# Three theories about the right to self-determination*

## Tres teorías sobre el derecho a la autodeterminación

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## Abstract

Law has two dimensions: on the one hand, it can be linked to the maintenance of an unjust status quo; but, on the other hand, it can also be an instrument of fight for any social actor. This idea will be developed throughout the analysis of the right to self-determination, object to the present article.

Self-determination is a rather old concept understood as self-governance before the states. At the beginning of the twentieth century, social actors recognized this concept as a right, and subsequently as a human right. This article will focus on the notion of self-determination from a theoretical point of view, while also mentioning some historical elements that will complement the historical relevance this right has had. Hence, I will first start by explaining what self-determination meant from John Locke´s standpoint, which is linked to natural law-liberalism. Likewise, I will consider the Marx-Leninists perspective that supported the African decolonization. Finally, I will illustrate how global indigenous movements reinterpreted the notion of self-determination and materialised it through the Bolivian Constitution. With this, the reader will see how law and human rights are both indeterminate and difficult-to-reconcile concepts.

**Keywords:** self-determination, human rights, indigenous movements.

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## Resumen

El derecho tiene dos dimensiones: puede representar un *statu quo* injusto, pero asimismo puede representar una herramienta de lucha aplicable a cualquier actor social. Esta idea es desarrollada en este artículo a través del análisis del derecho a la autodeterminación.

La autodeterminación es un viejo concepto que representa el autogobierno ante los Estados. Sin embargo, recién a principios del siglo XX se reconoció como derecho y, posteriormente, como derecho humano. En este artículo, se analiza la noción de *autodeterminación* desde un alcance teórico sin dejar de lado algunos elementos históricos. Primero, el artículo explica lo que significó la autodeterminación desde el punto de vista de John Locke como representante de la ley natural: el liberalismo. Posteriormente, se analiza desde la perspectiva de Marx y Lenin, quienes se constituyeron en un fundamento a favor de la descolonización africana. Finalmente, se resalta cómo los movimientos indígenas globales reinterpretaron la noción de *autodeterminación* a través de la Constitución boliviana y el concepto de *Sumak Kawsay*. Este caso ejemplifica cómo el derecho y los derechos humanos pueden ser un territorio indeterminado y disputable.


**Palabras clave:** autodeterminación, derechos humanos, movimiento indígena.

## Introduction

This article outlines how international human rights bodies have implemented the right to self-determination, being this an example of the duality of law as it can represent a crucial strategy to support social struggle, but simultaneously could be an instrument to reinforce the interest of neo-liberalism (Kennedy, 2003).

For that purpose, I will analyse several historical milestones on self-determination. To start with, I will cover Locke's conceptualization of self-defence as a natural right. Afterwards, I will move on the Marxist understanding to evaluate how this line of thought redirects this notion by criticizing extensively Locke's categorization while simultaneously highlights self-determination in favour of African decolonization symbolized in "the wretched of the Earth" (Fanon, 2004) during the twentieth century. Finally, this article exposes how the right to self-determination is nowadays addressed anew. In this case, not by African demands, but by indigenous social claims, which were not conducted against the classical Nation-State figure, but rather as an attempt to deepen the understanding of collective rights, understood as rights of Mother Earth, while trying to rebuild the relationship between nature and human beings. An example of this legal transformation represented by the Bolivian Constitution is also discussed.

## The malleability of the human rights discourse

According to Moyn (2010), human rights represent the ultimate utopia. This idea emerges as an alternative before other movements such as pan-Africanism, anticolonialism, communism, and Marxism, all examples that had proven to be unable to transcend the nation-state concept. In this sense, I agree with Campbell (2011) who attributes the popularity

of the human rights concept to their priority and legalization: "To have a right is to have something that overrides other considerations in both moral and legal discourse. It is a language high normative force that demands our attention." (Campbell, 2011, p. 2).

However, rights are associated with the language of remedies and thus "rights are part of a practical discourse that not only invites, but requires action to be taken in response to the claims that the very right expresses. Rights, then, are seen as means of protection against the abuse of power" (Campbell, 2011, p. 2). Here, this author concurs with Dworkin, inasmuch as "rights are trumps" which resort to similar characteristics of Campbell's understanding of rights.

Certainly, it is a legalistic approach grounded in authors like Hohfeld (1978). However, it does not mean that I believe in a "celebration of human rights" (De Sousa Santos, 2015). It would be naive to consider that this legal discourse might become some sort of *"magic wand"* used to solve all contemporary social issues.

Human rights could represent the preservation of an unjust status quo by means of law enforcement, which simultaneously could lead to the discouragement of social movements. In that sense, Tushnet (1984) develops four critiques of the role of law as an obstacle for social emancipation, namely instability, generalization, indeterminacy, and reification. Accordingly, several activists and scholars believe that the Human Rights discourse is a methodology to conduct a deep and global legal movement, which would intertwine with social demands. In this way, De Sousa Santos (2015) uses the concept of subaltern cosmopolitan legality as a strategy to deploy a counter-hegemonic approach to globalization.

Law and human rights have a subtext which is subordinated to the context of who wrote the legal texts and when they were written. The legalization of human rights has been an area of dispute and struggle that has gone beyond the legal framework, "…to which the making of human rights norms and standards remain a dialectical process of inclusion and exclusion. The multiple readings that are made of the legal text help to reinterpret the hegemonic position of who writes the legal texts." (Baxi, 2006, pp. 182-183)

In order to describe this duality, it is necessary to undertake a sociological (Bourdieu, 1984) and anthropological (Moore, 2001) approach, as their views coincide with the understanding of law as a semiautonomous field.

According to Bourdieu (1984), law should be understood as a social field, since it is the site of struggle and competition for control. Indeed, this field sets out what is to be controlled; it