of merely a more egalitarian decision making mechanism between equals.[227]

The counter argument to this proposal is that the masses are uneducated and not fit to engage in the political process. Yet, as Fishkin underlined, "whether or not ordinary citizens appear competent may well depend on whether they have reasons to pay attention, whether they think their voice will matter, how discussions and interactions are conducted, and how any data about their views is collected".[228] Deliberative institutions would give the common citizens such reasons. As I explained at the beginning of this chapter, experts do play a role in the deliberative process. It is very likely that the role played by experts would increase for more technical issues. Furthermore, a political system moving towards increased deliberative practices would also require an effective and high quality education system accessible to all members of society regardless of identity and income levels. Overall competence would, therefore, increase substantially. This is particularly true with a conception of deliberative democracy that

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[227] Shawn W. Rosenberg, "Rethinking Democratic Deliberation: The Limits and Potential of Citizen Participation," *Polity* 39, no. 3 (2007): 354.
[228] Fishkin, *When the People Speak: Deliberative Democracy & Public Consultation*, 68.

emphasises the socio-political learning dimension of the process instead of its goal-oriented decision making dimension. This argument is thus mainly used to justify institutionally-created hierarchies in the political system and can easily be defeated. It is important to recognise, however, that "a great deal of social psychological research suggests that individuals generally do not think in a logical, rational or reasonable way and do not evidence the communicative competence assumed by deliberative democratic theory".[229] This issue could be reinforced with socio-economically disadvantaged individuals who could suffer from a deliberative deficit related to lower levels of education. This potential problem further emphasises the importance of the pedagogical dimension of deliberative democracy. It is important, however, that this corrective aspect of deliberative democracy remains a progressive process to avoid potential "failure" of public deliberation that would then lead to failures of recognition.

Can a theory of recognition embedded in deliberative practices offer an alternative and/or a corrective/complement to liberal multiculturalism? I suggest that it can. The next four chapters dealing with policies of recognition in Colombia and New Zealand will illustrate this claim but I can already mention some advantages of a deliberative approach to recognition. First, it would make the whole of the group's members more active and less passive. If an increased number of the group's members is likely to be involved in decision making processes, you would want as many as possible of the people in your group to be educated and well-informed about political affairs. This increase in activity and education is likely to raise self-esteem and have a positive impact on the lives of individuals and families with the group. Second, it would reduce institutional mediation in relations of recognition. Deliberative forums would allow different people from different background to meet and interact directly. These direct interactions could play a positive role in decreasing negative stereotypes between different identities and create a feeling of mutual respect that is more complicated to achieve when inter-identity relations are always mediated by the media or political elites. To a certain extent, this function can be accomplished through a variety of shared social experiences but political deliberation would emphasise the equality between people as rational agents (something less likely to happen with sport or entertainment). Third, it would make policies of recognition more reflective of the aspirations of common citizens. Given that usually, despite identity-related differences, human beings share a wide range of aspirations, this dimension may decrease the

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[229] Rosenberg, "Rethinking Democratic Deliberation: The Limits and Potential of Citizen Participation," 344.

perceived differences between "us" and "them" and the negative stereotypes associated with them.

What kind of deliberative model would best serve, however, the goal of improving relations of recognition? I will explore this question more in depth in the last chapter but I will give a brief outline here. Mansbridge's systemic approach has many advantages. Intertwining deliberations at different levels of decision making ensures a good balance between the inputs of common citizens' views and the input of people who are specialised in particular fields. A systemic approach would work as a form of deliberative system of checks and balances. It would also make deliberation part of a broader cultural switch since deliberation would become a common practice not only within the political spheres of the state but within all major institutions. This means that improved relations of recognition would happen at different institutional levels.

Fishkin's appeal to random sampling offers a number of advantages. I outlined some of these advantages earlier. First, it would decrease the role of activist voices and its polarisation effect. Second, it would allow a more representative voice to emerge. Of course, there are also downsides to sortition. It could be argued, for example, that participants in the deliberative polls are not held accountable to the rest of the population in the same way professional politicians are held accountable through electoral means. This would be a major problem if the decisions arising from the deliberative polls were directly binding on the decision process but it represents less of an issue if deliberative polls only inform the decision making process. It should, however, play enough of a role to be relevant.

A system that combines both approaches is easily conceivable. The systemic approach could be conceived as the overarching organising principle and some pockets of randomly selected deliberative polling could be inserted in the system to make sure that the balance between specialist deliberation and common citizen deliberation is respected. The importance given to any of these two approaches would likely be contextual and would vary from institution to institution. Such system would radically alter fundamental institutions that are responsible for informing relations of recognition between citizens and would, therefore, be consistent with the previous argument in favour of a struggle for recognition embedded in institutional changes. Furthermore, such system should develop pre-existing cultural practices that already promote deliberation (I will discuss these practices in the cases of Colombia and New Zealand).

Conclusion

In this chapter I outlined some key theoretical elements of deliberative democracy. I discussed some of the advantages and disadvantages of descriptive representation and explained how sortition can mitigate some of the disadvantages embedded in representative democracy. Finally, I related deliberative democracy to the theory of recognition and argued that deliberative practices can improve relations of recognition by decreasing the deforming role played by identity entrepreneurs and increasing the self-esteem of individuals more directly involved in decision making processes about their own lives.

At this stage, my argument remained theoretical. I suggest, however, that the ideas outlined in my first chapters have very practical applications. The analysis of the politics of recognition in Colombia and New Zealand will show that some of the problems arising from the current differentiated rights policies in both countries could be mitigated by an increase in deliberative practices and that a "deliberative turn" in the politics of recognition could increase the likelihood of mutual recognition between equals to materialise.

Part II: Case study one: Recognition in Colombia

Chapter five: Ethnic pluralism and recognition in Colombia

Introduction

In 1991, Colombia officially recognised its pluri-ethnic demographic reality through a new constitution. The text offered a number of progressive measures to recognise the indigenous population of the country and opened the door for the legal recognition of Afro-Colombians through a transitory article that led to Law 70 in 1993. These measures paved the way for the implementation of a wide range of affirmative action and differentiated rights policies related to land rights, political representation, welfare and the preservation of culture. These policies are consistent with the theories of liberal multiculturalism outlined in chapter three and, therefore, arguably represent the materialisation of some of the ideals of the theory of recognition through political practices.

In this chapter, I begin with a historical introduction that will help contextualise the adoption of the new constitution and Law 70. I then present and analyse the many constitutional articles enunciating the newly acquired rights of indigenous peoples. The goal of this descriptive account is to highlight the extensive and complex legal framework informing relations of cultural recognition in Colombia. I start my analysis with policies related to land rights and political autonomy for indigenous people as well as the political representation of these communities within Colombia's democratic institutions. Then, I analyse particular welfare policies aimed at improving the well-being of indigenous people and focus on the development of indigenous health care providers. Next, I analyse the recognition of Afro-Colombians through Law 70 and focus my attention on land rights and political autonomy as well as their political participation and representation. Finally, I analyse initiatives aimed at increasing the visibility of Afro-Colombian culture in the nation and at struggling against racism.

Colombian History and Political landscape

Spanish conquest and colonial era (1499-1810)

The Spanish conquest of the region where contemporary Colombia is now located began at the beginning of the 16th century. The Spanish military superiority over the indigenous peoples of the region quickly allowed the colonisers to dispossess the native inhabitants from their land and to begin exploiting the land. The colonial economy in what was known at the time as the New Kingdom of Granada was based on gold mining and on the *hacienda*[230] system. These *haciendas* were used for agricultural production and raising cattle.

Because of a labour shortage in the vast territories available for the exploitation of natural resources, the Spanish established the *encomienda* system. In the *encomienda*, indigenous people were put under the control of colonial settlers and forced to do hard labour and pay a tribute in exchange for protection, education and Christianisation.[231] In other words, the *encomienda* system was very similar to slavery. A sharp decline in indigenous population and the debates over the abuses towards indigenous people linked to the *encomienda* system led to a gradual replacement of *encomiendas* by *haciendas* and *resguardos* (indigenous reserve).[232]

The steady introduction of African slaves to the region began in the late 1520's as a solution to the continuing labour shortage and the changing relationship between Spanish colonisers and the indigenous population. African slaves were used for mining and working on *haciendas*. Cartagena de las Indias soon became the main port of transit for African slaves in the Spanish colonies. The Magdalena River was used to ship slaves from the coast far into the interior. Some slave rebellions took place and run-away slaves established free communities known as *palenques*. The African *palenques* are now described as the first territories free from Spanish colonisation in the region. The institution of slavery was officially abolished in 1852 but many Afro-descendants were already free before that date because of rebellions and escapes, race

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[230] Large landed estate.
[231] David Bushnell, *The Making of Modern Colombia : A Nation in Spite of Itself* (Berkeley: University of California Press, 1993), 13.
[232] Maria Clara Van Der Hammen, "The Indigenous Resguardos of Colombia: Their Contribution to Conservation and Sustainable Forest Use," (Amsterdam: Netherlands Committee for IUCN, 2003).

mixing and the process of manumission whereby slaves could buy their freedom from their masters.[233]

Because of these experiences of colonisation, slavery and race mixing, a racial hierarchy informed social relations in the region: Europeans were on top of the hierarchy over *mestizos* (mixed European and indigenous) who themselves were considered as superior to indigenous people (*indígenas*) while Afro-descendants (*negros*) occupied the lower rank in the racial division of society.

Colombian independence and the conflict between Conservatives and Liberals (1810-1948)

Discontent over Spanish rule led the *criollo*[234] oligarchy to wage several wars of independence. The leader of this independence movement was Simon Bolivar. The Republic of Gran Colombia was proclaimed in 1819 with Bolivar as president and consisted of present-day Colombia, Venezuela, Guyana, Ecuador, Northern Peru and Panama. The Republic gradually fragmented and by 1830 it was reduced to contemporary Colombia and Panama.[235] Colombia would lose Panama at the turn of the 20th century.

Two main political currents were born in the struggle for independence: the Conservatives (centralists) and the Liberals (federalists). The strong rivalries between these two parties resulted in a chaotic state of violence. Multiple rebellions and civil wars plagued Colombian society during the 19th century. Between 1811 and 1902 Colombia experienced eight general civil wars and many smaller local anti-government insurrections. Because of "the penetration of the two parties into the popular consciousness" of the population, "rural and urban poor were drawn into supporting one or the other [party]" and this phenomenon "enabled the mobilization of the population into armies of thousands of fighters"[236] which finally clashed and engaged in the Thousand Days War (1899-1902) that ended with a Liberal victory and claimed over 100,000 victims.

This period was also marked by an increase in agricultural export (coffee, sugar cane, tobacco among others) and an expansion of large landholdings (*latifundios*) to the detriment of smaller

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[233] Daron Acemoglu, Camilo García-Jimeno, and James A. Robinson, "Finding Eldorado: Slavery and Long-Run Development in Colombia," *Journal of Comparative Economics* 40, no. 4 (2012).
[234] Creole
[235] Bushnell, *The Making of Modern Colombia : A Nation in Spite of Itself*, 60-73.
[236] Jasmin Hristov, *Paramilitarism and Neoliberalism : Violent Systems of Capital Accumulation in Colombia and Beyond* (London: Pluto Press, 2014), 68.

properties (*minifundios*). This phenomenon was concomitant with the integration of the nation into the international capitalist market[237] and was responsible for an increased pressure on small scale farmers and the rising problem of landlessness.[238] Indigenous people were also victims of this expansion. While Bolivar "issued a decree in 1820 that ratified the collective ownership of the *resguardos*", in 1821 "a law was issued by Congress establishing equity before the law"[239] and turned communal ownership into private ownership. From 1873, a number of laws were passed to dismantle the *resguardos* which were seen as obstacles for development and capitalist expansion.[240]

La Violencia and the National Front regime (1948 – 1974)

After the Thousand Days War, there was a period of relative peace. In 1948 however, war between the two parties broke out again. It was the beginning of one of Colombia's most traumatic eras known as *La Violencia* (1948-1958). The war started with urban riots in Bogota (*bogotazo*) following the assassination of Jorge Eliécer Gaitán, a charismatic populist Liberal leader.[241] *La Violencia* was characterised by high levels of brutality and a death toll of approximatively 300,000.

In 1957 the leaders of the two parties reached an agreement and united to form a National Front. The accord stipulated that the two parties would alternate in the presidency every four years for a period of 16 years. While putting an end to La Violencia, the agreement was problematic as it left no place for other political parties, therefore reinforcing the general trend towards bi-partism and excluding from the political sphere different actors which would soon turn to other means to reach political power.

During this time, the capitalist development in agro-business accelerated and further aggravated the socio-economic situations of small scale farmers who were forced to work as day-labourers on large *haciendas* or to move to "empty lands" (*tierras baldias*) of lesser quality

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[237] Bushnell, *The Making of Modern Colombia : A Nation in Spite of Itself*, 131-39.
[238] Hristov, *Paramilitarism and Neoliberalism : Violent Systems of Capital Accumulation in Colombia and Beyond*, 71-73.
[239] Van Der Hammen, "The Indigenous Resguardos of Colombia: Their Contribution to Conservation and Sustainable Forest Use," 13.
[240] Hristov, *Paramilitarism and Neoliberalism : Violent Systems of Capital Accumulation in Colombia and Beyond*, 65-66.
[241] Bushnell, *The Making of Modern Colombia : A Nation in Spite of Itself*, 201-03.

where some of them slowly began to grow increasingly profitable coca crops. Many of them were indigenous and Afro-Colombians.

Land Struggles, Marxist guerrillas, Paramilitarism and narco-trafic

Because of the monopoly of the elites over political institutions and land, the 1960s were marked by an increase in social discontent (especially in rural areas) which was characterised by the creation of several peasant movements claiming a fairer repartition of land and by the rise of a number of radical left-leaning armed groups.[242] These two types of political actors had many relations and overlapping interests.

Peasant (many of them indigenous) struggles in Colombia started to intensify as landownership inequalities were reaching new heights. Indigenous people were particularly active as the system of *terraje* (rent) was highly oppressive: payment of the tribute due to land-owners was so high that they could hardly find time to work on their land. The CRIC, Colombia's oldest and best organised indigenous movement, was founded in 1971 out of these peasant struggles for land.[243]

While peasant struggles usually revolved around issues of land distribution and agrarian reforms, other groups arose with the intent of radically transforming the political structures of the state and implementing a political order informed by Marxist theories. The *Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo* (FARC-EP) and the *Ejército de Liberación Nacional* (ELN), the two main Colombian guerrilla groups, were founded in 1964. Other less influential guerrilla movements such as the *Movimiento 19 de Abril* (M-19) and *Movimiento Armado Quintin Lame*, a self-defence indigenous group, were founded later. Within a Cold war setting, these Marxist groups, supported by their Soviet and Cuban allies, engaged in an armed struggle against the state and oligarchies. In response to these guerrilla activities, right-wing paramilitary groups also became active while the state increased its military might. While at the beginning of the struggle these guerrilla movements engaged in a genuine struggle against social injustice, the declining power of communist ideology and decreasing support from the Soviet Union gradually led these groups to resort to criminal activities, extortion, kidnapping and drug trafficking to fund their activities thereby alienating

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[242] Frances Thomson, "The Agrarian Question and Violence in Colombia: Conflict and Development," *Journal of Agrarian Change* 11, no. 3 (2011).

[243] Joanne Rappaport, "Civil Society and the Indigenous Movement in Colombia: The Consejo Regional Indigena Del Cauca," *Social Analysis* 51, no. 2 (2007).

themselves from the very people they claimed to be fighting for.[244] In parallel, paramilitary activities became increasingly violent and were characterised by torture, mass killing, rapes and close ties with the drug trade. Paramilitaries were responsible for more civilian deaths than the guerrilla movements and were reported to maintain close ties with large land owners, the Colombian army and political elites. The main paramilitary force in Colombia was the *Autodefensas Unidas de Colombia* – United Self-Defense Forces of Colombia (AUC).

In parallel to these armed groups, organised criminal gangs (*bacrim*)[245] have gradually increased their activities in Colombia from the 1970s in relation to the expansion of the international drug trade industry. Many demobilised paramilitaries turned to these illegal activities after paramilitary forces were outlawed in 1989. Violence related to the drug trade reached a peak in the 1980s with drug lords such as Pablo Escobar becoming one of the wealthiest men in the world until his death in 1993. Escobar was responsible for the climate of extreme insecurity which turned Colombia, and especially his home town Medellin, one of the most dangerous places on earth.

The new constitution and contemporary situation

By the end of the 1980s the Colombian state was losing its grip on Colombian society and was on the verge of collapse. The government's response to this state of chaos was to organise a national constituent assembly whereby different actors belonging to Colombian society were called to write a new constitution. The new constitution was adopted in 1991 with the aim of reshaping radically the Colombian nation through decentralisation and the legal recognition of minority ethnic groups.

In 1999, Plan Colombia was unveiled by President Pastrana. Plan Colombia was a US aid initiative aimed at combating Colombian drug cartels and Marxist guerrilla groups.[246] It consisted in a sharp increase in US military support and the eradication of coca production through several measures among which aerial fumigations with toxic pesticide has been very controversial for its negative impact on the environment and human health. The initiative was

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[244] Bilal Saab and Alexandra Taylor, "Criminality and Armed Groups: A Comparative Study of Farc and Paramilitary Groups in Colombia," *Studies in Conflict and Terrorism* 32, no. 6 (2009).
[245] For *bandas criminales* (criminal gangs)
[246] Tobias Franz, "Plan Colombia: Illegal Drugs, Economic Development and Counterinsurgency – a Political Economy Analysis of Colombia's Failed War," *Development Policy Review* 34, no. 4 (2016).

expanded under the Bush administration after the September 11 2001 attacks and became part of the war on terror.

This militarisation of the state reached its peak when right-wing hardliner Álvaro Uribe, a political figure with alleged links to the paramilitaries, won the 2002 presidential election because of his strong pro-security positions and refusal to negotiate with armed insurgents.[247] Uribe's plan quickly materialised as he launched successful military campaigns against guerrilla groups on the one hand and reached agreements with some major paramilitary groups on the other who agreed to give up their weapons in exchange for lenient prison sentences. Criminality under Uribe's presidency also sharply decreased and even his critics recognise that Uribe played a positive role in the pacification of Colombia which now has begun to attract international tourists. Uribe's successor, Juan Manuel Santos Calderón, promised to continue the pacification process and Santos announced in August 2012 that the Colombian government was ready to engage in peace talks with FARC in order to seek an end to the half-century long conflict. The peace talks between government representatives and FARC leaders led to a revised Peace Accord in November 2016 after the first draft was rejected by the Colombian population in a referendum. While the Uribe and Santos presidencies have undoubtedly improved Colombia's security issues in many regions (mainly the main economic hubs), violence has in effect been displaced to the margins of the state in very remote areas.

The 1991 constitution and Law 70

As explained in the previous section, the 1980s were a difficult period for Colombia. The state was on the verge of total collapse. This institutional crisis could only be solved through radical changes. The government called a national constituent assembly whereby different actors coming from Colombian society were asked to draft a new constitution that would radically reshape the Colombian nation. Among the participants of the assembly were indigenous leaders

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[247] On Uribe's Consolidation Policy of the Democratic Security, see: Adolfo León Atehortúa Cruz and Diana Marcela Rojas Rivera, "La Política De Consolidación De La Seguridad Democrática: Balance 2006-2008 " *Análisis Político* 22, no. 66 (2009).

determined to lobby for the constitutional recognition of the multi-ethnic dimension of the nation.[248]

The 1991 constitution of Colombia represents a radical turn in Colombian politics and national identity. Its previous constitution, dating from 1886, was one of the oldest still in force and did not mention the indigenous population living within its territory. But in 1991, for the first time in the history of the country, the cultural and ethnic diversity of the Colombian population was officially acknowledged and steps were taken to protect and promote this diversity. The old ideology of *mestizaje* was abandoned in favour of a multicultural ideal and the falsely monocultural identity of Colombia was replaced by the more accurate image of a pluriethnic state. A new political project was born with the hope to solve the enduring political and social crisis of the nation.

This multicultural project first appears in the seventh article of the constitution which stipulates that "the State recognizes and protects the ethnic and cultural diversity of the Colombian Nation".[249] The constitutional commitment to cultural diversity is further emphasised when article 70 states that "culture in its diverse manifestations is the basis of nationality. The State recognizes the equality and dignity of all those who live together in the country".[250] For the indigenous people of Colombia this cultural recognition and protection appeared clearly in several articles of the constitution. The provision for the recognition of Afro-Colombian people on the other hand only appeared in the transitory article 55 which gave birth two years later, in 1993, to Law 70 also known as the Law of blackness (*Ley de negritude*).

The Colombian constitution recognises indigenous peoples as subjects of collective rights and this recognition covers a very broad field. The constitutional recognition of indigenous people is complemented by both statute and constitutional court judgements. It is also supplemented by the adherence of Colombia to several international documents. Colombia was the first country to sign the legally binding Convention 169 on indigenous and tribal people of the International Labour Organization in 1991.

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[248] Virginie Laurent, *Comunidades Indígenas, Espacios Políticos Y Movilización Electoral En Colombia, 1990-1998 : Motivaciones, Campos De Acción E Impactos* (Bogotá: Instituto Colombiano de Antropología e Historia, 2005), 113-38.
[249] Colombia Constitution (CC), art.7. All further quotes from the Colombian constitution come from the translated version of the text by Marcia W. Coward, Peter B. Heller, Anna I. Vellve Torras, and Max Planck retrieved from on 7/03/2016.
[250] Ibid., art.70.

Here I propose to focus my analysis on collective rights in the field of land rights, political autonomy, political representation and welfare. Before I do, in order to offer a more complete picture of indigenous recognition in Colombia, I need to briefly highlight other policies which have been developed to recognise indigenous people and in particular their linguistic rights.

According to article 10 of the Constitution, "Spanish is the official language of Colombia". However, the text also declares that "the languages and dialects of ethnic groups are also official in their territories" and that "the education provided in communities with their own linguistic traditions will be bilingual".[251] Article 68 also states that "the members of ethnic groups will have the right to education that respects and develops their cultural identity".[252] This means that indigenous people in Colombia have the right to use their own languages in schools, hospitals, tribunals and other public institutions. Bilingual education programs can be delivered through indigenous organisations such as the *Consejo Regional Indígena del Cauca* (Regional Indigenous Council of Cauca – CRIC) or through state-sponsored ethnoeducation institutions and universities. Indigenous people are exempted from military service, pay no taxes and are guaranteed free university education.[253]

Indigenous rights in the Colombian legal system: land rights and political autonomy

The 1991 Constitution recognises collective territorial rights for its indigenous population and these territorial rights go hand in hand with some level of political autonomy. These territories are recognised as indigenous *resguardos* (reserves) and are now estimated to cover approximately 25% of Colombian territory.[254] Each *resguardo* is under the administrative control of an indigenous authority known as *cabildo* which "are elected every 2 to 3 years by communities to oversee land distribution, conflict resolution, rule implementation, resource management, and decentralized fiscal resources".[255] *Cabildos* are places of deliberation and

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[251] CC, art.10.
[252] CC, art.68.
[253] David Gow, "Can the Subaltern Plan? Ethnicity and Development in Cauca, Colombia," *Urban Anthropology and Studies of Cultural Systems and World Economic Development* 26, no. 3/4 (1997): 249; Jean E. Jackson, "Culture, Genuine and Spurious: The Politics of Indianness in the Vaupés, Colombia," *American Ethnologist* 22, no. 1 (1995): 5-6.
[254] Van Der Hammen, "The Indigenous Resguardos of Colombia: Their Contribution to Conservation and Sustainable Forest Use," 7.
[255] Marcela Velasco, "Confining Ethnic Territorial Autonomy in Colombia," *The Journal of Environment and Development* 20, no. 4 (2011): 414-15.

indigenous authorities insist on the importance of collective decision making through the *assemblea* (assembly). All adults in the community can participate (men and women) and influence the way financial resources are used. Different *Cabildos* are connected to form area-based councils and these, in turn, are all connected to create regional councils. Deliberation is present at all three levels of that pyramidal structure between delegates from all *cabildos*.[256]

Indigenous reserves in Colombia are, in fact, a remnant from the Spanish colonial era. Indeed, the Spanish used to establish indigenous reserves in isolated remote areas as "a way of protecting but also controlling the indigenous people".[257] The dissolution of these *resguardos* was encouraged shortly after independence in 1810 in the name of the assimilationist ideology of *mestizaje* so that towards the end of the 19th century, the indigenous *resguardos* had almost disappeared. It is only from the middle of the 20th century that indigenous movements started to regain control over land in the broader context of land claims made by indigenous and non-indigenous peasants alike. Successful campaigns for access to land during the 70s and 80s led to the legal recognition of more than 300 indigenous territories covering over 27 million hectares.[258]

It is with the 1991 Constitution that the indigenous people of Colombia received full recognition of their right to land. Several articles of the constitution establish this right to land and the political autonomy related to it. Article 329 states that:

> The configuration of the indigenous [Indian] territorial entities will be drawn subject to the provisions of the Organic Law of Territorial Planning, and their delimitation will be effected by the national government with the participation of the representatives of the indigenous communities following the plan of the Commission of Territorial Planning. The safeguards that apply relate to collective property which may not be sold. The law will define the relations and coordination of these entities with those of which they form a part.[259]

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[256] David Recondo, "Las Paradojas De La Democracia Participativa En América Latina: Una Comparación De Las Trayectorias Mexicana Y Colombiana," *Controversia* 191 (2008).
[257] Van Der Hammen, "The Indigenous Resguardos of Colombia: Their Contribution to Conservation and Sustainable Forest Use," 13.
[258] Ibid., 15.
[259] CC, art. 329.

Article 330 emphasises the political dimension of the state's recognition of indigenous territories:

> In accordance with the Constitution and the laws, the indigenous territories will be governed by the councils formed and regulated according to the uses and customs of their communities and will exercise the following functions:
>
> 1. Oversee the application of the legal regulations concerning the uses of the land and settlement of their territories.
> 2. Design the policies, plans and programs of economic and social development within their territory, in accordance with the National Development Plan.
> 3. Promote public investments in their territories and oversee their appropriate implementation.
> 4. Collect and distribute their funds.
> 5. Oversee the conservation of natural resources.
> 6. Coordinate the programs and projects promoted by the different communities in their territory.
> 7. Cooperate with the maintenance of the public order within their territory in accordance with the instructions and provisions of the national government.
> 8. Represent the territories before the national government and the other entities in which they are integrated; and
> 9. Other matters stipulated by the Constitution and the law.[260]

This article is in line with the general tendency towards decentralisation of the new Colombian state. Its applicability is secured by many redistributive mechanisms such as those elaborated through Law 60 of 1993, Law 715 of 2001 and Law 1122 and 1176 of 2007 as well as the decree 1953 of 2014 and 1082 of 2015 that codify financial transfers from the central state to local indigenous authorities.[261] These financial transfers, or *transferencias*, are meant to improve development at the local level and therefore require complex administrative skills and

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[260] Ibid., art. 330.
[261] Virginie Laurent, "Dans, Contre, Avec L'etat: Mouvement Indien Et Politique(S) En Colombie, Vingt Ans Après," in *Multiculturalisme. Un Modèle Latino-Américain ? Au Concret*, ed. Christian Gros and David Dumoulin Kervran (Paris: Presses Sorbonne Nouvelle, 2012), 150.

planning on behalf of the indigenous authorities. Some communities are more successful than others at this exercise.[262] I will analyse these transfers latter in this section.

According to the constitution, the land belongs to the indigenous communities through the recognition of the *resguardos*. However, subsoil natural resources remain the property of the state. The potential negative impacts of mineral and oil exploration and extraction are mitigated by a consultation mechanism, the *consulta previa*, which makes it compulsory for state and non-state actors to seek the consent of indigenous communities for the exploration and exploitation of resources.[263] This mechanism was first approved through Law 91 of 1991 (which ratifies ILO Convention 169) and then subsequently strengthened through Law 99 of 1993 and Decrees 1320 of 1998 and 4530 of 2008, which all establish and regulate mechanisms of consultation and general principles of respect for the integrity of indigenous communities.[264] The *consulta previa* has been described as a legal mechanism that creates spaces of "deliberative negotiation" (the concept is borrowed from Mansbridge et al.)[265] which are considered by indigenous people as their main tool for defending their cultural identities and territories.[266]

While *resguardos* are mainly situated in rural areas, some urban *cabildos* were also constituted in urban areas such as Bogota or Medellin. While the formation of an urban *cabildo* does give a certain amount of rights, these rights are limited and only conceded by the state after long legal struggles and processes of re-ethnicisation to prove the indigenous nature of these institutions.[267]

The *resguardo* system is supposed to be gradually converted in a new type of territorial entity, the *entidades territoriales indígenas* (Indigenous Territorial Entities) referred to in article 329

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[262] Gow, "Can the Subaltern Plan? Ethnicity and Development in Cauca, Colombia."

[263] Van Der Hammen, "The Indigenous Resguardos of Colombia: Their Contribution to Conservation and Sustainable Forest Use," 40-43.

[264] Nina Agrawal et al., "Political Representation & Social Inclusion: A Comparative Study of Bolivia, Colombia, Ecuador, and Guatemala," (New York: The Americas Society, 2012), 30.

[265] Jane Mansbridge et al., "The Place of Self-Interest and the Role of Power in Deliberative Democracy," *Journal of Political Philosophy* 18, no. 1 (2010).

[266] Alejandro Santamaría Ortiz, "La Consulta Previa Desde La Perspectiva De La Negociación Deliberativa," *Revista Derecho del Estado*, no. 36 (2016).

[267] Luisa Fernanda Sánchez, "Au Nom De La Culture : Migrations Indiennes, Espaces D'action Et Sens D'appartenance " in *Multiculturalisme. Un Modèle Latino-Américain ? Au Concret*, ed. Christian Gros and David Dumoulin Kervran (Paris: Presses Sorbonne Nouvelle, 2012).

through the adoption of the Organic Law of Territorial Planning. The adoption of that law was delayed and was only passed in 2011 (20 years after the new constitution was adopted) but hardly develops its initial goals. While *resguardos* depend upon the municipality for the administration of the resources allocated to them, Indigenous Territorial Entities would be considered as a municipality and its authorities would receive and administer directly the funding.[268] At the time of writing it was still difficult to see these proposed new authorities materialise.

The transfer of funding to indigenous resguardos is partly carried through the *Asignación Especial del Sistema General de Participaciones para los Resguardos Indígenas* (AESGPRI) which is part of the *Sistema General de Participaciones* - the General System of Participations (SGP) which redistributes resources from the nation to local entities. AESGPRI transfers correspond to "the resources transferred from the general system of participations to the indigenous *resguardos* for the financing of investment projects duly formulated, and included in the life plans or in accordance with the customs and traditions of indigenous people".[269] These transfers are codified through Decree 1953 of 2014 and 1082 of 2015.[270] In 2015 the SGP distributed 30.9 billion of Colombian pesos, amongst which 157 millions were allocated to indigenous *resguardos*.[271] The amount of money distributed to each *resguardo* depends on the population of the resguardo in relation to the total indigenous population living in *resguardos*.[272] In order to be allowed to receive and implement the AESGPRI resources, the *resguardos* are required to sign a contract of administration and present investment plans.

Decree 1953 of 2014 codifies the transfer of resources to the *resguardos* until the application of article 329 of the constitution and the creation of Indigenous Territorial Identities.[273] Decree 1953 has 99 articles and is organised along six main topics. It aims at strengthening the Special Indigenous Jurisdiction and at transferring competencies in relation to health, education and

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[268] Compes 12/13

[269] Departamento de La Guajira - Departamento Administrativo de Planeación, "Informe De Seguimiento Programación Y Ejecución De Recursos Del Sistema General De Participaciones De Resguardos Indígenas De La Vigencia 2011," (2012), 15.

[270] Departamento Nacional de Planeación, "Asignación Especial Del Sistema General De Participaciones Para Los Resguardos Indígenas. Guía Para La Presentación De Solicitudes Al Departamento Nacional De Planeación.," (Bogotá2015).

[271] Ibid., 5.

[272] Ibid., 6.

[273] Ibid., 11.

water distribution and sanitation.[274] The application process for receiving resources is complex. Six requirements need to be fulfilled to obtain AESGPRI resources.[275]

- A document designed in accordance with the "life plan" of the people which underlines and justifies the necessary investments, their goals and costs as well as investment plans.
- A document proving the recognised past experience and/or good practices of the indigenous authorities in charge of the project.
- The minutes of the community assembly, or of any other authority meeting in charge of taking administrative decisions, which indicate that the community has approved the request for AESGPRI resources.
- The minutes of the meeting which recorded the constitution of the indigenous collective structure of government and the certificate of recognition of that structure of government delivered by the *Dirección de Asuntos Indígenas, Rom y minorías* of the Ministry of Interior.
- A copy of the current rules of the *resguardo*.
- The contact details of the legal representative of the *resguardo*.

As we can see, the increased decentralisation of services goes hand in hand with the recognition and strengthening of indigenous authorities. These indigenous authorities' role is reinforced by the sixth title of Decree 1953 (articles 95 to 99) which repeats the constitutional right of indigenous people to have their own indigenous jurisdiction.

The implementation of indigenous legal systems over their own territories is recognised in the constitution and relates land rights to political self-determination. Article 246 states that "the authorities of the indigenous [Indian] peoples may exercise their jurisdictional functions within their territorial jurisdiction in accordance with their own laws and procedures as long as these are not contrary to the Constitution and the laws of the Republic. The law will establish the forms of coordination of this special jurisdiction with the national judicial system".[276]

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[274] Ibid., 12.
[275] Ibid., 19-33.
[276] CC, art. 246.

In practice the implementation of customary law on indigenous territories by indigenous authorities means that the *Cabildo* becomes a substitute for judges and assumes state responsibilities. Most of the debates surrounding the application of indigenous law deals with instances of customary corporal punishments, such as public whippings, but the idea of indigenous justice in itself is now well established and accepted within Colombian legal institutions.[277]

The administration of indigenous justice is a collective right which sometimes clashes with a constitutional right designed to protect individual rights: the mechanism known as *tutela*. This right is a legal mechanism which allows citizens to claim protection from the state through legal actions if they feel that their fundamental rights are not being respected. The constitution explains this mechanism: "every individual may claim legal protection before the judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority".[278] The application of corporal punishments for example is one of the reasons why the right to administer indigenous justice is *sometimes* restricted by the right of *tutela*. When a *tutela* is presented to a judge, he or she needs to balance the weight of collective rights against individual rights. The right of *tutela* is a practical (limited) embodiment of the "right of exit" theorised by some proponents of liberal multiculturalism.

This right of *tutela* has been a challenge to the coordination of indigenous special jurisdiction and the wider Colombian framework as many *tutelas* originate from indigenous people raising complaints against their own communities. This phenomenon can sometimes be interpreted as a challenge against traditional indigenous authorities.[279] In fact, in Colombia there is still no law or mechanism effectively establishing the coordination between the two legal systems referred to in article 246.[280]

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[277] Joanne Rappaport, *Intercultural Utopias : Public Intellectuals, Cultural Experimentation, and Ethnic Pluralism in Colombia* (Durham: Duke University Press, 2005), 227-61.
[278] CC, art. 86.
[279] Sandra Brunnegger, "Legal Imaginaries: Recognizing Indigenous Law in Colombia," *Studies in Law, Politics, and Society* 55 (2011).
[280] Jorge Ernesto Roa Roa, "Pluralismo Jurídico Y Mecanismos De Coordinación Entre Los Sistemas De Justicia Indígena Y El Sistema Nacional De Justicia En Colombia," *Revista Derecho del Estado*, no. 33 (2014).

Political representation

In this section, I analyse the interplay between indigenous social movements in Colombia and the legal framework of recognition established by the state to satisfy the provisions of the 1991 constitution. Understanding the claims and struggles of indigenous political actors is important for assessing the legal framework which is supposed to guarantee their rights and fulfil their aspirations. Indigenous peoples are not passive recipients of paternalistic state policies but instead shape and are shaped by the political processes that promotes recognition in the country. I first start with an overview of some of the main indigenous political actors. I focus on the history of these groups and show how their ideas and actions have influenced Colombian politics. I also show how some difficulties have limited the impact of these movements on Colombian politics. In a second step I analyse the legal framework of Colombia in the light of the claims made by these groups and reflect upon the extent to which the new constitution answers these claims. The goal is to assess Colombia's legal framework through the lens of indigenous social movements. Finally, I analyse the reserved seats mechanism that guarantees indigenous representation within the democratic system of Colombia and which is one of the differentiated rights that is part of many liberal multicultural frameworks in Latin America.

Indigenous political actors

Indigenous people in the Americas have a long history of resistance to European colonisation but one of the first modern indigenous movements in Colombia was the Quintín Lame Armed Movement (*Movimiento Armado Quintín Lame* – MAQL). The MAQL was a self-defence guerrilla group which arose from indigenous communities in South-Western Colombia because of the constant violence they were exposed to from a variety of actors: other guerrilla groups, the Colombian army, the police, large landowners (among others). Despite its indigenous base, the organisation was multi-ethnic and regrouped many indigenous fighters but also urban intellectuals, *mestizo campesinos* and some Afro-Colombian members without ethnic differentiation.[281] According to Rappaport, this multi-ethnic dimension is "a clear indication of the importance of pluralism in the early years of the indigenous movement". [282] The MAQL was demobilised in 1991 when they participated in the constituent assembly but had an

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[281] Rappaport, *Intercultural Utopias : Public Intellectuals, Cultural Experimentation, and Ethnic Pluralism in Colombia*, 70-75.
[282] Ibid., 70.

important influence on the political ideology of the CRIC, Colombia's most active indigenous political organisation.

The CRIC was founded in 1971 in the Cauca region of South Western Colombia. The organisation is composed mainly of Nasa Indians but Guambianos, Yanacona, Inga and several other small Indian groups are also part of the organisation. From the beginning, the organisation's objectives related strongly to territorial autonomy and the defence of indigenous culture (its history, language and customs).[283]

Here are the ten official objectives of the CRIC. The first seven objectives date from 1971 while the three last ones were added later on.

1. Recuperation of *resguardo* land and defence of ancestral territory and life-spaces of indigenous communities.
2. Extension of *resguardos*
3. Strengthening of the *cabildos*
4. Exemption from sharecropping
5. Education about and application of indigenous law.
6. Defence of indigenous history, language and customs
7. Training of indigenous teachers
8. Strengthening of economic and communal businesses
9. Recuperation, defence and protection of life-spaces in harmony and equilibrium with Mother Earth.
10. Defence of the family[284]

Because of its strong stance on territorial autonomy, from the mid-1970s, the CRIC organised land occupation campaigns to repossess usurped lands. From that moment, its political influence kept increasing and in 1991 they participated in the Constituent Assembly responsible for the drafting of the 1991 constitution. Today, CRIC is a powerful indigenous organisation "dedicated to mobilizing Cauca's indigenous communities through alliances with other popular sectors and as an organization providing vital social services to native

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[283] "Civil Society and the Indigenous Movement in Colombia: The Consejo Regional Indigena Del Cauca," 109.
[284] « Puntos de cambio en el Programa de Lucha » retrieved from http://www.cric-colombia.org/portal/estructura-organizativa/plataforma-de-lucha/ on 5/9/2018.

communities".[285] CRIC's political inclusiveness has been a feature of the organisation ever since its creation. The organisation has always shown a strong will to relate closely to other sectors of civil society which share indigenous people's living conditions such as *mestizo campesinos*, labourers, unionists, students and afro-Colombian communities.[286] In fact, as mentioned earlier, the indigenous movement in Colombia receives a relatively strong support from some of Colombia's middle class and the youth.

This inclusive attitude reflects a general trend for Latin American indigenous movements but also creates tensions within the movements as inclusiveness becomes a sign of inauthenticity for some indigenous leaders. For example, the Guambianos split from CRIC and created their own organisation, AICO, because of this assumed lack of authenticity. AICO emphasises the ethnic dimension of the struggle much more and criticises CRIC for its centralisation and distance from their grassroots (and the cabildos).[287] Ironically, AICO became a political party, playing the "white politics" electoral game, while CRIC remains a social movement. AICO also gives a lot of importance to state institutions to build "an indigenous politics of the Colombian state" and therefore is willing to work within its parameters. Their politics is narrowly oriented towards indigenous issues and if they do promote exchange and mutual respect with non-indigenous people, *mutual respect* "does not necessarily mean *common struggle*".[288] Another indigenous political party and key actor is the Indigenous Social Alliance (ASI – Alianza Social Indígena) which, similarly to CRIC, is willing to work alongside non-indigenous marginalised sectors of the Colombian society as they intertwine the logics of ethnic and class struggle in a political project emphasising the importance of searching alternatives to the mainstream understanding of the concepts of political power, development and well-being. However, despite promoting these political alternatives and a form of "people power", ASI recognises the importance of working from within the state apparatus.[289]

Others, such as the *Movimiento Sin Tierra Nietos de Quintín Lame* (Quintín Lame Armed Movement), created in 2006 reject all the moderate organisations open to dialogue and

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[285] Rappaport, "Civil Society and the Indigenous Movement in Colombia: The Consejo Regional Indigena Del Cauca," 110.

[286] Virginie Laurent, "Con Bastones De Mando O En El Tarjetón," *Colombia Internacional* 71 (2010): 41.

[287] Rappaport, "Civil Society and the Indigenous Movement in Colombia: The Consejo Regional Indigena Del Cauca," 116.

[288] Laurent, *Comunidades Indígenas, Espacios Políticos Y Movilización Electoral En Colombia, 1990-1998 : Motivaciones, Campos De Acción E Impactos*, 169.

[289] Ibid., 169-73.

compromises and call for a much more confrontational approach against the government and the large landholding aristocracy in the region.[290]

Indigenous political actors have proved their capacity for popular mobilisation on many occasions. One of their most visible political actions was the *minga popular* of 2008. The term *minga* refers to an ancestral practice in the Andes. It refers to a collective work with a common goal and emphasises deliberation, consultation and consensus.[291]

In October 2008, indigenous authorities in the Cauca organised a march, a *minga*, from their Caucan region to the capital Bogota. The *minga* "was described by its leadership as the beginning of a nationwide 'conversation with the people', a popular uprising of sorts, designed to transform Colombian society and politics through coordinated, non-violent mobilization".[292] The march brought together up to 40,000 people[293] started mainly as an indigenous protest but consultation with different sectors of civil society ever since 2004 broadened the scope of the protest and gave birth to a five point agenda: rejection of free trade agreements with the US, Canada and Europe; rejection of the armed conflict in Colombia; abolition of legal dispossession; implementation of national and international agreements and conventions; creation of mechanisms of sovereignty, peace and coexistence. [294]

This ambitious agenda and its pluri-sectorial dimension lost momentum pretty quickly and only one month after the Bogota encounter, CRIC presented a watered down version of the five point agenda that suited better the institutionalisation process of indigenous demands. The five points were reduced to the following five demands: respect for human rights and the "good name" of the indigenous movement; respect for international declarations, agreements and conventions; the halt and reversal of legalised eviction; the compliance with pending agreements between the government and "processes of social mobilisation"; the construction of a country where differences are understood and included within the national territory.[295] Critics have seen behind this softening of the original posture the materialisation of the pacified

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[290] Mario A. Murillo, "Colombia's Minga under Pressure," *NACLA Report on the Americas* 43, no. 5 (2010).

[291] "The 2008 Indigenous and Popular Minga in Colombia: Civil Resistance and Alternative Communication Practices," *Socialism and Democracy* 23, no. 3 (2009): 137.

[292] Ibid., 138.

[293] Ibid., 137.

[294] Manuel Rozental, "Qué Palabra Camina La Minga?," *Deslinde* 45: 59.

[295] Micheál Ó Tuathail and Manuel Rozental, "'Authorized' Minga in Colombia? The Challenges of Popular Movements," http://upsidedownworld.org/main/colombia-archives-61/2196-authorized-minga-in-colombia-the-challenges-of-popular-movements.(access date: 28/02/2016)

"*indio permitido*" who fits within the neoliberal agenda of the state.[296] But even this milder, less threatening version of indigenous demands remain the target of the state and Feliciano Valencia, one of CRIC's most visible members and a leader of the 2008 *minga* is now serving a 18 years jail sentence for "judging"[297] according to indigenous law an infiltrated member of the army looking for (or constructing) for evidence of guerrilla presence amongst the members of the *minga*.

Indigenous Colombian political movements and the 1991 constitution

If we compare the legal provisions of the 1991 constitution and contemporary indigenous demands for recognition, many similarities arise. The three first objectives of CRIC (recuperation and extension of *resguardos* alongside a strengthening of the *cabildos*)[298] are met by different articles of the 1991 constitution related to land rights and indigenous autonomy.

Objective four (exemption of sharecropping) is already a reality and indigenous people are exempted from paying taxes[299] while objective five (education about and application of indigenous law) as we have seen has also become a common feature of the Colombian justice system. Indeed, article 246 states that *cabildos* will exercise jurisdictional functions within the *resguardos* "in accordance with their own laws and procedures".[300]

Objective six (defence of indigenous history, language and customs) and seven (training of indigenous teachers) were met by articles 10 and 68 of the Constitution, which promote the implementation of ethno-education projects. These educative projects have been developed with a relative success by CRIC itself. It could be argued that the promotion of differentiated health care policies through the creation of indigenous EPS, the *Entidades Promotoras de Salud Indigena* (indigenous health promoting entities – EPSI) also promote the defence of indigenous customs.[301] I will analyse the development of EPSI in a further section

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[296] Ibid.
[297] Valencia, who received the National Colombian Peace Prize in 2000 for being a model of peaceful resistance, is accused of illegally detaining and giving 20 lashes to the Colombian soldier. http://internacional.elpais.com/internacional/2015/09/17/actualidad/1442453411_567454.html
[298] These objectives are very close to the objectives of other actors such as AICO or ASI.
[299] Jackson, "Culture, Genuine and Spurious: The Politics of Indianness in the Vaupés, Colombia," 5-6.
[300] CC, art. 246.
[301] Nadège Mazar, "Santé Et Multiculturalisme En Colombie : L'épreuve De La Pratique. Etude Autour Du Cas De L'epsi Aic Dans Le Cauca Autochtone," in *Multiculturalisme. Un Modèle Latino-Américain ? Au Concret.*, ed. Christian Gros and David Dumoulin Kervran (Paris: Presses Sorbonne Nouvelle, 2012), 256.

Objectives eight (strengthening of economic and communal businesses), nine (Recuperation, defence and protection of life-spaces in harmony and equilibrium with Mother Earth) and ten (defence of the family) are less straightforward but some sustainable ethno-tourism projects seem to promote their realisation.[302]

At first glance, the 1991 constitution seems to perfectly answer indigenous' political and cultural aspirations and to favour their recognition within Colombian society. Yet indigenous people continue to show greater signs of social suffering than the *mestizo* population and indigenous organisations keep demanding respect and protection for their people. This means that misrecognition persists for indigenous people in Colombia. A number of reasons can be advanced to explain the gap between the progressive dimension of the new Colombian constitution and the social reality of the indigenous population. I will tackle these reasons in the next chapter.

Reserved seats mechanism

The new constitution tried to remedy the invisibility of indigenous people within the political system of the state by creating reserved seats within the Senate and the chamber of representatives to ensure indigenous representation within the democratic institutions of the state. The constitution stipulates that in addition to the hundred members elected in one nationwide constituency composing the Senate, "There will be an additional two (2) senators elected in a special national constituency for indigenous communities".[303] The text further explains that "the chamber of representatives will be elected in territorial and special constituencies [...] the law may establish a special constituency to ensure the participation in the chamber of representatives of ethnic groups and political minorities and Colombians residing abroad".[304] While the special electorate for the Senate was put in place relatively

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[302] « Proyecto Económico » retrieved from http://www.cric-colombia.org/portal/proyecto-economico/ on 5/09/2018.
[303] Colombia Constitution (CC), art. 171.
[304] Ibid., art. 176.

quickly, the disposition ensuring representation in the chamber of representatives took longer and only came into effect in 2001.[305]

This political mechanism has led to new dynamics within the indigenous political movement of Colombia and to the creation of indigenous political parties that became the first viable indigenous parties in South America.[306] The better organised indigenous movements have made a better use of this mechanism and organisations such as the *Alianza Social Indigena* (Indigenous Social Alliance – ASI), *Autoridades Indigenas de Colombia* (Indigenous Authorities of Colombia – AICO, formally called *Autoridades Indigenas del Suroccidente – AISO*) and to a lesser extent the Movimiento Indigena Colombiano (Indigenous Colombian Movement – MIC)[307] have become genuine political players in the electoral game of Colombian democracy.[308]

It is worth mentioning that indigenous parties in Colombia gained sympathy and support from many non-indigenous voters, especially in highly populated cities, because of the articulation of their ethnic agenda with political proposals appealing to other sectors of the Colombian society. Indigenous parties have therefore succeeded in appearing "*enough* but not *too* indigenous" to attract non-indigenous voters.[309] This electoral phenomenon appears clearly when we realise that most of the indigenous representative receive their votes from outside of their department of origin and especially from departments with no or very low indigenous presence.[310] In order to attract a broader electorate, indigenous parties also gathered non-indigenous candidates amongst them.[311]

Furthermore, indigenous politicians gained access to political representation and positions of lesser visibility at the municipal and departmental levels. This is important since these lower

[305] Virginie Laurent, "Multiculturalismo a La Colombiana Y Veinte Años De Movilización Electoral Indígena: Circunscripciones En La Mira," *Análisis Político* 25, no. 75 (2012): 48.
[306] Donna Lee Van Cott, *From Movements to Parties in Latin America : The Evolution of Ethnic Politics* (Cambridge: Cambridge University Press, 2005), 178-79.
[307] The MIC was dissolved after the 1998 elections because of a lack of electoral support.
[308] Agrawal et al., "Political Representation & Social Inclusion: A Comparative Study of Bolivia, Colombia, Ecuador, and Guatemala," 23.
[309] Laurent, "Multiculturalismo a La Colombiana Y Veinte Años De Movilización Electoral Indígena: Circunscripciones En La Mira," 54.
[310] Javier Duque Daza, "Las Organizaciones Políticas Étnicas En Colombia. Los Indígenas Y Las Elecciones 1990-2006," *Iberoamericana (2001-)* 8, no. 32 (2008): 18; 21.
[311] Laurent, "Multiculturalismo a La Colombiana Y Veinte Años De Movilización Electoral Indígena: Circunscripciones En La Mira," 54.

level governmental institutions were granted increased competencies after the beginning of the decentralising process set in motion by the new constitutional arrangement.

Welfare: Differentiated health care

Indigenous people claim to have specific social needs related to their identity. They argue that welfare mechanisms need to adapt to these needs. Health care is one sector of welfare where indigenous recognition is common. In Colombia, a major legal development for increased indigenous control over health care took place within the broader context of Law 100 of 1993, which led to reforms in the health care system and the creation of *Entidades Promotoras de Salud* (health promoting entities - EPS). As their name suggests, EPS are organisations that work as health providers. They can receive their funding either through direct contribution from sectors of the population who can afford it or through a totally subsidised regimen for the most vulnerable parts of the population.[312] Their funding depends on the number of members and the efficiency of the EPS. They therefore follow a competitive model and try to attract increasing numbers of members.[313]

From 1997, some indigenous organisations started to develop their own health care systems and from 2001 their own indigenous EPS, the *Entidades Promotoras de Salud Indigena* (indigenous health promoting entities – EPSI).[314] One of the goals of EPSI is to revive ancestral indigenous medical practices. The recognition and protection of traditional indigenous medicine, while not specifically referred to in the Constitution, was expressed through other legal texts.[315] Another key objective of these EPSI's is their promotion of food sovereignty initiatives including "support for traditional crops, rescuing traditional food preparation methods and nutritional practices, and encouraging family production leading to food self-

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[312] Javier Mignone, Jorge Nallim, and John H. Gómez Vargas, "Indigenous Control over Health Care in the Midst of Neoliberal Reforms in Colombia: An Uneasy Balance," *Studies in Political Economy*, no. 87 (2011): 96-97.

[313] Mazar, "Santé Et Multiculturalisme En Colombie : L'épreuve De La Pratique. Etude Autour Du Cas De L'epsi Aic Dans Le Cauca Autochtone," 256.

[314] Ibid.

[315] Esther Sanchéz Botero, "Los Pueblos Indígenas En Colombia. Derechos, Políticas Y Desafíos," (Bogotá: UNICEF, 2003), 22.

sufficiency".[316] Another important legal tool related to indigenous health care worth mentioning is Law 691 of 2001 which regulates the participation of ethnic groups in the general system of social security in Colombia. According to this law the Colombian state should make available health care services which respect the cultural background of the patients.[317]

Here I propose an overview of the services offered by two EPSI from Northern Colombia: the EPSI Dusawaki,[318] formed by the *Asociación de Cabildos Indígenas del Cesar y La Guajira* and Anaswayuu,[319] formed by the *Asociación de Cabildos y/o Autoridades Tradicionales de La Guajira y la Asociación Sumuywajat*, located in the municipalities of Maicao, Uribia and Manaure.

Dusawaki functions through a network of health providers which emphasise "intercultural" and "differential" services. The intercultural dimension highlights the complementarity between western and indigenous medicine while the differential approach focuses on flexibility in order to adapt to the socio-cultural needs of diverse populations.[320] The network of providers needs to comply with quality standards and qualifications approved by the Ministry of Health. Amongst the necessary conditions to be part of the network are:

- Being authorised [to offer these services]
- Being (preferably) indigenous
- Having an assistance model with emphasis on the delivery of services in rural areas and having an extramural team.
- Having indigenous employees in the extramural team.
- Having previous experience in service delivery for indigenous communities.[321]

Dusawaki offers eight differential services:

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[316] For example the sentences C-377 of 1994 and T-214 of 1997. Mignone, Nallim, and Gómez Vargas, "Indigenous Control over Health Care in the Midst of Neoliberal Reforms in Colombia: An Uneasy Balance," 100.
[317] Agrawal et al., "Political Representation & Social Inclusion: A Comparative Study of Bolivia, Colombia, Ecuador, and Guatemala," 8.
[318] http://dusakawiepsi.com
[319] http://epsianaswayuu.com/
[320] Ministerio de Salud y Protección Social, "Estudio Técnico De Servicios Diferenciales Para Los Pueblos Indígenas De Colombia," (Bogotá2014), 5.1.1.1.
[321] Ibid., 5.5.1.6.

- *Bilingual guides* help indigenous people to navigate the urban, technological and bureaucratic world of western health care.

- *Passing houses* are temporary accommodation allocated to affiliated indigenous people who fit certain criteria and are travelling for health care until they are in condition to return home

- Through *Funeral help* Dusawaki repatriates, in certain cases, the body of deceased indigenous people to their ancestral territories.

- Dusawaki contributes to the promotion of *traditional indigenous medicine* by helping with the cost of communitarian meetings, the realisation of traditional workshops aimed at health improvement and the buying of sacred materials.

- *Programmes of health self-improvement* cover topics such as the production and/or preparation of food and medicinal plants, the strengthening and exchange of ancestral knowledge and general healthy practices.

- Dusawaki offers *patient transport in rural areas* in some delicate circumstances such as snake bites, difficult labour or traumas and fractures.

- Dusawaki offers *patient transport in urban areas* where the concentration of members is the highest.

- Dusawaki offers potable water delivery in the arid areas of the Guajira Peninsula when sufficient water is unavailable.[322]

Anaswayuu offers broadly the same services as Dusawaki: delivery of potable water, bilingual guides, passing houses, promotion of traditional medicine and affordable health care. Anaswayuu also offers prevention programmes focused on family planning and reproductive health services. They also offer programmes designed to decrease family violence, which is particularly problematic amongst the Wayuu community.

Anaswayuu is one of the most successful with 115,000 members, amongst which 24% are non-indigenous.[323] It has been recognised as one of the better managed and most effective EPSI and in 2012, was the best subsidised EPS (non-indigenous and indigenous taken together).[324] Its finances and activities are very transparent and are available for download on the EPSI website.

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[322] Ibid., 5.5.1.7.

[323] Javier Mignone and John Harold Gómez Vargas, "Anas Wayuu, El Éxito De Una Organización Indígena De Salud Colombiana En Medio De Un Sistema En Crisis," *Voces en el Fénix* 2014, 82.

[324] Information retrieved from https://laguajirahoy.com/2013/07/anas-wayuu-mejor-empresa-promotora-de.html on 9/3/2017.

Despite being centred and originating on the Guajira Peninsula, Anaswayuu also offers services in urban centres around the country (Bogotá, Medellín, Cali, Barranquilla and more).

As we can see, the legal framework developed in Colombia to recognise the indigenous population of the country is impressive given the small demographic weight of that population. The 1991 constitution grants indigenous people a wide range of rights related to territorial autonomy, political autonomy and representation, and the preservation of their culture. For these reasons Colombia is seen as a model of indigenous recognition in the region.

Afro-Colombian collective rights in Law 70

In spite of presenting several candidates to sit in the national constitutive assembly, there were no Afro-Colombian representatives present during the process leading to the new constitution draft and no direct mention of affirmative action measures in favour of Afro-Colombian communities appear in the document. Nonetheless, indigenous representatives who were present in the constituent assembly, especially Francisco Rojas Birry, made sure that Afro-Colombian communities would be taken into account in the redesigned pluri-ethnic Colombian state. [325]

Provisional article 55 was the only guarantee of the possibility of such a step towards institutional recognition of Afro-Colombian communities. Provisional article 55 led to the adoption of law 70 in 1993 which recognises Afro-Colombian communities as subjects of collective differentiated rights. The law emphasises the access of Black communities to collective land, the guarantee of some level of political autonomy and the implementation of affirmative action measures aimed at the preservation of their culture. Several authors have argued that Law 70 broadly replicates the model of indigenous recognition established by the new constitution and is, therefore, also consistent with liberal multiculturalism. [326] This aspect will be clearly manifest as I describe the articles of the law.

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[325] Elizabeth Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)* (Bogotá: IFEA-ICANH-Uniandes-Observatorio del Caribe Colombiano, 2003), 33.

[326] Arturo Escobar, *Territories of Difference. Place, Movements, Redes* (Durham: Duke University Press, 2008), 211. Peter Wade, *Race and Ethnicity in Latin America* (London: Pluto, 2010), 117.

The first article of Law 70 identifies its objective:

> The object of the present Law is to recognize the right of the Black Communities that have been living on barren lands in rural areas along the rivers of the Pacific Basin, in accordance with their traditional production practices, to their collective property as specified and instructed in the articles that follow. Similarly, the purpose of the Law is to establish mechanisms for protecting the cultural identity and rights of the Black Communities of Colombia as an ethnic group and to foster their economic and social development, in order to guarantee that these communities have real equal opportunities before the rest of the Colombian society. In Accordance with what has been stipulated in paragraph 1 Article 55 of the Political Constitution, this Law will also apply in the barren, rural, and riparian zones that have been occupied by Black Communities that have traditional practices of production in other areas of the country and abide by the requirements established in this Law.[327]

In the second article, Black community is defined as follows:

> It is the group of families of Afro-Colombian descent who possesses its own culture, shares a common history and has its own traditions and customs within a rural-urban setting and which reveals and preserves a consciousness of identity that distinguishes it from other ethnic groups.[328]

And finally, in order to finalise the introduction to the law, Article Three establishes four key principles:

- Recognition and protection of ethnic and cultural diversity, and equal rights for all cultures that compose the Colombian nationality.
- Respect for the integrity and dignity of the Black Communities' cultural life.

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[327] Law 70, art. 1. All further quotes from Law 70 come from the translated version of the text by Norma and Peter Jackson (Benedict College, Columbia, South Carolina) retrieved from http://www.benedict.edu/exec_admin/intnl_programs/other_files/bc-intnl_programs-law_70_of_colombia-english.pdf on 7/03/2016.
[328] Ibid., art. 2.

- Participation of the Black Communities and their organizations, without detriment to their autonomy, in decisions that affect them and in those that affect the entire nation in conformity with the law.

- The protection of the environment, emphasizing the relationships established by the Black Communities and nature.[329]

Here, I propose to broadly reproduce the structure of the previous discussion to focus my analysis on land rights, political autonomy, political representation and welfare (in this case policies aimed at promoting the visibility of Afro-Colombian culture and decreasing racism).

Land rights and political autonomy

Before addressing the matter of land rights as such, it is important first to introduce the political authority recognised as responsible for the development of these lands. Article 5 requires the creation of an administrative body, the *Consejo Communautario* (community council), as an intermediary between the state and Black communities. Article 5 states that:

> In order to receive adjudicable lands as collective property, each community will form a Community Council as its internal administrative body whose functions will be determined by National Government ruling.
>
> In addition to the functions determined by National Government ruling, other functions of the Community Councils are: to watch over the conservation and protection of the rights of collective property, the preservation of cultural identity, the use and conservation of natural resources; to identify a legal representative from the respective community as their legal entity, and to act as friendly conciliators in workable internal conflicts.[330]

It could be argued that community councils are the equivalent of indigenous *cabildos* but contrary to the indigenous *cabildos*, these community councils are not the recipient of direct fiscal transfers from the state nor are they recognised as and have the legal status of public

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[329] Ibid., art. 3.
[330] Ibid., art. 5.

entities.[331] The autonomy of the *consejos communitarios* is mainly reduced to administrative tasks related to the process of land titling.

In Article 4, the law defines the lands susceptible to becoming collective property of black communities:

> The State will grant collective property to the Black Communities referred to in this Law, in areas that, according to the definitions in Article II, comprise barren lands located along the riverbanks in rural riparian areas of the Pacific Basin as well as those in areas specified in the second clause of Article 1 of the present Law: lands that they have been occupying in accordance with their traditional practices of production.
> For all legal purposes the lands, for which collective property rights are established, will be called: The Lands of the Black Communities.[332]

Articles 6 however sets a number of limitation to article 4:

> Except for the grounds and the forests, collective grant lands under this Law do not include the following:
>
> • Control over goods for public use.
> • Urban areas of municipalities.
> • Renewable and non-renewable natural resources.
> • Legally constituted and protected indigenous territories.
> • The subsoil and rural lands accredited as private property as per law 200 of 1936. • Areas reserved for national security and defense.
> • Areas of the national-park system.

The article further explains that the ownership of the soils and forests included in the land titles should be exercised as "a social function with an inherent ecological function". In order to ensure the respect for these social and ecological dimensions, Article 6, therefore requires that the exploitation of forests for commercial purposes should guarantee the continuity of

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[331] Velasco, "Confining Ethnic Territorial Autonomy in Colombia," 415.
[332] Law 70, art. 4.

resources and that the authorisation of a competent entity to handle these resources should be sought.

The article then stipulates that the black communities which are granted land titles will need to develop conservation and handling practices compatible with ecological conditions of the Pacific basin and that "appropriate models of production should be developed, such as agrosilvopasture, agroforestry, and the like, designing suitable mechanisms to stimulate them and to discourage unsustainable environmental practices.[333]

Article 7 establishes further restriction:

> In each community, the Black Community's portion of the land designated for collective use is non-transferable, imprescriptible, and non-mortgageable.[334]

As we can see, Law 70 emphasises strongly the assumed sustainable character of the Afro-Colombian lifestyle and the Afro-Colombian recognition project sometimes appear to be more akin to a conservation project. Articles 19, 21 and 54 all further emphasise the conservation dimension of the land titling process.

Article 19 lists a series of practices which are considered as legal practices and should be exercised "in a manner that the renewal of resources, in quantity as well as in quality, is guaranteed". These practices include the use of natural resources for the construction or repair of houses, fences, canoes, and other domestic elements but also "the traditional practices exercised over the waters, the beaches, the riverbanks, the secondary fruits of the forest or over the fauna and the terrestrial and aquatic flora for alimentary purposes". These include hunting, fishing and the harvesting of products for subsistence. The article further states that all these activities "will have preference over any other quasi-industrial, industrial, or sports interest".[335]

Article 21 further emphasises the guardianship role of Black Communities and explains that

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[333] Ibid., art. 6.
[334] Ibid., art. 7.
[335] Ibid., art. 19.

the groups receiving collective title will continue to maintain, preserve, and favor the renewal of the vegetation that protects the waters, and to guarantee, through adequate use, the preservation of particularly fragile ecosystems such as mangroves and wetlands, and to protect and preserve species of wild fauna and flora that are threatened or that are in danger of extinction.[336]

Article 54 stipulates that the Colombian state will assist Afro-Colombian communities to ensure that they retain intellectual property over the knowledge derived from all these ecological practices. The state will also ensure that these communities will obtain the economic benefits inherent to these practices in the same way that other entrepreneurs who develop products for national or international markets benefit from their creativity.[337]

The right of prior consultation, *consulta previa,* accorded to indigenous people before natural resources exploitation permits are granted (and in particular mining and oil extraction) is also a right given to Afro-Colombian communities. According to article 26,

> The Ministry of Mines and Energy dutifully or by petition from the Black Communities to which this Law refers may choose to identify and delimit in lands adjudicated to the Black Communities, mining zones where the exploration and exploitation of non-renewable natural resources should be carried out under special technical conditions for their protection, and with the participation of the Black Communities for the purpose of preserving their particular economic and cultural characteristics, without prejudicing their acquired or constituted rights, in favor of third parties.[338]

While all these articles raise serious questions about the political autonomy of black communities in Colombia and do not in any way address the many urban Afro-Colombians, Ulrich Oslender casts a positive look upon these legal advancements and argues that the legal mechanisms set in motion by Law 70 have been used by black communities to reconceptualise the Pacific region and challenge "the capitalist state logic of extraction and exploitation".[339]

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[336] Ibid., art. 21.
[337] Ibid., art. 54.
[338] Ibid., art. 26.
[339] Ulrich Oslender, "The Quest for a Counter-Space in the Colombian Pacific Coast Region: Toward Alternative Black Territorialities or Co-Optation by Dominant Power?," in *Black Social Movements in*

Black communities would therefore use the provision of Law 70 to create "territories of difference" in the margin of capitalist development whereby ecology, culture and autonomy would intersect in new types of development projects.[340] I will come back to this later in the section about Afro-Colombian social movements.

Political Representation

In this section, I describe Afro-Colombian social movements in Colombia. Understanding the claims of these Afro-Colombian political movements is important for assessing the legal framework which is supposed to guarantee their rights and fulfil their aspirations. First, I start with an overview of some of the main Afro-Colombian political actors. Second, I analyse the legal framework of Colombia through the claims made by Afro-Colombian social movements and reflect upon the extent to which Law 70 answers these claims. Third, I analyse the reserved seat mechanism which guarantees Afro-Colombian people representation within Colombia's democratic institutions.

Afro-Colombian political actors

The political struggle of Afro-Colombians started with the first slave rebellions and run-aways. Run-away slaves established fortified villages in remote areas known as *palenques* where they aspired to live as free people. These *palenques* were effectively the first territories on the continent to break free from Spanish colonisation.[341] Modern Afro-Colombian political organisations are, however, a much more recent phenomenon which can be traced back to the 70s and the international political climate surrounding civil rights movements in the United States. There are now many different Afro-Colombian political organisations fighting against racism, for collective land rights or for the respect of internally displaced people's human rights.

Latin America : From Monocultural Mestizaje to Multiculturalism, ed. Jean Rahier (New York: Palgrave Macmillan, 2012), 96.
[340] Escobar, *Territories of Difference. Place, Movements, Redes*.
[341] Adriana Espinosa Bonilla, "Activismo Global: Nuevas Rutas De Acción Colectiva Del Movimiento Negro En Colombia," *Universitas humanística*, no. 72 (2011): 220.

The *Cimarrón* movement, Colombia's oldest black movement, was born in 1976 out of the Soweto study circle in the city of Pereira where a group of black students, influenced by the struggle of African Americans in the US, decided to meet on a weekly basis to discuss and understand the phenomenon of racism. Alongside Martin Luther King, Malcolm X and Nelson Mandela, historical Afro-Colombian figures such as Benkos Biohó, the African king founder of several *palenques*, became heroes and role models for the *Cimarrón* struggle.[342] *Cimarrón* is now one of the main black organisations in Colombia and plays a major advocacy role. Its main objectives are to:

- Present and manage policies and programs for the development of Afro-Colombian communities with the governmental, private, national and international institutions

- Promote the independent organization of Afro-Colombian communities at local and national level, their awareness, and mobilization for a dignified life.

- Educate to eradicate racism from the collective and individual consciousness of Colombians.

- Promote programs and actions aimed at eliminating racial discrimination practices affecting Colombian society. Promote the education, organization and empowerment of Afro-Colombian women.

- Develop, enhance and disseminate Afro-Colombian identity and Afrocolombianidad, as patrimony of each Colombian man and woman and the society as a whole. Protect and conserve the biodiversity and the rights granted to Afro-Colombian communities regarding their ancestral lands.

- Encourage the autonomous political participation of Afro-Colombian people, claiming the equitable representation it deserves within Colombian society.

- To promote relations and identity between the Colombian society and Afro-descendants, and the continental unity among the African-American people.[343]

Cimarrón has developed ethno-education projects, publishes reports on the social well-being of Black communities, puts pressure on the government to develop ethnically differentiated

[342] Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*, 37-40.
[343] Movimiento Cimarrón, "main objectives" http://www.movimientocimarron.org/ (accessed 25/02/2016)

statistical analysis and created the Justice Centre against Racism (*Centro de Justicia contra el Racismo*). *Cimarrón* also played a role in the genesis of the first Afro-Colombian peasant organisations in the Pacific region which then became the first "community councils".

Another major Afro-Colombian political movement is the network known as Black Communities Process (*Processo de Communidades Negras – PCN*). The PCN is a much more rural organization and was born in the early nineties out of the debates surrounding the elaboration of Law 70. PCN has the strongest and most effective organizational structure and has gained recognition from the state as an interlocutor in matters of land rights.[344] Indeed, the PCN gives "pre-eminence to the social control of the territory and natural resources as a precondition for the survival, re-creation, and strengthening of culture".[345] It therefore played a key role in the ethnicisation process of blackness in Colombia and to the creation of an "imagined [black] community" to use Benedict Anderson's expression.[346] Indeed what characterises PCN is the claim that emphasising a common past and the experience of slavery and racism is not enough. Instead, for the PCN, the remembrance of a common past necessarily needs to lead to the construction of a common future for the Afro-Colombian population.[347] PCN therefore emphasises clearly the territorial (and rural) dimension of the struggle while *Cimarrón* focuses more on the fight against racial discrimination.

The PCN helped the development of particular ideological concepts to empower black communities and to create "counter-spaces" in the Colombian Pacific coast. According to Oslender and Escobar, these counter-spaces try to elaborate specific development projects that do not obey the traditional development agenda offered by capitalism.[348] For example, PCN has developed a strong political ecology discourse that leads to the reconceptualisation of the term biodiversity as "territory plus culture". This means that "there is no conservation without territorial control, and conservation cannot exist outside of a framework that incorporates local

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[344] Carlos Agudelo, "Participation Politique Des Populations Noires En Colombie," *Cahier des Ameriques Latines* (1999): 11-12.
[345] Escobar, *Territories of Difference. Place, Movements, Redes*, 221.
[346] Eduardo Restrepo, "Ethnicization of Blackness in Colombia: Toward De-Racializing Theoretical and Political Imagination," *Cultural Studies* 18, no. 5 (2004).
[347] Libia Grueso, Carlos Rosero, and Arturo Escobar, "El Proceso Organizativo De Comunidades Negras En Colombia," *Ecología Política*, no. 14 (1997): 56.
[348] Oslender, "The Quest for a Counter-Space in the Colombian Pacific Coast Region: Toward Alternative Black Territorialities or Co-Optation by Dominant Power?." Escobar, *Territories of Difference. Place, Movements, Redes*.

people and cultural practices".[349] This political ecology promotes small scale sustainable economic practice such as "collective shrimp farming".[350]

The PCN also plays a key role in seeking restorative justice[351] and is particularly skilled in attracting international attention and extending their networks to international NGOs while remaining aware of the issues inherent to a potential "NGO-ization" of the movement.[352]

Afro-Colombian political movements and Law 70

If we compare the content of Law 70 to the political demands for recognition made by major Afro-Colombian organisations it is clear that the Law of blackness offers a very interesting legal framework to improve the social wellbeing and political autonomy of black communities.

If we first analyse some of the objectives of *Cimarrón* such as promoting "the independent organization of Afro-Colombian communities at local and national level, their awareness, and mobilization for a dignified life", promoting "programs and actions aimed at eliminating racial discrimination practices affecting Colombian society" and promoting Afro-Colombian identity in general, it is clear that Law 70 offers a good legal framework to implement these ideals. Article 41 and 47 particularly deal with the promotion of Afro-Colombian culture while article 33 takes a firm stand against racism in Colombian society.

On a more political and territorial level, Law 70 also seems to answer Afro-Colombian claims. *Cimarrón* vows to "protect and conserve the biodiversity and the rights granted to Afro-Colombian communities regarding their ancestral lands" and "encourage the autonomous political participation of Afro-Colombian people, claiming the equitable representation it deserves within Colombian society" while PCN emphasises the importance of social control over territory and natural resources to rebuild and strength Afro-Colombian culture through a political ecology agenda. Law 70 guarantees both Afro-Colombian representation within the democratic institutions of the state and some level of political autonomy within their territories. Furthermore, the political ecology developed by PCN is tailored on many articles of Law 70 which emphasise the necessary ecological dimension of Afro-Colombian development in the Pacific region.

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[349] *Territories of Difference. Place, Movements, Redes*, 146.
[350] Ibid., 95-106.
[351] Ibid., 267-68.
[352] Ibid., 259-73; Kiran Asher, *Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands* (Durham: Duke University Press, 2009), 124.

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Here too, it would seem that the legal framework of recognition established by the state through Law 70 perfectly fits the political and cultural demands of Afro-Colombian communities. Yet, Afro-Colombian people also continue to experience greater socio-economic issues than the *mestizo* population and black organisations are still struggling for the respect of their people's dignity and basic rights. Let me now turn to some possible explanations to make sense of the ambiguous situation of ethnic populations in Colombia.

Reserved seats mechanism

Similar to indigenous rights to guaranteed political representation within the democratic institutions of the state, the political representation of Afro-Colombian communities within the Colombian political system is guaranteed as well through Article 66 of Law 70. The Article states that "In accordance with Article 176 of the National Constitution, a special electorate is established to elect two members from the country's Black Communities to participate in the House of Representatives".[353] Beside this special electorate, Law 70 also led to the creation of other spaces of participation and deliberation such as the high level and departmental consultative commissions (decreto 1371 de 1994).[354] Afro-Colombian representatives are also present in many state planning agencies such as CONPES (Consejo Nacional de Política Económica y Social – Nacional Council of Economic and Social Politicies) or INCORA (Instituto Colombiano de Reforma Agraria – Colombian Institute of Agrarian Reform). The main idea behind the representation of Afro-Colombians in various state agencies dealing with issues potentially affecting black communities (such as environmental issues and education) is to involve as much as possible black people in the planning and decision making process.

Welfare: policies against racism and promoting Afro-Colombian culture

Law 70 also addresses the problem of racism and discrimination affecting black communities. According to article 33,

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[353] Law 70, art. 66.
[354] Gustavo I. De Roux, "Políticas Públicas Para El Avance De La Población Afrocolombiana: Revisión Y Análisis," (Panamá: Programa de las Naciones Unidas para el Desarrollo, 2010), 21-23.

> The State will sanction and will prevent all acts of intimidation, segregation, discrimination or racism against Black Communities in all social spaces, at high decision making levels of public administration, and, in particular, in the mass communication media and in the educational system; the State will be vigilant in enforcing the principles of equality and respect for ethnic and cultural diversity.[355]

This article represents an important step in the acknowledgement of a racial problem in Colombia because the term racism had for a long time been avoided in mainstream political and scholarly discourses about Colombia and Latin America in general.[356]

Finally, Law 70 stipulates that the state will assist the economic and social development of Black communities according to their cultural characteristics and vow to help the preservation and protection of these cultural specificities.

> The State will support, by providing the necessary resources, the organizational processes of the Black Communities, in order to recover, preserve, and develop their cultural identity.[357]

> The State will adopt measures to guarantee the Black Communities referred to in this Law their right to develop economically and socially, according to their autonomous and cultural elements.[358]

The recognition and support for the preservation of Afro-Colombian culture takes many forms. For example, Law 725 of 2001 established the "National Day of Afro-Colombianness" which is celebrated on the 21st of May as a tribute to the abolition of slavery and the pluri-ethnic dimension of the nation. [359] This recognition also means that the Colombian state will promote ethno-education for black communities:

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[355] Law 70, art. 33.
[356] Peter Wade, "Multiculturalismo Y Racismo," *Revista Colombiana de Antropología* 47, no. 2 (2011).
[357] Law 70, art. 41.
[358] Ibid., 47.
[359] De Roux, "Políticas Públicas Para El Avance De La Población Afrocolombiana: Revisión Y Análisis," 23.

The Colombian State recognizes and guarantees the Black Communities the right to an education in accordance with their needs and their ethnic and cultural aspirations.[360]

The State's education programs and services for the Black Communities must be developed and applied with their cooperation in order to respond to their particular needs, and these programs should encompass their history, knowledge, techniques, value systems, linguistic and dialectical forms, and all other social, economic, and cultural aspirations. The State must recognize and guarantee the right of the Black Communities to create their own communication and educational institutions, as long as said institutions comply with the norms established by competent authorities.[361]

The state's commitment to black ethno-education materialises through the elaboration of specific curricula dedicated to black history and culture, the formation of ethno-educators and the creation of an educational commission for black communities (*Comisión Pedagógica de Comunidades Negras*).[362]   Afro-Colombian students also receive scholarships for university studies through a special fund, the Special Fund of Educational Credits (*Fundo Especial de Créditos Educativos*) and universities in Colombia have adopted special quotas for Afro-Colombian students. The decree 1122 of 1998 also increased the visibility of Afro-Colombians in the education system by creating a Chair for Afro-Colombian studies (*Cátedra de Estudios Afrocolombianos*).[363]

As we can see, the legal framework developed in Colombia to recognise its Afro-Colombian population is impressive and broadly replicates the model of recognition granted to indigenous people. Black communities benefit from differentiated rights mainly related to land rights and the preservation of their culture. For this reason, Colombia is rightly seen as a pioneer of Afro-descendants recognition in the Americas.[364]

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[360] Law 70, art. 32.

[361] Law 70, art. 35.

[362] Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*, 44-45.

[363] De Roux, "Políticas Públicas Para El Avance De La Población Afrocolombiana: Revisión Y Análisis," 23.

[364] Asher, *Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands*, 175.

Conclusion

In this chapter, I contextualised the adoption of the new constitution and Law 70 and described how this new constitution represents a radical turn in Colombian politics and its cultural imaginary that was designed to promote the recognition of ethnic minorities. I then presented and analysed several constitutional articles enunciating the newly acquired rights for indigenous peoples. These rights are consistent with theories of liberal multiculturalism. I then analysed how Law 70 framed the recognition of Afro-Colombian communities. In each case I paid particular attention to policies related to land rights and political autonomy, political representation within Colombia's democratic institutions and particular welfare policies aimed at improving the well-being of indigenous and Afro-Colombian populations. The goal of this chapter was to highlight the extensive system of ethno-recognition developed by the Colombian state since its adoption of a new constitutional framework. The set of policies described in this chapter illustrates how the theory of recognition materialises through group-differentiated rights policies that are related to liberal multiculturalism.

Chapter six: The challenges of ethno-cultural recognition in Colombian

Introduction

I start this chapter with an analysis of the experience of social suffering endured by indigenous and Afro-Colombian populations in Colombia. I use many social indicators to describe the social suffering currently afflicting disproportionately both groups despite the extensive legal framework established by the Colombian constitution and Law 70 to promote the recognition of these populations in Colombian society. I then cast a critical look at the 1991 constitutional project before scrutinising more in depth the challenges and contradictions of indigenous recognition in the following three areas: indigenous land rights and political autonomy, indigenous political participation within Colombia's democratic institutions, and indigenous welfare policies (in this case the differentiated indigenous health care systems). I then analyse the challenges facing Afro-Colombian recognition through Law 70 in the following three areas: Afro-Colombian land rights and political autonomy, Afro-Colombian participation within Colombia's democratic institutions, and Afro-Colombian welfare policies (in this case policies against racism and for the preservation of Afro-Colombian culture). I will underline, when relevant, the five key issues with "identity politics" identified in chapter three: reification; displacement; divide and rule; moral relativism; normalisation/pacification. I will further focus on, and discuss in depth, these issues in the last chapter.

Social Suffering in Colombia: Assessing the wellbeing of indigenous and Afro-Colombian populations

Social Suffering in Colombia

Colombia is a developing country which has endured a low intensity civil war for over half a century and is plagued by the drug trade and all the criminal activities inherent to that particular illicit business. According to the World Bank, Colombia is the seventh most unequal country in the world.[365] While some of its major cities, such as Bogotá and Medellin, have undergone

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[365] Information retrieved from http://www.worldbank.org/en/news/opinion/2012/12/17/why-colombia-needs-a-more-progressive-tax-system on 11/4/2016.

radical changes and developed quickly over the past decade, some remote regions of Colombia are still undeveloped and lack basic necessities. Social suffering is therefore a reality for many in Colombia.

In a country with strong socio-economic inequalities and criminality such as Colombia, it could be argued that the connection between experiences of misery and deprivation and structural inequalities affect all those in the poorest strata of the population equally. No doubt, *mestizos* living in Colombian slums or non-ethnic *campesinos* in remote rural areas experience the same social difficulties as their indigenous or black neighbours. However, because of their ethnicity which ties them to a geographical place and a shared colonial history, indigenous people and Afro-Colombians are grossly over-represented in the suffering part of the population.

Exploring the collective and ethnic dimension of social suffering in Colombia therefore poses some challenges. These challenges relate to the close proximity between the social reality of *mestizo* and indigenous/black populations (especially in the countryside) but also to the lack of ethnically differentiated data. Indeed, data relating to the usual indicators of social suffering in relation to each ethnic group are not systematically available. This deficit and the negative impact of such a deficit on the respective ethnic groups are acknowledged by state institutions themselves and represent a certain form of disregard for these populations. For example, a CONPES document recognises that "the deficit of reliable and recurrent statistical and sociodemographic information about the black or Afro-Colombian population has generated inconsistencies and imprecision in the formulation of public policies for that sector of the population".[366]

Data, however fragmented, are nonetheless widely available from both state and non-state institutions and a careful analysis reveals the negative social experiences to which indigenous and Afro-Colombian populations are subjected. Clinical analysis of mental health issues would improve our understanding of the phenomenon but the field of ethno-mental health care practice is not developed very well in Colombia at this stage.

Social suffering and the indigenous peoples

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[366] CONPES, "Documento Conpes 3310: Política De Acción Afirmativa Para La Población Negra O Afrocolombiana," (2004), 12.

The armed conflict destabilising Colombia's countryside is one of the main reasons behind indigenous peoples' suffering in the country. Indeed, a 2006 UNHCR report highlighted the "ethnic and racial dimension of the armed conflict in Colombia".[367] Indigenous territories are usually located in remote areas of the country with low state presence. These regions are plagued by illegal activities related to the armed insurgency and drug trade. Between 1985 and 2006, 1641 indigenous people were killed, mostly by the armed groups: FARC-EP, ELN and paramilitaries (AUC).[368] Indigenous leaders are the target of this deadly violence. They are victims of intimidation and sometimes murder.[369]

Because of this geographical reality, indigenous people suffer greatly from forced displacement. Numbers vary but Rodolfo Stavenhagen considers "that 12 per cent of Colombia's displaced people are indigenous". He further describes the situation: "there were 128 incidents of mass displacement of indigenous people in at least 63 municipalities between 1995 and 2003, affecting 28,000 people, while 12,650 indigenous people were displaced under pressure from the armed groups in 2002".[370] Displaced indigenous communities swell the slums of big cities such as Bogotá where they end up begging for food.[371] Indigenous women and girls are particularly vulnerable in the city as they are forced to do low paid domestic work without the formal legal protection guaranteed to workers and, in some regions, such as Chocó or Vaupés, young girls work as prostitutes to survive.[372]

The armed conflict and other illegal activities are major factors of land dispossession but the environmental destruction resulting from the exploitation of natural resources (oil, coal, gold, timber, water) equally fuels the land alienation that impacts the lives of many indigenous people in Colombia. The environmental degradation is further exacerbated by the aerial fumigation of coca crops with glyphosate. This radical method of eradicating coca production has very negative effects as the herbicide destroys indiscriminately all plant life and contaminates the soil and rivers.

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[367] Instituto Interamericano de Derechos Humanos, "Colombia, Desplazamiento Indígena Y Política Publica: Paradoja Del Reconocimiento," (San José de Costa Rica: ACNUR, 2006), 1.
[368] Ibid., 1-2.
[369] Rodolfo Stavenhagen, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Mission to Colombia," (United Nations, 2004), 11.
[370] Ibid.
[371] Ibid.
[372] Sanchéz Botero, "Los Pueblos Indígenas En Colombia. Derechos, Políticas Y Desafíos," 30.

When they are not victims of violence or land dispossession, indigenous people are still victims of poverty. Socio-economic indicators show the dire situation of indigenous people in Colombia. According to the Ministry of Health, 11.5% of citizens located in the lowest level of wealth (wealth index – *indice de riqueza*) are indigenous.[373] This means that indigenous people experience hunger but also that they have a much lower access to basic services such as electricity or running water.[374] For example, in the second largest indigenous group in Colombia, the Wayuu, an estimated 40,000 people (about 10% of the total Wayuu population) suffer from extreme thirst and hunger causing very high mortality rates amongst children.[375] In this case, the Río Ranchería project (a dam and deviation of the river) is blamed for being one of the major reasons for the lack of water affecting Wayuu communities in the Guajira as the Río Ranchería is the only sizeable river on the peninsula. Indeed, the relocation of 26 km of the river to develop the coal mining activities of *Cerrejón* had a terrible environmental impact and ruined the lives of all the indigenous communities depending on its water for their livelihood. [376]The *Río Ranchería* issue perfectly illustrates the close connections between land dispossession and poverty.

Access to education represents another social issue for the indigenous people of Colombia. Only 71.4% of indigenous people are literate while the national average is 91.6%.[377] This sharp difference is rooted in the lower school attendance of indigenous people at all ages with an abysmal gap between indigenous and non-indigenous people for the 12-17 years old age group category (8.81% for indigenous people while the national average is of 77.8%).[378]

All of these problems sometimes drive indigenous people to take their own lives. Colombia has been hit by waves of indigenous suicides.[379] The particular case of the *Embera* community

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[373] Ministerio de Salud y Protección Social, "Perfil Epidemiológico De Pueblos Indígenas De Colombia (Parte 2)," (Bogotá 2010), 30.
[374] Ibid.
[375] Retrieved from http://www.noticiasrcn.com/nacional-pais/nos-estamos-muriendo-hambre-indigenas-wayuu on 12/11/2016.
[376] "¿Dónde está el agua del río Ranchería? La sequía de los wayú por una represa" retrieved from https://noticias.caracoltv.com/colombia/donde-esta-el-agua-del-rio-rancheria-la-sequia-de-los-wayu-por-una-represa on 14/09/2018.
[377] Ministerio de Salud y Protección Social, "Perfil Epidemiológico De Pueblos Indígenas De Colombia (Parte 2)," 31.
[378] Ibid., 32.
[379] Retrieved from http://www.elespectador.com/noticias/nacional/suicidios-enlutan-indigenas-articulo-546903 on 12/11/2016

in Western Colombia attracted a lot of media attention because of the young age of those committing suicide (13 to 17 years old) and UNICEF analysed the situation in a report on indigenous suicides in Peru, Brazil and Colombia.[380] If accurate data about indigenous suicide in Colombia is difficult to find, it is estimated that the rate of suicide within indigenous communities is of 500/100 000 compared to 4.4/100 000 for the Colombian population as a whole.[381]

The consequence of all these elements is that some indigenous peoples of Colombia – those most vulnerable – are in danger of extinction.[382] For example, in less than 20 years, the number of Nunak People, a nomadic group from the Amazon, decreased from 1200 to 500 individuals.[383] The very existence of this group is, therefore, now under threat.

For the indigenous people of Colombia, "the problem of suffering – expressed through the narratives of territorial alienation, loss of autonomy, struggle for land and resistance – acquires an identity aspect and a political and ethical meaning which is urgent to recognise".[384] Indeed, given the strong identification between indigenous people in Colombia and their land, the disrespect given to their territorial rights is a major source of suffering for many indigenous communities and the foundation of their claims for recognition. Indigenous attachment to their land for cultural and spiritual reasons is a well-known aspect of indigenous life, the severance of which can be dramatic for indigenous people. In the case of the indigenous people of Colombia, however, this land alienation and lack of genuine territorial control engenders other socio-economic problems and is partly responsible for the high levels of violence exposure, poverty and lack of basic services that these communities suffer from. The complex relations between state and non-state actors in the current territorial crisis affecting indigenous communities in Colombia will be analysed later in this chapter in order to establish a relationship between this crisis and Colombian institutions (or lack of).

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[380] UNICEF, "Suicidio Adolescente En Pueblos Indígenas. Tres Estudios De Caso," (Panamá, 2012).
[381] Johan S. Lopera Valle and Sara Rojas Jiménez, "Salud Mental En Poblaciones Indígenas. Una Aproximación a La Problemática De Salud Publica," *Medicina U.P.B* 31, no. 1 (2012): 45.
[382] Retrieved from http://www.acnur.org/t3/noticias/noticia/colombia-continua-peligro-de-extincion-para-algunos-pueblos-indigenas/ on 11/11/2016.
[383] Humanos, "Colombia, Desplazamiento Indígena Y Política Publica: Paradoja Del Reconocimiento," 4.
[384] Mónica Espinosa Arango, "Memoria Cultural Y El Continuo Del Genocidio: Lo Indígena En Colombia," *Antípoda : Revista de Antropologia y Arqueologia.*, no. 5 (2007): 55.

Social suffering and the Afro-Colombian people

Afro-Colombians suffer mostly from the same problems as the indigenous population, but with some differences mainly due to their more urban location. Indeed, while indigenous peoples live mostly in remote rural areas, black communities live both in remote rural areas, such as the Pacific coast, and in some large urban centres such as Cali or Cartagena.

Afro-Colombians living on the Pacific coast share the same experience of exposure to violence as indigenous people. Indeed, Black communities also suffer greatly from the armed conflict in Colombia and in total 12.3% of the Afro-Colombian population is in a situation of forced displacement (and 98.3% of them live below the poverty level)[385] because their lands are located in areas of lawlessness where narco-traffic, guerrilla and paramilitary activities are increasing ever since the early 90s. The armed conflict and other illegal activities are major factors of land dispossession for black communities as paramilitaries in particular dislodge them from their newly acquired collective lands to open up the land for new legal (palm) and illegal (coca) cultivation. The alienation of black communities from their land also results from the exploitation of natural resources (oil, coal, gold, timber, water) which plays a role in the dispossession of indigenous land and rural Afro-Colombians also have to suffer the effects of aerial fumigation with toxic herbicides. Afro-Colombians also sometimes have to compete against indigenous people to have their land recognised as part of their territory.

Poverty is a problem for both rural and urban Afro-Colombians. Several measurements of economic marginality such as the poverty line or unsatisfied basic needs index show that poverty and extreme poverty impact gravely the life of the Afro-Colombian population.[386] In Buenaventura, an almost entirely black city, up to 80% of the population lives in poverty.[387] This general economic marginalisation reflects the fact that almost 15% of the Afro-Colombian population suffers from hunger. This is twice as many as the average population (7.22%).[388] Afro-Colombians are therefore more likely to have deficiencies in important oligo-elements

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[385] UNHCR, "Situación Colombia: Afrodescendientes (Hoja Informativa)," (2012).
[386] Cesar Rodriguez Garavito, Tatiana Alfonso Sierra, and Isabel Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," (Bogota: Observatorio de discriminación racial, 2008), 30-31.
[387] De Roux, "Políticas Públicas Para El Avance De La Población Afrocolombiana: Revisión Y Análisis," 14.
[388] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 31.

and vitamins than the rest of the population.[389] Living conditions further reflect this economic marginalisation since the access of black communities to basic services such as running water, sewage systems and access to electricity is a lot lower than the average population and impact their health and social well-being.[390]

Black people in Colombia, and urban Afro-Colombians in particular, face a problem which affects less the indigenous people: racial discrimination. Indeed, while the concept of racism or racial discrimination are rarely used in reference to the negative social experiences of indigenous people in Colombia, it is becoming very common amongst academics to use these concepts to describe the social reality of the Afro-Colombian population.[391] The myth of Latin America being a "racial democracy" is increasingly questioned and debates over the existence of racism in the region, and in Colombia in particular since the 1991 constitution, tend to expose increasingly the phenomenon of racism. Many authors have seen behind the constant invisibilisation of Afro-Colombians in Colombian history a type of "racism which refuses to say its name".[392] Some court cases have however made the phenomenon of racism visible in Colombian society. For example, a *tutela* was accepted by the constitutional court after two black sisters were denied access to a nightclub because of the colour of their skin. The court sentence resulting from the *tutela* (Sentencia T-1090/05) represents one of the first case of recognition by legal institutions of the existence of everyday racism in Colombia.[393]

Olivier Barbary conducted an in-depth survey of socioracial segmentation and the perception of discrimination in Cali, the capital of the Valle del Cauca department in Western Colombia. The responses from the survey showed that discrimination definitely exists in the city even if the segmentation factor for black communities is not as strong as in some North American

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[389] Information retrieved from https://www.minsalud.gov.co/Paginas/De-qu%C3%A9-se-enferman-los-afrocolombianos.aspx on 12/11/2016.

[390] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 54-57.

[391] Peter Wade's work is a good example of this acknowledgment and research about racism. See: Peter Wade, "Patterns of Race in Colombia," *Bulletin of Latin American Research* 5, no. 2 (1986); *Race and Ethnicity in Latin America*; "Multiculturalismo Y Racismo." The development of an Observatory of Racial Discrimination – *Observatorio de Discriminación Racial* through the *Universidad de los Andes* (http://www.odracial.org/) is another good example of these changes.

[392] Elisabeth Cunin, "El Negro, De Una Invisibilidad a Otra: Permanencia De Un Racismo Que No Quiere Decir Su Nombre," *Palabra*, no. 4 (2003).

[393] Donny Meertens, "Discriminación Racial, Desplazamiento Y Género En Las Sentencias De La Corte Constitucional. El Racismo Cotidiano En El Banquillo," *Universitas Humanística*, no. 66 (2008).

cities and operates more at a micro level. Interestingly, 55% of the people surveyed cited black people as the most discriminated category but only 0.5% cited indigenous people.[394] This element correlates with another finding about labour discrimination in Bogotá which showed that indigenous persons were less susceptible to be discriminated against than Afro-Colombians when applying (at least in Bogotá).[395] Indeed, racism towards Afro-Colombians in the labour market is a well-established fact. Afro-Colombians generally occupy positions which necessitate less qualifications and which are less remunerated.[396] With equal qualifications, they are less likely to be called for an interview than mestizos and indigenous people when applying for work.[397] Unemployment therefore affects Afro-Colombians in big urban centres with a majority mestizo population because of discrimination but it also affects Afro-Colombian communities in black regions such as Choco because of lack of opportunities. In Buenaventura for example, unemployment reached 29% and sub-employment 35% in 2010.[398] Work conditions for Afro-Colombians on the Pacific coast are difficult as they usually serve as cheap labour on palm plantations.

Illiteracy is another social problem affecting Afro-Colombians. As almost twice as many Afro-Colombians as *Mestizos* are considered illiterate.[399] This low literacy rate reveals a broader problem with education for Afro-Colombian communities. 11% of Afro-Colombian children do not attend primary school and 27% do not attend secondary education.[400]

Low levels of primary and secondary education means that access to tertiary education therefore remains difficult. According to a 2004 CONPES document, only 14% of Afro-Colombians studied at the tertiary level while the average for non-Afro-Colombians is 26%.[401] Beside the difficulties inherent to poverty and lower levels of prior education, research has also

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[394] Olivier Barbary, "Segmentacion Socioracial Y Percepción De Discriminaciones En Cali: Una Encuesta Sobre La Población Afrocolombiana," *Desarollo y Sociedad*, no. 47 (2001): 126.

[395] César Rodríguez Garavito et al., "La Discriminación Racial En El Trabajo. Un Estudio Experimental En Bogotá," (Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad, Dejusticia, 2013), 18.

[396] Ibid., 7-8.

[397] Ibid., 18.

[398] De Roux, "Políticas Públicas Para El Avance De La Población Afrocolombiana: Revisión Y Análisis," 14.

[399] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 41-44.

[400] Ibid., 43.

[401] CONPES, "Documento Conpes 3310: Política De Acción Afirmativa Para La Población Negra O Afrocolombiana," 21.

shown the persistence of "everyday racism" in tertiary institutions where Black students suffer from isolation, racial stereotyping and paternalist attitudes. [402]

Research has shown that mainstream media further play a role in the reproduction of racial stereotypes as they relate blackness with hyper-sexuality, strength, folklore and happiness, dance, servility and social problems.[403] A paradigmatic example of this form of misrecognition can be found in the way mainstream media have covered debates in Colombia (and especially in Cartagena) over the possible prohibition of a popular dance, *la champeta*. *La champeta* is a popular urban erotic dance which originated in black *barrios* in Cartagena, on the Caribbean coast. Because of its hyper-sexualized dimension, the dance is described by its detractors as increasing problematic sexual behaviours such as unwanted pregnancies, child sexual activities, rape and paedophilia. While the sexual description of the dance is accurate, the emphasis on the relation between this erotic dimension and its African origins along with the depictions of sweating black bodies moving vigorously in the middle of a pandemonium of alcohol and loud music reinforces the link between Afro-Colombians and "wild" behaviours in the social imaginary of the nation.[404]

Given all these social difficulties, it is therefore not surprising that the life expectancy of Afro-Colombians is a lot lower (64.6 for men and 66.7 for women) than the average for the Colombian population taken as a whole (70.3 for men and 77.5 for women). These numbers mean that the average Afro-Colombian woman lives 10.8 years less than the average Colombian woman.[405]

As we can see, and similarly to indigenous people in Colombia, one of the major sources of social suffering for black communities is land alienation. Because of their lack of genuine territorial control, black communities face forced displacement bycriminal groups, difficult

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[402] Oscar A. Quintero Ramirez, "El Racismo Cotidiano En La Universidad Colombiana Desde La Experiencia Vivida Por Los Estudiantes Negros En Bogotá," *Universitas humanística*, no. 77 (2014).
[403] Lewis Alexandra León Baños, "Imaginarios Sobre Lo Étnico-Racial Negro En La Agenda Noticiosa. Un Pre-Texto Para Seguir Cuestionando-Nos," (Cartagena de Indias: Universidad de Cartagena, 2012), 24-30.
[404] On the racialization/naturalisation of La Champeta, see Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*, chapter 5.
[405] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 29-30.

economic development and poverty. On top of that, Afro-Colombians, who are more present than indigenous people in urban centres, also have to live with the difficulties inherent to living in the poorest areas of Colombia's cities where they face the extra weight of racial discrimination. Again, the complex relations between this dire situation, non-state actors and state institutions will be analysed later in the Chapter.

In conclusion, an analysis of all of the mainstream social indicators demonstrates that indigenous people and Afro-Colombians still experience great social difficulties in Colombia. Such an assessment therefore leads one to wonder why the impressive legislative framework developed to improve the wellbeing of these ethnic groups through a politics of recognition has not yielded the expected results.

The 1991 constitution: a neoliberal project?

It could easily be argued that the 1991 constitution was a strategic move by the Colombian state towards an "indirect government" strategy in a chaotic time characterised by the weakening of the central state bordering on total loss of control.[406] Christian Gros underlines the potential benefits of such a strategy for the Colombian state: "low cost presence in vast regions ignored until then; environmental protection and valorisation of biodiversity; quarantine line in front of subversive or criminal groups; quest for legitimacy at the national and international level; implementation of self-sustained development programmes; etc.".[407] The crux of the argument is that the self-interest of a state committed to neoliberal reforms would in fact be hidden behind the façades of ethno-cultural recognition, local development, democracy and sustainable development. It could also be argued that the Colombian government was willing to recognise and grant differentiated rights to indigenous people and Afro-Colombian communities in order to co-opt them and reduce the appeal of left-wing radical groups amongst these communities. As Jean Jackson explains, "by co-opting indigenous organizations the government can weaken, if not neutralize, claims for political

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[406] James Arocha, "Inclusion of Afro-Colombians: Unreachable National Goal?," *Latin American Perspectives* 25, no. 3 (1998).

[407] Christian Gros, "Indigenismo Y Etnicidad: El Desafío Neoliberal," in *Antropología En La Modernidad: Identidades, Etnicidades Y Movimientos Sociales En Colombia*, ed. Victoria Uribe and Eduardo Restrepo (Bogotá: ICAN, 1997), 48.

autonomy" and the remaining claims for cultural autonomy are easier for the state to accommodate without threatening its own political and economic interests. Jackson continues and explains the result of such accommodation: "Colombian Indian communities retain their languages and have input into the Ministry of Education's school curricula and the Ministry of Health's local programs, but their members become loyal, law-abiding citizens rather than dangerous revolutionaries".[408] Jackson's observation highlights the potential problem of pacification/normalisation identified by Wendy Brown.

Following this argument, the state would therefore compensate for its institutional weaknesses through decentralisation and delegation of powers. However, while the recipients of these new policies could doubtlessly benefit from such decentralisation and delegation of power, a corollary to such institutional weakness is the difficulty to create mechanisms for the implementation of these new regulations and laws which appear genuinely progressive and benevolent on the surface but are in actuality enforced with great difficulty. This phenomenon is particularly clear in the Colombian case. CONPES documents are a clear example of this problem. CONPES is a technocratic institution. It is the highest planning authority at the national level and is responsible for coordinating social and economic policies.[409] In theory, its recommendations guide the implementation of development politics. However, most of the documents elaborated by CONPES with an ethno-development agenda are vague and hardly explain how the recommendations are supposed to be carried out.[410] In other cases, official documents describe in a long and tedious way different bureaucratic mechanisms. CONPES and other official state institution's documents are therefore symptomatic of the broader issues related to the implementation of recognition policies in Colombia which I now wish to explore. Problems of implementation might not however be the only issues related to the legal recognition of ethnic groups.

Before I analyse the politics of recognition related to self-determination, I wish to mention that many issues still arise even if we disregard the "radical" issues of political representation and of territorial autonomy to focus instead on less radical demands for cultural recognition. Indeed, the recognition of indigenous culture also creates many problems, as it usually undergoes a simplification and folklorisation process in order to be made intelligible to non-indigenous state

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[408] Jackson, "Culture, Genuine and Spurious: The Politics of Indianness in the Vaupés, Colombia," 8.
[409] Retrieved from http://www.eltiempo.com/archivo/documento/MAM-221821 on 11/11/2016.
[410] For example, se CONPES documents 3169 (2002) and 3310 (2004).

structures and to bend to legal definitions. These simplification and folklorisation processes are happening alongside the commodification of indigenous culture and are symptomatic of the process of reification of identities (identified by authors such as Fraser) that may arise from "recognition" policies. This commodification of indigenous culture results principally from the state's willingness to develop eco and ethno-tourism in Colombia. According to the Ministry of Environment and the Ministry of Development, eco and ethno-tourism projects would be a good way to help marginalised communities through the creation of jobs related to the development of "eco-shops" and "eco-shows" in indigenous territories. In this way, tourism agencies open up the "authentic" and "sacred" places of indigenous people for wealthy foreign tourists.[411] The fact that the *Guajira Peninsula* has become a hot spot of eco/ethno-tourism despite the grave socio-environmental degradation affecting many Wayuu communities is typical of the ambiguities embedded within the policies of recognition promoted by the state.

Institutional misrecognition? Land rights and indigenous people

The delegation of power to the *cabildos* has created its own problems and difficulties in regard to the political authority of community leaders who are now selected much more for their knowledge and understanding of the state apparatus than for their traditional and ancestral wisdom.[412] The burden on the shoulders of indigenous leaders is therefore heavy as they still need to be experts and recognised as such in indigenous matters (cosmology, rituals, language) but at the same time also need to be fluent in Spanish and demonstrate a great understanding of the non-indigenous world and all its cultural and bureaucratic procedures.[413]

The financial transfers from the state to the *resguardos* are also the source of further issues. Not only do these transfers sometimes attract people seeking personal benefit and lead to corruption,[414] they also create extra administrative and bureaucratic burdens for the communities that weaken their traditional authorities.[415] These administrative and bureaucratic

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[411] Astrid Ulloa, *The Ecological Native : Indigenous Peoples' Movements and Eco-Governmentality in Colombia* (New York: Routledge, 2005), 261-66.

[412] Laurent, "Dans, Contre, Avec L'etat: Mouvement Indien Et Politique(S) En Colombie, Vingt Ans Après," 151.

[413] Jackson, "Culture, Genuine and Spurious: The Politics of Indianness in the Vaupés, Colombia," 14.

[414] Laurent, "Dans, Contre, Avec L'etat: Mouvement Indien Et Politique(S) En Colombie, Vingt Ans Après," 151.

[415] Gow, "Can the Subaltern Plan? Ethnicity and Development in Cauca, Colombia."

processes further weaken the traditional communal authorities who can only receive the money if they are recognised as such by the *oficina de Asuntos Indigenas* (Indigenous Affairs office) from the ministry of interior. This means that these authorities therefore need the approval from the state to be able to exercise their role.[416] These bureaucratic and grassroots planning processes are not always successful and Jean Jackson explains that the history of development in the Vaupés region "reveals a familiar pattern of preliminary study, implementation, and, frequently, failure, followed by excuse-making, bickering, and mutual finger pointing among rival agents at local and national levels".[417] As we saw in the previous chapter, the bureaucratic demands related to the transfers of funds from the central government to the indigenous authorities are also complex and require much quality human resources from the communities. The traditional authorities, therefore, also appear very dependent on external help and collaboration from "outsiders" such as development experts and international NGOs and can sometimes be perceived as weak. Let us also remember that the institution of the *cabildo* is in itself rooted in colonial practices. It is also an Andean model of indigenous governance that was unknown for indigenous people in the lower plains and forests but had to be adopted in order for them to be recognised by the state.[418] These phenomena contradict a theory of recognition that emphasises the importance of self-affirmation (such as Fanon's) to counter the internalised effects of misrecognition.

The quality and location of the land located within *resguardos* – which are usually covered with dense forests in remote areas unfit for agricultural use – is problematic for a number of reasons.[419] The "environmental imperative" represents a first obstacle to a genuine indigenous autonomy and control over their territories. Indeed, Astrid Ulloa argues that the situation of indigenous people in the Sierra Nevada de Santa Marta (but this remark applies to the vast majority of indigenous people in Colombia) reveals a deep contradiction: "they cannot consolidate their autonomy over territory and resources because they are tied to national and transnational environmental policies and processes that place them firmly within international

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[416] Laurent, "Con Bastones De Mando O En El Tarjetón," 51.
[417] Jackson, "Culture, Genuine and Spurious: The Politics of Indianness in the Vaupés, Colombia," 5.
[418] Ibid., 13.
[419] John Jairo Rincón García, "Diversos Y Comunes: Elementos Constitutivos Del Conflicto Entre Comunidades Indígenas, Campesinas Y Afrocolombianas En El Departamento Del Cauca " *Análisis Político* 22, no. 65 (2009).

eco-markets".[420] Indigenous people definitely play the "protectors of the environment" card to their benefit to recuperate land and extend their *resguardos* but the mainly imagined ecological dimension of their territorial project sometimes clash with the imperatives of development. Building roads, water treatment plants and connecting villages to electricity and communication networks do not really fit with the image of ecological havens promoted by NGOS.[421] The emphasis by indigenous people, NGOS and the state on the essentially ecological aspect of indigenous lifestyles also creates unjust situations whereby non-indigenous *campesinos* are left aside from development projects as a whole and of sustainable development projects in particular. Buying non-indigenous campesino land is even now understood by the indigenous communities, the state and NGOS as a "cleansing" process (*saneamiento*).[422] Since *campesino* and black communities also need land and suffer the same living conditions as indigenous people, this process of extension of the *resguardos* creates conflicts which threaten conviviality between communities and raise questions about the potentially divisive dimension of multiculturalism (the "divide and rule" issue).[423] Besides, the fact that indigenous lands are collective and inalienable reduces the autonomy of indigenous communities to dispose and exploit the land as they would wish to do.

Indigenous communities also have to deal with legal contradictions when they elaborate their developmental plans. For example, article 31 of Law 152 of 1994 states that the development planning process needs to be in agreement with the customs and cultural practices of the indigenous communities while article 24 of Law 60 outlines and restricts the way in which financial transfers from the government are to be used by assigning a percentage of the total amount to go to education (30%), health (25), drinking and sanitation (20%) and only leaving the remaining 25% to be allocated in other ways.[424]

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[420] Astrid Ulloa, "The Politics of Autonomy of Indigenous Peoples of the Sierra Nevada De Santa Marta, Colombia: A Process of Relational Indigenous Autonomy," *Latin American and Caribbean Ethnic Studies* 6, no. 1 (2011): 92.

[421] Diana Bocajero, "Deceptive Utopias: Violence, Environmentalism, and the Regulation of Multiculturalism in Colombia," *Law and Policy* 31, no. 3 (2009): 317.

[422] Ibid., 316.

[423] Rincón García, "Diversos Y Comunes: Elementos Constitutivos Del Conflicto Entre Comunidades Indígenas, Campesinas Y Afrocolombianas En El Departamento Del Cauca " 74.

[424] Gow, "Can the Subaltern Plan? Ethnicity and Development in Cauca, Colombia," 250; Catherine González, "Institucionalización Y Movilización En Colombia: ¿Dos Caminos Divergentes En La Democratización Indígena?," *América latina hoy*, no. 59 (2011): 79. These restrictions are repeated with minor variations in subsequent laws.

The fact that subsoil resources remain the property of the state impedes a truly autonomous economic development for indigenous communities. Of course, this problem is closely linked to the "environmental imperative" imposed upon indigenous development. It is necessary to point to the state's ambiguous discourse over that matter by mentioning that the ecological zeal of the state and its support for sustainable development does not condemn the perspective of economic benefits based on oil or minerals extraction as such. Instead, subsoil natural resources can and are exploited in great quantities but only by (and for) actors who are outsiders vis-à-vis the indigenous communities. The mechanism set in place to ensure the consent and participation of the communities, the *consulta previa*, is usually quite weak when facing economic imperatives. While indigenous people consider that legal mechanism as one of the main tools to defend their identity and protect their territories through dialogue between equals, governments tend to reduce the prior consultation process to an obstacle for economic development. The deliberative dimension of the process is downplayed and the mechanism is reduced to a "box ticking" formality.[425] It sometimes takes the indigenous communities drastic measures to see this right respected. For example, the Uwa people had to threaten to commit collective suicide to prevent oil exploration from taking place in their territory.[426] The tensions between a cultural recognition that emphasises the environmental imperative and the economic requirements of indigenous communities represent a potential clash between recognition and redistribution.

Another key obstacle to territorial autonomy for indigenous communities relates to the presence of guerrillas, paramilitaries and actors linked to drug production and trafficking on their territories. Coca production creates environmental and health hazards on indigenous land because of the chemicals used in the process of producing cocaine itself but also, and most importantly, because of the fumigations taking place in order to eradicate the crops.[427] Even the Colombian army represents a threat to indigenous autonomy and security as the cases of the "false positives" scandal,[428] sexual abuses and robberies have demonstrated.[429] The presence of armed and criminal groups on indigenous territories leads to widespread and well-

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[425] Santamaría Ortiz, "La Consulta Previa Desde La Perspectiva De La Negociación Deliberativa."
[426] Van Der Hammen, "The Indigenous Resguardos of Colombia: Their Contribution to Conservation and Sustainable Forest Use," 42.
[427]Ibid., 35.
[428] The "false positives scandal" refers to Colombian soldiers killing innocent people in rural areas and presenting them to the army as guerilleros in order to receive bonuses.
[429] Ulloa, "The Politics of Autonomy of Indigenous Peoples of the Sierra Nevada De Santa Marta, Colombia: A Process of Relational Indigenous Autonomy," 99-100.

documented cases of basic human rights violations. These in turn feed the indigenous diaspora in the main urban centres which create further problems and alienation for them.

The responsibility of state institutions in this situation is a matter of debate. In some cases, state institutions are directly related to these issues. Aerial fumigation and military encroachment on indigenous lands are obvious cases of such direct relations. The proliferation of coca crops and illegal economic activities can also be linked to the lack of state investments and development in the impoverished remote areas of the country where the access to land remains an issue. Furthermore, it could be argued that the state's willingness to recognise indigenous territorial autonomy over territories which it barely controls is a sign of lack of genuine recognition. The ambiguous ties between paramilitary forces, a large landholding aristocracy and some state officials also raise questions about the involvement of the state in the crisis plaguing more indigenous regions of the country. More generally this particular issue highlights the internal divisions and contradictions within state institutions and their ambiguous, ever-changing, attitude towards indigenous recognition. This problem equally informs the relations of recognition between the state and Afro-Colombian communities living on the Pacific coast. In the final section I will argue that these changes and ambiguities can be explained by the instrumental use of ethnic recognition by the state to fulfil its own interests.

Indigenous Political representation

As we have seen, the reserved seats policy guarantees indigenous representation in the democratic institutions of Colombia. Indigenous representatives in Colombia almost exclusively come from indigenous parties. In 1994, two indigenous representatives were elected as senators.[430] Indigenous representation in the National Congress peaked in the 1998-2002 period with four representatives in the Senate and two deputies in the Chamber but then decreased to four representatives from 2002 to 2006 and three from 2006 to 2010.[431] Interestingly, "between 1998 and 2010, non-indigenous representatives actually authored more bills relating to Indigenous and/or Afro-Colombian populations (85 bills by 147 non-ethnic

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[430] Laurent, *Comunidades Indígenas, Espacios Políticos Y Movilización Electoral En Colombia, 1990-1998 : Motivaciones, Campos De Acción E Impactos*, 186.
[431] Agrawal et al., "Political Representation & Social Inclusion: A Comparative Study of Bolivia, Colombia, Ecuador, and Guatemala," 24-26.

member of congress)" and "sixteen of those bills (18.8 percent) became Law" but "most of these 85 bills concentrated on recognition of ethnic celebrations rather than on concrete legal or social policies intended to improve the welfare and inclusion of those peoples".[432] Only one law with policy implications for indigenous people passed between 1998 and 2010 was authored by an indigenous representative. This law is the Law 691 of 2001 that relates to culturally inclusive health care mentioned earlier.[433] The impact of the reserved seats provision on indigenous policy, therefore, seems minimal.

Some authors argue that this mechanism poses serious challenges to indigenous communities and leadership since electoral politics follow a very different logic from traditional indigenous politics and the long history of indigenous social movements in Colombia.[434] While this might be true, the very negligible political weight of a few indigenous representatives in a Congress ruled by two main parties probably explain much more accurately the challenges faced by indigenous representatives within the democratic institutions of Colombia. This problem is typically faced by small minorities in democratic systems.

The reserved seats mechanism also created divisions amongst indigenous activists, organisations and parties as it nurtures political ambitions and appetites. The result is a worrying tendency towards more caciques for very few Indians that illustrates the "divide and rule" issue highlighted in the chapter on liberal multiculturalism. Indeed, there has been a multiplication of political actors claiming to represent indigenous communities without the close proximity necessary for such claims to be legitimate.[435] These political confusions led to an increase of blank votes for the special electorate that reached 59.67 % of the votes in 2006.[436] Indigenous leaders and parties have also attacked one another based on ideological, regional and sometimes personal grounds.[437] While a certain heterogeneity to the indigenous movement is natural and even beneficial from a democratic point of view, divisions resulting from the personal ambitions of individuals are corrosive and weaken the political power of indigenous people.

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[432] Ibid., 27-28.
[433] Ibid., 28.
[434] González, "Institucionalización Y Movilización En Colombia: ¿Dos Caminos Divergentes En La Democratización Indígena?," 83.
[435] Laurent, "Multiculturalismo a La Colombiana Y Veinte Años De Movilización Electoral Indígena: Circunscripciones En La Mira," 55.
[436] Ibid., 57.
[437] *Comunidades Indígenas, Espacios Políticos Y Movilización Electoral En Colombia, 1990-1998 : Motivaciones, Campos De Acción E Impactos*, 438-51.

Welfare: indigenous health care

The differentiated health care system implemented through the development of EPSI offers mixed results. The experience of EPSI seems to suggest some achievements. Indeed, I have shown in the previous chapter that some EPSI, such as Anaswayuu, are doing very well and have become respected health care providers in Colombia. The services they offer to indigenous and non-indigenous affiliates are varied and of good quality. The development of EPSI has also contributed to "increasing the leverage of Colombian Indigenous organizations" and increases their autonomy and cultural survival.[438] This increase of indigenous autonomy through differentiated health care services is even reinforced by the articles 83 to 88 of Decree 1953 of 2014 mentioned in the previous chapter. Differentiated health care for indigenous people in Colombia is therefore closely related to their territorial autonomy and the general decentralisation of Colombia's political system.

The development of EPSI also shows some shortcomings and challenges as it forces indigenous organisations to compete with one another for affiliates and to work within the neoliberal parameters imposed by the state's approach to health care. Because it has fostered competition between EPSIs, the current differentiated health system for indigenous people also creates tensions between EPSI and therefore undermines the indigenous ideal of solidarity.[439] EPSI therefore play a role in the fragmentation of the indigenous movement. The neoliberal emphasis on individual autonomy, when applied to holistic indigenous health care practices, also creates internal contradictions. The purpose of these institutions is to preserve and promote indigenous culture, but the neoliberal logic embedded within the functioning of these institutions in fact deny some key aspects of this culture. For example, it is often argued that indigenous culture favours cooperation while neoliberalism favours competition. Indigenous practices are, therefore, moulded on a neoliberal model and not entirely developed according to their own internal logic. Corruption issues amongst major EPSI such as the Dusakawi EPSI analysed in the previous chapter create further problems for the recognition and well-functioning of

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[438] Mignone, Nallim, and Gómez Vargas, "Indigenous Control over Health Care in the Midst of Neoliberal Reforms in Colombia: An Uneasy Balance." 101
[439] Ibid., 102-04.

differentiated health care services for indigenous people, even if corruption is far from being a solely indigenous problem in Colombia.[440]

The legal framework of ethno-cultural recognition developed as a result of the 1991 constitution, therefore, suffers from a number of shortcomings in regard to the indigenous population of Colombia. The reserved seat provision in the Senate and Chamber does not give as much political power to indigenous people as traditional indigenous social movements have. Worse, the presence of indigenous representatives seems to have contributed to an increased fragmentation, and, therefore, weakening, of the indigenous movement. Territorial rights come with a number of restrictions. One may want to ask what is the point of the recognition of indigenous territorial autonomy if this territorial autonomy covers undeveloped areas of the country that are under the constant threat of armed groups, drug lords, the army and the extractive industry. The fact that the right to prior consultation is rarely upheld reinforces the weaknesses of indigenous autonomy over land. Finally, indigenous culture is recognised and celebrated but the correlation of this cultural recognition is a folklorisation of indigenous culture becoming a consumption good for ethno-tourism projects. The recognition of indigenous autonomy and culture in the health sector has shown some promising, albeit sometimes contradictory, results. I will further develop how these issues relate to the theory of recognition in the last chapter.

Afro-Colombian territorial rights and political autonomy

Over 22,000 Afro-Colombian families were granted collective land titles over more than 2.36 million hectares under Law 70. This represents over 20% of the total land area of the Pacific region.[441] While the surface of land (re)distributed to Afro-Colombian communities is theoretically impressive, a critical analysis of the actual situation reveals important issues and also raises questions about the state's intention when granting land rights to black communities.

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[440] "Gerente de EPSI indígena Dusakawi, a la cárcel por corrupción" retrieved from https://www.opinionysalud.com/dusakawi-gerente-epsi-indigena-la-carcel-corrupcion-desnutricion-cesar/ on 11/3/2017.
[441] Asher, *Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands*, 162.

As I mentioned earlier, there are a number of restrictions placed on the type of land which can be claimed by Afro-Colombian communities.

First, Law 70 and the subsequent process of land titling were designed to benefit black communities living on the Pacific coast and leave the rest of the Afro-Colombian population in an unclear state of recognition. In fact, it could be argued that Law 70, with its strong emphasis on the Pacific coast, "solidified Colombia's racialized geographies by literally demarcating cartographies of blackness. As a result of this demarcation, blackness became paradigmatically associated with rural, Pacific, and riverine communities".[442] In other words, Law 70 reified a particular set of Afro-Colombian identities. The priority given to the Pacific therefore plays a role at the legislative level as the Pacific represents a benchmark against which other black communities are compared but also plays a role in the definition of black ethnicity.[443] Afro-Colombian communities elsewhere in Colombia have faced difficulties related to the recognition of their land claims – especially on the Caribbean coast and islands – [444] but also to the recognition of their specific identity since the social and cultural realities of Black communities differ widely from region to region. It is hard to see how the land rights outlined in Law 70 has much relevance to the majority of Afro-Colombians who live in urban settings since they do not benefit from it.

Second, Law 70 imposes strong environmental restrictions on black communities and, usually, the land under their control is to be conceived of as a natural reserve instead of as a land opened for large scale development projects by Afro-Colombians. Again, as it is the case for indigenous people, out of the total surface of land granted to Indigenous and Afro-Colombian communities, only a small portion is suitable for agriculture or livestock usage.[445] The land is also limited to non-urban areas.

Third, the region is actually under the threat of the extractive industry and of the many companies who have seen potential major economic benefits behind the ecological richness of

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[442] Roosbelinda Cárdenas, "Multicultural Politics for Afro-Colombians: An Articulation "without Guarantees"," in *Black Social Movements in Latin America : From Monocultural Mestizaje to Multiculturalism*, ed. Jean Rahier (New York: Palgrave Macmillan, 2012), 118.

[443] Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*, 34.

[444] Engle, *The Elusive Promise of Indigenous Development : Rights, Culture, Strategy*, 254-78.

[445] Rincón García, "Diversos Y Comunes: Elementos Constitutivos Del Conflicto Entre Comunidades Indígenas, Campesinas Y Afrocolombianas En El Departamento Del Cauca ".

the region. Indeed, the strong ecological restrictions imposed on the socio-economic development of Black communities contrasts sharply with the model of development supported by the government in the Pacific region.[446] Palm oil monoculture and intensive shrimp farming are particularly problematic in the area.[447] The detrimental effects on the environment of palm cultivation are well-known. Furthermore, such industry also has a very negative socio-economic impact on black communities since "many of them have now become sources of cheap labor for the plantations in a land that used to be theirs".[448] Intensive shrimp farming also plays a role in the environmental destruction of the areas where Afro-Colombian communities live since the industry plays an important role in the degradation of coastal areas and of mangroves in particular. As in the case of indigenous people the right to prior consultation is not upheld and Afro-Colombian communities have little power to stop the development of these industries in the region.[449]

Fourth, and similarly to the indigenous case, most of the land that has been granted to Afro-Colombian communities actually covers territories which are not under the control of the Colombian state but instead are territories disputed by armed actors, criminal groups and the Colombian army. This fourth issue related to land rights is embedded within a broader issue of systemic violence already mentioned in this chapter and in relation to which the state plays an ambiguous role. What is particularly worth signalling in the case of Afro-Colombian communities is the close relation between the land titling process and the phenomenon of forced displacement. In 2007, 252,541 persons were expelled from collective territories in the Pacific region. This represents 79% of the population having the right to land titling.[450] These communities are forced to relocate into urban refugee camps in slums where they suffer substandard living conditions. Paramilitary forces are usually responsible for these displacements and the land vacated by its legitimate occupants is subsequently used by primary industry companies.

In 2009, to answer the catastrophic situation of internally displaced Afro-Colombian communities, the Constitutional Court passed *auto* 005. *Auto* 005 aims at developing

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[446] Engle, *The Elusive Promise of Indigenous Development : Rights, Culture, Strategy*, 244.

[447] Escobar, *Territories of Difference. Place, Movements, Redes*, 69-110.

[448] Ibid., 81.

[449] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 37-39.

[450] Ibid., 35.

differentiated public policies for displaced black communities. More specifically, the court order mandates the design of protection plans for black communities in at risk regions, the undertaking of in-depth analysis of the state of affairs of these communities in their ancestral lands and the elaboration of assistance strategies for communities confined by the war.[451] Yet, as Roosbelinda Cárdenas notices, even if "auto 005 facilitated the reintroduction of Afro-Colombian issues into national-level government agendas", it was in fact not "devised as a multicultural initiative" but instead "a subsidiary order of a sentence concerned primarily with IDPs, not with Afro-Colombians; with forced displacement, not with territoriality".[452] This is despite the explicit mention of Afro-Colombians in the title of the *auto*.

An analysis of the materialisation of *auto* 005 at the society level highlights broader issues with the implementation of policies of recognition in Colombia and can be used as a paradigmatic example. Indeed, the process leading to the implementation of the *auto* is supposed to follow a three steps methodology of "increased awareness and socialisation", "elaboration of documents" and "implementation". Concretely this means the composition and multiplication of draft documents and plans vaguely outlining the issues at stake which are sometimes of poor quality and rarely target the issues of implementation. This phenomenon is illustrated in a report of the *Observatorio de Discriminación Racial* in Colombia which states that "the advances reported are limited to ideas, proposals, meetings, paperwork, and the design or adoption of general measures, from which the displaced Afro-descendent population has not benefitted directly".[453] It is therefore a logical consequence that "Of the six principal orders decreed by Order 005, all six merit the classification of NON-COMPLIANCE".[454]

Effectiveness of Afro-Colombian political representation?

There were two black representatives elected in the chamber of representatives in 1994, Augustin Valencia from the Conservative Party, and the activist Zulia Mena from a black party,

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[451] Cárdenas, "Multicultural Politics for Afro-Colombians: An Articulation "without Guarantees"," 123-25.
[452] Ibid., 124.
[453] César Rodriguez Garavito, Natalia Orduz Salinas, and Julián Berrío, "El Desplazamiento Forzado De Los Afrocolombianos. Evaluación Del Cumplimiento Del Gobierno Colombiano Del Auto 005 De La Corte Constitucional," (Bogotá: Observatorio de discriminación racial. Universidad de los Andes, 2010), 11.
[454] Ibid.

OBAPO (Organización de Barrios Populares y Comunidades Negras de Chocó), but the reserved seat provision was abolished for the 1998 election after the Constitutional Court challenged the constitutionality of article 66 in 1996.[455] The special electorate was reinstated in 2001 through Law 649 "which amended Article 176 of the Constitution to explicitly create two seats in the Chamber of Deputies for Afro-Colombians, one seat for Indigenous communities, one for minority political parties, and one for Colombians living abroad".[456] Four Afro-Colombian representatives were elected for the 2002-2006 period and another four for the 2006-2010 period. Two famous representatives came directly from Afro-Colombian parties: María Isabel Urrutia Ocoró (Alianza Social Afrocolombiana) and Silfredo Morales Altamar (Afrouninca). Afro-Colombian representatives authored many bills but only a few have been approved. For example, between 2006 and 2010, Afro-Colombian representatives authored 39 bills. Among these 39 bills, 15 had a direct relation with Afro-Colombian claims but only two were approved. The first "sought to allocate more federal resources to the *Universidad de la Amazonia* to provide financial aid to low-income students, especially internally displaced peoples and Afro-Colombian and Indigenous students" while the other bill "recognizes 'Petrónio Alvarez' Pacific Music Festival – a celebration of the traditions of Colombia's largely Afro-descendant Pacific Coast – as a national heritage".[457]

The mechanisms put in place to guarantee political representation within the state structures therefore raise questions. While I will not question the nature of political representation for minority ethnic groups here, two main issues deserve attention. First, the personalities of those representing Afro-Colombian communities can at times be seen as problematic. For example, Elizabeth Cunin underlines that major Afro-Colombian representatives such as María Isabel Urrutia Ocoró (Gold medal in weight-lifting during the Olympic games of Sydney in 2000) and Willington Ortiz (a retired international football player) were more popular for their sporting careers than for their political ideas, thereby reinforcing the racial stereotypes which commonly reduce black people to good dancers and sportsmen/women.[458] Indeed, neither Urrutia nor Ortiz had any prior link to Afro-Colombian struggles and according to Kiran Asher, "during their terms in office, they did little to address the socioeconomic inequality of the vast

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[455] Agrawal et al., "Political Representation & Social Inclusion: A Comparative Study of Bolivia, Colombia, Ecuador, and Guatemala," 26.

[456] Ibid.

[457] Ibid., 27.

[458] Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*, 49-50.

majority of blacks in the country, and especially in the Pacific region".[459] More activist candidates such as Zulia Mena who was elected to the chamber of representatives in 1994, on the other hand, lost their electoral support after being in office.

A second issue with the reserved seats mechanism relates to the fragmentation of Afro-Colombian political forces with a multiplication of candidates coming from many different organisations but also from the two main political parties claiming to represent the Afro-Colombian population. This is again the same potential mechanism of "divide and rule" that was highlighted with indigenous representation. The result of these divisions is a high level of abstention and a fragmentation of votes with elected candidates only receiving a tiny percentage of the total votes. This phenomenon is explained by the generally critical attitude of black organisations towards electoral politics.[460]

As it is the case with indigenous people, it could be argued that such a limited percentage of the total seats available give very little bargaining power to Afro-Colombian people within a representative system which is itself already arguably defective. However, the case of Afro-Colombian representation within the democratic institutions of the state is even more problematic since their representation in the Senate does not correspond at all to their demographic weight (approximatively 10% of the total population).

Welfare: racism and cultural survival

Welfare policies for Afro-Colombian people are not as extensive as welfare policies for indigenous people who benefit, for example, from a differentiated heath care system. Indeed, it is important to highlight the invisibility of Afro-Colombians in the health system. While Afro-Colombians are officially recognised as an "ethnic group", they do not benefit from the same differentiated health care advantages as indigenous people do. No Afro-Colombian EPS exist to this day and Afro-Colombian traditional medicine is not the object of state recognition. Law 691 of 2001 which is supposed to regulate the participation of ethnic groups in the general

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[459] Asher, *Black and Green: Afro-Colombians, Development, and Nature in the Pacific Lowlands*, 180.
[460] Agudelo, "Participation Politique Des Populations Noires En Colombie."

system of social security in Colombia does not apply to Afro-Colombian communities.[461] Welfare policies for Afro-Colombians are reduced to programmes aimed at decreasing negative stereotypes towards blacks and decreasing racism.

The Colombian state vowed to struggle against racism towards Afro-Colombians by criminalising racism and promoting and valorising Afro-Colombian culture. However, as we have seen at the beginning of this chapter, despite the requirement for the state to tackle the issue of racial discrimination expressed in several articles of Law 70, racism remains a major problem for black people in Colombia who are victims of racism when looking for a job or in their daily social life.

Beside the issues of racial discrimination on the labour market, we could argue that the new multicultural framework of Colombia only represents the move from one type of racism to another. Indeed, the move from a previous institutional invisibility to a new form of restricted over-visibility for Afro-Colombians represents the perpetuation of a subtle form of racism as Afro-Colombian culture is reduced to folkloric representations of muscular and sexualised bodies, dances and gastronomic particularities.[462] This stereotyping goes hand in hand with a certain increase in the commodification and reification of Afro-Colombian culture. The commodification aspect is exemplified by the touristic appropriation of the Palenque of San Basilio resulting from investments from the Ministry of Commerce, Industry and Tourism.[463] The reification aspect of Afro-Colombian culture can also be exemplified by the Palenque de San Basilio, symbol of heroic black resistance against slavery, which creates a hyper-black identity excluding non-Palenqueros blacks on the Caribbean coast from the valorisation inherent to this identity.[464] This symbolism could serve well a Fanonian approach to recognition but its folklorisation may in fact turn it into another form of pacification/normalisation by reducing it to a romanticised image of the past instead of the reality of an unjust present.

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[461] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 50.
[462] Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*.
[463] Retrieved from http://www.elheraldo.co/noticias/economia/palenque-le-apuesta-a-ser-destino-turistico-112562 on 11/03/2017.
[464] See Cunin, *Identidades a Flor De Piel. Lo 'Negro' Entre Apariencias Y Pertenencias: Mestizaje Y Categorías Raciales En Cartagena (Colombia)*, chapter 4.

The implementation of ethno-education programs for Afro-Colombian communities is supposed to reinforce Black identity and self-esteem. These policies are equally problematic. Indeed, the state implements these programs by placing ethno-educators in schools but does not make the necessary changes to the curriculum or teaching methodology for these policies to be relevant.[465] The quota system for Afro-Colombians in Universities also poses problems since this practice of affirmative action is purely quantitative and not qualitative. It focuses on numbers instead of broader institutional reforms and better academic outcomes for Afro-Colombians.[466]

The attitude of the state towards Afro-Colombian communities is therefore ambiguous. On the one hand, Law 70 is a ground-breaking legislative text that gives differentiated rights to Afro-descendants. On the other hand, there are also problems inherent to the Law itself and other problems related to its implementation. Regarding political representation it would seem that Afro-Colombian representatives never fully gained the political strength of Afro-Colombian social movements and seem detached from these popular bases. The reserved seat provision also appears to have divided the movement. The coincidence between the land titling process and the phenomenon of forced displacement is puzzling. It seems that the state was only willing to give title to lands which were out of its control. The environmental imperative represents another key restriction to Afro-Colombian autonomy over their territories. Finally, the celebration of Afro-Colombian culture does not prevent racism in Colombian society to plague the life of Afro-Colombians.

Conclusion

In this chapter, I offered an analysis of the experience of social suffering endured by indigenous and Afro-Colombian populations. I underlined many negative social indicators to describe the social suffering currently afflicting disproportionately both groups despite the extensive legal framework aimed at promoting the recognition of these populations in the Colombian society.

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[465] Rodriguez Garavito, Alfonso Sierra, and Cavalier Adarve, "El Derecho a No Ser Discriminado. Primer Informe Sobre Discriminación Racial Y Derechos De La Población Afrocolombiana," 45.
[466] José Antonio Caicedo Ortiz and Elizabeth Castillo Guzmán, "Indígenas Y Afrodescendientes En La Universidad Colombiana: Nuevos Sujetos, Viejas Estructuras," *Cuadernos Interculturales* 6, no. 10 (2008): 84.

I then highlighted the challenges and problems of indigenous recognition in the areas of indigenous land rights and political autonomy, of indigenous political participation, and of indigenous welfare policies (and I focused on the differentiated indigenous health care systems). I then analysed the many issues facing Afro-Colombian recognition through Law 70 in the area of Afro-Colombian land rights and political autonomy, Afro-Colombian participation, and Afro-Colombian welfare policies (policies against racism and for the preservation of Afro-Colombian culture). I highlighted problems with the formulation of the policies of recognition arising from the 1991 constitution and Law 70 but even more so, with the non-respect and problematic implementation of these policies. I will now turn to indigenous recognition in New Zealand and focus on the same types of differentiated rights policies. Both case studies will then be used to draw broader conclusions regarding policies of recognition in the last chapter.

Part III: Case study two: Recognition in New Zealand

Chapter seven: Māori Recognition in New Zealand

Introduction

In 1840, the representatives of the British Crown and various Māori chiefs assembled in Waitangi to sign the Treaty of Waitangi which was to become a founding document of New Zealand. Despite the controversial nature of the document and the inconsistencies between the English and Māori versions of the text, the Treaty is a foundation of New Zealand's current bicultural political model and is said to establish a partnership relationship between the Crown and Māori.[467] It is used as a tool for Māori to seek financial compensation for the historical wrongs they suffered through the process of colonisation. The Waitangi Tribunal has been charged, since 1975, with settling Treaty breaches.

In this chapter, I start with a brief overview of New Zealand's history with a focus on the process of colonisation. I then describe the content of the Treaty of Waitangi, analyse the controversies surrounding the different interpretations of the document, and pay particular attention to the concept of tino rangatiratanga (Māori self-determination). I also explain the relations between the Treaty and the concept ofbiculturalism. Then, I explain the role of the Waitangi tribunal in recognising Māori by establishing redistributive and restorative justice mechanisms. I analyse how Māori are recognised in contemporary New Zealand with an emphasis on three broad types of policies. First, I analyse policies related to their access and control over natural resources and pay particular attention to the 2014 Tūhoe Settlement.[468] Second, I focus on the political representation of Māori in New Zealand and analyse the reasons behind the development of a separate Māori representation mechanism in New Zealand's parliament. Third, I analyse welfare programs targeted at the Māori population and focus my

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[467] The idea of partnership and of Treaty principles can be traced back to a 1987 Court of Appeal case related to land rights: *New Zealand Maori Council v Attorney-General.* New Zealand Law Reports 1 (1987): 643
[468] Tūhoe Claims Settlement Act 2014.

attention on the Whānau Ora programme, a differentiated health care initiative that started in 2010.

The aforementioned differentiated policies for Māori are part of New Zealand's bicultural framework and express the importance given to the Treaty of Waitangi. The concept of biculturalism in New Zealand does not deny the multicultural demographic reality of New Zealand's society but rather emphasises the importance of recognising at a political level the differences between Māori and non-Māori. I will analyse these bicultural policies with the same theoretical framework as I analysed multicultural policies directed towards societal cultures in Colombia. Analysing such policies in a very different socio-economic and geographical context will allow me to draw stronger conclusions in chapter nine.

New Zealand history and political landscape

Pre-Colonial era (1280-1800)

New Zealand was first settled by Polynesian people in the 13th century BCE. These first settlers slowly began to develop a distinct culture and later became known as the Māori. As the Māori population increased, their culture underwent changes and regional differences arose. The Māori sustained themselves from fishing, hunting birds and sea mammals, harvesting plants and cultivating some root vegetables such as sweet potatoes and taro. Māori leadership was based on chieftainship and Māori society was structured around the whānau (extended family) and hapū (group of whānau). Iwi (tribes) were later formed and consisted of several related hapū. These tribal and family structures remain relevant to Māori society.[469]

The first encounter between Māori and European explorers happened in 1642 when Abel Tasman reached the northern coast of the South Island. This first encounter quickly turned violent and it would take another 127 years before the next encounter between Europeans and Māori, when Captain James Cook arrived in New Zealand in 1769.[470] From the 1790s, New Zealand was increasingly visited by sealing, whaling and trading ships. Contact between the

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[469] Ranginui Walker, *Ka Whawhai Tonu Mātou = Struggle without End* (London: Penguin, 2004), 24-43.
[470] Ibid., 78-79.

two civilisations became more common as Europeans and Māori exchanged goods. European guns and metal tools were exchanged mainly for food.

Early Settlements and the Treaty of Waitangi (1800-1840)

European settlement increased (in a relatively disorganised fashion) during the first decades of the 19th century. Different understanding of land ownership between Europeans and Māori, as well as the increasingly problematic behaviour of many settlers and lawless sailors, led to widespread Māori discontent. This situation played an important role in leading Māori chiefs to sign a treaty proposed by the British. On 6 February 1840, Captain Hobson and about forty Māori chiefs signed the Treaty of Waitangi at Waitangi in the North of the North Island. Subsequently, about 540 chiefs signed the Treaty.[471]

The Treaty of Waitangi was a problematic document in many aspects. First, the document was not signed by all Māori chiefs.. Second and more importantly, the English and Māori versions of the Treaty (which is a very short document) differ greatly and Māori signed the te reo version. The differences between the two documents feed the conflict between the Crown and Māori to this day and were quickly used by the Crown to justify its increased control over Māori land.[472] I will describe these differences in the next section.

New Zealand Wars (1845-1866)

Māori quickly began to feel betrayed by the British and a number of conflicts erupted from 1845. The symbol of this disenchantment was expressed when Hōne Heke cut down the British flag at Kororāreka in New Zealand's Far North where the first major war took place.[473] It is in the Central North Island however that the bloodiest clashes happened. The Taranaki and Waikato regions were shaken by conflicts over land as Māori tribes opposed the sale of their land by the Crown. This is the moment when a Māori King movement emerged with a strong nationalist and territorial agenda. There was strong inter-tribal rivalry before the arrival of Europeans but these conflicts were exacerbated by colonisation. The introduction of firearms to New Zealand aggravated the situation and it is estimated that thousands of Māori were killed and enslaved between 1821 and the early 1830s in a series of conflict known as the

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[471] Ibid., 97.

[472] Claudia Orange, *The Treaty of Waitangi* (Wellington: Bridget Williams Books, 2015). In particular chapters 3-7.

[473] David Williams, "Constitutional Traditions in Maori Interactions with the Crown," *New Zealand Journal of Public and International Law* 12, no. 1 (2014): 237.

"musket wars".[474] The Māori King movement tried to create some form of unity amongst Māori tribes to fight their common enemy.[475] It should be noted that some Māori sided with the Crown during these wars.[476]

Imperial forces invaded Māori territories in what are known as the two Taranaki wars and the Waikato campaigns invasion which lasted from 1860 until 1866. The conflicts claimed hundreds of lives on both sides and resulted in the confiscation of large areas of Māori land by the government under the New Zealand Settlements Act in 1863. The Act was a form of punishment for some Māori as it specifically targets the tribes which were "in rebellion against Her Majesty's authority". Land was also confiscated from these communities.

Land acquisition by the Crown also happened through legal sales by the Māori. The Native Land Act 1865 established the Native Land Court which played an important role in the division and alienation of Māori land.[477] Michael Belgrave explains the process:

> The native land laws, assisted by a small army of surveyors, cut up the land and allocated it to specific owners with a transferable title. The process was cumbersome, messy and expensive, often subject to endless disputes, and rough and ready in its transformation of customary interests into a transferable and individualised title. But for the government it worked. Large amounts of land were transferred from Māori ownership into European ownership from the late 1860s well into the twentieth century.[478]

There are debates over the nature of these land sales by the Māori. Indeed, "some argued that land had not been sold, others that the land had been sold by the wrong people; some maintained that the land had been returned by the purchaser".[479] Some even argued that Māori did not have the same concept of "sale" as Europeans and did not understand what they were getting

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[474] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 82-84.

[475] M. P. K. Sorrenson, *Ko Te Whenua Te Utu: Land Is the Price. Essays on Māori History, Land and Politics* (New York: Auckland University Press, 2014), 106-25.

[476] Williams, "Constitutional Traditions in Maori Interactions with the Crown."

[477] Sorrenson, *Ko Te Whenua Te Utu: Land Is the Price. Essays on Māori History, Land and Politics*, 90-105.

[478] Michael Belgrave, in *Treaty of Waitangi Settlements*, ed. Nicola R. Wheen, Janine Hayward, and Michael Belgrave (Wellington: Bridget Williams Books and the New Zealand Law Foundation, 2012), 37.

[479] "Looking Forward: Historians and Waitangi Tribunal," *The New Zealand Journal of History* 40, no. 2 (2006): 238.

themselves into.[480] Regardless of the reasons and motivations behind these sales the result was a fragmentation and decrease in Māori held territory.

Maori political participation, urbanisation and claims for reparation (1867-1975)

In a gesture that can be interpreted as a way to calm discontent over land alienation and wars while rewarding tribes that were loyal to the Crown during the conflicts, four Māori seats were established in the House of Representatives from 1867 under the Māori Representation Act.[481] While this special representation was initially meant to last for a period of only five years, it has gradually become a permanent feature of New Zealand politics and the number of reserved seats in parliament gradually increased to reach seven seats by 2002. I will discuss this policy further in a later section.

Māori society underwent radical transformations from the end of the 19th Century. Land loss through purchase transactions was a major cause of these transformations as "the authority of chiefs was undermined as all individuals were awarded full rights to sell their shares of land"[482] and this, therefore, disintegrated tribal unity and shifted the population towards urban areas.

From the 1920s Māori gradually moved to the cities and this process increased with World War Two since "Māori not eligible for military service were 'manpowered' into industries to support the war effort".[483] Māori urban migration peaked after the war as Māori saw increased job opportunities as the demand for labour in the growing industries increased.[484] The result of this progressive urbanisation was the constitution of a Māori working class. Indeed, Māori "were concentrated in blue-collar occupations such as the freezing works, on the waterside, in construction and transport, and as coalminers and railway workers".[485] This demographic and geographic change was encouraged by the government through a relocation programme established by the Department of Māori Affairs.[486]

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[480] Ibid., 239.
[481] It could also be argued that the Māori seats mechanism was a move to prevent Māori (who were demographically much more numerous than British settlers) from dominating politics if they were given a general vote.
[482] Sorrenson, *Ko Te Whenua Te Utu: Land Is the Price. Essays on Māori History, Land and Politics*, 98.
[483] Retrieved from http://www.teara.govt.nz/en/urban-maori/page-1 on 1/01/2017
[484] Pare Keiha and Paul Moon, "The Emergence and Evolution of Urban Māori Authorities : A Response to Māori Urbanisation," *Te Kaharoa*, no. 1 (2008).
[485] Evan Te Ahu Poata-Smith, "Inequality and Māori," in *Inequality: A New Zealand Crisis*, ed. M Rashbrooke (Wellington: Bridget Williams Books, 2013), 149.
[486] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 197.

Despite the increased urbanisation of the Māori population, Māori continued to raise their voice against land loss. In 1975, to remedy Māori grievances over loss of land, the Treaty of Waitangi Act established the Waitangi Tribunal.[487] The role of the Tribunal was first to investigate Māori claims of injustice based on breaches by the Crown of the Treaty of Waitangi from 1975 onward, but in 1985 the Tribunal's jurisdiction was extended back to 1840. The Waitangi Tribunal seeks to redress past and present wrongs through a Treaty settlement process which involves an apology from the Crown and financial or other material compensations. I will discuss the functioning of the Tribunal at length later in this chapter.

Neoliberal reforms and current situation (1980s – present)

While New Zealand developed a strong welfare state over time (a process that started in the 1930s and received bipartisan support), the 1970s economic crisis related to the loss of New Zealand's biggest export market, Great-Britain, and problems of inflation led the Fourth Labour government, elected in 1984, to adopt radical neoliberal economic reforms. These reforms meant a general trend toward deregulation, tax reductions, a sharp decline in government spending and a liberalisation of immigration policies.[488] Neoliberal economic policies continue to inform New Zealand politics to this day. The democratic electoral system became a mixed member proportional (MMP) system in 1996 and the New Zealand government was led by the National Party from 2008 until 2017. The National Party received support from the Māori Party (a party formed in 2004 with the goal of advocating for Māori rights) from 2008 until 2017 through a confidence and supply agreement relationship.

The Treaty of Waitangi, the Waitangi Tribunal and Biculturalism

The Treaty of Waitangi is one of New Zealand's founding documents. The text of the Treaty is relatively short and is composed of an introduction, three articles and a short conclusion. There are two versions of the Treaty: the English version and the Māori version. The English version is considered as the official version despite the fact that the approximately 540 chiefs[489] who signed the document signed the Māori version of the text. According to Ranginui Walker,

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[487] Sorrenson, *Ko Te Whenua Te Utu: Land Is the Price. Essays on Māori History, Land and Politics*, 256-72.
[488] Katherine Smits, "The Neoliberal State and the Uses of Indigenous Culture," *Nationalism and Ethnic Politics* 20, no. 1 (2014).
[489] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 97.

"besides their publicly proclaimed desire for law and order, the prospect of gaining secure title in fee simple from the Crown" provided settlers with a strong incentive for the Treaty to be signed.[490]

The English version of the three articles:

Article the first [Article 1]

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole sovereigns thereof.

Article the second [Article 2]

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the third [Article 3]

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.[491]

The Māori version of the three articles (translated):

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[490] Ibid., 91.
[491] Retrieved from http://www.nzhistory.net.nz/politics/treaty/read-the-treaty/english-text on 29/12/2016.

The First

The chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The Second

The Queen of England agrees to protect the Chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The Third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.[492]

As we can see, the two versions vary significantly. The key element explaining the different interpretations of the text, however, relate to the semantics of some key terms. As Sorrenson explains, "there has been a vital conflict between Pakeha and Maori in New Zealand over the interpretation of the Treaty. At the heart of this conflict are the differing interpretations of kawanatanga and rangatiratanga".[493] Indeed, in the first article of the Treaty, Māori are ceding their kawanatanga (an invented word that was supposed to convey the notion of sovereignty/governorship in a biblical and, therefore, less political sense) but, in the second article, they are meant to retain their rangatiratanga (chieftainship) which means traditional authority but also full control over their lands and other properties (prized possessions – *taonga*). For the Crown this meant that the control over resources could be handed over through payment.

So it is argued that in 1840 Māori believed that they were transferring the vague notion of sovereignty/governorship (kawanatanga) to the Crown with "the impression that the powers of

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[492] Ibid.
[493] Sorrenson, *Ko Te Whenua Te Utu: Land Is the Price. Essays on Māori History, Land and Politics*, 245.

governance would be exercised largely to keep the whites in order, not to interfere with the authority of the chiefs" while retaining their rangatiratanga.[494] The British had no such understanding of the deal: by ceding sovereignty and receiving the rights of British subjects, the Māori agreed to be brought under English law. By declaring "we are now one people" at Waitangi after the signing of the Treaty, Lieutenant Governor Hobson made clear that the goal of the Crown was the assimilation of the Māori into the British way of life and articles one and three of the Treaty hint at such assimilationist tendencies.[495] According to Andrew Sharp, "in strict legal constitutionalism", through the signing of the Treaty, Māori "ceded any law-making and law-interpreting powers they had to the Crown and its successors" and "merely paved the way for Queen Victoria to do what she would".[496] These differences and ambiguities, along with the extensive legislative power given to the Crown, may explain the Crown's subsequent policies of land seizure and disregard for Māori authority as well as the feelings of anger and betrayal expressed by the Māori.[497] The situation was further aggravated when the Crown demonstrated its lack of commitment towards the Treaty when, in 1877, the text was dismissed as a legal nullity in the case *Wi Parata v Bishop of Wellington*[498]. The case was still cited by the Court of Appeal until 1963.[499]

The acknowledgment by the state of the Treaty's importance for race relations in New Zealand came gradually and was largely a response to increased Māori political mobilisation in the 1970s which culminated with the Māori land march (from Te Hapua in the Far North to Wellington) and the 506 days land occupation at Bastion Point, in Auckland, in 1977. The land occupation was ended by the intervention of 600 policemen.[500] As a result of Māori grievances, in 1975 the Treaty of Waitangi Act established the Waitangi Tribunal which is still in place today and plays a major role in the recognition of Māori.

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[494] Ibid., 280-81.
[495] Ibid., 279.
[496] Andrew Sharp, "The Treaty in the Real Life of the Constitution," in *Waitangi Revisited : Perspectives on the Treaty of Waitangi*, ed. Michael Belgrave, Merata Kawharu, and David V. Williams (Oxford: Oxford University Press 2005, 2005), 313.
[497] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 102-03.
[498] David Williams, *A Simple Nullity? : The Wi Parata Case in New Zealand Law and History* (Auckland: Auckland University Press, 2011).
[499] David Williams, "Honouring the Treaty of Waitangi : Are the Parties Measuring Up?," *Elaw Journal : Murdoch University Electronic Journal of Law* 9, no. 3 (2002): 2.
[500] Ranginui Walker, "Waitangi Revisited : Perspectives on the Treaty of Waitangi," in *Waitangi Revisited : Perspectives on the Treaty of Waitangi*, ed. Michael Belgrave, Merata Kawharu, and David V. Williams (Oxford: Oxford University Press, 2005), 56-61.

The Tribunal's main goal is to remedy breaches of the Treaty. It was first designed to remedy breaches which would occur after 1975 but a 1985 amendment to the Act made its jurisdiction retroactive to 1840. The Waitangi Tribunal "makes findings that are not legally binding (with four exclusions) and may make proposals for long term restoration but cannot recommend return of land. The tribunal functions as a commission of inquiry, is not a court, and is not bound by rules of evidence".[501] The Tribunal promotes reparative and distributive policies through "treaty settlements" that

> are provided as direct redress by means of tribal mechanisms – Maori culture. Therefore, treaty settlements are negotiated and implemented by individual iwi. Treaty settlements are collectively held tribal assets that are administered by individual iwi. Tribal trust boards maintain official registers of iwi ancestry, kinship networks, and membership. Assets and benefits from treaty settlement are best accessed by individuals through active iwi membership, active affiliation, and strong attachment to Maori culture through the marae.[502]

The Waitangi Tribunal played an important role in transforming the legal and political landscape of New Zealand. Indeed, "the Waitangi Tribunal embodies bicultural elements and has played a key role in developing a New Zealand-based bicultural jurisprudence".[503] Because even if the tribunal's decisions are in theory non-binding, its moral authority makes it a genuine actor in transforming the relationship between Māori and the government. This moral authority is embodied by a commitment to respect what is now referred to as "Treaty principles". The disputed concept of Treaty principles is an attempt to bridge the gap between the English and Māori versions of the text by reconstructing the meaning of the Treaty and how it may apply to contemporary political issues.[504]

Because of this moral authority, however, and its power to shape race relations in New Zealand, the Tribunal has been criticised for its revisionist tendency towards history. It is argued that the Tribunal reinvents history and does not abide by the rules and methodologies of academic

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[501] Marilyn E. Lashley, "Implementing Treaty Settlements Via Indigenous Institutions: Social Justice and Detribalization in New Zealand," *The Contemporary Pacific* 12, no. 1 (2000): 8. As we will see later *some form* of return of land is now part of the process.
[502] Ibid., 9.
[503] Meredith Gibbs, "Justice as Reconciliation and Restoring Mana in New Zealand's Treaty of Waitangi Settlement Process," *Political Science* 58, no. 2 (2006): 22.
[504] On the dispute over the concept of Treaty principles, see: Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 394-96.

history.[505] This is problematic for the credibility of the Tribunal since it is one of its main roles is to be a commission of enquiry into claims based on past events. For example, David Williams illustrates the selectivity of this revised history by underlining that much of the emphasis has been put on those "resistance heroes", the "Kingites", Māori who resisted against the Queen while the "loyal natives", the "Queenites", who fought alongside the Crown during the land wars are usually ignored.[506] Indeed, objectively articulating the role played by Māori tribes which sided with the Crown would complicate the dominant binary Crown/ Māori narrative which informs current debates over Treaty settlements.

As we will see in the next chapter, the Tribunal and Treaty settlement process have also been criticised for their "iwicentrism" and for leaving out of the process detribalised Māori. The establishment of Urban Māori authorities remedied this issue to some extent. On the flip-side of the coin, the Tribunal is also attacked for being "Crowncentric". As Michael Belgrave explains, "the Crown has to be found, if not all knowing and all seeing, at least all responsible" and this has the important consequence to take "the heat off capitalists, patriarchs and red-necks, transferring responsibility for injustice to a distant and even impersonal abstraction, the Crown".[507]

Despite these issues, many Māori advocates nevertheless have used the Waitangi Tribunal as the best way to voice Māori discontent,seek justice, and ensure that the Treaty principles are respected. These principles are usually grouped under the themes of partnership, self-determination, and active protection.[508] They also promote a remedy to past grievances, which has taken the form of Treaty settlements. Some iwi have received large sums of money from the government through the Waitangi tribunal and, as Dominic O'Sullivan argues, "it is significant that restoration, at least to the fullest extent possible, of collective economic, social and cultural bases through Treaty settlements is among the foundations of contemporary Maori prosperity".[509] Indeed, many iwi have reached an agreement with the Crown and Treaty settlements have formed the core of reparative justice in New Zealand from the early nineties. Some of these settlements were significant. For example, Waikato-Tainui received a package

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[505] Michael Belgrave, "The Tribunal and the Past: Taking a Roundabout Path to a New History," in *Waitangi Revisited : Perspectives on the Treaty of Waitangi*, ed. Michael Belgrave, Merata Kawharu, and David V. Williams (Oxford: Oxford University Press, 2005).
[506] Williams, "Constitutional Traditions in Maori Interactions with the Crown," 253-60.
[507] Belgrave, "Looking Forward: Historians and Waitangi Tribunal," 234.
[508] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 265-68.
[509] Dominic O'Sullivan, "The Treaty of Waitangi in Contemporary New Zealand Politics," *Australian Journal of Political Science* 43, no. 2 (2008): 322.

worth $170 million from the Crown in 1995. Ngāi Tahu's claim was equally settled for $170 million in 1998. The Central North Island Forests Land Collective Settlement Act 2008 led to the transfer of approximately $450 million (the largest settlement to this day) in land and cash to eight Central North island iwi. The Tūhoe Settlement Act 2014 was also worth $170 million. Transfer of assets from the Crown to iwi is usually accompanied by a "Crown apology" and some symbolic gestures such as the "return" of Mount Cook/Aoraki (New Zealand's highest mountain) to Ngāi Tahu (which was then gifted back to the nation) for example.

Because of the considerable amounts of money involved in what is sometimes referred to by its detractors as "the Treaty of Waitangi grievance industry", many Māori trusts were created to manage these important assets. Most of these trusts are centred around iwi and function as capitalist businesses which, theoretically, manage the newly acquired assets and trade commodities and services in the best interest of their tribe's members.[510] The Waitangi Tribunal also played a role in non-financial forms of recognition. Indeed, Māori also benefit from more symbolic forms of redress related to cultural recognition and preservation which will be discussed later in this chapter.

It can be argued that the establishment of the Waitangi Tribunal represents the firmest step towards biculturalism taken by the state of New Zealand. For many Māori and non-Māori advocates, biculturalism is the natural consequence of the Treaty of Waitangi and is "generally understood as official recognition of Maori language, culture and modes of social organisation, and their incorporation into government protocols, discourses, administration and policy considerations" as well as the agreement on "the funding of social services targeted specifically at Maori, aimed at overcoming perceived socioeconomic disadvantages, and on redressing historical breaches of the Treaty of Waitangi".[511]

Biculturalism has nevertheless been attacked by many politicians. Don Brash (the then-leader of the New Zealand National Party)'s 2004 Orewa speech is the most cited case of such attacks. In his speech, Brash criticised the unfair privileges given to Māori based on the concept of "race" and argued for a "needs not race" policy. Brash argued that "the Treaty of Waitangi should not be used as a basis for giving greater civil, political or democratic rights to any

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[510] Elizabeth Rata, "Late Capitalism and Ethnic Revivalism: A `New Middle Age?," *Anthropological Theory* 3, no. 1 (2003).

[511] Keith Barber, "'Indigenous Rights' or 'Racial Privileges': The Rhetoric of 'Race' in New Zealand Politics," *The Asia Pacific Journal of Anthropology* 9, no. 2 (2008): 141-42.

particular ethnic group".[512] According to these ideas, "Maori could be categorized as poor people with "needs", not indigenous peoples with "rights"".[513]

Brash's message received considerable public support from the settler majority and support for the National Party sharply increased after Brash's speech. Given the importance of such stances on race relations and Crown/ Māori relations to National's popularity, it is ironic that National returned to power in 2008 by forming an alliance with the Māori party. Biculturalism has not only been the target of Pakeha and right wing leaders but has also been criticised by some Māori scholars such as Dominic O'Sullivan on different grounds (mainly that it institutionalises unequal relations of power). I will cover this criticism in the next chapter.

Biculturalism is also increasingly clashing with the idea of multiculturalism. Indeed, "by the late 1970s the major political parties were firming up a commitment to multiculturalism"[514] and some Māori see the influx of migrants, mainly from the Pacific Island and Asia, and the multicultural discourse attached to this demographic change as a potential threat to their different status as *Tangata Whenua.* Māori do not want to be treated as just another minority ethnic group and fear that the government could use the label of multiculturalism "to avoid honouring some or all of its obligations to respect *rangatiratanga* under the Treaty of Waitangi".[515] This could explain Māori resistance to immigration in New Zealand as new migrants can be considered as competitors for resources (both financial and cultural).[516] Overall, however, because of the importance given to the Treaty and to the Waitangi Tribunal, biculturalism informs New Zealand politics to a larger extent than multiculturalism.[517]

Broadly speaking, it could be argued that biculturalism in New Zealand has led to Māori recognition in the following areas. Māori have been recognised as having a right to own some natural resources, rights to political representation (a measure that predated discourses over biculturalism), to differentiated welfare policies, and to cultural preservation. Here, I focus on the three first aspects of recognition because their relationships with social suffering are easier

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[512] Don Brash cited in ibid., 146.
[513] Dominic Sullivan, "Needs, Rights and "One Law for All": Contemporary Debates in New Zealand Maori Politics," *Canadian Journal of Political Science* 41, no. 4 (2008): 975.
[514] Richard Hill, "Fitting Multiculturalism into Biculturalism: Maori-Pasifika Relations in New Zealand from the 1960s," *Ethnohistory* 57, no. 2 (2010): 301.
[515] Ibid.
[516] "Maori more important?" Retrieved from http://www.stuff.co.nz/national/10081307/Maori-more-important on 29/12/2016
[517] David Pearson, "The Ties That Unwind: Civic and Ethnic Imaginings in New Zealand," *Nations and Nationalism* 6, no. 1 (2000): 101.

to establish. However, before analysing these policies in depth, policies of cultural preservation need to be briefly outlined in order to give a better, broader, understanding of the recognition of Māori in New Zealand.

Te reo Māori was recognised as an official language in New Zealand through the Māori Language Act in 1987 and since then, many efforts have been made by the state to revitalise the language. The basis for such recognition was the interpretation of te reo Māori as a *taonga* which had to be protected in virtue of the Treaty. The language, as an official language, can now be used in court and other public settings such as the parliament. It has also gained increased public visibility as many signs in government buildings and public libraries now appear in both languages. The use of common Māori words and formulas has also become part of TV and radio practices. The revitalisation process was greatly helped by the broadcasting of Māori programmes through the state funded Māori television which was launched in 2004 and by immersion pre-school and school initiatives (Te Kōhanga Reo and Kura Kaupapa schools).[518]

Māori education (part of which focuses on the revitalisation of the language) plays a key role in protecting Māori culture and many projects targeted at the uplifting of Māori educational outcomes have received increased government support from 2008. Efforts are currently made at all educational levels from primary schools to university level to promote Māori culture. At the primary and secondary level, the immersion school initiatives (Te Kōhanga Reo) have enhanced a culturally sensitive learning environment for Māori and many initiatives also exist to remedy the low literacy skills of the Māori population (both adults and children). Access to tertiary education for Māori was eased through a number of affirmative action initiatives such as lower requirements for receiving scholarships.[519] Many universities also offer Māori studies programmes and have strict research ethics protocols to ensure that Māori customs and intellectual properties are respected. Publicly owned tertiary Māori institutions (wananga) offering degrees up to the doctoral level such as Te Wānanga o Aotearoa have also been created.[520]

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[518] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 238-43.
[519] At the University of Auckland, for example, Māori (and Pasifika) doctoral applicants are guaranteed a scholarship with a GPA of 7.5 while non- Māori need a GPA of 8.0. See: https://www.auckland.ac.nz/en/study/scholarships-and-awards/scholarship-types/postgraduate-scholarships/doctoral-scholarships.html (retrieved on 5/9/2018).
[520] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 344-66.

Māori are also the focus of ethnically differentiated initiatives within the criminal justice system. While some scholars such as Moana Jackson advocated for a totally differentiated justice system for Māori on the ground that the current justice system is a colonial imposition that marginalises traditional Māori practices and negatively impacts their social, political and economic structures, the current system remains a state-centred post-colonial system based on the Common Law to which some Māori cultural elements have been grafted.[521] Current initiatives aimed at reducing the high level of Māori criminality focus on cultural loss as a key determinant of Māori offending and therefore emphasise cultural rehabilitation as a cornerstone for decreasing criminality among Māori.[522] An example of such initiative is the development of Ngā Kooti Rangatahi, a specialist Māori youth court, which integrates te reo and tikanga Māori in its functioning and takes place on marae.[523]

Māori recognition: autonomy and control over natural resources

The line between financial compensation and access to natural resources for Māori is blurred since many compensation packages for past wrongs and the recognition of Māori rights to a fair share in the use of natural resources include a percentage of benefits or shares within companies which exploit these natural resources. As I will show in the next chapter, the monetarisation of the recognition of Māori sovereignty over natural resources complicates the debate between proponents of recognition and proponents of redistribution described in chapter two.

As a result of intense negotiations with the Crown, Māori have been recognised as having a privileged right of access to natural resources and to consultation over any project with a significant environmental impact. It is important to underline that all land in New Zealand "was once Māori customary land" while "today, about six percent of the country is classified as Māori freehold land".[524] Here I will discuss the provisions for Māori consultation embedded

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[521] Tauri Juan Marcellus and Webb Robert, "A Critical Appraisal of Responses to Māori Offending," *International Indigenous Policy Journal* 3, no. 4 (2012).
[522] Ibid.
[523] Darise Bennington, "Successful Nga Kooti Rangatahi Are Providing Positive Outcomes for Rangatahi," (2013).http://maorilawreview.co.nz/2014/11/rangatahi-courts-of-aotearoa-new-zealand-an-update/
[524] Nicola Wheen and Jacinta Ruru, "Providing for Rāhui in the Law of Aotearoa New Zealand," *Journal of the Polynesian Society* 120, no. 2 (2011): 172.

within environmental law and the rights of access and control over New Zealand's sea, rivers, forests and radio spectrum. I will then explore in more depth the Tūhoe settlement.

The Resource Management Act 1991

The Resource Management Act 1991 (RMA) promotes the sustainable management of natural resources and represents New Zealand's main source of environment law. The Act takes under consideration Māori interests and values in resource management processes. The recognition of Māori interests in the management of natural resources is expressed through a commitment to the principles of the Treaty of Waitangi and this commitment materialises through consultation processes that are understood as part of the partnership principle established by the Treaty. The Act received a number of amendments in 2005 aimed at clarifying the consultation process with Māori.[525]

While the Act establishes a strong foundation for the consultation of Māori, it is nevertheless important to underline that, for the courts, Māori consultation does not mean that Māori communities have a right of veto and the power to impede decisions to be implemented.[526] In fact, section 36A of the amended Act even clearly stipulates that "there is no duty to consult on a resource consent application by either the applicant or the consent authority, unless required under another enactment".[527] There is, therefore, no clear-cut statutory duty to consult with Māori. This is highly problematic since, as I mentioned earlier, consultation with Māori represents a key element of the partnership ideal embedded in the Treaty of Waitangi and a way for Māori to exercise their tino rangatiratanga. Consultation with indigenous people (and their informed consent) over matters that affect them is also enshrined in Article 19 of UNDRIP.

Any engagement in Māori consultation thus relies on the good will of local authorities and on the requirement by applicants to include an assessment of environmental effects (AEE) in their applications. This AEE is supposed to identify the persons who may potentially be affected by the project and Māori may be affected in many different situations.[528] It is nevertheless not always simple to determine whether or not a particular activity will impact Māori communities and local authorities tend to put the burden of such decision on the shoulders of the Māori

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[525] Jenny Vince, "Maori Consultation under the Resource Management Act and the 2005 Amendments," *New Zealand Journal of Environmental Law* 10 (2006).
[526] Ibid., 296.
[527] Ibid., 302.
[528] Ibid., 303-06.

communities themselves. Māori communities therefore face the challenge of going through lists of applications with very little information to determine whether or not they might be affected by a particular project.[529]

Māori interests are thus formally taken into account by the RMA but the implementation of the ideals expressed through a commitment to "Treaty principles" is highly problematic. Māori communities usually depend on the good will of applicants and local authorities and the task of researching the impact of particular projects requires a lot of resources.

Sea

Many of the claims to ownership over natural resources made by Māori were related to their access to the sea and the first major Treaty settlement related to the fishing industry happened in 1992. The settlement, known as the "Sealord deal", was a full and final settlement of Māori claims to a fair share in commercial fisheries. The settlement was significant as "the government bought out and transferred 50 percent of the shares in the Sealord fisheries company, worth about NZ$ 150 million" in 1992. These settlement assets "were added to the 1989 "pre-settlement" quota, cash, and shares, which by 1992 were worth about NZ$250 million, bringing Te Ohu Kai Moana's total assets at that time to about NZ$400 million".[530] This significant settlement had nonetheless to be shared by over forty iwi and represented "less than half the values of one year's export profits of the privatized fisheries industry". [531] The settlement also extinguished all future Māori claims over fisheries.

A controversy over access and ownership to the sea arose in 2004 when the Foreshore and Seabed Act (devised by the Labour government) established that the Crown was the owner of the foreshore and seabed surrounding New Zealand. The Act was interpreted as an act of confiscation by Māori who protested vigorously the new law.[532] Because of continuous protest, a spectacular *hikoi* (march/protest) gathering 50,000 protesters and continuing controversies, the National-led government that succeeded Labour repealed the Foreshore and Seabed Act

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[529] Ibid., 314.
[530] Te Ohu Kaimoana is a Māori organisation which is related to fisheries and aquaculture management.
[531] Steven Webster, "Maori Retribalization and Treaty Rights to the New Zealand Fisheries," *The Contemporary Pacific* 14, no. 2 (2002): 348.
[532] Margaret Mutu, *The State of Māori Rights* (Wellington: Huia, 2011), 139.

and replaced it with the Marine and Coastal Area (Takutai Moana) Act 2011. The Crown ownership over the foreshore and seabed was replaced by a 'no ownership' regime.[533]

Lakes and Rivers

It is argued by Māori scholars that "the personification of the natural world is a fundamental feature of Māori tradition".[534] For Māori, rivers are living entities. The Waikato River (New Zealand's longest river), for example, as explained by Linda Te Aho, "is conceptualised as a living ancestor by the Waikato-Tainui peoples and is recognised as having its own mauri (life force) and spiritual integrity".[535] Fresh water management is therefore a key component of Māori claims to natural resource management and access. I will give three examples to illustrate this issue: the Te Arawa Lakes settlement, the Waikato River settlement and the Whanganui River settlement.

The Te Arawa Lakes Settlement Act 2006 was the first significant settlement related to fresh water claims. The Act offers a Crown apology to Te Arawa and transfers the ownership of the lakebeds to the iwi. It further establishes partnership relationships between Te Arawa and local government bodies for decisions concerning the lakes. It is important to underline that, according to the Act, it is the lakebeds that are owned by the iwi: the lakes themselves (the content and space over the lakebed) remain property of the Crown. Ownership in this case only offers symbolic compensation and limited tangible material benefit. Indeed, section 25 of the Act "states that the vesting of the lakebeds in Te Arawa does not confer any rights or obligations to Te Arawa in relation to the water or the aquatic life in the lakes that float free of the lakebeds".[536] Anyone is still free to navigate and recreationally use the lakes and commercial activities can keep going undisturbed. As we can see, this description hardly fits the common western discourse about property rightsand the Settlement can best be described as a form of cultural redress mechanism not one of natural resources redistribution. The Act focuses more on the importance of protocols in the interactions between the Crown and Te Arawa and on the acknowledgment of the Iwi's spiritual relation to the lakes. It does also,

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[533] "Law of the foreshore and seabed" retrieved from http://www.teara.govt.nz/en/law-of-the-foreshore-and-seabed/page-5 on 22/01/2018

[534] Linda Te Aho, "Indigenous Challenges to Enhance Freshwater Governance and Management in Aotearoa New Zealand - the Waikato River Settlement," *the Journal of Water Law* 20, no. 5 (2010): 285.

[535] Ibid.

[536] Jacinta Ruru, "Indigenous Restitution in Settling Water Claims: The Developing Cultural and Commercial Redress Opportunities in Aotearoa, New Zealand," *Pacific Rim Law and Policy Journal* 22, no. 2 (2013): 332.

however, "provides customary and commercial fisheries redress".[537] Some iwi are trying to increase the financial benefits of their limited ownership. The Tūwharetoa iwi that owns the lakebed of Lake Taupo is currently taking court action to be able to charge all commercial operators that benefit from the lake. At the time of writing, 40 businesses already have an agreement with the iwi while another 50 businesses operate without such agreement.[538]

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 is the result of direct negotiations between Waikato-Tainui and the Crown (and not via the Waitangi Tribunal as other claims are usually lodged). The settlement does not resolve the issue of the ownership of the river but it does offer two valuable commitments: it aims at "restoring and protecting the health and well-being of the Waikato River" and it "ushers in a new era of co-management".[539] The provision for co-management and co-governance led to the establishment of the Waikato River Authority which is made up of an equal number of Crown and iwi representatives and which is in charge of monitoring the River's health and any project related to the River. Some scholars have argued that, although pragmatic, "the co-governance structure is an inherently western model with appointed representatives making formal statutory decisions on behalf of the various groups" and "therefore, it is a model or way of viewing the river which is foreign to most Māori and one in which they cannot easily participate".[540]

While the Waikato River settlement represents a landmark in terms of co-management and co-governance initiatives, *the Ruruku Whakatupua Te Mana o te Awa Tupua*, the Whanganui River Settlement, represents a landmark in the recognition of natural things as legal entities, something which has now become more common in Latin America. This is an interesting development as scholars previously argued that applying the idea of "legal personality to New Zealand's rivers would create a link between the Maori legal system and the state legal system. The legal personality concept aligns with the Maori legal concept of a personified natural world".[541] As I will show, this idea was applied to the Te Uruwera Park as well. Another feature

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[537] Ibid., 334.
[538] "Iwi seeks to enforce Lake Taupō toll" retrieved from https://www.stuff.co.nz/business/98773161/iwi-seeks-to-enforce-lake-taup-toll on 22/01/2018
[539] Linda Te Aho, "Ngā Whakataunga Waimāori: Freshwater Settlements," in *Treaty of Waitangi Settlements*, ed. Nicola R. Wheen, Janine Hayward, and Michael Belgrave (Wellington: Bridget Williams Books and the New Zealand Law Foundation, 2012), 110.
[540] Marama Muru-Lanning, "The Key Actors of Waikato River Co-Governance : Situational Analysis at Work," *AlterNative* 8, no. 2 (2012).
[541] James D. K. Morris and Jacinta Ruru, "Giving Voice to Rivers : Legal Personality as a Vehicle for Recognising Indigenous Peoples' Relationships to Water?," *Australian Indigenous Law Review* 14, no. 2 (2010): 50.

of the Act is that the document is drafted in a more culturally Māori way, making ample use of te reo and traditional sayings.[542]

Māori have also launched claims for water and geothermal energy rights related to their rivers claims through the Waitangi Tribunal, but while the Tribunal found that Māori have rights amounting to ownership of fresh water, the government has been reluctant to act upon these findings privileging a "no one owns the water" policy when deals related to state owned enterprise were at stake. Indeed, Māori claims against the partial sale of state owned energy companies (in particular Mighty River Power, Genesis, Meridian and Solid Energy) were dismissed by the Supreme Court in 2013 as the Court judged that the asset sales would not impair the Crown's ability to recognise Māori rights. This position is easily explained by the fact that none of the settlements related to rivers clearly vested ownership of these rivers in Māori hands privileging co-management policies instead.

Forests

Māori have also gained access to the forestry industry. As mentioned earlier, the Central North Island Forests Land Collective Settlement Act 2008 (also known as the TreeLord deal) transferred approximately $450 million in land and cash to eight Central North island iwi. In this case, the land acquired does represent a genuine asset as forest license land comes with rental income and carbon credits which represent "another significant tradeable asset".[543] It should be noted that Crown rents for forests are reserved to fund the settlement process through the Crown Forestry Rental Trust (CFR).[544] The CFR "uses interest earned from forest rental proceeds to assist eligible claimants to prepare, present and negotiate claims, which involve, or could involve, Crown forest licensed lands before the Waitangi Tribunal or through the direct negotiations process managed by the Office of Treaty Settlements".[545]

It is difficult to assess the potential benefits for Māori associated with the forestry industry. Indeed, although "it is difficult […] to determine the long-term benefit of acquiring forestry

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[542] Linda Te Aho, "Ruruku Whakatupua Te Mana O Te Awa Tupua - Upholding the Mana of the Whanganui River," (Māori Law Review, 2014).
[543] Dean Cowie, "The Treaty Settlement Process," in *Treaty of Waitangi Settlements*, ed. Nicola R. Wheen, Janine Hayward, and Michael Belgrave (Wellington: Bridget Williams Books and the New Zealand Law Foundation 2012), 60.
[544] Retrieved from https://www.parliament.nz/resource/0000021392 on 2/3/2017.
[545] Retrieved from http://www.cfrt.org.nz/travelled/settlementbackground.asp on 2/3/2017.

land given the cyclical nature of the forestry industry"[546], forestry lands have become a prized asset for many Māori communities and have led to often competing claims over Crown forestry land. In fact, the Act has been criticised for advantaging some "favourite" tribal groups over others and was challenged in a 2007 Waitangi Tribunal report (*Te Arawa Waka* Report) on that ground.[547]

Radio spectrum

One of the most controversial claims made by Māori over natural resources is that "the electromagnetic spectrum formed part of ō rātou taonga, or the special or prized possessions of Māori" and therefore that Māori had a right to a "fair and equitable share in the resource".[548] The claim was based on prior knowledge and use of the spectrum by Māori as light and sound (which makes it a *taonga* or at the very least a natural resource) but also on the fact that the Crown had an obligation to protect Māori culture and language and that modern telecommunications could play a key role in this respect.[549] Negotiations between the Crown and Māori led to compromises whereby Māori were recognised as having a share in the radio frequency spectrum with a $5 million cash contribution from the Crown and the establishment of the Te Huarahi Tika Trust. Māori therefore benefited from a right to use radio frequencies to promote their language and culture but were also granted a right of purchase over the new generation spectrum (3G and now 4G) radio frequency and currently hold shares in New Zealand's network company 2 Degrees.

The Tūhoe Settlement Act

Ngāi Tūhoe's territory is located mainly inland in the central North Island and is centred around the Te Uruwera National Park. There are 34,890 members of Tūhoe. The iwi has kept strong cultural roots and, while te reo fluency is declining,[550] 37% of Tūhoe can still speak the

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[546] Damian Stone, "Financial and Commercial Dimensions of Settlements," in *Treaty of Waitangi Settlements*, ed. Nicola R. Wheen, Janine Hayward, and Michael Belgrave (Wellington: Bridget Williams Books and the New Zealand Law Foundation 2012), 147.
[547] Waitangi Tribunal, "Report on the Impact of the Crown's Treaty Settlement Policy on Te Arawa Waka (Wai 1353)," (2007).
[548] Aidan Cameron, "Maori Rights in the 4g Radio Spectrum: Fantasy or the Future of Treaty Claims?," *Otago Law Review* 13, no. 1 (2013): 181.
[549] Ibid., 185.
[550] See "Speakers of te reo Māori" retrieved from http://archive.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-progress-indicators/home/social/speakers-of-te-reo-maori.aspx last accessed 4/3/2017.

language.[551] The iwi is also one of the most socio-economically disadvantaged Māori groups in New Zealand: at the time of the 2013 census, unemployment for Tūhoe members reached 21% and 29% received benefit payments. Its population growth is also high in comparison to other iwi (6.8% between 2006 and 2013).[552]

Tūhoe has always been a more marginal iwi. It did not sign the Treaty of Waitangi.[553] In fact, before the 1860s, there was very little contact between Tūhoe and the Crown. Māori customary law and practices continued to inform social life in Te Uruwera. Tūhoe remained relatively isolated until the late 1860's when the first land alienations and clashes with the Crown happened. After a period of conflicts and peace agreements, Tūhoe obtained recognition of a right to self-government over its *rohe* (territory) through the Urewera District Native Reserves Bill 1895.[554] Because of the previous land alienations and a general under-development in the region, Tūhoe was impoverished and the Crown used this situation to illegally purchase individual interests in the *rohe* and encroach on Tūhoe territory through roading and development projects. Indeed, "colonisation became largely a matter of legal procedure rather than military might".[555] Tūhoe were further dispossessed from their control over national resources through the establishment of the Te Uruwera National Park in 1954.[556]

The Crown's actions were recognised as breaches of the Treaty of Waitangi by the Waitangi Tribunal and an agreement between the Crown and Tūhoe lead to the Ngāi Tūhoe Deed of Settlement in 2014. The Tūhoe Settlement includes five main dimensions:

- Agreed historical account, Crown acknowledgments and apology

- Redress over Te Urewera

- Redress in relation to mana motuhake (self-determination)

- Financial and commercial redress

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[551] "Tuhoe takes its own path" retrieved from http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11546915 on 31/12/2016
[552] David Moore et al., "Decentralising Welfare - Te Mana Motuhake O Tuhoe," (Sapere Research Group, 2014), 10.
[553] Tūhoe Claims Settlement Act 2014, 2.8.
[554] Ibid., 2.120.
[555] Vincent O'Malley, "Tūhoe-Crown Settlement – Historical Background," *Māori Law Review* October (2014).
[556] Tūhoe Claims Settlement Act 2014, 2.178-2.85.

- Other cultural redress

First, in the agreed historical account, the Crown acknowledgments and apology represent a symbolic gesture from the Crown to acknowledge its past wrongdoings. It furnishes a detailed historical account of Tūhoe's history and grievances against the Crown and represents an aspect of postcolonial nation-building. Second, the redress over Te Urewera represents a legal landmark in New Zealand history. Indeed, the park is removed from the national park legislation and instead become a legal entity of its own:

> Te Urewera will be recognised as a legal personality and therefore will be established as a legal entity in Te Urewera Act.[557]

> The rights, powers, duties and liabilities of Te Urewera will be exercised by and will be the responsibility of Te Urewera Board in the manner set out in Te Urewera Act.[558]

The purpose of the Te Urewera Board is to act on behalf of Te Uruwera and gives Tūhoe an important role on the Board. Indeed, Tūhoe's spiritual relation with Te Uruwera is emphasised in the Act and their customary values and laws are reflected in the functioning of the Board. While, at first, there was four representatives of Tūhoe and four representatives of the Crown on the board, after three years, the number of representatives from Tūhoe increased to six while the number of representatives of the Crown decreased to three.[559] It should be mentioned that Te Urewera, despite being recognised as a legal entity, can still be mined.[560]

Third, the redress in relation to mana motuhake clarifies the Crown's commitment to a number of initiatives amongst which the Service Management Plan (SMP) is the most important. The SMP is a key Crown document recognising Tūhoe's claims for autonomy. The plan aims at increasing Tūhoe's development, wellbeing and self-determination.[561] The document, which was developed in prevision of the settlement, was signed in 2011 between the Crown and Tūhoe and "was significant in that it included an acknowledgement by the Crown of the mana motuhake of Tūhoe, and acknowledgement by Tūhoe of the mana of the Crown".[562]

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[557] Ibid., 4.18.
[558] Ibid., 4.19.
[559] Ibid., 4.31-4.32.
[560] Ibid., 4.184.
[561] Ngai Tūhoe, "Service Management Plan," (2011).
[562] Moore et al., "Decentralising Welfare - Te Mana Motuhake O Tuhoe," 11.

The SMP establishes a working relationship between the Ministry of Building, Innovation and Employment, the Ministry of Education, the Ministry of Social development and three District Health Boards as Crown representatives and Tūhoe for 40 years. The plan outlines mutual agreements and planning in four key areas: business, innovation and employment; health; education; and social development. While the document recognises the mana motuhake of Tūhoe and increases Tūhoe's participation in planning, it still differs from the ideal of welfare decentralisation promoted by Tūhoe (explained in the next chapter) since "there is not a co-governance body overseeing progress – Tūhoe holds the view that the SMP is a Crown document and a Crown responsibility and while they would attend the Taskforce meetings they were not part of the Taskforce" and "The SMP is structured as a series of bi-lateral agreements between the participating agencies and Tūhoe as opposed to cross agency commitments".[563]

Fourth, the financial and commercial redress offers Tūhoe $169 million in compensation for the Crown's past actions towards the iwi. The money is meant to develop Tūhoe projects and initiatives aimed at improving the socio-economic conditions of the iwi's members. Tūhoe also received a right of first refusal over some Crown-owned properties located in the region.

 Fifth, the other cultural redress vest a number of significant sites to Tūhoe in fee simple and allows the iwi to propose changes to the names of geographic features in the region such as streams and rivers.

Tūhoe established the Te Uru Taumatua Trust and the finances of the iwi are managed by the Investment Committee, Tūhoe Charitable Trust and Tūhoe Fisheries Quota Ltd. Tūhoe has a diversified investment portfolio. Indeed, "Tūhoe's financial portfolio, which accounts for 52% of assets, is largely made up of investments in global shares, term deposits, NZ bonds, global bonds and Australian shares".[564] The Treaty Settlement contributed to rapid increases in Tūhoe's assets and net worth: "Tūhoe's assets and net worth were valued at $328m and $325m respectively as at 30 June 2016".[565] The net assets per member rose from $3,811 in 2013 (before settlement) to $5,490 in 2016.

As we can see, Māori self-determination and access to natural resources (forests and rivers) is distinctive as they are often related to the commercialisation of these resources (less so with lakes) and contrasts sharply with the policies relating to indigenous self-determination and

[563] Ibid., 12.
[564] TBD Advisory, "Iwi Investment Report," (Wellington2016), 21.
[565] Ibid., 22.

access to land (understood as a territory) in many Latin American countries. Indeed, as we saw with the Colombian case study, claims for land in Latin America are more closely related to claims for territory.

Nevertheless, Treaty settlements help Māori self-determination as they enable Māori communities to be self-sufficient and have an increased control over their affairs through financial independency. Indeed, as Pare Keiha and Paul Moon explain:

> Increasingly Maori are seeking to determine for themselves their own rangatiratanga – particularly that defined through economic development. Maori economic development has been defined as not only the expansion in the output of goods and services, but also an increase in capacity to achieve expansion of output, plus ownership of the means of production (resources, capital, labour) and increase in the ability to exercise management control over production (ownership and control of firms in a market economy).[566]

Dominic O'Sullivan also explains that self-determination has three important dimensions:

> It is first concerned with "economic standing, social well-being, and cultural identity" for both individuals and communities. Secondly, it attends to individual and collective "power and control" for better self-management and decision making over natural resources, including Maori land, the active promotion of good health, good education and Maori language usage. Thirdly, it is concerned with cultural change, as "Maori self-determination is not about living in the past".[567]

We can see the strong emphasis put on self-determination as self-management and economic development. Interestingly the relation between Māori self-determination and entrepreneurial spirit is in line with Don Brash's 2004 Orewa speech which equated the Māori renaissance with entrepreneurship.[568] Whether or not such strategies are beneficial or detrimental to Māori aspirations will be discussed in later chapters of the thesis.

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[566] Keiha and Moon, "The Emergence and Evolution of Urban Māori Authorities : A Response to Māori Urbanisation," 4.
[567] Sullivan, "Needs, Rights and "One Law for All": Contemporary Debates in New Zealand Maori Politics," 977-78.
[568] Ilana Gershon, "Being Explicit About Culture: Māori, Neoliberalism, and the New Zealand Parliament," *American Anthropologist* 110, no. 4 (2008): 426.

Māori recognition: political representation

Māori Politics

Given all these policies and issues surrounding Māori/Crown relations, it is important to underline the important role played by Māori political actors in the current paradigm of recognition that influences New Zealand politics. Māori political activism has a long history. An important development was the rise of a King Movement when Te Wherowhero was elected first Māori King in 1858 in the central North Island. As Ranginui Walker explains, "the Maori King was established as the symbol of *mana whenua* (land) and *mana tangata (*people), and to stop inter-tribal blood-letting".[569] While the king was a symbol of Māori sovereignty, he did not advocate for separatism but instead for a form of dual administration. The King movement was defeated and million acres of land were confiscated.[570] A number of prophetic movements then arose among Māori, the Rātana movement being the most important. The Rātana movement is both a religious and pan-*iwi* political movement. It was founded by Tahupōtiki Wiremu Rātana at the beginning of the 20th century and has played a major political role by occupying Māori seats in parliament and being a key ally of the Labour Government. Other smaller Māori activist groups such as the Māori Women's Welfare League, Māori Council and *Nga Tamatoa* (young warriors) also played an advocacy role for Māori and protests were organised such as the 507 days long land occupation at Bastion Point mentioned earlier. It is the foreshore and seabed controversy in 2004 which marked a turn in Māori politics as it led to the creation of the Māori Party.

The Māori Party was formed by the former Minister Tariana Turia. Because of her opposition to the Foreshore and Seabed Act, she resigned from the Labour Party and created, along with Pita Sharples, a new party that aimed to unite all Māori into a single political movement focused on Māori development. After the 2008 elections, the Māori Party (which won five seats) chose to join the National led government. In the 2011 general election the Māori Party lost two of its five seats as former Māori Party MP Hone Harawira, displeased with the alliance between the Māori Party and National, split from the party in order to form his own, strongly leaning to

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[569] Ranginui J. Walker, "The Genesis of Maori Activism," *The Journal of the Polynesian Society* 93, no. 3 (1984): 270.
[570] Ibid.

the left, party. In 2014 the Māori Party won two seats and had a confidence and supply agreement with the National-led government (the 2017 elections results are discussed below).

According to its constitution, the Māori Party "is born of the dreams and aspirations of tangata whenua to achieve self-determination for whānau, hapū and iwi within their own land; to speak with a strong, independent and united voice; and to live according to kaupapa handed down by our ancestors".[571] The party focuses and is structured according to kaupapa and tikanga Māori: it puts a strong emphasis on *mana* (authority but also prestige and status) and the qualities which relate to *mana* (generosity, humility, mutual respect, among others). It also emphasises the importance of strengthening Māori collective identities (iwi, hapū and whānau), of spirituality and of the preservation of Māori culture.[572] If the party focuses on Treaty related policies and wants to implement Treaty principles further at different levels of New Zealand society (for example by developing Treaty studies programmes in schools) it also offers broader aims such as the reduction of poverty in New Zealand. One of the major policies developed by the Māori Party is the Whānau Ora programme which will be analysed more in depth in the next section.

The Mana Movement (formally known as Mana Party) was formed by Hone Harawira in 2011 after he resigned from the Māori Party. The party had a strong Māori flavour but was less ethnically centred than the Māori Party as it embraced a strongly anti-neoliberal agenda and tried to reach out to poor and marginalised groups in New Zealand and in particular to Pacific Islanders. Mana received support from left-wing activists John Minto and Sue Bradford and won one seat (Harawira in the Te Tai Tokerau electorate) after the 2011 election. The party however lost its seat in the 2014 general elections. The reasons behind this electoral failure can easily be related to the loss of credibility inherent to the awkward alliance between Mana and the Internet Party (founded by internet tycoon Kim Dotcom) to form "Internet-Mana" before the elections as well as the fierce competition with Labour MP Kelvin Davis, another Māori politician. This electoral failure also led Mana to re-centre its focus on grass-roots politics.

The 2017 elections showed an overall lack of support from Māori voters towards "ethnic parties". Both the Māori party and Mana failed in their attempts to gain a seat in parliament. This does not mean that Māori are not represented in parliament since they are guaranteed a number of seats in parliament (see the next sub-section) and MPs who self-identify as being of

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[571] Māori Party, "Māori Party Constitution," (2013), 1.
[572] Ibid., 1-6.

Māori descent have recently been over-represented within parliament. In 2014, for example, 21% of the MPs identified as Māori while Māori represent 14.9% of the total population.[573]

Of course Māori political participation is not reduced to party politics and Māori also engage in politics in many other ways. Maria Bargh argues that the low Māori turnout during elections (usually the proportion of non-voters amongst Māori is around 10% higher than non-Māori)[574] is not a sign of Māori political passivity but instead a sign of their distrust for the electoral system. She argues that while Māori political participation during elections might be low, politics substantially informs the lives of Māori as they engage in political discussion within Māori tribal organisations or on the marae. These grass-roots and "micro-oriented" political practices are sign of a vibrant civic engagement by Māori.[575] The example of Te Puea Marae in Mangere, South Auckland, opening its doors to homeless people and speaking out against poverty during the autumn of 2016 is just one example of such civic engagement.[576] Lodging claims through the Waitangi Tribunal is of course another way Māori engage in non-parliament based politics.

The cultural institution of the hui renders Māori political practices highly deliberative. The hui represents a "customary form" of "deliberation" that gives people "the opportunity to speak and to express their views". In theory, in a hui, "there is the opportunity for the most persuasive argument to prevail".[577] Political deliberation through hui can be a one off form of consultation with a highly important impact on Māori society (such as the 1984 Hui Taumata (Maori

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[573] Data retrieved from https://www.parliament.nz/en/pb/research-papers/document/00PLLawRP2015011/final-results-2014-general-election last accessed 7/11/2017
[574] For an ethnic breakdown of voters turn out for the 2008 and 2011 elections, see: http://socialreport.msd.govt.nz/civil-and-political-rights/voter-turnout.html For the 2014 elections, see: http://www.elections.org.nz/events/2014-general-election/election-results-and-reporting/2014-general-election-voter-turnout?electorate_name=All+electorates&voter_descent=2 For the 2017 elections, see: http://www.elections.org.nz/events/2017-general-election/2017-general-election-results/voter-turnout-statistics?electorate_name=All+electorates&voter_descent=2 All last accessed 7/11/2017
[575] Maria Bargh, "Multiple Sites of Māori Political Participation," *Australian Journal of Political Science* 48, no. 4 (2013).
[576] See: http://thespinoff.co.nz/featured/02-07-2016/a-week-at-te-puea/ retrieved on 2/3/2017.
[577] David Robinson and Kayt Robinson, "Pacific Ways of Ralk - Hui and Talanoa," (Wellington/Dayton: Social and Civic Policy Institute/ Council on Public Policy Education, 2005).

Economic Summit Conference))[578] or can be an ongoing process (such as the iwi fisheries forum).[579]

Māori Representation in parliament

Because of strong Māori political activism, the state quickly realised the importance of incorporating Māori voices into New Zealand's political system. The Māori Representation Act 1867 mentioned in the historical introduction served that purpose. The act divided New Zealand into four separate districts and one representative from each constituency was elected to parliament by male Māori not previously convicted of "treason" or an infamous offence. It should be mentioned that given their demographic weight at the time, Māori should have received 40 seats instead of four in order for the system to be a genuine representative system.

The Maori seats were never meant to become a permanent feature of New Zealand politics. The seats (and then the special Māori electoral roll) were never abolished and the number of seats evolved through time: from four in 1867 to five in 1993 after the switch to the MMP voting system. The number of seats, which depends on the number of Māori enrolled on the Māori roll, is currently seven seats out of 120.[580]

Māori are particularly attached to this institution as "for them, these seats represent an important symbol of their distinctive constitutional position as indigenous people".[581] The Māori franchise, however, offers more than a symbolic presence in parliament and has become a bargaining tool under an MMP system which favours coalition governments.[582] The continuous participation of the Māori Party, formed in 2004 as a result of the foreshore and seabed controversy, in the National-led government from 2008 until 2017shows how Māori presence in parliament has influenced New Zealand politics. The Māori Party's main contribution has been the controversial Whānau Ora programme discussed in the next section.

Separate Māori representation in parliament is nevertheless a controversial feature of New Zealand democracy and has its detractors. Indeed, some consider this arrangement as

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[578] Walker, *Ka Whawhai Tonu Mātou = Struggle without End*, 257-60.
[579] David Robinson, "Sustained Dialogue and Public Deliberation: Making the Connection," in *Resolving Community Conflicts and Problems: Public Deliberation and Sustained Dialogue*, ed. Roger Lohmann and Jon Van Til (New York: Columbia University Press, 2011).
[580] Sometimes 121 due to the "overhang" seats.
[581] Alexandra Xanthaki and Dominic O'Sullivan, "Indigenous Participation in Elective Bodies: The Maori in New Zealand," *International Journal on Minority and Group Rights* 16, no. 2 (2009): 192.
[582] Ann Sullivan, "Effecting Change through Electoral Politics: Cultural Identity and the Māori Franchise " *Journal of the Polynesian Society* 112, no. 3 (2003): 235.

undemocratic and redundant since they argue that a MMP system already offers minorities fair representation in parliament. Philip Joseph for example argues that "the electoral advantage that Maori have reaped under MMP reverses the discrimination" if the Māori seats are preserved.[583] Opponents of separate Māori representation further argue that such an institution cannot be justified on Treaty grounds either because none of the three articles refer to special political representation within a representative democracy system.[584]

Political representation at the local level

In 2016, New Plymouth mayor Andrew Judd (a Pakeha) was spat at and abused in the street because of his campaigning for the introduction of a guaranteed Māori representation on New Plymouth's local council.[585] This incident illustrates the issues faced by Māori in seeking to have their right of political representation upheld at the local government level. Indeed, "Māori have long recognized the significance of local government as resource managers and have sought meaningful engagement with local government" but they are nonetheless "chronically under-represented in local government".[586] This issue was the object of a Human Rights Commission report in 2010.[587]

Legislation to promote local representation for Māori does however exist. The Local Government Act 2002, for example, encourages local authorities to provide Māori with opportunities to partake in decision-making processes[588] while the Local Electoral Amendment Act 2002 allows councils to establish Māori wards for their local government. Māori wards and constituencies "establish areas where only those on the Māori Parliamentary electoral roll vote for the representatives".[589] While most councils have established both formal and informal

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[583] Philip Joseph, "The Maori Seats in Parliament," (New Zealand Business Round Table, 2008), 14.
[584] Ibid., 17-18.
[585] Information retrieved from http://www.radionz.co.nz/news/national/303537/judd-felt-force-of-anti-maori-racism on 12/12/2016.
[586] Janine Hayward, "Mandatory Māori Wards in Local Government: Active Crown Protection of Māori Treaty Rights," *Political Science* 63, no. 2 (2011): 187.
[587] Human Rights Commission (New Zealand), *Māori Representation in Local Government: The Continuing Challenge* (Auckland: Human Rights Commission, 2010).
[588] The following statement appears on the Local Councils government website:"All councils must have processes in place for consulting with Māori. This means that councils have processes in place before issues arise, rather than improvising the processes on an issue-by-issue basis". Retrieved from http://www.localcouncils.govt.nz/lgip.nsf/wpg_url/About-Local-Government-M%C4%81ori-Participation-in-Local-Government-How-can-M%C4%81ori-participate-in-local-government on 2/3/2016.
[589] Retrieved from http://www.localcouncils.govt.nz/lgip.nsf/wpg_url/About-Local-Government-M%C4%81ori-Participation-in-Local-Government-How-can-M%C4%81ori-participate-in-local-government#MāoriWardsandConstituencies on 14/12/2016.

means of consultation with Māori, not many have yet decided to establish a Māori ward. Furthermore, the councils which polled electors' opinion on the matter all found out that electors rejected the idea.[590]

One interesting case is the creation of a Māori advisory board to the Auckland Council. In 2009, the Royal Commission on Auckland Governance recommended the establishment of three Māori seats on the new Auckland Council. The proposal was rejected but after Māori protest, the council agreed to establish a statutory Māori advisory board comprised of nine members.[591]

The Board and Council meet at least four times a year and has four main functions. It,

- Puts forward the cultural, economic, environmental, and social issues that are significant for mana whenua groups and Mātāwaka in Tāmaki Makaurau
- Makes sure that the Council complies with statutory provisions that refer to the Treaty of Waitangi.
- Gives advice to Auckland Council about issues that affect Māori in Auckland
- Helps the Council create suitable documents and processes to meet its statutory obligations to Māori in Auckland.[592]

Margaret Mutu argues that "the Independent Māori Statutory Board to the Auckland Council has proved far more effective than the three seats for Māori on the Council, which the government refused to create".[593] Yet the board's chair himself, David Taipari, considers Auckland Council's progress regarding Māori affairs as "disappointing" as it does not act upon the Board's recommendations.[594]

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[590] Hayward, "Mandatory Māori Wards in Local Government: Active Crown Protection of Māori Treaty Rights," 188-93.
[591] Human Rights Commission (New Zealand), *Māori Representation in Local Government: The Continuing Challenge*, 22-27.
[592] Retrieved from http://www.aucklandcouncil.govt.nz/EN/AboutCouncil/representativesbodies/Maori_relations/Pages/independentmaoristatutoryboard.aspx on 14/12/2016.
[593] Margaret Mutu, "Māori Issues," *The Contemporary Pacific* 23, no. 1 (2011): 189.
[594] "Māori Board: Auckland Council progress 'disappointing'" retrieved from http://www.radionz.co.nz/news/te-manu-korihi/276431/maori-board-auckland-council-progress-'disappointing' on 29/12/2016.

Some other interesting examples of co-operation between local government and Māori exist. The Bay of Plenty Regional Council in fact established Māori wards in 2001, one year before the Local Government Act was passed. The formation of a co-management body constituted of equal members of the Auckland City Council and Ngati Whatua o Orakei in charge of the management of a number of reserves in Auckland is also mentioned as a positive example of co-operation between local authorities and iwi. This second example underlines some of the positive developments of the RMA discussed earlier.

Māori recognition: welfare

Like Colombia, New Zealand has ethnically differentiated welfare practices. Here welfare is defined more broadly than receiving unemployment benefit to encompass instead educational, health care and social wellbeing initiatives. Amongst the differentiated welfare practices, health care practices for Māori have gained the most support. The rationale behind differentiated health care for Māori is that Māori "have a unique way of conceptualizing health and curing sickness, and, therefore, require special programs to receive health services on their own terms".[595] Proponents of differentiated health care for Māori argue that Māori culture emphasises a more holistic conceptualisation of health than western medicine and Māori scholars have constructed a four-dimensional model of health care (*Te Whare Tapa Wha*) expressed through the metaphor of the four walls of the traditional meeting house. [596] This model encompasses a spiritual dimension, a mental dimension, a family dimension and a physical dimension.[597]

Many of these health-related initiatives and cultural revitalisation policies are now part of the Whānau Ora approach developed by the National government and the Māori Party. Whānau Ora "is an inclusive approach to providing services and opportunities to families across New Zealand. It empowers families as a whole, rather than focusing separately on individual family members and their problems".[598] The programme is based on traditional Māori values and aims

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[595] Toon Van Meijl, "A Maori Perspective on Health and Its Politicization," *Medical Anthropology* 15, no. 3 (1993): 283.

[596] Ibid., 287.

[597] For a brief introduction to the model, see: http://www.health.govt.nz/our-work/populations/maori-health/maori-health-models/maori-health-models-te-whare-tapa-wha (last accessed 2/3/2017).

[598] Retrieved from http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/initiatives/whanau-ora/ on 20/2/2017.

at improving the wellbeing of whānau by approaching health, educational and social issues holistically and has received over $200 million in government funding since it was launched in 2010.[599]

The programme focuses on seven positive outcomes for whānau.[600] They want whānau to become:

- Self-managing;

- Living healthy lifestyles;

- Participating fully in society;

- Confidently participating in Te Ao Māori (the Māori world);

- Economically secure and successfully involved in wealth creation;

- Cohesive, resilient and nurturing; and

- Responsible stewards to their living and natural environment.

The programme is described as an approach.[601] The approach,

- starts by asking whānau and families what they want to achieve for themselves, and then responding to those aspirations in order to realise whānau potential

- provides flexible support for whānau and families to move beyond crisis into identifying and achieving medium and long-term goals for sustained change

- focuses on relationships, self-determination and capability building for whānau to achieve positive long-term outcomes

- uses a joined up approach that focuses on all factors relevant to whānau wellness, including economic, cultural, environmental factors, as well as social factors

- recognise that each whānau has a different set of circumstances, and what works well for one whānau does not work well for other whānau

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[599] It was first launched with a $134.3 million budget for a four year period. Information retrieved from https://www.beehive.govt.nz/release/budget-2010-whanau-ora-launches-1343m on 20/2/2017.
[600] Retrieved from https://www.tpk.govt.nz/en/whakamahia/whanau-ora/about-whanau-ora/ on 20/2/2017.
[601] Ibid.

- recognises that whānau and families have skills, knowledge and experiences that contribute to their own resilience, and can provide a platform for whānau and families to become more self-managing and independent.

The implementation of the programme has occurred in two distinct phases. The first phase (2010 - 2014) "focused on building the capability of providers to deliver whānau-centred services".[602] This means that Te Puni Kōkiri (TPK) representatives met with providers across the country to discuss ways to focus their attention on whānau when delivering their services. The second phase (2014 - present day) "moved implementation by Government to three non-government Commissioning Agencies" which "have been contracted to invest directly into their communities".[603] These agencies are: Te Pou Matakana (in the North Island); Te Pūtahitanga o Te Waipounamu (in the South Island); Pasifika Futures which is working with Pacific Island families more particularly.

In 2015, a leadership group, the Whānau Ora Partnership Group, was formed. The group is "made up of six iwi and six Crown representatives" and "this group provides a strategic oversight of Whānau Ora and advises the Minister for Whānau Ora".[604] TPK then develops strategies and annual investment plans which are taken charge of by the commissioning agencies. These commissioning agencies contract selected providers, partners and community organisations which in turn deliver the services to Whānau. Sometimes, a Whānau navigator is used as an intermediary between the providers and Whānau. Whānau navigators "are practitioners who work with whānau and families to identify their needs and aspirations, support their participation in education, primary health and employment, and link and coordinate access to specialist services".[605] At the time of writing there were 235 navigators funded from a $50 million budget.

Te Pou Matakana's mission statement embodies perfectly the spirit of Whānau Ora:

> As a result of Te Pou Matakana Commissioning activities, whānau in Te Ika a Māui (North Island) will enjoy good health, experience economic wellbeing, be

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[602] Ibid.
[603] Ibid.
[604] Ibid.
[605] Retrieved from https://www.tpk.govt.nz/en/whakamahia/whanau-ora-old2/navigators/ on 20/2/2017.

knowledgeable and well informed, be culturally secure, resilient, self-managing and able to participate fully in te ao Māori and in wider society'.[606]

The agency divides its commissioning activities into three distinct activities: Whānau Direct, Collective Impact for Whānau and Kaiārahi. However, the distinctions between these types of activities are not evident. Whānau Direct assists whānau experiencing hardship and in need of timely financial relieve. It offers investments of up to $1,000. Whānau Direct also collects information directly from Whānau regarding common themes such as issues related to rental properties or covering basic medical costs.[607] Collective Impact for Whānau's purpose is less clear. It "is the commitment of a group of partners from different sectors to a common agenda for achieving Whānau Ora outcomes".[608] Kaiārahi are the navigators and "walk alongside whānau to develop plans, set goals and support them to achieve their outcomes towards success".[609] They also collect information directly from whānau and report their findings to the agency. In the 2015/2016 years, 3,682 whānau (8,187 individuals) were engaged with navigators and, according to the 2015/2016 annual report, of these whānau, 2,567 (69.7%) have made measureable improvement towards their priority outcomes as a result of their engagement with Kaiārahi.[610] While the report provides tables outlining the priority outcomes and progress of whānau in achieving these, the methodology used to assess these progress is not available.

The websites of the partners listed on Te Pou Matakana's official website offer an overview of the work carried out by these partners. They offer affordable health care, health and safety training, social counselling, basic computing and financial literacy courses, youth support programmes and other social work related activities.

The South Island commissioning agency, Pūtahitanga o Te Waipounamu, has published a variety of well documented reports which describe the activities of the organisation. These are divided into five categories which all represent a particular "workstream":

- Commissioning Pipeline
- Whānau Enhancement
- Capability Development

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[606] Te Pou Makana, "Annual Report 2015/2016," (2016), 3.
[607] Ibid., 8.
[608] Ibid., 3.
[609] Ibid.
[610] Ibid., 9.

- Te Punanga Haumaru

- Research and Evaluation

The commissioning pipeline assesses applications for funding and prioritises a "whānau enterprise model".[611] Whānau Enhancement uses navigators to reach out directly to whānau. The Capability Development activity focuses on self-management initiatives as well as the development of a strong leadership among Whānau through the Te Kākano o te Totara leadership programme. Te Punanga Haumaru is another fund aimed at "commissioning a whānau-centred approach which will enable whānau and communities to create safe and nurturing environments for children and young people". However, "This workstream is distinctive in that it represents the first time that funding has been made available outside of the Whānau Ora vote, through a transfer from the Ministry of Social Development".[612] At the time of writing, the fund had commissioned five initiatives through the South Island. These initiatives engage in health care and social work activities. Finally, Research and Evaluation offers quantitative and qualitative research relevant to Whānau Ora outcomes. While Te Pou Matakana's work was oriented towards urgent relief and counselling initiatives, Pūtahitanga o Te Waipounamu offers initiatives which are much more business, leadership and research oriented. It is possible that the central role played by financially stable Nga Tahu Iwi in the South Island influences this trend. Pūtahitanga o Te Waipounamu also offers more detailed progress assessment criteria and an explanation of the methodology used to measure performance than Te Pou Matakana.[613]

As we can see, the Whānau Ora programme involves many different actors and has many layers of service delivery and decision making from the Whānau Ora Partnership Group down to each single provider. As we will see in the next chapter, this complexity renders its implementation problematic. The way the services delivered by the Whānau Ora partner organisations (such as affordable health care, youth programmes, drug and alcohol prevention programmes) differ from non-Whānau Ora providers is also not evident and will also be discussed in the next chapter.

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[611] Pūtahitanga o Te Waipounamu, "Whānau Ora in Te Waipounamu: Annual Report of Pūtahitanga O Te Waipounamu," (2016).
[612] Ibid.
[613] Te Pūtahitanga o Waipounamu, "Making a Measurable and Positive Difference in the Lives of Whānau in Te Waipounamu. An Introduction and Overview of Te Pūtahitanga O Waipounamu's Whānau Ora Outcomes Framework " (2016).

Conclusion

In this chapter, after giving a brief introduction to New Zealand's history, I described the content of the Treaty of Waitangi and analysed the controversies surrounding the different interpretations of the text. I then discussed the concept of tino rangatiratanga (Māori self-determination) and explained how Māori self-determination was embedded within the ideal of biculturalism. Then, I explained the role of the Waitangi tribunal in recognising Māori by establishing redistributive and restorative justice mechanisms. I focused my analysis of Māori recognition in contemporary New Zealand by discussing three broad types of policies. First, I analysed the policies related to Māori access and control over natural resources. Second, I analysed the political representation of Māori in New Zealand. Third, I analysed welfare programs targeted at the Māori population and payed a particular attention to the Whānau Ora programme. In the next chapter I will analyse these policies as they illustrate how the theory of recognition materialises through group-differentiated rights policies that are related to liberal multiculturalism.

Chapter eight: the challenges of ethno-cultural recognition in New Zealand

Introduction

In this chapter, I offer a critical appraisal of New Zealand's bicultural system. More precisely, I critically assess the way biculturalism is currently implemented through the treaty settlements process and Māori-centred policies described in the previous chapter. I start my analysis by reviewing several social indicators related to Māori wellbeing in contemporary New Zealand. I use data about rates of incarceration, suicide and poverty (among others) to highlight the phenomenon of social suffering affecting Māori communities. I then reflect upon biculturalism and on the way the Treaty of Waitangi and the Waitangi Tribunal can impact negatively on claims for increased self-determination. I particularly focus on the emergence of Māori elites and the corporatisation of iwi as a result of Treaty settlement policies and how these "neotribal" elites might play a role in increasing social inequalities among Māori. I then focus my attention on separate Māori representation within New Zealand's parliament and question the efficacy of that institution. Finally, I critically assess the Whānau Ora programme. Again, I will pay particular attention to the five key issues with "identity politics" identified in chapter three before returning and discussing more in depth these issues in the next chapter.

Social Suffering in New Zealand: Assessing the wellbeing of the Māori population

Most of the social indicators related to Māori presented below illustrate the social suffering affecting Māori communities in New Zealand. While the gap between Māori and European New Zealanders is always significant, it is important to note that most of the negative social indicators related to the Māori are also characteristic of Pacific Islander populations living in New Zealand. The data presented in this section highlight the experience of social suffering plaguing the lives of many Māori in New Zealand despite the policies of recognition implemented by the New Zealand government. The fact that Māori experience similar negative social indicators as do other populations which are not the subject of special recognition policies suggests that the policies are not operating effectively.

First, Māori incarceration rates are very high. While Māori represent only 15% of the total New Zealand population, they comprise around 50% of the prison population. These figures certainly reflect the high crime rates among Māori but they also "reflect practices by state agencies towards ethnic minority groups".[614] These (discriminatory) practices can be subtle: for example the way laws are designed can impact disproportionately some specific ethnic groups (for example, anti-marijuana laws). But this phenomenon can also be less subtle: the fact that the police tend to control some ethnic groups more than others is a form of racial discrimination. Many Māori indeed experience negative framing from the police and they therefore consider the police as a racist institution which perpetuates colonial relationships.[615] Negative stereotyping can therefore explain why apprehension, prosecution and conviction rates are considerably higher for Māori and therefore why rates of incarceration are so high.[616] Some authors have also highlighted the relationship between crime and poverty and argue that "crime represents one of the few relevant sources of income and status" for marginalised populations.[617] Indeed,

> the communities that most offenders come from have experienced a reduction in primary health care services, increased evictions from and ineligibility for social housing, increased levels of unemployment, a decline in the level of welfare support, the introduction of 'workfare', and increased pressure to 'behave' without any commensurate provision of support.[618]

The argument here is that poverty breeds criminality. Poverty is doubtless a key factor of social suffering for Māori and is one of the results of the economic dispossession that took place through the land alienation which happened after the signing of the Treaty of Waitangi and the subsequent incorporation of Māori into the lower levels of the working class during the 20th

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[614] Robert Webb, "Māori, Pacific Peoples and the Social Construction of Crime Statistics," *MAI Review*, no. 3 (2009): 1.

[615] Tim McCreanor et al., "The Association of Crime Stories and Māori in Aotearoa New Zealand Print Media," *SITES: New Series* 11, no. 1 (2014): 123. It should be noted however that a small proportion of the police force is Māori and that the police has established policies to increase the cooperation with Māori communities to prevent crime. See the police website for more information on some of the strategies put in place: http://www.police.govt.nz/about-us/maori-police

[616] Rodolfo Stavenhagen, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. Mission to New Zealand," (United Nations, 2006). See also : Department of Corrections, "Over-Representation of Māori in the Criminal Justice System: An Exploratory Report " (Wellington: Department of Corrections 2007).

[617] K. Workman and T. K. McIntosh, "The Criminalisation of Poverty," in *Inequality: A New Zealand Crisis*, ed. M Rashbrooke (Wellington: Bridget Williams Books, 2013), 124.

[618] Ibid., 125.

century. This phenomenon was concomitant with the urbanisation of the Māori which increased in the middle of the 20th century. As we saw in the previous chapter, this urbanisation happened out of economic necessity: Māori were unable to support their families on their land and were attracted by the prospect of economic growth in the cities. One aggravating consequence of this process was the "weakened sense of these communities as spatial entities" and "as a corollary to this, the relevance of kinship links, the traditional division of labour, community cohesion, cooperative economic development, and traditional political structures has altered, and in most cases, diminished".[619]

Māori are overrepresented in low wage[620] and difficult jobs. They also suffer from widespread unemployment: unemployment rates for Māori have been two to three times higher than for European New Zealanders for the past four years and this trend has lasted for decades.[621]

Income inequalities therefore affect disproportionately Māori families even if lately "income and wealth have accrued unevenly among Māori"[622] as well: the majority of Māori are continuously represented in the bottom percentages of households income while a small proportion of Māori families is located in the top fifth.[623] This means that not all Māori suffer equally from these economic disparities and that a class differentiation has appeared within Māori society with the rise of a Māori capitalist elite (I analyse this phenomenon in a later section) alongside a majority of impoverished working class and unemployed Māori. In the 2001 census, 12.90% of the New Zealanders who earned between 0 and $20,000 (Europeans: 78.86%) were Māori while they represented only 5.04% of those who earned over $50,000 (Europeans 92.30%).[624] In the 2006 census, 12.74% of the New Zealanders who earned between 0 and $20,000 (Europeans: 66.83%) were Māori while they represented 6.46% of those who earned over $50,000 (Europeans 75.14%).[625] The trend of a widening gap in Māori

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[619] Keiha and Moon, "The Emergence and Evolution of Urban Māori Authorities : A Response to Māori Urbanisation," 6.
[620] In 2015 the median hourly earnings for Māori was $20.06/hour while it was $25.37/hour for European New Zealanders. Statistics retrieved from http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Labour%20market/med-hourly-earnings.aspx on 31/12/2016
[621] Information retrieved from http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Labour%20market/unemployment.aspx on 12/12/2016
[622] Te Ahu Poata-Smith, "Inequality and Māori," 155.
[623] Ibid.
[624] Retrieved from http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE1390 on 5/3/2017
[625] Retrieved from http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE216 on 5/3/2017

income became sharper with the 2013 census despite the Treaty Settlement process being well underway. 14.45% of the New Zealanders who earned between 0 and $20,000 (Europeans: 8.09%) were Māori while they represented 8.09 % of those who earned over $50,000 (Europeans 83.78%).[626]

Māori who are poor suffer from many ills. For example, nationally, Māori are about two times more likely than European New Zealanders to live in small, cold, damp and over-crowded houses.[627] Māori also suffer from geographical segregation in large urban centres (even if the level of segregation is not comparable to the one affecting African-Americans in US cities).[628] This phenomenon further perpetuates issues of criminality and increases the incidence of Māori-on-Māori crime. It also increases joblessness and negative stereotyping (based on one's address when applying for work, for example, as some neighbourhoods have bad reputations).

Māori also suffer from poor health: they suffer from obesity, diabetes and poor nutrition at higher rates than non-Māori. They also tend to smoke twice as much as non-Māori.[629] These issues help to explain why life expectancy is only 77.1 years for Māori females and 73.0 years for Māori males while it is 83.9 years for non-Māori females and 80.3 years for non-Māori males.[630]

Given these social difficulties, it is no surprise that Māori tend to suffer disproportionately from mental illness, drug and alcohol abuse and ultimately suicide. Indeed, Māori suicide rates are particularly alarming (1.5 times higher than non-Māori New Zealanders) and are related, according to some authors, to the traumatising effects of colonisation (referred to as historical

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[626] Retrieved from http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE8112 on 5/3/2017.
The 2001 census offered a breakdown up to $100,000 but the 2006 and 2013 did not. It would have been interesting to see the percentage of Māori who earned over $100,000. Inflation and rise in salaries need to be taken into account to have a better understanding of the situation but a tendency towards class division amongst Māori is noticeable. The widening gap between low and high income in New Zealand also appears amongst Europeans but is sharper amongst Māori.
[627] Statistics New Zealand, "Perceptions of Housing Quality in 2010/11: Exploratory Findings from the New Zealand General Social Survey," (2013). Pacific Islanders' housing situation is even worst. http://www.stats.govt.nz/browse_for_stats/people_and_communities/housing/perceptions-housing-quality-nzgss-2010-11.aspx
[628] Ron Johnston, Michael Poulsen, and James Forrest, "The Residential Segregation of New Zealand Maori in Comparative Perspective: An Ecology of Social Inequality?," *New Zealand Population Review* 31, no. 2 (2005).
[629] TPK fact sheet 011-2009 available at https://www.tpk.govt.nz/en/a-matou-mohiotanga/health/
[630] http://www.stats.govt.nz/browse_for_stats/health/life_expectancy/NZLifeTables_HOTP12-14.aspx (based on death rates in New Zealand in 2012–14)

trauma)[631] leading to wounded indigenous spirits.[632] The phenomenon of indigenous suicide is not particular to New Zealand and can be witnessed among indigenous communities all around the world. This suicide rate is a symptom of broader mental health issues as illustrated by the fact that Māori admission rates (especially for schizophrenia which represented 47.9% of mental health related hospitalisations between 2003 and 2005) to psychiatric facilities is much higher than non-Māori. Māori rates of hospitalisation for mental disorder between 2003 and 2005 were 1.8 times higher than for non-Māori. [633] The mental health issues plaguing Māori communities are in turn reinforced by the fact that, as explained by Joanne Baxter in a Ministry of Health report,

> substance use disorders are very common among Māori, with 1 in 4 experiencing such disorder in their lives before interview, and 1 in 11 in the last 12 months. Overall, almost 1 in 3 Māori will develop a substance use disorder over their lifetimes (up until age 75).

And

> it is important to note that alcohol and drug abuse and dependence impact not only on those suffering from the disorder but also on the health, wellbeing and social outcomes of others, including whānau and children. This impact can be experienced through contributions to domestic violence, family relationship disruption, economic adversity, impact on children, and contribution to other forms of injury (e.g. accidents). [634]

Child abuse and maltreatment amongst Māori (and Pacific) communities is well documented.[635] Rates of hospital admissions show that between 2000 and 2011, "Māori and Pacific children were 3.24 and 2.26 times respectively more likely to be admitted to hospital for intentional injuries than European children".[636] A bill is currently being discussed as part of the review of the Child, Young Persons and their Families Act 1989. The new proposal

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[631] Waldram, "Healing History? Aboriginal Healing, Historical Trauma, and Personal Responsibility."
[632] Keri Lawson-Te Aho and James H. Liu, "Indigenous Suicide and Colonization: The Legacy of Violence and the Necessity of Self-Determination," *International Journal of Conflict and Violence* 4, no. 1 (2010).
[633] Mason Durie, "Mental Health and Maori Development," *Australian and New Zealand Journal of Psychiatry* 33, no. 1 (1999); Joanne Baxter, "Māori Mental Health Needs Profile: A Review of the Evidence " (The Ministry of Health, 2008).
[634] "Māori Mental Health Needs Profile: A Review of the Evidence " 56.
[635] Erana Cooper and Julie Wharewera-Mika, "Healing: Towards and Understanding of Māori Child Maltreatment," in *Māori and Social Issues*, ed. Tracey McIntosh and Malcolm Mulholland (Wellington: Huia, 2011).
[636] Donna Wynd, "Child Abuse: What Role Does Poverty Play?," (Child Poverty Action Group, 2013), 21.

negates the previous ethno-cultural priority criteria when making placements in foster families. This means that Māori children could be taken away from their Whānau and raised by non-Māori. This would, according to Māori Party co-leader Marama Fox, create another New Zealand "stolen generation".[637]

These negative social indicators are reinforced by the way the media depicts these figures and therefore create a vicious circle of racism and internalised deprecation which lead these stereotypes to become self-fulfilling prophecies. Media in New Zealand sometimes tend to emphasise the image of Māori as incapable, threatening and violent people.[638] Because of this negative portrayal through the media, anti-Māori racism in New Zealand is a real problem.[639] A recent Ministry of Health report, Maori Health Chartbook, Tatau Kahukura, shows 30.8 percent of Māori aged over 15 reported unfair treatment in the areas of health care, housing or work between 2011 and 2012.[640] Research has shown that there is strong evidence of a relationship between the number of reported experiences of racial discrimination and poor health indicators.[641]

While these data definitely relate to poverty, it is important to understand that they cannot be reduced to redistributive issues alone. Indeed, "When indigenous people are seen simply as poor people whom the government has an obligation to help materially, the justice of their wish to reclaim culture and identity is dismissed. A narrow focus on material need removes attention from deeper causal issues arising from a colonial history and post-colonial present".[642] Not only does a focus on material need remove attention from issues of cultural identity but it also offers a poor causal mechanism to explain Māori social suffering since Māori have in fact received a lot of financial compensation through Treaty settlements (the questions related to

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[637] Retrieved from http://www.stuff.co.nz/national/politics/89450483/marama-fox-threatening-to-walk-away-from-the-government-if-vulnerable-children-legislation-doesnt-change on 25/03/2017.
[638] Craig Coxhead, "Maori, Crime and the Media: The Association of Maori with Crime through Media Eyes," *Yearbook of New Zealand Jurisprudence* 8, no. 2 (2005); McCreanor et al., "The Association of Crime Stories and Māori in Aotearoa New Zealand Print Media." Ray Nairn et al., "Māori News Is Bad News: That's Certainly So on Television," *MAI Review* 1, no. 1 (2012).
[639] Sylvia Pack, Keith Tuffin, and Antonia Lyons, "Resisting Racism: Maori Experiences of Interpersonal Racism in Aotearoa New Zealand," *AlterNative: An International Journal of Indigenous Peoples* 11, no. 3 (2015): 14.
[640] Ministry of Health, *Tatau Kahukura : Māori Health Chart Book 2015*, 3rd edition.. ed., Māori Health Chart Book 2015 (Wellington: Ministry of Health, 2015).
[641] Ricci Harris et al., "Racism and Health: The Relationship between Experience of Racial Discrimination and Health in New Zealand," *Social Science and Medicine* 63, no. 6 (2006).
[642] Dominic O'Sullivan, *Beyond Biculturalism : The Politics of an Indigenous Minority* (Wellington: Huia, 2007), 144.

the distribution of these settlements among Māori will be discussed later). In fact, focusing on issues of "redistribution" could also increase the image of passive Māori in need for financial intervention from the state and this would in turn reduce the strength of their claims for Tino Rangatiratanga. The obvious claim Māori can make to legitimise their position in regard to settlement policies is that since the Crown will never accept Māori to have genuine self-determination, increasing their autonomy through Māori initiatives is the best which can be achieved in this colonial setting.

The cunning of biculturalism: the Waitangi Tribunal and Tino Rangatiratanga

In the previous chapter, I explained that New Zealand developed a "bicultural" political model to articulate the relation between the Crown and Māori. This political model is rooted in a mutual commitment to the Treaty of Waitangi and is embraced by many Māori who can benefit from a number of affirmative action policies and seek redress through the Waitangi Tribunal. Yet this bicultural model is not beyond reproach. Dominic O'Sullivan, for example, argues that "biculturalism is to some extent a tool of coercion developed to assist the state to retain colonial authority in a new political and legal environment where assimilation is no longer acceptable".[643] According to him, "tokenism" is "the defining characteristic of biculturalism".[644] O'Sullivan bases his argument on the idea that the current bicultural model represents the continuation of relationships of colonisation between the Crown and Māori who are reduced to a "junior partner" in unequal political arrangements maintaining unbalanced relations of power. Because biculturalism entrenches these unequal relations of power, O'Sullivan argues that this system solidifies the colonial dimension of the state and impedes the right of self-determination for Māori.

Biculturalism can impede self-determination in many ways and, as I will now explain, the Waitangi Tribunal and Treaty settlements could potentially be one of the tools allowing the government to attenuate strong claims for self-determination. First however, it could be argued that a bicultural political model rooted in the Treaty itself represents a great limitation for strong claims to self-determination since, despite the differences between the two versions, the Treaty never offered a strong tool for self-determination as the term is usually understood: self-

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[643] Ibid., 18.
[644] Ibid., 32.

determination over territory and freedom to live under one's own law. Instead, the English version of the Treaty cedes all law-making powers to the Crown and creates an undividable sovereignty. Arguably, the appeal to the recognition of tino rangatiratanga in the Māori version of the Treaty is quite weak in comparison to the first article of the text which gives, even in the Māori version, an overarching political control to the Queen.

This undividable dimension of political power is one of the main reasons why New Zealand is represented as a bicultural state instead of as a binational one.[645] The over-reliance on the Treaty is therefore criticised by some authors. Andrew Sharp argues that "for governments and Māori to consult the Treaty as if it were an oracle, with too pious a frequency and intensity, will not take them very far and will actually impede processes of social adjustment and justice".[646] Mason Durie also argues that the Treaty "is not always the most useful document to define the extent of indigenous rights".[647]

Self-determination matters to Māori and it is plausible to imagine that increased self-determination *could* decrease social suffering amongst Māori communities for two reasons. First, *political* self-determination is opposed to political domination and servitude. It is easy to see how the first would improve the mana of Māori and therefore their self-esteem while the second would decrease it. Second, if it is the case that the non-Māori majority makes political decisions which advantage their own constituency, increased political self-determination would diminish this phenomenon and increase the decision-making power of Māori over matters which impact Māori communities. The current bicultural system does not offer a strong tool for political self-determination but, it is argued, it does offer a number of mechanisms to increase *some form* of self-determination.

I have mentioned in the previous chapter that the commitment to biculturalism meant that Māori became the recipients of a number of differentiated policies aimed at preserving their

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[645] An exception worth mentioning is the Iwi Chairs Forum's Matike Mai o Aotearoa report that makes proposals that are more binational. For example, the report discusses the possibility of having a tricameral model of governance (one sphere of governance (or "site of power") for Māori, one sphere of governance for the Crown, and one "relational" sphere of deliberation between the two first spheres (The independent working group on constitutional transformation, "The Report of Matike Mai O Aotearoa," (n.d.).).

[646] Andrew Sharp, "Blood, Custom, and Consent: Three Kinds of Maori Groups and the Challenges They Present to Governments," *University of Toronto Law Journal* 52, no. 1 (2002): 15.

[647] Mason Durie, "Tino Rangatiratanga," in *Waitangi Revisited : Perspectives on the Treaty of Waitangi*, ed. Michael Belgrave, Merata Kawharu, and David V. Williams (Oxford: Oxford University Press, 2005), 15.

culture and offering targeted services for Māori communities. Here I will analyse in depth the policies related to land rights, political representation and welfare (and in particular whānau ora). Before I do, I need to briefly remind the reader that Māori recognition also covers other aspects of social life. Te reo Māori is recognised as an official language in New Zealand and programmes of revitalisation have been implemented. Māori culture is also protected and promoted through several policies related to education. Māori are also the focus of ethnically differentiated programmes within the criminal justice system. These different areas of recognition have all shown mixed results.[648]

Rights to natural resources and Tino Rangatiratanga

As we saw in the previous chapter, one of the main tools which increases Māori access to and control over natural resources is the treaty settlements mechanism resulting from the Treaty of Waitangi Tribunal. An analysis of the treaty settlement process highlights the fact that treaty settlements have mainly reduced compensation for land alienation to financial transfers and land/natural resources "returned to Māori" have been commodified. This leads to a paradoxical situation. For while O'Sullivan recognises that "natural resources, and land in particular, are inextricably linked to rangatiratanga" he also further adds that this "means that claims to the Tribunal are based on much more than simply restoring an economic base. Land is symbolic of authority and identity, and often has religious significance".[649] It is, however, not obvious how treaty settlements accomplish this task since the returns of land usually take the form of a

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[648] For an assessment of Te reo Māori revival programmes, see: Richard A. Benton, "Perfecting the Partnership: Revitalising the Maori Language in New Zealand Education and Society 1987-2014," *Language, Culture and Curriculum* 28, no. 2 (2015); Arapera Royal Tangaere and Stuart McNaughton, "From Preschool to Home: Processes of Generalisation in Language Acquisition from an Indigenous Language Recovery Programme," *International Journal of Early Years Education* 2, no. 1 (2003).
For an assessment of differentiated education policies, see: Elizabeth Rata, "Localising Neoliberalism: Indigenist Brokerage in the New Zealand University," *Globalisation, Societies and Education* 8, no. 4 (2010); Tangaere and McNaughton, "From Preschool to Home: Processes of Generalisation in Language Acquisition from an Indigenous Language Recovery Programme."
For an assessment of differentiated programmes within the criminal justice system, see: Dannette Marie, "Maori and Criminal Offending: A Critical Appraisal," *Australian and New Zealand Journal of Criminology* 43, no. 2 (2010); Juan Marcellus and Robert, "A Critical Appraisal of Responses to Māori Offending."; David Green, "Interweaving the Status and Minority Rights of Maori within Criminal Justice," *Te Mata Koi : Auckland University Law Review* 21 (2015).
[649] O'Sullivan, *Beyond Biculturalism : The Politics of an Indigenous Minority*, 56.

redistribution of economic assets and it could be argued that symbolic cultural recognition only allows the return of "authority" in a very thin sense.[650]

I interpret O'Sullivan's statement as an emphasis on the return of mana through Māori agency within the tribunal. This agency then leads to the Crown's recognition of its past wrong doings and its "symbolic" return of assets to the tribes.[651] I say "symbolic" because even if transfers of millions of dollars (or even in some cases of material objects) are tangible they still do not equate to a return of land understood as territory over which Māori could control their own political decisions. It should be mentioned that Māori who advocate for a separate Māori territory are few and that the strongest case comes from Tūhoe (this case will be analysed at the end of this section).

If Māori separatism is a very marginal phenomenon, it is nonetheless legitimate to question why other political arrangements which would make the "return of land" (more closely related to the idea of territory) more tangible are not thoroughly discussed, especially since some countries such as Colombia have developed such policies for indigenous populations. The recognition of certain areas as Māori *rohe* is the closest equivalent to claims for Māori territory but as we saw in the previous chapter, Treaty settlements recognising Māori control over natural resources (land or water) are always highly conditional and restricted.

It could be argued that the Waitangi Tribunal offers a paradoxical "bicultural tool" to implement tino rangatiratanga. Indeed, O'Sullivan accurately suggests that Treaty settlements "contribute to self-determination, but at the same time limit its political space".[652] Treaty settlements in fact contribute to "self-determination" if we understand the term with a more philosophical neoliberal approach: self-determination as the ability to make choices about one's life, wealth and ability of enterprise. Put simply: Treaty settlements increase self-determination because by giving money to Māori it allows Māori to increase their financial power and therefore use that money to develop their own Māori environment from within New Zealand's neoliberal system. As O'Sullivan said however, the "political space" of Māori self-determination is extremely reduced by this arrangement.

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[650] Tuhoe's role in the gestion of the Te Urewera park is one of the only exception to this rule even if the recognition of Tuhoe's role and relation to Te Urewera is still far from a form of territorial recognition.

[651] Gibbs, "Justice as Reconciliation and Restoring Mana in New Zealand's Treaty of Waitangi Settlement Process."

[652] O'Sullivan, *Beyond Biculturalism : The Politics of an Indigenous Minority*, 60.

Treaty settlements do cover non-financial redress as well such as co-management initiatives and symbolic gestures aimed at respecting and promoting Māori worldviews. Co-management initiatives increase tino rangatiratanga to a certain extent but let us remember that these partnership mechanisms are problematic and usually reduce Māori to an advisory role and not to a sovereign/owner role. It is difficult to see how the promotion of Māori worldviews such as renaming places or taking into account Māori metaphysical views, while being positive gestures of respect towards Māori, increase tino rangatiratanga. Again, these policies have more to do with reconciliation and restoring *mana* to Māori than with self-determination as such. Expending on O'Sullivan's idea that the settlements process reduces the "political space" of Māori self-determination it could be argued that Treaty settlements expand the economic and cultural space of Māori self-determination to the detriment of its political one.

The reduction of political self-determination is made clear by another problem inherent to the process: "settlements explicitly require a concession that the Crown is sovereign and implicitly suggest that lands and resources that form the settlement are at the disposal of a benevolent Crown".[653] This problem raises issues related to the concept of self-determination but it also question the validity of a partnership-based contract. As Maria Bargh asks: "how can a relationship be restored when one side of the relationship, such as the Crown […] is determining the process and taking limited responsibility for changing their fundamental attitudes, let alone their behaviour?".[654] Bargh also argues that settlements have become "much more 'about money'" than about political self-determination and the process, therefore, misses the opportunity to engage in broader debates over potential deeper political changes.[655]

If we accept O'Sullivan and Bargh's analysis it becomes difficult to see how Treaty settlements offer a viable political form of self-determination or even a meaningful symbolic gesture portraying Māori as an equal self-determining people instead of a subordinated people. Again, the only self-determination which Treaty settlements can offer to Māori is a self-determination compatible with neoliberal philosophy: self-determination to invest assets and create (Māori controlled) businesses and services but not self-determination as a self-ruling people which would require differentiated law and possibly control over territory in a decentralised New Zealand state (as it is the case in my other case study, Colombia). The political space for the

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[653] Ibid.
[654] Maria Bargh, "The Post-Settlement World (So Far)," in *Treaty of Waitangi Settlements*, ed. Nicola R. Wheen, Janine Hayward, and Michael Belgrave (Wellington: Bridget Williams Books and the New Zealand Law Foundation, 2012), 168.
[655] Ibid.

development of a potential separate Māori political project in New Zealand is very restricted and any "significant constitutional change that would radically alter the settlement process" to increase Māori control over their destinies would require "removing the Crown from being in sole charge of it".[656] Such radical constitutional changes are nevertheless necessary if Māori would want to move away from claims for cultural protection and "strategies that are seen as more consistent with polyethnic multiculturalism" to claims for self-determination.[657]

The political project which best embodies these stronger claims for self-determination is developed by the Tūhoe iwi. Tūhoe's political project considers the Tūhoe as a nation and aims at decreasing their dependency on state-delivered services such as health and education. They have opened a clinic without receiving state funding and are now talking about (and planning) managing welfare money in order to combat welfare dependency among Māori as they consider receiving benefits a form of servitude.[658] They also built a $15 million sustainable headquarter, a "living building", as a sign of Tūhoe's commitment to the environment and to encourage "pride, unity and presence".

Tūhoe's demands for decentralisation of welfare represent a unique and innovative claim for self-determination in New Zealand. It is part of a broader project which encompasses broader control over conservation, health and education. One core idea of the project is that Māori who are on benefits in Tūhoe's region would cost the government $735.4 million in their lifetimes and that this amount count be directed to Tūhoe instead.[659] The iwi would use the money to create job opportunities and run its own welfare system.

A report has been commissioned by the Ministry of Social Development to explore the feasibility of such project.[660] The idea is, according to the iwi, consistent with the recognition of Te Mana Motuhake O Tūhoe. The concept of mana motuhake is described as followed in an official Tūhoe document. It is:

> a political stance that supports the retention and restoration of power and control by Tūhoe over all matters pertaining to Tūhoe. This confirms the validity of hapū political systems and rights to exercise leadership authority pertinent to decision -making that is based on Tūhoetanga. The freedom to determine how Tūhoe will live, how they will

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[656] Ibid., 180.
[657] Smits, "The Neoliberal State and the Uses of Indigenous Culture," 48.
[658] Ibid.
[659] It would, according to the report, appear that this number is an over-estimate.
[660] Moore et al., "Decentralising Welfare - Te Mana Motuhake O Tuhoe."

raise their children and mokopuna, how they will keep traditions alive, how they will celebrate who they are, how they will preserve and maintain their language and cultural values and ultimately how they will prosper and continue.[661]

In an interview, Tamati Kruger described mana motuhake as

…basically saying we take responsibility and we do not want you to pay for it, we want to pay for it ourselves…mana motuhake exists to do one thing and that is to avert poverty, ignorance and powerlessness and secondly it is there to encourage prosperity.[662]

The report argues that

The twin objectives of Tūhoe and the Crown are not inconsistent: enabling tailored and innovative approaches to the design and delivery of social services is intended to achieve better outcomes in a more efficient way, and sustainable results in these dimensions will reduce the long-term welfare liability.[663]

Basing its analysis on the data available from different agencies as well as the experience of other indigenous communities in other countries, the report explores "a spectrum of differing degrees of decentralisation from deconcentration of administrative functions at the very limited end through to full fiscal and political devolution".[664]

Besides the limited changes involved in contracting out the Ministry of Social Development (MSD) services to a third party (Tūhoe), one of the feasible alternative (and the one most in line with Tūhoe's claims) would be partial fiscal decentralisation.

Under this option, the individual rights of the beneficiaries would be changed – or provision for an opt-out made – so that a calculated sum of money would be allocated to the Tūhoe to meet agreed social and economic objectives but with a degree of freedom to be negotiated for the Tūhoe to spend these funds more effectively than under the present centrally-managed system. Reasons for doing this would be to honour the relevant aspect of the settlement agreement, but also because it would be believed that

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[661] Ibid., 13.
[662] Ibid.
[663] Ibid., 15.
[664] Ibid., V.

the Tūhoe could get better results from the money because of the knowledge, proximity and influence with the potential beneficiaries.[665]

Yet, even without adopting the most extreme end of the spectrum, full fiscal devolution, which would be unsustainable because taxing the local population would not raise enough revenue, certain challenges already appear. The main one is the lack of experience of Tūhoe in managing funds and designing welfare policies. The report nevertheless argues that,

> Without anticipating what the scope and content of the agreed vision and plan may be, we suggest that practical initiatives start with what is possible within existing institutional frameworks, and with MSD's discretionary funding. This could be expanded to inter-agency trials, as are already underway and consider available and possible new mechanisms for multi-year, multi-Vote funding. Pilot programmes would enable Tūhoe to start gaining experience in both governing and implementing initiatives, incrementally build their capacity, and progressively 'learn by doing'. It would also allow progress to begin to be made while more substantive self-governing actions are negotiated and developed.[666]

This decentralisation of welfare demanded by Tūhoe would be more consistent with the recognition of mana motuhake in their settlement with the Crown than the current emphasis on the Service Management Plan outlined in the deed of settlement which, as we saw, remains a Crown document reducing Tūhoe's self-determination to bi-lateral agreements between the iwi and some state agencies. The $169 million financial redress could also be used for capacity building but money itself will not create self-determination. Instead, a political decision towards decentralisation would be necessary. While the fact that MSD commissioned a report to assess the viability of such project demonstrates at least some degree of openness to the project it is unlikely that any major party would take the risk to back up a project which could be framed in a negative, separatist way.

A further issue is raised by some scholars. They argue that because of its emphasis on iwi as recipients of Treaty settlements, the Waitangi Tribunal renders impossible the creation of a pan-Māori movement which would increase the possibility for a genuine Māori self-determination movement to arise. Some authors even underline the negative impact of treaty settlements on Māori co-operation as treaty settlements tend to pit iwi against iwi in a

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[665] Ibid.
[666] Ibid.

competition for a greater share of the cake.[667] They also create tensions within iwi themselves as the assets are not always distributed in a way which is agreed upon by all hapū or Whānau. As we will see in the next section, iwicentrism also tends to help the creation of an elite amongst Māori which may impede the proper redistribution of Treaty Settlements and slow down the trickle-down effect of these redistributive mechanisms.

Finally, Treaty settlements contribute to an increase in anti- Māori attitude among the rest of New Zealand's population. As Keith Barber explains,

> since *some* Maori have become the beneficiaries of Treaty of Waitangi settlements, Maori *as a whole* have become perceived as a privileged group and, for most pakeha, the idea that an already privileged group should be receiving further special assistance is anathema. As a result, a high level of anti-Maori resentment has emerged.[668]

Here Barber underlines a very common backlash resulting from affirmative action policies and refers to Don Brash's type of messages to show that, to a certain extent, treaty settlements can impede the "partnership model" promoted by biculturalism. A 1999 survey revealed that the Treaty and Waitangi Tribunal was a major point of division and 34% of participants wanted the Treaty abolished.[669] According to another survey conducted in 2003, "77% believe the Treaty mostly creates division between Maori and non-Maori".[670]

It would be easy to argue that the general population's resentment does not in itself invalidate the adequacy and justice of the treaty settlement process but since the theme of my investigation is "recognition", the feelings resulting from recognition policies among the general population need to be taken into account. Indeed, a policy or set of policies which increase misrecognition and disrespect towards a particular group, regardless of the justifiability of the policies, need to be critically assessed. I will return to this issue in the last chapter of this thesis.

Before moving on to the next section, I would like to argue that Treaty settlements and their relationship with tino rangatiratanga highlight a theoretical problem covered in the chapter on

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[667] Maria Bargh, "Resistance : An Indigenous Response to Neoliberalism," in *Resistance : An Indigenous Response to Neoliberalism*, ed. Maria Bargh (Wellington: Huia, 2007).
[668] Barber, "'Indigenous Rights' or 'Racial Privileges': The Rhetoric of 'Race' in New Zealand Politics," 149.
[669] Elizabeth Rata, "Discursive Strategies of the Maori Tribal Elite," *Critique of Anthropology* 31, no. 4 (2011): 360.
[670] Data retrieved from "The public, race relations and the Treaty" available at http://www.massey.ac.nz/~wwpubafs/2004/Press_Releases/02_20_04.html (last accessed 5/11/2017)

the theory of recognition (chapter two). In that chapter, I covered the debate over the analytical distinction between recognition and redistribution. I explained how Nancy Fraser argues that it is important to keep a distinction between these two paradigms and not to "displace" economic issues under a recognition framework. Treaty settlements in New Zealand, however, show that the distinction between the two categories can be unclear. In this case, treaty settlements can be understood as a form of "redistribution as recognition" that is consistent with Honneth's theory. From the discussion covered in this section, it is plausible, however, to argue that, paradoxically, a form of cultural recognition that is mainly reduced to redistributive mechanisms can impede self-determination, which is, in many cases, a component of the recognition of peoples.

Māori elites, Māori political representation and/or Māori co-option?

The rise of Māori elites

As I have explained, biculturalism and the Treaty settlements process led to ambiguous outcomes for Māori. Elizabeth Rata recognises that the proponents of biculturalism's intention was to "change the colonial based dominant-subordinant relationship between Maori and Pakeha and establish a new political positioning in which Maori social and economic aspirations could be realized".[671] She argues, however, that "despite the emancipatory intentions driving this project, the outcome has been the creation of wealthy corporate tribes and the double dispossession of many urban Maori".[672] According to her, we witness a paradoxical phenomenon in New Zealand as ethnic revivalism becomes concomitant with, and even supports, capital accumulation.[673]

She describes this contradictory phenomenon and argues that the fusion between the two ideologies of capitalism and ethnic revivalism is achieved in the following four ways.

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[671] Elizabeth Rata, "The Transformation of Indigeneity," *Review (Fernand Braudel Center)* 25, no. 2 (2002): 180.
[672] Ibid.
[673] In this section, I rely heavily on Rata's work. While I believe that she raises valid issues from the perspective of the theory of recognition, her normative position is different to mine. Rata's criticism is built upon the idea that there should be no racial differentiation in New Zealand, not that a *better form of recognition* might require alterations to the current bi-cultural model of racially differentiated policies.

Firstly, the traditional resources returned under the government's historical grievance settlement scheme are brokered into national and international capitalism as tribal property rather than as the traditional inheritance of both tribalized and de-tribalized Maori. Secondly, the tribal brokers are considered to be traditional leaders of a revived communal tribe rather than a class elite in an exploitative relationship to tribal and non-tribal Maori. This is despite their privileged relationship to the newly capitalized lands, waters and financial compensation packages. Thirdly, tribal organizations are recognized by the government as the modes of regulation of tribal economic and social activity, despite the non-democratic nature of the tribes. Finally, the neotraditionalist ideology of the revived traditional tribe and revived communal social relations is widely and uncritically accepted by both Maori and Pakeha (white New Zealanders). By legitimating the capitalization of traditional resources, by enabling the creation of neotribal modes of regulation, and by concealing the bourgeois status of a section of Maori in traditional status and authority, neotraditionalism links ethnic revivalism and late capitalism in ways that contribute towards both the stabilization of accumulation and the entrenchment of inequalities.[674]

Rata's criticism is very broad and covers a wide range of phenomena related to indigenous recognition in contemporary New Zealand. In short, Rata criticises the way Treaty settlements commodify natural resources and turns this capital into "tribal property".[675] This newly acquired capital becomes concentrated in the hands of non-elected "tribal brokers" who use their status of traditional authorities to justify their position and become a capitalist ruling elite among Māori. Rata criticises both Māori and Pakeha for buying this "neotraditionalist ideology" uncritically. This last criticism is reinforced by her strong argument against the highly constructed identity put forward by these "new tribal elites". In other words, her criticism towards the unequal development of Māori society underlines the lack of mechanisms to ensure that Treaty settlements are properly used and that the financial benefits related to settlements trickle down to the whole Māori population equally.

Rata's criticism needs to be addressed, as it could very well represent one of the reasons why Māori recognition in New Zealand has not yielded the expected improvements in Māori wellbeing. I will now analyse and assess the four aspects of her criticism. First, the

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[674] Rata, "Late Capitalism and Ethnic Revivalism: A `New Middle Age?," 45.
[675] For Rata the 1992 Treaty of Waitangi Fisheries Claim Settlement Act (the Sealord deal) represent the paradigmatic moment when natural resources where turned into commodified capitalist resources.

commodification, privatisation and capitalisation of natural resources benefiting iwi has been established in the previous section and will not be repeated here.

Second, Rata argues that the traditional tribal leaders have become a capitalist elite. We can see how some trust board members, lawyers and entrepreneurs could fit her description as their careers depend on this phenomenon. Rata gives a list of institutions and names without, however, clearly articulating how these institutions and people perpetuate or create new forms of injustice.[676] She argues that this elite "operates through the Iwi Leaders Group and Iwi Chairs Forum".[677] The Iwi Chairs Forum is an important organisation and works as a platform with the goal of organising meetings between tribal leaders and promoting Māori economic, social and political interests. It plays an important role in the development of Māori businesses.

It appears that involvement in Treaty settlements and Māori businesses is highly lucrative for tribal leaders. The current total assets of iwi which have settled their claims are estimated to be $6 billion. Ngai Tahu ($1.27b), Waikato-Tainui ($940m) and Ngati Whatua Orakei ($717) are the wealthiest iwi and their leaders received high payments for their bargaining activities. For example, Tukoroirangi Morgan, from Tainui, "was paid $141,000 in director's fees as well as a $100,000 success fee for completing Tainui's Waikato River settlement".[678] Other Māori leaders received high amounts of money for their involvement in the settlement process: "Since 2008 the Government has paid Sir Douglas Graham $177,264 to untangle the claims in Tamaki Makaurau, while Sir Wira Gardiner was paid $76,496".[679] These amounts add on to their normal remunerations.

These high salaries have led to controversies and the government sometimes had to take action. For example, "High-profile Maori leader Sir Graham Latimer has had his fees from a land claims body slashed by the Government. Sir Graham made more than $100,000 a year as chairman of the Crown Forestry Rental Trust. But Finance Minister Michael Cullen has capped Sir Graham's annual trust income at a quarter of that, $25,000".[680] Involvement in Māori education through Wananga leadership is also lucrative: the head of Te Wananga o Aotearoa

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[676] Elizabeth Rata, "'Marching through the Institutions': The Neotribal Elite and the Treaty of Waitangi," (New Zealand Research for Political Research, 2005).
[677] "Discursive Strategies of the Maori Tribal Elite," 360.
[678] Retrieved from http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10632936 on 5/03/2017.
[679] Retrieved from Ibid.
[680] Retrieved from http://www.nzherald.co.nz/treaty-of-waitangi/news/article.cfm?c_id=350&objectid=3514559 on 5/3/2017.

can be paid up to $400,000.[681] The salary cap for the chief executive of Whakatane's Te Whare Wananga o Awanuiarangi is $330,000 while Otaki's Te Wananga o Raukawa's reaches $200,000.[682]

Sir Mark Solomon of Ngai Tahu perfectly embodies the successful Māori elite described by Rata. Solomon was the prime administrator (Kaiwhakahaere) of Ngai Tahu, a position which "commands a salary of about $300,000 plus car and expenses.".[683] Solomon is also part of a number of other high-profile Māori organisations such as the Iwi Chair forums and has recently been appointed deputy chair to the Canterbury District Health Board (CDHB) after stepping down from his position at Ngai Tahu amidst issues of transparency within the iwi bureaucracy which were leaked into the media. "The main leaks were memorandums prepared by Sir Mark Solomon, in which he made accusations of nepotism and corruption in the Ngai Tahu organisation and attacked Te Runanga o Ngai Tahu (Tront) chief executive Arihia Bennett".[684] Ngai Tahu then spent at least $200,000 to investigate the leaks which mainly revealed power struggles amongst Ngai Tahu leaders.

Rata's claims about the rise of an elite capitalist class of Māori are further supported by the figures provided in this chapter which showed a widening gap between low and high income Māori even if statistics New Zealand's lack of breakdown within the high income bracket does not permit us to know how many Māori belong to the super-rich class. It is therefore possible to argue that Māori do not benefit equally from the current Māori development initiatives and treaty settlements and Māori society now tend to reproduce the exploitative class differentiation inherent to a capitalist system. Iwi become entangled in an economic system which many would judge alien to indigenous worldviews.[685] Indeed, because of their focus on economic

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[681] This is just below the salaries of Vice-Chancellors from low and mid-ranking universities in New Zealand but much lower than the University of Auckland's Vice-Chancellor's salary of about $715,000. Data retrieved from http://www.stuff.co.nz/national/education/88302136/canterbury-university-vicechancellor-receives-90001-jump-in-remuneration on 17/12/2017.
[682] Retrieved from http://www.radionz.co.nz/news/te-manu-korihi/222333/pay-rises-for-maori-govt-sector-ceos on 5/3/2017. It should be noted that these salaries are consistent with those paid to the CEOs of comparably sized non-Maori organisations.
[683] Retrieved from http://www.stuff.co.nz/business/industries/87067469/ngai-tahu-spends-200000-hunting-leak-to-the-media on 5/3/2017.
[684] Retrieved from http://www.stuff.co.nz/business/industries/87067469/ngai-tahu-spends-200000-hunting-leak-to-the-media on 5/3/2017.
[685] See for example Taiaiake Alfred, *Peace, Power, Righteousness : An Indigenous Manifesto* (New York: Oxford University Press, 2009).

growth, iwi now tend to adopt ambiguous positions such as their attachment to what they call "collective capitalism" (which seems like an oxymoron).[686]

The third point highlighted by Rata referred to the government's support for the corporatisation and privilege given to iwi as the partner in the post-Waitangi settlement relationship. It is in fact clear that such a corporatised iwi-centric structure is supported by the government since iwi have been designed as the recipients of settlements. Rata's criticism of the "iwicentrism" inherent to the Treaty settlement process is also shared by other scholars. Fiona McCormack, for example, argues that "the concentration of power and decision making at the iwi level […] has been fostered and legitimized by governmental policies".[687] McCormack nonetheless also argues that these new socio-political constructs centred around tribal identity could also be understood as appropriate Māori responses to modern circumstances in particular geographical and political settings while recognising that some Māori can be left out of the process.[688] The creation of "urban iwi" for non-iwi Māori represents such positive response to modern circumstances and has decreased the number of Māori left out of the iwi-centric process.

Fourth, Rata's claim about the generalised acceptance of such a system of recognition is more complicated. While government agencies and educational institutions have shown a great commitment to "Treaty principles", some non-Māori New-Zealanders have also shown their objection to what they perceive as Māori privileges. The success of Don Brash's Orewa discourse is a reminder of this opposition. It does seem, however, that positions on the matter are polarised with uncritical adherence to the Treaty principles on the one hand, and anti-Māori, sometimes almost racist, rejection of Māori recognition on the other hand.

Rata's main concern is centred on the difficulties encountered by those left out of this tribal-business process and in particular by de-tribalised urban Māori who have to suffer from the disadvantages of their condition as a colonised people but who also do not fit nor benefit from the post-Waitangi Tribunal advantages secured for tribal Māori. She argues that "a more just criteria of entitlement to the settlement benefits based upon continuity with the past would recognize tribal displacement rather than tribal identification. After all, contemporary Maori poverty is the consequence of the historical displacement and dispossession".[689] Here Rata

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[686] Māori Economic Development Taskforce, "Iwi Investment Wānanga Report " (2010).
[687] Fiona McCormack, "Indigeneity as Process: Māori Claims and Neoliberalism," *Journal for the Study of Race, Nation and Culture* 18, no. 4 (2012): 424.
[688] Ibid. 425.
[689] Rata, "The Transformation of Indigeneity," 182.

underlines a common pattern of policies of recognition targeted at indigenous people whereby those who do not fit the "definition" of indigenous people do not benefit from the policies aimed at recognising indigenous people on the one hand but also still suffer from general misrecognition related to their identity on the other hand. She advocates for corrective measures to be based on the experience of injustice of people because of their identity instead of whether or not they fit into the mould cast by the colonial state. While her idea could appear appealing in theory, it is difficult to know how a set of criteria could be used to judge whether or not someone has "suffered enough" because of her identity to benefit from corrective measures. This would likely fuel a "politics of the wound" that counters Wendy Brown's advocacy for liberating self-affirmation (chapter two).

The creation of Māori urban authorities represents a (partial) corrective to this problem but Rata's articles do not take into account the relatively recent increased importance of these Māori Urban authorities. Interestingly, these institutions had to fight to have their legitimacy as Māori authorities recognised. It is noteworthy, however, that these authorities are now functioning in a very similar fashion as those iwi that Rata criticises: they are established as corporate trusts, receive government funding and are just as enthusiastic about financial settlements as more traditional iwi.[690]

The Waipareira Trust and Manukau Urban Maori Authority are two of the main Māori urban authorities and are part of the National Urban Māori Authorities. Pare Keiha and Paul Moon described the functioning of these institutions as follow:

> These organisations have developed a portfolio of business activities that include the delivery of social, health, and training and employment services to the community. The complexity of the business activities of these organisations have become increasingly sophisticated, and in the case of the Waipareira Trust, it is actively engaged in property development and also operates a corporate services division that provides financial, legal, administration and research services for the trust's activities.[691]

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[690] For example they have shown interest in increasing the control of urban Māori over Māori Fisheries settlement money. See "Urban Maori win case against Te Ohu Kai Moana over control of $20m trust" retrieved from https://www.nbr.co.nz/article/urban-maori-win-case-against-te-ohu-kai-moana-over-control-20m-trust-b-191761 on 31/12/2016

[691] Keiha and Moon, "The Emergence and Evolution of Urban Māori Authorities : A Response to Māori Urbanisation," 10.

These activities illustrate perfectly Rata's neotribal capitalism. This phenomenon decried by Rata is in line with New Zealand's neoliberal agenda.[692] Indeed, as I explained in the previous chapter, from 1984 New Zealand adopted a set of policies in line with the Washington Consensus which include deregulation of the labour market, reduced government spending and privatisation among other characteristics. One key aspect of the adoption of neoliberal policies was that "public services were contracted out, departments were reconceived as the "suppliers" of services purchased by government and ministers" in a competitive process.[693]

By returning a certain amount of wealth to tribal organisations that function as businesses and asking these bodies to take care of traditionally state-delivered services, New Zealand is effectively following the neoliberal politics of devolving state responsibilities and regulations to non-state institutions in order to maximize profit. Some of these institutions could very well deliver good services to Māori but they still work from within an economic system that is known for increasing social inequalities.

The phenomenon of decreasing state services can be analysed particularly through a critical appraisal of Māori welfare programmes whereby the health and wellbeing of Māori communities is handed over to Māori providers. I will discuss this issue in regard to Whānau Ora in the next section. The use of Māori culture to promote New Zealand's neoliberal agenda also takes the form of a commodification of Māori arts and rituals for purely commercial purposes.[694] The "neoliberalisation" of indigeneity is therefore advantageous to the state as the threat of a radical left-leaning indigenous project (as it is common in Latin America) decreases. I will show in later chapters that "neoliberal" multiculturalism is a common phenomenon in many other parts of the world but it can already be argued that this phenomenon illustrates the pacification/normalisation issue described in the chapter on liberal multiculturalism.

Māori political representation in parliament

I now wish to analyse how Māori representation in parliament influences (positively or negatively), or could influence the current situation of misrecognition faced by Māori in New Zealand. I have already mentioned in the previous chapters that a number of scholars are sceptical about the reserved seats mechanism and see it as a way to dilute strong claims for self-determination (again, this policy was first introduced in times of confrontation between

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[692] Rata, "Late Capitalism and Ethnic Revivalism: A `New Middle Age?," 51.
[693] Smits, "The Neoliberal State and the Uses of Indigenous Culture," 53.
[694] Ibid.

Māori and the Crown towards the end of the Land wars) and to assimilate Māori in the mainstream (colonial) political establishment of the state.

Of course, the Māori seats institution functions within a representative democracy system and such system is in itself worth a systematic critique to underline the lack of genuine "representation" within a representative democracy. It could also be argued that majoritarian rule will always disadvantage indigenous people within countries where they form a democratic minority (this means everywhere except Bolivia and maybe Guatemala). Andrew Sharp mentions a "pakeha veto" which is always ready to block Māori aspirations.[695]

I will, however, not discuss these particular issues but instead arguethat, even without being critical towards representative and/or majoritarian democracy, the current system is potentially problematic because of its co-opting tendency. By co-opting tendency I mean (A) the phenomenon of diluting radical demands and portraying them as a threat to "realistic" politics and (B) the creation of a class of representatives who benefit from their position and would lose these benefits if they were to give way to the genuine demands of those who they represent and who would step out of line too frequently or vigorously.

Augie Fleras argues that separate representation for Māori "did not originate entirely from magnanimous intentions" but instead for a number of practical reasons such as the necessity

> to (1) pacify a defeated, yet formidable, adversary whose co-operation was useful in the orderly development of New Zealand society; (2) assimilate the Maori as quickly as possible without imposing an undue burden on the colony or Colonial Office; (3) safeguard settler interest for as long as it took to acquire Maori land and to secure the frontier against unfriendly Maori; (4) preclude any attempt by the Maori to set up a separate power base with which to circumvent parliamentary authority; and (5) placate the British Colonial Office over government confiscation of Maori land following the Land wars of 1865.[696]

In other words, the special Māori representation in parliament was more a matter of co-opting and securing power than a matter of sharing it. Indeed, "Maori seats were consistent with the

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[695] Sharp, "Blood, Custom, and Consent: Three Kinds of Maori Groups and the Challenges They Present to Governments," 10.
[696] Augie Fleras, "From Social Control Towards Political Self-Determination? Maori Seats and the Politics of Separate Maori Representation in New Zealand," *Canadian Journal of Political Science* 18, no. 3 (1985): 556.

government's assimilation philosophy, which attempted to transform the Maori into brown-skinned Pakeha with a minimum of financial, military and administrative interference".[697]

The issue of co-option and dilution of demands for more genuine forms of Māori political is addressed by some Maori scholars. Robert Matuha, "criticized Maori seats as an exercise in political futility, useful only for the control and containment of the Maori".[698] He further argued that the abolition of the seats would force non-Māori politicians to chase the Māori vote and increase their interests in Māori issues. Ranginui Walker also criticised the Māori seats and argued that they "constitute a political cul-the-sac, the ineffectiveness of which is directly attributable to the parliamentary principle of majority rule".[699] The adoption of MMP may have weakened these criticisms.

It could be argued that the co-option of Māori through parliamentary means was evident through the Māori Party's alliance with National since the Māori party decided to co-operate with National and its neoliberal ideology which has negative effects on the poor of New Zealand (and, as I have mentioned earlier, Māori represent the poorest social strata of the country). The "bargain" offered to Māori in exchange for their cooperation was revitalisation programmes for Te Reo and the Whānau Ora programme, both of which have shown very mixed results. Māori political protests have also almost disappeared from the public scene after the Foreshore and Seabed controversy and the 2004 hikoi which followed and led to the creation of the Māori Party.

It could be argued on the other hand that under National Māori have fared quite well in terms of Treaty Settlements. I have shown earlier, however, that these Treaty Settlements and the commodification of natural resources inherent to this particular process of reparative justice poorly serve claims for self-determination unless these claims are understood in neoliberal terms. Besides, the degree to which the reserved seats and, later, participation of the Māori party have played a role in this process is uncertain.

Other political arrangements could be established to better reflect New Zealand's bicultural objectives. The Mana Māori Motuhake Party once outlined "plans for the eventual establishment of a separate Maori parliament, modelled along the lines of the Kotahitanga".[700]

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[697] Ibid., 557.
[698] Ibid., 566.
[699] Ibid., 567.
[700] Ibid., 571.

Such political arrangements exist in Norway where the Sami people have their own parliament[701] and could allow the development of political practices aligned with kaupapa Māori. I will, however, discuss a different political alternative in the last part of this thesis.

Welfare

As I have explained in the previous chapter, New Zealand has adopted a broad range of policies to recognise Māori culture and Māori people as partners with the Crown in virtue of the Treaty of Waitangi. Many of these policies are implemented by newly formed Māori services providers. In the former sections, however, I have highlighted some shortcomings, paradoxes and ambiguities with Māori recognition through a bicultural model focused on the Treaty and I have underlined some questionable developments with the current "neoliberalisation" of indigeneity resulting mostly from a focus on the Waitangi Tribunal as a tool to implement reparative justice in New Zealand. I now want to turn towards other policies which could be defined as "differentiated rights" policies within the welfare system and within the health sector in particular. Because what is certain is that an emphasis on the "identity" dimension of health and the devolution of health care to Māori communities is again an easier solution for the government to adopt than tackling genuine health related issues which would require increased government spending in the health care system but also in social services and housing for example.

As Mason Durie explains, answering the question "do policies based on race or ethnicity work?" is "unlikely to produce a straightforward or unequivocal answer, not because there is a dearth of research about the impacts of policies on race and ethnicity, or any lack of experience with race-based policies in New Zealand, but because the answer to "what works?" depends as much on who asks the question as who answers it".[702] In other words, the conclusions of an assessment of ethnically differentiated policies will depend on what the researcher is looking for. In this case, I would like to propose a criterion to assess these policies: do these policies help to alleviate the social suffering of Māori?

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[701] Anne Julie Semb, "From 'Norwegian Citizens' Via 'Citizens Plus' to 'Dual Political Membership'? Status, Aspirations, and Challenges Ahead.," *Ethnic and Racial Studies* 35, no. 10 (2012).

[702] Mason Durie, "Race and Ethnicity in Public Policy: Does It Work?," *Social Policy Journal of New Zealand*, no. 24 (2005): 1.

Mason Durie is a foremost advocate of differentiated healthcare for Māori. He argues that "gains in Māori health would not occur until Māori had a sense of ownership over health" and that "that required the recognition of a Māori health perspective".[703] Durie is the scholar who developed the *Te Whare Tapa Wha* model described in the previous chapter. The claim is that Māori, because of their cultural differences, have different needs from non-Māori, and in particular require a more holistic approach to health care. The claim was accepted by the New Zealand government and *kaupapa* Māori health programmes are funded to improve Māori health. This phenomenon culminated in the adoption of the Whānau Ora programme.

While approval from the government for these programmes outwardly appear as a positive gesture towards the recognition of Māori it is important to critically analyse these policies under the light of Rata's criticism of Māori elites' control over newly generated indigenous capital. This is particularly the case when Durie emphasises the important role played by Māori leaders. He argues that "it is doubtful that changes in Māori mental health services would have experienced the same momentum without the positive attitudes shown by leaders".[704] Further in the text: "our experience has shown that the critical ingredients for change have been indigenous leadership – a combination of professional and tribal leadership".[705]

It is unclear however how these policies, highly influenced by Māori leaders, represent an effective form of recognition. First, there are doubts about the extent to which these policies and practices are in fact different from Western approaches to health. Toon Van Meijl for example, analysing the Māori perspective on health, has argued that "apart from the cultural metaphors through which this perspective on health was expressed, it appears strikingly similar to the holistic definition of health by the World Health Organization" while Māori physicians "presented this perspective on health as typically and uniquely Māori […] criticizing the national health program of the New Zealand government as "monocultural"".[706] This criticism highlights the tendency of neoliberal multiculturalism to focus on cosmetic measures instead of genuine social, economic, and political changes and of using this "culturalisation" of state services to devolve its tasks to indigenous organisations.

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[703] Masson Durie, "Indigenizing Mental Health Services: New Zealand Experience," *Transcultural Psychiatry* 48, no. 1-2 (2011): 29.
[704] Ibid., 32.
[705] Ibid., 34.
[706] Van Meijl, "A Maori Perspective on Health and Its Politicization," 287.

Second, given the still poor health condition of some Māori, it is necessary to question the methodology at play with ideologically driven "indigenous healthcare". It has been argued, for example, thatover-emphasis on questions of identity and the spiritual/mental dimensions of health could negatively impact medical outcomes.[707] While this could be the case for a number of pathologies, it is nonetheless plausible that Māori-specific spiritual and identity-related practices in mental health could have a positive impact. Given that Māori greatly suffer from mental health issues and other health problems related to mental health, the creation of a culturally sensitive medical environment for them can hardly be considered as a negative policy.

Third, the implementation of differentiated health policies for Māori might also be problematic. Indeed such policies might increase bureaucratic processes and create murky interactions between several agencies and providers which could increase the difficulty of assessing the service delivery. Furthermore, it could be argued that the reliance on private health care providers and the competition between these providers to receive government contracts would force the providers to offer cost-effective services, it could equally be argued that the competition would lead the providers to privilege cost over quality and/or manipulate quality insurance factors to prove their effectiveness while real results might not be as good as advertised.

If we look at Whānau Ora, the main indigenous health care programme discussed in the previous chapter, as an example, it would seem that the programme had mixed results. Indeed, it came under criticism by Māori MP Tariana Turia (who herself faced criticism on similar grounds in 2012 while she was the one who first implemented the programme) for being poorly handled and lacking accountability. It is further argued that the aim of the programme is not clearly outlined and uses vague terminology.[708] In other words it is not easy to know what it is the programme actually does. Winston Peters strongly criticised the programme calling it a "bro-ocracy". This criticism was raised after a $60,000 grant was given to a Rugby and Sports Club to research the "vaguely-termed "whanau connectedness" and 'resilience' in the community." [709]

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[707] Ibid., 291-92.

[708] Controller and Auditor-General, "Whānau Ora: The First Four Years," (Wellington2015), 20.

[709] Retrieved from http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10809318

Even if these claims and criticism have been strongly dismissed by Te Ururoa Flavell,[710] his focus on the number of whānau reached by the initiative as a proof of achievement for the programme is not convincing since "reaching out" to a whānau does not mean quality of life improvement. Indeed, the Controller and Auditor-General document, "Whānau Ora: The First Four Years", underlines many issues related to performance assessment and lack of comprehensive reports on achievements from Te Puni Kōkiri (TPK). The document also highlights issues with planning, financial management and high administration costs.[711]

Of course it could argued that the intentions and ideas behind the programme are not the problem but instead that it is its implementation which is problematic. A TPK report in fact shows an overall satisfaction from whānau with the programme[712] and the Controller and Auditor-General report also underlines that whānau are generally benefiting from the programme despite the many issues highlighted by the report.[713] But the way the programme is designed might in itself be the source of implementation-related issues. Indeed, the interplay of many different agencies, providers and individuals highlighted in the previous chapter might explain difficulties of implementation and transparency. In fact, the commissioning agencies are not subject to the Official Information Act which creates further problems with transparency.[714] Another problem could be related to funding. Indeed, it would appear that service providers are asking for more resources and that staff members are overworked.[715] But again, the design of the programme and its whānau-centered approach itself does require more funding and work than mainstream social/health programmes and if indigenous health needs are not different from non-indigenous' then the programme is just creating unnecessary issues which contribute to the social suffering Māori.[716] The assumption that Māori require differentiated health care practices because their needs are different from non-Māori impoverished communities therefore needs to be more systematically tackled. This assumption

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[710] Retrieved from https://www.parliament.nz/en/pb/hansard-debates/rhr/document/51HansS_20150506_00000925/flavell-te-ururoa-urgent-debates-wh%C4%81nau-ora-auditor-general-s on 13/12/2017.
[711] Controller and Auditor-General, "Whānau Ora: The First Four Years."
[712] Te Puni Kōkiri, "Tracking Whānau Ora Outcomes: July-December 2013."
[713] Controller and Auditor-General, "Whānau Ora: The First Four Years," 53.
[714] Retrieved from http://www.radionz.co.nz/news/te-manu-korihi/307598/agency-defends-whanau-ora-to-labour-mps on 22/3/2017.
[715] Controller and Auditor-General, "Whānau Ora: The First Four Years," 47.
[716] Ibid., 53.

may be derived from the phenomenon of reification of identities that was identified as a potential problem with a theory of recognition reduced to liberal multicultural policies.

Conclusion

In this chapter I offered a critical analysis of New Zealand's bicultural system. I critically assessed the way biculturalism is implemented through treaty settlements and Māori-centred policies. I began by reviewing several social indicators related to Māori's experience of social suffering I then reflected upon the idea of biculturalism and on the way the Treaty of Waitangi and the Waitangi Tribunal can influence claims for self-determination. I highlighted the relation between the treaty settlement process and the emergence of Māori elites and the corporatisation of iwi. I explained how these "neotribal" elites might play a role in increasing social inequalities among Māori. I then focused my attention on the separate Māori political representation within New Zealand's democratic system and highlighted the problems inherent to such an institution. Finally, I critically assessed the Whānau Ora programme and underlined some of the challenges it faces. In the next chapter, I return to the challenges with the policies of recognition in Colombia and New Zealand discussed in the previous four chapters and revise the theoretical framework elaborated in chapters two to four by taking these challenges into account.

Part IV: Analysis

Chapter nine: Assessing the politics and theory of recognition

Introduction

In this chapter, I first assess the policies of ethnic recognition adopted by Colombia and New Zealand by asking to what extent they are in line with the theory of recognition. I then return to the critiques of multiculturalism and recognition raised in the second chapter and assess the validity of these theoretical critiques based on the analysis of my case studies. Third, I explore the idea of a deliberative corrective to the theory of recognition and, fourth, I reconceptualise the theory of recognition in light of the theoretical and practical analysis that informed the eight chapters of this research project. This chapter's aim is to approach the ideal equilibrium between the theoretical insights of chapters two, three and four and the empirical observations and analyses of chapters five, six, seven and eight.

Recognition and political institutions in Colombia and New Zealand

The 1991 Colombian constitution offers a strong institutional framework for the recognition of indigenous people and Afro-Colombian communities. The constitution offered indigenous people and rural Afro-Colombians a certain level of self-determination over vast territories, guaranteed representation within the state's democratic institutions and opened the way for their cultural survival through a number of policies and affirmative action endeavours. The new constitution also gave indigenous people the right to exercise (to a certain extent) their own customary legal system over the indigenous people living within the reserves' boundaries. On paper, Colombia in fact fulfils all the requirements of a multicultural liberal society as outlined by Kymlicka regarding national minorities. We could even argue that it goes further than Kymlicka's recommendations since, while Kymlicka underlined the theoretical tension

existing between self-government rights and special representation rights, Colombia guarantees both sets of rights to these two ethnic groups.[717]

The success of indigenous people in securing these rights is remarkable given that they represent only 3.4% of the total population. The gap between the higher level of recognition given to indigenous people despite their lesser demographic weight and the recognition given to Afro-Colombian people in the constitution can partly be explained by global norms that favour indigenous people. But the great indigenous capacity for political organisation in Colombia and their capacity to engage in a struggle for recognition also profoundly increased their power to influence policies when they were discussing the provisions of the new constitution. Let us remember that most political indigenous organisations in Colombia engaged in a struggle over recognition in the name of indigeneity but have succeeded in broadening their struggle to gain the support from, and address problems relevant to, non-indigenous people as well.

Yet, as we saw, despite the legal advancements of the early 1990s and the political mobilisation and success of indigenous and Afro-Colombian organisations, indigenous and Afro-Colombian people still experience acute levels of social suffering. While the Colombian state is still responsible for the suffering experienced by these communities (for example by not respecting the prior consultation mechanism) and could therefore be responsible for institutional misrecognition or non-recognition, it is equally important to remember that some causes of this suffering are related to problems that are beyond the control of the state. Indeed, criminality, which plays a key role in these populations' suffering, can only indirectly relate to the state.

New Zealand's institutional recognition of its indigenous population has a much longer history than Colombia's and began in 1840 with the signing of the Treaty of Waitangi. We have seen that the Treaty of Waitangi, which can be considered as the first step towards Māori recognition in New Zealand is nonetheless problematic from the point of view of the theory of recognition. Indeed, the document was drafted by the dominant power and signed under conditions of power imbalance in favour of the Crown despite the Māori's contemporary demographic superiority. By signing the document, Māori, knowingly or not (the Māori version of the Treaty is more ambiguous about this matter than the English one), ceded law-making and law-interpreting powers to the Crown. They were brought under English law in exchange for receiving the rights of British subjects and preserving their control and "chieftainship over their lands, villages and

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[717] Kymlicka, *Multicultural Citizenship a Liberal Theory of Minority Rights*.

all their treasures". It could be argued that, given the power imbalance between the two sides signing the Treaty, the assimilationist tendencies of the document and the fact that it gave legislative power to the Crown, the Treaty of Waitangi was not a sound basis for the recognition of Māori in New Zealand as free agents and equal partners and even paved the way for the subsequent land dispossession suffered by many tribes at the hands of the Crown. The benefits deriving from the fact that, as British subjects, Māori share legislative power through their representatives in parliament are tempered by their demographic (and socio-economic) disadvantage.

Article one of the Treaty, in both the English and (to a lesser extent)[718] Māori versions, makes it clear that the Crown would become the sovereign in New Zealand. Despite the arguments about the meaning of kawanatanga and rangatiratanga that highlight the fact that Māori never agreed to give up their sovereignty, Article one of the Treaty makes the political idea of having a divided or shared sovereignty in New Zealand very difficult. This might explain why subsequent discourse about the place of Māori in the nation has used the concept of biculturalism since the 1980s instead of binationalism. It also means that talks over the self-government rights advocated by theorists of liberal multiculturalism such as Kymlicka are almost absent from the political discourse in New Zealand despite the fact that these rights particularly apply to societal cultures.

Given these shortcomings it is difficult to understand why respect for the Treaty (which was considered a fraud by some activists in the 1970s) is at the core of Māori demands for recognition (instead of international documents such as UNDRIP or ILO169) in New Zealand and might explain some shortcomings of the Treaty settlement process as well. Māori over-reliance on the Treaty and their low political support from non-indigenous New Zealanders contrasts with the indigenous use of international documents and reliance on non-indigenous support to further their call for recognition in Colombia. Two factors need to be underlined to further explain these differences.

While Māori emphasise the notion of bi-culturalism to articulate their politics, indigenous Colombians tend to privilege an intercultural approach. I will show how this difference plays out when I analyse welfare policies in a latter section. Second, Colombia's decentralised state structure plays in favour of greater self-determination for indigenous people in Colombia than

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[718] The ambiguities surrounding the Māori neologisms related to the concept of governance in the Māori version were covered in chapter seven.

the centralised structure of the New Zealand state. Paradoxically, therefore, indigenous people in Colombia benefit from a decentralised structure allowing greater space for political and territorial autonomy, yet privilege an intercultural approach that opens their identity struggle to other identities while New Zealand indigenous people are constrained by a centralised structure rendering self-determination difficult, yet privilege a bi-cultural approach which cuts off their struggle from the rest of New Zealand's population. This is particularly the case of the bi-culturalism proposed in the Matike Mai O Aotearoa report mentioned earlier.

The Colombian model, therefore, offers a system that creates greater opportunities for recognition within Honneth's third sphere of recognition by offering greater possibilities for self-determination and indigenous/Afro-Colombian agency. How does self-determination facilitate recognition within the third sphere of recognition? First, political autonomy guarantees greater possibilities for the development of self-esteem through political action as equals than political subjection. Second, and more practically, increased self-determination is synonymous with increased control over resources and decision making mechanisms. It, therefore, offers people an increased opportunity to be involved in the development of their communities (instead of being the recipients of external help) and to develop a sense of achievement (provided that the involvement is successful).

These opportunities, however, are constrained by economic difficulties and a lack of rule of law (chapter six) that impede gravely their political freedom but also on the emotional/physical well-being of indigenous and Afro-descendant people therefore rendering recognition within the first sphere of recognition problematic. New Zealand, on the other hand, because of an overall greater wealth and security, offers a better framework to guarantee basic security and physical well-being. It therefore secures more readily the first sphere of recognition despite the fact that poverty, domestic violence and health issues remain a real problem amongst Māori (despite New Zealand's first world nation status). Conversely, New Zealand offers a much more restricted space for Māori to secure recognition within the third sphere of recognition because of the self-determination deficit of its policies of recognition. Māori control over some natural resources does, however, also allow them to develop a sense of self-achievement through the development of entrepreneurs' skills even if only a small portion of the Māori population gets to develop this potential.

In conclusion, both institutional frameworks have strength and weaknesses. Colombia went further than New Zealand in recognising the right to self-determination of indigenous and Afro-

Colombian people but these gains are mitigated by grave security and socio-economic issues. New Zealand, on the other hand, does not offer a strong institutional framework for self-determination but, as we will see in the next section, because of its important financial transfers to Māori and a generally safer environment, has provided indigenous people means to mitigate, at least in theory, social suffering.

Recognition, land rights, and autonomy

One of the key indicators of institutional misrecognition in the Colombian case is the fact that the state has guaranteed land rights to indigenous people and Afro-Colombian communities mainly over territories that are underdeveloped and that are not even fully under its control. Therefore, indigenous and Afro-Colombian people are given some form of self-determination over lands that are hardly suitable for economic development but, even worst, are disputed by a variety of armed groups. It is therefore possible to argue that the Colombian state aims to use indigenous and black communities to regain control over its territory and open it up for economic development.

Another problem that reveals the continuing imbalance of power between indigenous and Afro-Colombian communities on the one hand, and the Colombian state on the other, is the generalised lack of respect for the prior consultation mechanism (*consulta previa*) mentioned in chapter six. The prior consultation mechanism is supposed to guarantee these communities a say in projects taking place within or affecting their territories when economic development initiatives (which in fact will benefit businesses and the nation as a whole much more than the populations inhabiting the region) do happen. In reality, the government has shown very little respect for these populations' voices when extractive activities jeopardize the living space of these groups.

Judicial activism has, nonetheless, played a role in overturning some governmental decisions through the constitutional court. In this case, however, the outcome of the struggle is only partly the result of indigenous or Afro-Colombian agency as it is a non-indigenous/Afro entity that takes the initiative to combat government policies and has the power to make the final decision. The communities, on the other hand, are reduced to the status of victims asking for help and compensation from non-indigenous tribunals. This phenomenon does not entirely fit within the framework of the theory of recognition. It is important, however, to underline that judicial

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activism is also partly the result of indigenous protests such as when the Uwa people threatened to commit collective suicide in order to stop extractive projects on their territories.

The political autonomy of indigenous people and their right to exercise customary law is restricted. The state-imposed restrictions underline the phenomenon of recognition with an asterisk identified by Elizabeth Povinelli in the Australian context. Indeed, she argued that "we should pay heed to how a naturalized hierarchy of moral and legal authority is re-established at the very moment common and customary laws are formally equated. Remember: an invisible asterisk, a proviso, hovers above every enunciation of customary law: (provided [they]…are not so repugnant)".[719] This contingent asterisk, in fact, applies to all laws in liberal democratic societies and not only to indigenous people. What differs in the case of indigenous people, however, is the tension between indigenous' freedom to live by their own laws without suffering from ethno-centric value judgements on the one hand and the respect for moral and ethical demands inherent to a political system that values individual rights and freedom on the other hand. This tension is, nonetheless, not insurmountable.

Rejecting colonial imposition of an alien legal system does not require adopting a morally relativistic view point and it is not evident that indigenous people are willing to relinquish their basic human rights in order to preserve their culture. I do not believe that giving indigenous people the opportunity to avoid corporal punishment is a colonial imposition. On the contrary, allowing them the opportunity to dispute certain cultural norms is a form of recognition of indigenous people's autonomy and agency.

In the Colombian case we have seen that indigenous customary law was restricted by constitutional rights and that indigenous people could always appeal to non-indigenous institutions (through the *tutela* mechanism) if they felt their basic human rights were infringed upon by indigenous authorities. In this case it could be argued that the right of appeal through the mechanism of the *tutela* offers a possibility for indigenous people to struggle for recognition from within and against the indigenous system while also offering a form of right of exit and/or to challenge the normative framework of customary justice. Community members are therefore not bound to a reified identity but are free to question, alter and/or reject this identity. Offering indigenous people the possibility to develop their own legal system as a

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[719] Elizabeth A. Povinelli, *The Cunning of Recognition : Indigenous Alterities and the Making of Australian Multiculturalism* (Durham: Duke University Press, 2002), 176.

group while securing individual freedom to appeal to another set of rules is a good compromise that respects the normative guidelines of the theory of recognition.

Finally, the *cabildos*, despite being recognised as a legitimate indigenous authorities have to operate within a bureaucratic system imposed by the Colombian state and are not free to organise the development of their communities with a high level of autonomy. This is true of the Afro-Colombian authorities as well (in particular on the Pacific Coast). All human political communities are bound by a number of circumstantial limitations and bureaucracy is an unavoidable feature of modern political organisation. Some of these bureaucratic rules are necessary to ensure adequate levels of accountability. Yet, as we saw, in some cases, these restrictions are unnecessary burdens for indigenous communities that spend restricted resources (both human and financial) on complex, top-down designed, bureaucratic formalities that constrict their use of resources.

Furthermore, both ethnic groups are conceived as guardians of the environment and their economic development are tied to ecological imperatives. The imposition of an "ecological native"[720] identity on these communities represents a form of misrecognition as it imprisons indigenous and riverine black communities in a distorted reified identity while the theory of recognition stipulates that identities should be the product of one's freedom. In other words, according to the theory of recognition, indigenous and Afro-Colombian communities should be free to secure their economic development by following the economic model they consider the best suited to the circumstances of their group.

We have seen in the previous two chapters that the question of reparation for Māori-related land issues in New Zealand is addressed through the mechanisms of the Waitangi Tribunal and usually takes the form of financial compensation and symbolic gestures such as Crown apologies for the past wrongs. Financial compensations and the transfer of assets from the Crown to Māori tribes could be interpreted as a form of redistribution. However, if we follow Honneth's model of recognition which considers money transfers (as salaries but also as financial compensation) as recognition, the transfer of assets from Crown ownership to Māori ownership is a form of recognition as well. Yet, this very mechanism of recognition through redistribution of assets retains strong hierarchical aspects between a dominating power and dominated subjects. Indeed, the fact that the Waitangi Tribunal's decisions are non-binding

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[720] Ulloa, *The Ecological Native : Indigenous Peoples' Movements and Eco-Governmentality in Colombia*.

and that the Crown has the final word and controls the institutional framework (the space) where Māori recognition can take place reveals a gap between the Treaty Settlement process and the theory of recognition since the theory of recognition I use as a model in this research project emphasises the importance of *mutual* relations of recognition between *equals*.

Furthermore, the transfer of ownership over natural resources such as rivers is merely symbolic and in no way qualifies as ownership as such since Māori never have full-control over these resources. When a resource is "controlled" by Māori, they have to share (co-manage) its control with representatives of the Crown and cannot use that resource in the way they would chose. It could be argued that every property owner is restricted in his use of land but the restrictions imposed upon Māori go beyond usual restrictions. While it is common-sense and could hardly be considered a colonial injustice to ensure that Māori do not develop activities that would create grave environmental contamination, the restrictions imposed upon their usage of land and water perpetuate Crown domination. The Te Arawa Lakes Settlement Act 2006, because of the highly restricted notion of ownership it expresses, is a perfect example of this problem.

The return of land to Māori is, therefore mainly symbolic, partly economic but not related to political autonomy. It is the return of land conceived as a symbol, sometimes as a commodity, but not as a territory. This is problematic since the political autonomy of a people, tino rangatiratanga, is hardly attainable without some form of control over a territory. This reveals a peculiar characteristic of Māori politics since their claims to land are not attached to any claim to territory (except for Tūhoe) while territory is at the core of the majority of indigenous people's struggle in other parts of the world and in particular in Latin America.[721] The link between ethnicity and territory has been theorised by many theorists of nationalism. For example, Anthony Smith explained:

> *Ethnie* always possess ties to a particular locus or territory, which they call their 'own'. They may well reside in that territory; or the association with it may be just a potent memory. An *ethnie* need not to be in physical possession of 'its' territory; what matters is that it has a symbolic geographical centre, a sacred habitat, a 'homeland', to which it may symbolically return, even when its members are scattered across the globe and have lost their homeland centuries ago.[722]

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[721] See the example of Mapuche ethnonationalism in Chile : Victor Naguil, "Autogobierno En El País Mapuche," *Azkintuwe*, no. 14 (2005).

[722] Anthony D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986), 28.

This relationship to a territory they could call "theirs" is weak for Māori because of the bicultural model informing New Zealand politics of recognition which promotes undivided sovereignty over the land. The attachment of some tribes to their rohe is the closest thing some Māori tribes have to such nationalist attachment to land. It is strong for some iwi (for example Tūhoe) but a lot weaker for many detribalised urban Māori since the connection between an iwi and its territory is a key factor to develop such attachment. This situation contrasts with indigenous and rural Afro-Colombian communities in Colombia who still live in delimited territories, far away from major cities, and use the land for subsistence.

It could be argued that Māori leaders have been pragmatic and given that the Crown was historically unlikely to accept shared sovereignty over the country, they decided to adopt a model of self-determination understood as economic independence. Yet, in that case, it is hard to see what differentiates "Māori economic independence" as a specific ethnic group from the notion of individual economic independence which would then be shared by all New Zealand individuals regardless of their ethnicity. The only difference would be an increase in redistribution to Māori but, as we have seen, this increase does not appear to reach all Māori equally and a general, ethnic-blind, wealth redistribution could benefit impoverished Māori families more than the current system of redistribution through Waitangi tribunal mechanisms. It is still possible to relate this understanding of self-determination to the theory of recognition which, after all, does not address group recognition as such (only the characteristics related to an identity which may or may not relate to a group identity) but then the ethnic-dimension of the politics of recognition becomes questionable and the whole justification of ethnically-differentiated rights in New Zealand (and Colombia) falls apart.

Recognition and political representation

It could be argued that the guaranteed representation of indigenous and Afro-descendant people within the democratic institutions of the Colombian state can be interpreted as a step towards recognition, or at least towards the possibility of recognition, since it gives them a space of appearance within the public sphere where they can speak and enact their political equality. It should be underlined, however, one more time that the presence of Afro-Colombians in these institutions does not reflect their demographic weight. The issue, nonetheless, is that such a mechanism offers very little advantage from a pragmatic point of view given that indigenous people and Afro-Colombians represent a very small minority and their voices are often covered

by the majority. In a majoritarian democratic system the reserved seats mechanism represents a weak means of political leverage.

I also discussed the divisive dimension of ethnically-based institutionalised political representation through parliamentary means while non-institutional indigenous social movements, on the contrary, offered a much more cohesive political force. Indigenous social movements also allowed a broader grassroots participation by these communities and allowed a greater number of individuals to participate in politics and engage in the struggle for recognition. The 2008 *minga* popular discussed in chapter five illustrate this phenomenon. These individuals were engaged in Arendt's ideal of *action* mentioned in chapter three. The non-institutionalised dimension of these social movements also gave them greater liberty vis-à-vis the state and offered the possibility of a more radical critique of state institutions.

Despite these limitations, the guaranteed presence of indigenous people's representatives in Colombia and New Zealand's parliament does increase the visibility of indigenous people within both political systems and creates a space for these populations to engage in actions with the aim of having their people as a whole recognised. It also creates important alterations in social meaning: indigenous people are part of the "rulers" and not a permanent subjugated minority. In New Zealand especially, Māori have largely become part of the government whether or not Māori politicians across the political spectrum decide to emphasise the Māori dimension of their identity. It has yet to be established, however, that the general indigenous population can benefit from the recognitive advantages inherent to political participation through proxy-representatives.

It has been argued that New Zealand's parliament is not the main site of Māori political participation and that grassroots political engagement and discussions of a political nature on the marae and within communities better represent Māori political action.[723] Low Māori voting rates would be consistent with this hypothesis. The problem, however, is that the political practices on such sites are more likely to be amongst Māori only and, therefore, will play a very limited role in the recognition of Māori by non-Māori. These observations also apply to Indigenous and Afro-Colombian communities in Colombia. These forms of political participation could nonetheless play a role in building a certain amount of self-esteem which is the realm of Honneth's third sphere of recognition.

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[723] Bargh, "Multiple Sites of Māori Political Participation."

It should be noted that, in New Zealand, Māori representation within parliament may also negatively impact strong claims for self-determination from the point of view of liberal multiculturalism. Indeed, let us remember that Kymlicka contrasts the right of self-government and the right of representation since "the right to self-government is a right against the authority of the federal government, not a right to share in the exercise of that authority".[724] The right of special representation is therefore consistent with liberal multiculturalism but comes at a cost for indigenous people as they claim increased self-government rights. Of course, the Colombian case showed that both sets of rights could co-exist and is not always mutually exclusive.

Recognition and differentiated social services

As we saw, the Colombian state vowed to preserve indigenous and Afro-Colombian cultures and established a number of mechanisms to help promote them. The initiatives promoting indigenous languages and alternative educational systems consistent with indigenous/black history and culture are important to create the conditions of possibility for recognition to take place. These policies increase the visibility of these groups within the nation and rehabilitate them as worthy identities that belong and participate, on equal footing, to the cultural richness of the country.

It has been argued, however, that the policies aimed at the preservation of indigenous and Afro-Colombian cultures are sometimes related to a process of simplification and folklorisation of these identities. Again, the "environmental imperative" plays a key role in this process and tend to relate to a process of institutionalised misrecognition since these communities are recognised (and receive funding) provided that they fulfil a "noble savage" image that can be sold overseas to promote ethno-tourism and eco-development.[725] Here, again, a particular identity is forced upon indigenous and Afro-Colombian people and this phenomenon reinforces the reification of their identities.

The initiatives taken in the field of differentiated indigenous health care are more representative of a politics of recognition. Indeed, EPSI (*Entidades Promotoras de Salud Indigena -*

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[724] Kymlicka, *Multicultural Citizenship a Liberal Theory of Minority Rights*, 143.
[725] Ulloa, *The Ecological Native : Indigenous Peoples' Movements and Eco-Governmentality in Colombia*.

indigenous health promoting entities) are treated in the same way as other EPS and both face the same challenges. The EPSI's emphasis on intercultural service delivery allows both the development and promotion of a specific indigenous health care system and offers a certain amount of identity-related flexibility. The result is that EPSI such as Anaswayuu have improved health services for indigenous people while attracting non-indigenous people as well. The success of these EPSI has been underlined by non-indigenous institutions such as the Colombian Ministry of Health.

The situation in New Zealand is quite similar. Preserving Māori culture is necessary if Māori want to make any sort of claim for recognition as a culturally differentiated group with its own identity. This is particularly true given that Māori identity is much more diluted than indigenous identity in Colombia.[726] These policies in themselves do not represent policies of recognition but create the conditions of possibility for recognition to take place. Indeed, by funding programs aimed at revitalising the Māori language or developing Māori health care and educational institutions, New Zealand's government offers Māori the possibility to revive their culture and then seek recognition from the general public.

It would seem that it is in this area that the imbalance of power between the Crown and Māori is the most limited. Indeed, as we saw in the previous chapters, the government of New Zealand promotes many initiatives aimed at preserving Māori identity. One of these initiatives is the promotion of differentiated Māori health care. However, the Whānau Ora programme does not seem to be working as well as the EPSI system in Colombia. While EPSI have shown positive results, Whānau Ora's outcomes are contested. It could be that Colombia's overall decentralisation of health care services plays a role in this situation. EPSI are just one particular type of health provider amongst many and all are treated equally on the market. Whānau Ora represents an anomaly within the health care system of New Zealand and plays by different rules. It is representative of the bicultural practices established in New Zealand in contrast with the intercultural practices promoted in Colombia.

A hypothesis for explaining the state-sponsored commitment towards the preservation of Māori culture could be the prevention of stronger, more radical, political claims. Whānau Ora was one of the achievements reached by the Māori Party in exchange for their collaboration with the National-led government. Another potential reason behind this political support could be

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[726] For example, all Māori are fluent in English and many struggle with Te Reo Māori. Conversely, in Colombia, some indigenous people only speak their indigenous language and struggle with Spanish.

the commodification of Māori identity for commercial gains and the creation of a stable new national identity, an imagined community, where Māori and non-Māori alike are free to turn their skills and characteristics in potential wealth-producing resources.[727] The devolution of state services such as health and education to semi-private providers fits well with the neoliberal ideology of both states.

In conclusion, policies of recognition in Colombia and New Zealand offer mixed results. They usually create more favourable circumstances to improve relations of recognition within both states but they rarely secure recognition as such. They also tend to co-opt grassroot political movements and privilege identity entrepreneurs. More generally it could be said that the policies of recognition adopted by both states can be conceived of as strategies of containment of indigenous movements and of more radical demands for socio-political changes that could endanger the neoliberal agenda of both states. This phenomenon is at play in many countries that have an indigenous population. It can be described as "neoliberal multiculturalism". In the Guatemalan context, Charles Hale explains:

> Powerful political and economic actors[728] use neoliberal multiculturalism to affirm cultural difference, while retaining the prerogative to discern between cultural rights consistent with the ideal of liberal, democratic pluralism, and cultural rights inimical to that ideal. In so doing, they advance a universalist ethic which constitutes a defence of the neoliberal capitalist order itself. Those who might challenge the underlying inequities of neoliberal capitalism as part of their "cultural rights" activism are designated as 'radicals', defined not as 'anti-capitalist' but as 'culturally intolerant, extremist'. In the name of fending off this 'ethnic extremism', powerful actors relegate the most potent challenges to the existing order to the margins, and deepen divisions among different strands of cultural rights activism, all the while affirming (indeed actively promoting) the principle of rights grounded in cultural difference.[729]

At the core of this argument lies the problem of displacement: neoliberalism (more accurately, its adepts), understood as an economic doctrine, uses liberalism as a political/ethical theory for replicating and propagating an economic ideology that is a root cause of socio-economic inequality. Neoliberal multiculturalism is used as a filter to weaken stronger claims for justice

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[727] Smits, "The Neoliberal State and the Uses of Indigenous Culture."
[728] Here Hale assumes that powerful economic actors have a direct influence on political decisions.
[729] Charles R. Hale, "Does Multiculturalism Menace? Governance, Cultural Rights and the Politics of Identity in Guatemala," *Journal of Latin American Studies* 34, no. 3 (2002): 492.

that may involve a radical alteration of the socio-economic order informing contemporary liberal societies. For example, indigenous demands for the creation of communal enclaves managing land ownership and productivity through traditional indigenous modes of government are only partially met in some Latin American countries where indigenous social movements are influential. It would be difficult to imagine the creation of quasi anarcho-communist enclaves based on indigenous principles in New Zealand.

This phenomenon could be assessed positively if stability is considered the foremost political ideal but it could also be argued that neoliberal multiculturalism might impede political reforms that could be beneficial for indigenous, and maybe non-indigenous, people. In Ecuador, the political conflicts between left-leaning President Rafael Correa and the indigenous social movements that formally supported him illustrate the tensions between indigenous aspirations for radical socio-economic reforms and the nation's economic imperatives in a globalised neoliberal economic order (despite the left-leaning agenda of its President).[730]

Assessing the critique of policies of recognition

In this section I wish to discuss the criticisms raised against "identity politics" (see chapter two) in light of my research on the policies of recognition in Colombia and New Zealand. First is the *reification issue*. The crux of this criticism was that the politics of recognition and multiculturalism simplify identities and artificially force people into categories based on questionable sets of characteristics. This artificial reification of identity can reinforce the idea of a cohesive "we" that can further generate problems for marginal members of the groups.

Self-identification is considered as the main factor deciding who belongs and who does not belong to an ethnic group in both New Zealand and Colombia. New Zealand, however, more strongly emphasises the biological dimension of identity than Colombia given that genetic descent (whakapapa) is required to be recognised as Māori. It could also be argued that bicultural indigenous health care policies reify identities by promoting ethnically-differentiated health care practices. On the other hand, New Zealand's indigenous people are less victims of the "noble savage" stereotype than indigenous and Afro-Colombian people in Colombia. While in Colombia indigenous and Afro-Colombian recognition is tightly related to conservation

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[730] James D. Bowen, "Multicultural Market Democracy: Elites and Indigenous Movements in Contemporary Ecuador," ibid.43 (2011).

projects, Māori recognition in New Zealand is not particularly intertwined with environmental policies and can, in some cases, take the form of modern capitalist business models. It can, therefore, be argued that the reification of identity is only a minimal issue arising from a limited number of policies and could easily be avoided.

Second is the moral relativism issue. This criticism relates to the idea that policies of recognition, because of their emphasis on the equal worth of all cultures, would accept particularly problematic behaviours and customs in the name of respect for cultural difference. Critics warn that multiculturalism could be used to justify unfair treatment of women within minority traditional groups for example.[731]

This issue does not raise major concerns in New Zealand nor in Colombia. Contemporary Māori cultural practices are not radically different from non-Māori cultural practices and are often influenced by Christian doctrine. Some cases of protest against Māori gender-specific roles have caught public attention but were raised by non-Māori.[732] It could be argued that some indigenous customary laws in Colombia, such as public flogging, can be morally problematic.[733] Yet, the *tutela* system offers a protection against abuse and an effective "right of exit" to indigenous people who believe that customary law violates their intrinsic human rights. Research has shown that indigenous women are not experiencing increased oppression because of multicultural policies and, on the contrary, have used these new legal frameworks to imagine less patriarchal forms of socio-political organisations. In Latin America women are at the forefront of indigenous social movements.[734]

Third is the *displacement issue.* The problem of displacement relates to the idea that policies of recognition and multiculturalism focus on symbolic issues and, therefore, forget or minimise the economic problems that create social suffering and widespread injustice. Identity politics is considered as part of the problem as it incorporates identity-based social movements into the logic of neoliberalism and dilutes their confrontational and transformative potential.

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[731] Susan Moller Okin, "Feminism and Multiculturalism: Some Tensions," *Ethics* 108, no. 4 (1998).

[732] Gary E. R. Hook, "Bullock Versus the Department of Corrections : Did the Human Rights Review Tribunal Get It Wrong?," *MAI review* no. 2 (2009).

[733] Conversely, it could be argued that a painful few minutes of flogging is more humane than wasting years trapped behind bars surrounded by dangerous criminals. This is particularly the case for indigenous people who emphasise the flogging ritual as a form of purification after which the whole community needs to welcome back (and take care of) the chastised individual.

[734] Rachel Sieder and Anna Barrera, "Women and Legal Pluralism: Lessons from Indigenous Governance Systems in the Andes," 49, no. 3 (2017).

It could be argued that the displacement issue is not a real problem in New Zealand because of the Treaty Settlement process. Past injustices experienced by Māori are redressed by means of financial transfers and these financial transfers are used to improve the wellbeing of contemporary Māori communities. Of course, as we saw, there are problems with these policies as the trickle-down effect of Treaty Settlements seems, in many cases, to be poor and tend to privilege elites within the Māori population. Furthermore, it could be argued that Treaty Settlements also function within a neoliberal system without questioning the system as such and the fact that such a system could very well be a source of social suffering for Māori. Instead of re-conceptualising its economic policies, New Zealand would transfer money to some Māori and hope that free market mechanisms and entrepreneurship will improve the lot of these communities. It is, therefore, plausible to argue that indigenous recognition in New Zealand, despite important financial transfers, displaces to a certain extent broader systemic economic issues by perpetuating the current economic system.

In Colombia, indigenous recognition is not heavily intertwined with financial transfers and many indigenous and Afro-Colombian communities suffer from dire poverty. It could be argued, nonetheless, that this issue applies to many non-indigenous and non-Afro Colombians as well and that, therefore, ethnic recognition as such does not displace economic problems. Indigenous people in Colombia are part of a broader continental indigenous movement that keeps fighting against neoliberal policies and it would be difficult to suggest that they have forgotten about systemic economic inequalities.

Fourth, the "*divide and rule issue*" underlines the potentially divisive aspects of ethnic recognition. By splitting the disadvantaged people into several groups each competing against one another for a bigger share of resources, ethnic recognition impedes the possibly more destabilising effect of a united front of disadvantaged people who hold socio-economic status quo as a common enemy.

The divide and rule issue is problematic. In New Zealand, it would seem that Māori politics has politically isolated Māori from non-Māori, with the exception, to a certain extent, of Pacific Islander communities. Treaty settlements also create tensions between iwi and between hapū within iwi. This is particularly the case with Ngapuhi that has not yet reached a Treaty settlement despite being the largest iwi in the country. The problem of "divide and rule" seems less acute in Colombia where indigenous, Afro-Colombians and mestizos Colombians on the left tend to form a more united front. The indigenous movement retains a strong legacy from

far-left politics and openly seeks political cooperation with non-indigenous organisations. Some of these cooperations are recent. In July 2017 for example, Indigenous and Afro-descendant Peoples of Abya Yala, Cartagena de Indias, wrote a manifesto to create a network of intercultural relations.[735] Yet, as we saw, even in Colombia, the divisive dimension of ethnically-differentiated land rights sometimes create problems. Some non-indigenous *campesinos* lost their rights over land in favour of indigenous communities through the process of *sanamiento* and this competition over land can create tension between communities. Furthermore, the reserved seats mechanism within the democratic institutions of the state led to a certain fragmentation of the indigenous and Afro-Colombian movements.

Fifth is the pacification/normalisation issue. This problem underlines the co-opting tendencies of policies of recognition. Critics argue that multicultural policies are aimed at weakening strong demands for radical socio-political changes and at incorporating indigenous demands into a capitalist framework. This type of criticism is closely tied to the displacement issue. The pacification/normalisation issue is further related to a criticism of the legalism that informs the politics of recognition to the detriment of radical critique. According to this line of criticism, disadvantaged groups reduce politics to battles in tribunals informed by a feeling of *ressentiment* instead of engaging in power-building struggles to alter fundamentally the norms of recognition.

This issue seems to be a real problem in New Zealand where Māori social movements appear to have slowly vanished. Having the Waitangi Tribunal as a forum to raise grievances and seek financial compensation (despite the many problems mentioned earlier) is an undeniable advantage for Māori. Yet it could be argued that institutionalising the struggle for recognition also had the effect for Māori of decreasing the possibilities for broader systemic changes in New Zealand society. Some scholars argued that the original purpose of the Tribunal was to weaken Māori protests.[736] The Māori Party does not seem to have the same mobilising force as indigenous social movements used to have (and the loss of their seats as a consequence of the 2017 elections' results supports this analysis) and the Mana Party (a more overtly activist party/movement) has been weakened after its failed alliance with the Internet Party.

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[735] "Manifesto: Minga of thought "Communication and indigenous peoples"" available at https://www.opendemocracy.net/democraciaabierta/joan-pedro-cara-ana/manifesto-minga-of-thought-communication-and-indigenous-people

[736] Andrew Sharp, *Justice and the Māori: Māori Claims in New Zealand Political Argument in the 1980s* (Oxford: Oxford University Press, 1990), 74.

The problem appears less acute in Colombia where indigenous movements have succeeded in reshaping institutions more fully and continue to organise at the grassroots level. The 2008 *minga* exemplifies this phenomenon.[737] It is difficult to imagine, realistically, how much more the Republic of Colombia's institutions could have been altered to give more recognition to Afro and indigenous people. The problems currently faced by indigenous people are more related to the implementation of policies of recognition, organised crime and the poverty affecting rural areas in developing countries than to a colonial institutional system. These issues are still problems of recognition and are considered as such by indigenous and Afro-Colombian people but they are not primarily solved through institutional reforms and are more universal in nature than group-specific problems. Solving these problems require broader socio-economic alterations that do not relate only to indigenous and Afro-Colombian issues and the fact that indigenous and black social movements also target these issues show that the displacement criticism is not relevant to the Colombian case.

In conclusion, the moral relativism issue does not represent genuine problems for policies of recognition. The reification issue can potentially be a problem because indigenous recognition is attached to a set of measurable characteristics that differentiates between those who benefit and those who do not benefit from policies of recognition. In general, however, no problem of reification of identities seems to arise in either case studies. It would be difficult, furthermore, to imagine policies of recognition based entirely on the subjective aspects of identity. The displacement, "divide and rule" and pacification problems, however, need to be taken more seriously. I argue that these problems arise because of the conflation of liberal multiculturalism and the theory of recognition and I will now offer a political corrective to these problems.

The deliberative corrective to policies of recognition

I will now summarise the main problems with the policies of recognition (embodied in liberal multicultural political practices) analysed in this work and explain how deliberative practices could, at least partially, offer a corrective to these policies. This section is, therefore, an attempt to answer Tully's objective to develop institutions that promote recognition through dialogue. According to Tully: "the central questions then become, first, how to develop institutions that

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[737] Indigenous social movements in Colombia remain very active. The latest minga was organised in May 2017.

are always open to the partners in practices of governance to call into question and renegotiate freely the always less-than-perfect norms of mutual recognition to which they are subject, with a minimum of exclusion and assimilation […]".[738] These considerations will allow me to argue in the next section that we can reconceptualise the theory of recognition as a theoretical framework that shares more characteristics with deliberative democracy than with liberal multiculturalism.

The first key problem that arose from my analysis: there is a potential gap between elite-driven recognition and popular recognition. By popular recognition I mean the set of policies that would be perceived by the general population belonging to a certain group as increasing social respect for their given identity while decreasing the socio-political and economic disutilities arising from belonging to that particular identity.

Some identity entrepreneurs, in partnership with the state's authorities (to which they now belong), help design policies of recognition. My analysis highlighted (particularly in the context of New Zealand) that elite-driven recognition can sometimes benefit elites and have little impact on the masses' wellbeing. We could, therefore, say that there can be a problem with ascriptive political representation as elites can distort the reflection of their constituents' needs and wishes. As we saw in chapter four, Mansbridge warned of the potential dangers of "blind allegiance" to representatives based on the importance given to a shared identity. The gap between elite-driven and popular recognition highlights a potential problem with policies of recognition: elite-driven recognition may emphasise the symbolic while popular recognition could be concerned with different, more tangible, issues. This potential problem remains a hypothesis. Deliberative democracy could confirm or disprove this hypothesis. What the important issues for the general population in minority ethnic groups might be is not clear given the lack of large scale available data on the topic but hypotheses could be formulated based on interviews and interactions with the populations. The problem at stake here is that policies of recognition are developed by identity entrepreneurs and these policies play a role in the displacement, pacification, and even "divide and rule" issues highlighted in the previous section. I will soon show how deliberative practices could solve these problems.

There are also problems of implementation with policies of recognition. This was particularly the case in Colombia where bureaucracy and economic interests often delay and, sometimes, impede the implementation of policies that, on paper, look genuinely beneficial to indigenous

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[738] Tully, "Recognition and Dialogue: The Emergence of a New Field," 85-86.

people. Again, it could be argued that increased input from common citizens (by opposition to elites) in policy design and implementation would be beneficial for the populations even if these benefits could be mitigated by a lack of expertise (I shall return to this potential issue later in this section).

Finally, because relations of recognition are mediated by elites and institutions, relations of recognition do not necessarily take place at the popular level. Recognition is improved by direct engagement between different identities[739] and deliberation between elites in closed rooms cannot replace the embodied experience of being confronted, and interacting, with people with different identities. Racist attitudes, for example, are more likely to diminish through friendly exchanges and cooperation on a shared project between members of ethnically different groups than through the top-down imposition of a set of rules that could be perceived as illegitimate by those who do not benefit from these rules and feel that they are compelled to adopt new attitudes. It is important, however, that the contact between groups is organised through well-designed institutions since "negative contact" experiences can increase harmful attitudes and stereotypes between groups.[740] The strong legalism informing policies of recognition discussed in the previous section plays an important role in this problematic separation between legal and popular levels of recognition because a) it decreases direct engagement between groups and b) can reinforce negative stereotypes and create negative contact settings when groups are *perceived* as confrontational (as in a tribunal setting) or unfairly advantaged (as in benefiting from "special treatment"). I will now explain how a deliberative turn in the politics of recognition could partially solve these problems.

First, and almost axiomatically, deliberative democracy would decrease the role played by elites. As we saw earlier, with liberal multicultural policies, "the solutions are handed down to the members from on high, from theorists, courts or policy makers, rather than passing through the democratic will formation of those who are subjected to them. They are thus experienced as imposed rather than self-imposed".[741] The key idea behind deliberative democracy is to increase the participation of common citizens in the policy design and decision making process. A deliberative approach to recognition would, therefore, better reflect popular aspirations. It would improve the trickle-down effect of financial transfers since it is likely that, given the

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[739] John F. Dovidio, Samuel L. Gaertner, and Kerry Kawakami, "Intergroup Contact: The Past, Present, and the Future," *Group Processes & Intergroup Relations* 6, no. 1 (2003).
[740] Shelley McKeown and John Dixon, "The " Contact Hypothesis": Critical Reflections and Future Directions," *Social and Personality Psychology Compass* 11, no. 1 (2017).
[741] Tully, "Recognition and Dialogue: The Emergence of a New Field," 91.

decreased role played by elites, common members of a given group would find it illegitimate that some members of the group benefit more than others from financial transfers. Hypothetically, an increased reflection of popular aspirations could also decrease the symbolic aspects of policies of recognition and what the common members would consider as "real issues" could receive priority. The most efficient way to solve these issues would also be privileged and this could mean, in some cases, departing from ethnically-differentiated solutions and adopting more universal answers to some problems. Health or housing policies, for example, are good candidates for this type of change. This change would be a subject of deliberation. Here, deliberative democracy could offer a corrective to the displacement issue that can arise from non-deliberative, elite-driven, recognition. A potential challenge to this approach, however, is that the affected populations could be conservative and risk averse. The result of deliberation in this case, could be a solidification of the current policies.

The increased popular input could be beneficial for the implementation of policies as well because, first, the populations taking the decisions will feel the direct impact of these policies and, second, they will have a better understanding of the potential problems of implementation because of their proximity to the targeted socio-economic environment. This is an advantage over the types of decisions that are taken in an environment, and by people, far removed from the reality of place and subjected to the policies of recognition.

The deliberative turn in policies of recognition would also decrease mediation by institutions in relations of recognition. Relations of recognition would become much more "face to face" relations. People would enter in direct exchanges with identities they might not usually socially interact with and most of the stereotypes informing negative perceptions about the other would decrease though these interactions. People would also realise that they share many characteristics with the "other" despite belonging to different identities and the phenomenon of identity fluidity would further reinforce this feeling of sameness. In this case, deliberative democracy directly targets the potential reifying tendencies of some policies of recognition. An increase in direct encounters also means that policies of recognition would have a less divisive effect because these policies would arise from exchanges of justifications using ideas and concepts that are mutually intelligible. Furthermore, deliberative practices would also increase inter group co-operation if debates and decisions also cover socio-economic policies dealing with problems that are shared by all the groups involved. Here, deliberative democracy would offer a corrective to the "divide and rule" problem.

Deliberative practices would also allow more people to be engaged in a struggle for recognition. Indeed, it is unclear whether or not recognition can be secured through a proxy. Representatives who are engaged in a struggle for recognition might feel the psychological benefits of their political endeavour but their constituents could not experience the same benefits. Even if not every member of every group would be able to participate in deliberations, the mere fact that the possibility to play a political role increases dramatically could motivate people to educate themselves about their political community and engage more in casual exchanges of ideas over political matters. Individual agency would be strengthened. This would create a framework enabling a Fanonian self-affirmative practice to emerge. In the New Zealand case, for example, it has been argued that "Māori communities can have low expectations of themselves as communities" but that the political engagement of Māori through the deliberative forums of hui can "contribute to raising a community's expectations for itself and the personal sense of value of the individuals within the community".[742]

Even if this problem was not shown as a significant issue in the case studies, a theory of recognition embedded in deliberative practices would also avoid a form of moral tyranny related to moral relativism. "Recognising" different identities implies a positive evaluation of the recognised identity. Yet, if recognition is successfully forced upon society in a top-down fashion (something I believe is impossible but could be attempted by well-meaning elites and, sometimes, informs multicultural policies) it "would violate the freedom of others to make evaluative judgements".[743] A theory of recognition based on the exchange of ideas and the respect of differences would avoid such pitfall.

Deliberative democracy also requires amendments to political institutions. These amendments would progressively reconfigure the political system in a way that emphasises the equality and political agency of all. This means that a deliberative system would alter institutions and, given that institutions constitute relations of recognition (and not merely express them)[744], would create an institutional framework that would promote relations of recognition between free and equal political agents. By giving an equal voice to marginalised voices, this institutionalised deliberative turn could promote self-esteem but could also weaken the pacification/normalisation dimension of policies of recognition embedded in a liberal

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[742] John O'Sullivan and Colleen Mills, "The Maori Cultural Institution of Hui : When Meeting Means More Than a Meeting.," in *University of Canterbury Research Repository* (2009).
[743] Cillian McBride, "Deliberative Democracy and the Politics of Recognition," *Political Studies* 53, no. 3 (2005).
[744] Renault, "The Theory of Recognition and Critique of Institutions."

multicultural framework. One of the advantages of this approach is that these practices are already part, to a certain extent, of the political practices in place in both countries.

Indeed, it may seem that an emphasis on deliberative democracy represents a form of theoretical invasion of the indigenous worldviews. However, deliberation is, in fact, part of indigenous culture. The political organisation of indigenous people in Latin America emphasises deliberation and collective decisions making processes.[745] It has been institutionalised in many countries and some have argued that the deliberative dimension of the "occupy" movement was directly influenced by the Zapatistas who implemented deliberative democracy in their territories.[746] Interestingly, in this case, the Zapatistas do not only engage in deliberation within their own groups but also between themselves and other groups within and without Mexico.

As we saw, in Colombia, the prior consultation mechanism is considered by indigenous people as one of the most important legal tools to preserve the integrity of their territories and their cultural identities. As a matter of fact, the current issues related to the failures of that mechanism are related to the fact that the *consulta previa* has become an administrative formality and does not embody enough the ideals of deliberative theory.[747] Furthermore, indigenous authorities *(cabildos)* use deliberative mechanisms (the *assemblea* (assembly)) to collectively decide how to use financial resources. The financial transfers of these resources from the central state to the communities after 1991 (and the decentralising effect of the new Constitution) had the effect of making these assemblies much more relevant for the common members of the communities. These assemblies have become "new spaces of deliberation" where customary values are intertwined with modern democratic practices.[748] In New Zealand, Māori deliberation through the institution of hui is a common aspect of Māori culture (although Māori protocol on the marae is not as inclusive towards women's voices as the Zapatista deliberative forums) and Māori have a long history of political engagement at the local level.[749] The ideal of consultation with the Crown is valued by Māori and is considered as a form of exercise of their tino rangatiratanga. For example, Māori saw in the foreshore and seabed issue,

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[745] Sieder and Barrera, "Women and Legal Pluralism: Lessons from Indigenous Governance Systems in the Andes."

[746] Ignacio Martínez, "Democracia Para La Dignidad. Movimientos Políticos Sociales Y Ciudadanía Como Aportes a Las Reflexiones Sobre La Democracia En América Latina. El Caso Del Movimiento Zapatista," *Reis: Revista española de investigaciones sociológicas*, no. 123 (2008).

[747] Santamaría Ortiz, "La Consulta Previa Desde La Perspectiva De La Negociación Deliberativa."

[748] David Recondo, *Controversia* 121 (2008).

[749] Bargh, "Multiple Sites of Māori Political Participation."

that was discussed among Māori through a series of hui, a lack of genuine dialogue with the government that diminished their sovereignty.[750] A culturally appropriate increase in the deliberative dimension of the consultation process (especially the egalitarian dimension) would, therefore, increase indigenous self-determination as they would have an increased say over matters that affect them.

I suggest that increasing the deliberative dimension of politics would, therefore, represent another form of recognition for indigenous people. I do not agree with scholars who argue that deliberative democracy is inimical to indigenous people and that indigenous people would always lose out after deliberation. Jorge Valadez, for example, emphasises cultural incommensurability and argues that indigenous people will always be put at a disadvantage because of the "significantly different cultural views they hold in such areas as empirical beliefs, normative principles and practices, and epistemic procedures for validating empirical and normative claims".[751] In short, some critics argue that deliberative democracy's emphasis on reason would impose alien norms on indigenous people and would, therefore, create misrecognition. Katherine Smits summarises this criticism: "many critics have pointed out that this focus on reasonability tends to exclude those who are unable or unwilling to restrict their expression to what is understood to be a reasonable argument".[752] While this argument is valuable to broaden our understanding of a plurality of modes of reasonable argument it is also highly problematic. Indeed, the idea that rational argumentation is necessarily a white male normative ideal is, first, empirically false[753] and, second, dangerously essentialising. I consider the idea that indigenous people are unwilling or, worst, unable to offer impartial rational justifications for their claims as an untenable proposition that echoes the very reason why colonial powers considered indigenous people as inferior in the first place. One way of solving this tension between abstract generalizable reasons and particular indigenous experiences embedded in their worldview would be to deliberate over the norms of reasonable argumentation. Jacques Rancière argues that disagreement over what differentiates speech (understood as rational argumentation with normative power) from noise (understood as the

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[750] Robinson and Robinson, "Pacific Ways of Ralk - Hui and Talanoa," 9-11.

[751] Jorge M. Valadez, "Deliberation, Cultural Difference, and Indigenous Self-Governance," *The Good Society* 19, no. 2 (2010): 60.

[752] Katherine Smits, "Deliberation and Past Injustice: Recognition and the Reasonableness of Apology in the Australian Case," *Constellations* 15, no. 2 (2008): 241.

[753] Rational argumentation and deliberation is a feature of some Islamic school of thought for example. Nicolas Pirsoul, "Reason, Deliberation, and Democracy in Divided Societies: Perspectives from the Jafari School of Thought," *Journal of Public Deliberation* 13, no. 1 (2017).

unarticulated and irrational plebeian voice) is, in fact, at the core of politics.[754] Reaching a dissensus over a pluralist set of norms for deliberation might, therefore, be the first and foremost step in establishing genuine relations of recognition.

If deliberative democracy offers many advantages, it is still necessary to decide what kind of deliberative approach should be prioritised. I believe that the systemic approach highlighted in chapter three is valuable.[755] A systemic approach would increase deliberation at different levels of society and policy making and would ensure interactions between all these levels. As Mansbridge et al. explain,

> The systemic approach does not dictate that we take a nation or large polity as our object of study. Schools and universities, hospitals, media, and other organizations can be understood along the lines offered by a deliberative system approach. But in allowing for the possibility of ratcheting up the scale and complexity of interrelations among the parts, this approach enables us to think about democratic decisions being taken in the context of a variety of deliberative venues and institutions, interacting together to produce a healthy deliberative system.[756]

A systemic approach increases the levels of deliberation by creating citizens deliberation forums that inform and are informed by the deliberative process taking places at all the other levels. The scope of issues subjected to deliberation should be as broad as possible to increase the deliberative dimension of the system. Realistically, however, the number of issues discussed needs to be restricted. It is possible to imagine mechanisms that would allow the public to express its determination to deliberate over specific issues. In the particular cases at stake in this study it would be important to ensure that deliberation takes place whenever the ethnic groups feel that a particular set of policies influence their lives. The state can play an important constitutive role in this web of deliberation and deliberation can influence the state but some deliberation can also take place on the margin of the state. Indeed, "the state is not the terminus of all deliberation" and a cultural shift towards increased daily deliberation

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[754] Jacques Rancière, *Disagreement : Politics and Philosophy* (Minneapolis: University of Minnesota Press, 1999).
[755] Mansbridge et al., "A Systemic Approach to Deliberative Democracy."
[756] Ibid., 2.

amongst citizens should be promoted.[757] "Everyday political talk" should become an important part of the deliberative system.[758]

As I explained earlier, in practice, deliberative practices are already institutionalised, to a certain extent, in both New Zealand and Colombia. The goal would be, therefore, to multiplying the sites of deliberation within the system (and improve their deliberative qualities). In Colombia, local authorities usually consult with citizens and municipal councils (*consejos municipales*) organise deliberative forums to make sure that citizens' voices are heard and inform local projects.[759] Indigenous people also engage in deliberative practices in their *resguardos*[760] and Afro-Colombians communitarian council (*consejos communitarios*) are also involved in deliberation with their communities. Furthermore, the decentralised nature of the post 1991 Colombian state offers an institutional framework that creates a favourable background for increased deliberation. I explained earlier that the *consulta previa* was perceived as a key legal mechanism by indigenous authorities that enable them to protect their communities against negative external influences. However, while the prior consultation mechanism is supposed to be founded on a normative deliberative ideal, in many cases, non-deliberative means (sometimes illegal) of obtaining the consent of indigenous populations are used (misinformation about a given project and/or creation of a parallel, coopted, leadership for example). An emphasis on deliberative democracy as a corrective to these formal, often inefficient, policies of recognition would, therefore, embody the indigenous' will to be listened to and respected through a genuine dialogue between equals with the government.[761]

In New Zealand, some institutions already offer a place for deliberation to take place beside discussions and arguments between politicians and casual daily forms of debate between citizens. For example, deliberation plays an important role in the Waitangi Tribunal proceedings. Select committees also offer a tool for common citizens' voice to be heard. Most importantly, mechanisms of direct consultation with Māori are already institutionalised at both

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[757] Ibid., 10.

[758] Donald D. Searing, "Studying 'Everyday Political Talk' in the Deliberative System," *Acta Politica* 40, no. 3 (2005).

[759] Gutiérrez Alberto León, Hincapié Luis Alberto, and Villa Gloria María, "Potencial Social Y Político De La Planeación Local Y El Presupuesto Participativo En Medellín (Colombia) Para Fortalecer La Democracia Latinoamericana," *EURE (Santiago) - Revista Latinoamericana de Estudios Urbano Regionales* 42, no. 125 (2016).

[760] Recondo.

[761] See: "Minga indígena pide diálogo directo con Santos" retrieved from https://colombia2020.elespectador.com/territorio/minga-indigena-pide-dialogo-directo-con-santos on 18/03/2018.

national and regional levels and materialise the "partnership spirit" of the Treaty of Waitangi. A more deliberative democratic approach to the consultation process would solve some of the current issues with consultation that are related to power imbalance and the bureaucratic/formal dimensions of the process. Because of deliberative theory's emphasis on argumentation between equals, Māori views would likely weight more in decision-making processes arising from the dialogue. A "deliberative turn" in policies of recognition in both Colombia and New Zealand would, therefore, ensure that policies of recognition remain recognition-focused instead of being reduced to formal processes between unequals that reproduce misrecognition.

A certain element of random sampling could be beneficial in the institutionalisation of deliberative democracy because it could decrease the role played by elites while increasing common citizens' political participation and their chances to engage in a struggle for recognition. Random sampling allows more moderate and impartial voices to be heard. Furthermore, if one of the goals of a politics of recognition is to increase egalitarian inclusion, random sampling is a good way of achieving this goal. Indeed, it could be argued that random sampling is more inclusive than policies of recognition informed by liberal multiculturalism because it can potentially give a voice to dissenting voices within groups instead of perpetuating the distorted image of homogenous groups that is required by multiculturalism.[762] Group membership can be factored into the selection process by allowing (not forcing) citizens to opt for special categories that would create a pool of representatives for each groups. The problem of underrepresentation inherent to demographic imbalances (such as the ethnic groups at stake in this study) could be solved through oversampling methods whenever the topic of deliberation particularly concerns a given group.

This method, however, also faces challenges. First, random sampling is currently not practiced by the populations discussed in this thesis and the role of leaders is usually highly respected. Second, the increased inclusivity of sortition mentioned earlier is mitigated by the fact that those who are not selected to participate in deliberation cannot profit from the benefits of increased deliberation. This means, therefore, that randomly selected deliberative polls can be used as supplements to the deliberative system but cannot substitute themselves entirely for more common forms of political participations.

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[762] Here I am not suggesting that proponents of liberal multiculturalism argue that groups are homogenous. Instead I argue that group homogenisation, artificial as it is, is a requirement of liberal multiculturalism because multicultural policies would not work if groups were broken down into sub-units ad infinitum.

A mixture of Mansbridge's systemic approach and of Fishkin's deliberative polling method[763] is easily conceivable and this hybrid model offers the advantage of answering issues related to expertise and accountability. Experts would still play an important role in the deliberation. Advocates of deliberative democracy emphasise the importance of experts in making sure that the information circulating in deliberation is empirically informed. Their role would, however, be democratised as experts could not make decisions that do not appeal to citizens' reason. The accountability of decision makers would also be increased. Random sampling would not replace elections. Politicians would still be voted in and out and their respect for reflecting the publicly available outcomes of the deliberation would play an increased role in their re-elections. A systemic approach to deliberative democracy coupled with random sampling would therefore offer a system of checks and balances between political elites and citizens, between experts and citizens, between experts and political elites, and between citizens themselves.

Finally, another important factor needs to be emphasised: deliberative democracy requires a solid egalitarian educational system. This important requirement would benefit members of disadvantaged groups by increasing their opportunities to engage fully as equal citizens. Their capacity to engage in political discussion would be the goal of this improved education but another positive effect would be their improved and more equal chances on the job market. This education system should expose children and young adults to as wide as possible sets of ideas and theories to broaden their understanding of the world. This means that children and young adults should not be sheltered from views that conflict with their religious and/or cultural background under the pretext of cultural or religious preservation but also that not only one particular set of ideas should be privileged.[764]

The goal of this section was not to offer a blueprint of a perfect deliberative system aimed at replacing multicultural policies. Many factors need to be taken into account and the context would influence each particular situation. The goal was, instead, to explore some alternatives by offering broad guidelines informed by theoretical arguments. I now wish to explain how these reflections lead to a clarification of the concept of recognition if we want the concept to retain its strong critical egalitarian dimension.

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[763] Fishkin, *When the People Speak: Deliberative Democracy & Public Consultation*.
[764] Alisa Kessel, "Moving Beyond "Mozert": Toward a Democratic Theory of Education," *Educational Philosophy and Theory* 47 (2015).

Reconceptualising recognition

I hope to have shown that most of the charges levelled against the recognition paradigm in (mostly) Anglo-American political theory are unfounded. The criticisms that highlight genuine problems with policies of recognition are based on a reduction of the theory of recognition to multicultural liberal policies. The displacement and pacification issues, for example, would not devalue policies of recognition if these policies were informed by the theory of recognition outlined in chapter two.

This unfortunate conflation between two theoretical frameworks can explain some of the flaws in the implementation of "recognition" policies in multicultural societies. I argue that it is, therefore, important to return to the root of the concept of recognition if we want to re-establish its potentially radical dimension and its power to alter the current relations of (mis)recognition. Here, after this lengthy enquiry into several theories of recognition and their implementations in two different states, I highlight some characteristics of the root concept of recognition and develop my own definition of the concept.

Freedom and equality are central to recognition. Subjection (even to an identity) and difference are not. This means that policies that reify identities do not embody the ideals of the theory of recognition. Group belonging (and, therefore, their protection) is, doubtlessly, important to secure recognition because of the intersubjective constitution of the self but, in the end, individuals need recognition, not groups. Individuals value equality and, in some cases, wish to see it re-affirmed through recognition policies that *highlight equality despite differences of identities*. Policies that emphasise difference between people and focus on differentiated treatments, therefore, part way with the theory of recognition. Multicultural policies such as self-determination rights do not necessarily fall into this category. Instead, self-determination policies *can* be policies of equal treatment because if *some* people have a right to self-determination then *all* people should have such right and denying that right would be a form of differentiated treatment. The right to self-determination would only contradict the theory of recognition if it relates to intolerant forms of ethno-nationalism that enforce group homogeneity. The policies analysed in this thesis do not lead to such phenomenon of forced homogenisation. In both countries, individuals are not coerced into group belongings and even in Colombia, where indigenous customary law is applied, indigenous can use their right of *tutela* to ensure that their individual rights are respected.

Recognition needs to have an effect on individual subjectivities: individuals need to know that they are free and equal and that knowledge needs confirmation through practice. Paternalistic and top-down policies of recognition that acts upon people from without, therefore, do not embody the ideals of the theory of recognition as much as policies that emerge from, and reinforce, individual agency. This is why I advocated for a deliberative corrective to liberal multicultural policies.

Recognition is never only formal. Formal recognition would *enunciate* freedom and equality but not *materialise* it. As we saw, despite extensive legal policies of recognition in Colombia and New Zealand, indigenous (and Afro-descendent) people still suffer from misrecognition. Following Hegel, the materialisation, or confirmation, of freedom and equality only arises through social and political practices. The narrowing of recognition policies to well-meaning left legalism does not lead to a recognition embodied in lived experiences. If recognition cannot be formal, rights hardly secure recognition beyond the basic rights of Honneth's first and second sphere of recognition.[765] Differentiated rights can, in some cases, create the conditions of possibility for recognition to arise and pave the way for social change but never secure it (they can even in some cases impede it).

Since recognition cannot ever be formal only, recognition, therefore, requires a struggle. The misrecognised agent needs to prove its freedom and equality to the agents responsible for the denial of recognition. Only this direct intersubjective struggle can materialise recognition. This is not a normative claim. It is, instead, a descriptive claim. The skilled and virtuous actions of the misrecognised become a testimony of their equality and can lead mentalities to change when legal statements fail. The ideal of equality has informed liberal democratic legal systems for a long time, yet discrimination persists. The theory of recognition affirms that enacting equality instead of merely stating it is required for equality to materialise. The struggle for recognition I advocated for here was deliberative and focused on speech and argumentation but a performative element can also be required in some circumstances (the acceptance of this performative element can be understood as a broadening of our understanding of communicative action). This performative element usually takes the shape of protests and indigenous people, especially in Latin America, make a frequent use of this tool.

Relations of recognition are rarely direct, face to face, relations and are often mediated by institutions. A struggle for recognition will, therefore, be successful only if it also has a

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[765] Honneth, *The Struggle for Recognition : The Moral Grammar of Social Conflicts*.

transformative effect on the institutions which mediate relations of recognition. These institutions, in turn, need to favour more direct relations of recognition. The Waitangi Tribunal in New Zealand is a good example of an institution that allows more direct exchanges across identities. It could be argued, however, that because of its efficiency, the Tribunal also prevents broader institutional changes in New Zealand (such as those that took place in Colombia).

Recognition can, therefore, be understood as an intersubjective process through which individuals (their identity) see their freedom and equality reflected (recognised) to them by a different identity after a struggle that needs to be understood as a process of *proving* to the other the validity of their freedom and equality claims despite their different identities. Because of the mediation of institutions, the struggle for recognition is also a struggle against institutions denying the conditions of possibility for recognition to materialise.

We could, therefore, differentiate between a deliberative model of recognition and a multicultural model of recognition. The model of recognition I advocated for does not "involve a departure from traditional egalitarian morality and politics"[766] and does not raise "the banner of particularity, demanding recognition of ourselves *as* black and/or female, not respect *despite* these features".[767] The model of recognition I advocated for, instead, emphasises the idea of "recognition as respect" and entails "egalitarian arguments for non-discrimination which aim at securing universal rights for individual group members".[768] Of course proponents of group rights embedded in liberal multiculturalism such as Kymlicka also advocate for securing such universal rights. At the theoretical level, the difference between the two models of recognition, therefore, lies in the emphasis on one end or the other of the spectrum. At the policy level, however, the differences are sharper. Liberal multiculturalism tends to develop policies that demand of citizens the positive valuation of certain identities while decreasing the possibility of making evaluative judgments about these identities while a theory of recognition influenced by Honneth and Tully focuses on "the removal of inequalities that *unfairly* restrict the freedom of persons to seek social endorsement of their identities and projects".[769] In such framework, recognition between equals can only be reached when evaluative judgments about identities are part of the process of a struggle for recognition. Such approach avoids many of the pitfalls raised by opponents of liberal multiculturalism (see chapter three).

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[766] McBride, "Deliberative Democracy and the Politics of Recognition," 502.
[767] Ibid., 500.
[768] Ibid., 502.
[769] Ibid. Personal emphasis added.

If the theory of recognition's normative cornerstone is not group rights and cultural preservation but the emergence of a radical equality that respects identity differences but leaves room for ethical evaluation, then the superiority of a deliberative model over a multicultural model of policies of recognition becomes evident. This does not mean that multicultural policies need to be abandoned (in many cases they increase the conditions of possibility for egalitarian relations of recognition to take place) but instead that they should be subordinated to deliberative processes.

Chapter ten: Conclusion

The main goal of this project was to understand the extent to which policies of recognition embody the theoretical insights of the theory of recognition and benefit (or not) the populations at stake in the case studies that I analysed. I decided to use both a theoretical (chapters two, three and four) and an empirical approach (chapters five, six, seven and eight) to answer this question. The theoretical approach helped develop a better understanding of the empirical cases and the empirical approach was designed to ensure that the theoretical framework did not remain an abstract set of ideas detached from empirical evidence.

This mutually informing theoretical and empirical analysis highlighted a number of issues with the current implementation of policies influenced by the theory of recognition and the conflation of this theoretical paradigm with the closely related liberal multiculturalism paradigm. The complexity of the issues underlined in this project does not stem from one single root cause but is the result of a number of factors that interact in complex ways.

The phenomenon of social suffering experienced by Indigenous people and Afro-descendants in Colombia, and by Māori in New Zealand, highlights their experiences of misrecognition. These negative social experiences take multiple inter-related forms: experience of racism and poverty, high exposure to violence, and increased risks of both mental and health issues amongst others. The focus of my research was on institutionalised forms of recognition/misrecognition. In other words, I focused on the ways institutions produce or mitigate the aforementioned social issues. I explained that multicultural policies are implemented as policies of recognition with the goal of mitigating the experience of misrecognition and social suffering relating to it. Yet, in both case studies, these policies did not seem to lead to the increased social wellbeing of the ethnic groups at stake and, therefore, were seen as failing to create the socio-economic and political conditions for genuine recognition between groups to emerge.

Redistributive policies have shown mixed results. Land redistribution is mainly symbolic and the transfer of assets does not trickle down to the poorest members of the groups. Burdensome bureaucratic mechanisms and self-serving elites are, in some cases, part of the problem. Increased political visibility and participation through guaranteed representation within the state's institutions do not seem to have a strong impact on policy making and does not allow common members of the groups to engage in political activity. Guaranteed representation

appears to have, in some cases, decreased grassroots political activity and to have become a co-opting mechanism that serves as a vehicle for elites to promote their views and interests. Cultural forms of recognition also fail to drastically improve the wellbeing of the populations at stake. My focus here was on differentiated health care in particular and the Colombian case study showed more potential than the New Zealand one. I underlined the more fluid (intercultural) indigenous health care policies in Colombia and argued that this approach could be responsible for the more positive results displayed by indigenous health providers. Interestingly, the more fluid approach to identity displayed by indigenous groups in Colombia seems to have served them better than the more rigid bicultural approach to identity that informs New Zealand politics. Overall I underlined the existence of a gap between elite recognition and popular recognition as an explanation for the failures of multicultural policies. The promotion of bi/multiculturalism by both states also appeared to be tightly related to their neoliberal economic/political agenda and it was argued that multicultural policies could be used by both Colombia and New Zealand to widen the reach of market capitalism while creating an obstacle to more radical indigenous demands for social justice. I proposed a deliberative corrective to these multicultural policies and argued that a deliberative turn in the policies of recognition could make such policies more consistent with the theory of recognition.

At the theoretical level, these observations led me to advocate for a theory of recognition that is less legalist and focuses less on group-identities. A key difficulty with this approach is to reconcile individual recognition, group membership, and group recognition. I argue that most theoretical work in this field does not pay enough attention to these tensions and that understanding better the interplay between individual and group identities would allow the development of a theory of recognition that avoids many of the pitfalls of "identity politics".

At the policy level, my analysis highlights the importance of developing policies of recognition that are more inclusive of common voices within the groups and does not focus only on activist and elite ideas and needs. My key argument was that deliberative democratic frameworks can offer an interesting complement to the current multicultural policies. Offering a blueprint of deliberative practices that aim to resolve identity-related problems was beyond the scope of the present research project. I believe that no ideal overarching deliberative principles could apply to all situations of misrecognition and that adaptability is important. The deliberative policies that I advocated for will always be circumstantial and some models of deliberation might work better under particular conditions while other types of deliberative practices might be more suited to another set of conditions.

It is important to realise a number of limitations to the present research. First, social inertia needs to be taken into account. While, theoretically, I hope to have shown that it is clear that deliberative practices offer an undeniable advantage over top-down multicultural policies, it is still unclear how the radical dimension of implementing deliberative democracy to solve problems of misrecognition could be tempered by social inertia. Political representation is embedded in the social fabric of societies and promoting the idea that people can speak and take decision for themselves – and then act upon that idea – will take time. In this sense, this research project was hortatory: it is an invitation to push and explore in practice the theoretical conclusions elaborated in chapter nine. Second (and this is related to the first point), more dialogue with the common members of the misrecognised groups that would be involved in a potential deliberative process is required. Dialogue is necessary because it would help understand the wishes and desires of non-elites members of a group better and is, therefore, a first important step in the direction of a deliberative theory of recognition. Such dialogue, however, creates methodological issues. The issue that I am mainly concerned with is that there is a probable lack of self-transparency over the members' will and needs and finding the socio-psychological elements that express their genuine aspirations is a challenge. Decades or centuries of oppression, heteronomous ideological imposition and leader following/obedience renders the quiddity of freedom and autonomy elusive for people who belong to marginalised identities.[770] Even if we disregard this mainly ontological question and focus on a narrower understanding of freedom, there is currently a lack of available data on the wishes and expectations of the (common) members of many marginalised groups that needs to be addressed.

The aforementioned limitations underline the importance of improving our understanding of the phenomenon at stake in this project through further research. The research required is mostly empirical. First, as I already mentioned, it is important to increase our understanding of what the aspirations of the groups' members are. This type of research would already implement a deliberative dimension and it would be interesting to monitor changes in policies of recognition before and after the emphasis has moved from elite to popular recognition (through deliberative practices). Second, deliberative trials need to take place and the results of these trials need to be recorded. Here I am thinking of replicating James Fishkin's work on

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[770] As a matter of fact the notion of "true freedom" is a matter of philosophical enquiry for all human beings, marginalised or not.

mini-publics with a focus on recognition. These experiences at the micro level could then, if successful, be replicated at a more macro level.

This empirical research would in turn feed a more informed theoretical analysis centred on recognition. Much of the research on recognition starts from a number of assumptions about what marginalised groups want and need and, then, develops a theory to solve a number of social issues based on these assumptions. Starting a theoretical endeavour from a more accurate understanding of social reality would allow the theorist to develop a theory of institutional practices that are more likely to answer the problems that she identifies as relevant. This research agenda would be beneficial to deliberative democratic theory as well.

Research on the relationships between recognition and deliberation is in its infancy but promises to open up an interesting field of enquiry for political theorists. The challenges inherent to a theoretical framework that requires to be tested through institutional practices are many but these difficulties should not be considered as a deterrent because a deliberative approach to identity-related issues is the best (if not only) option for "rescuing justice and equality" without abandoning the insights of identity-sensitive theories of justice.

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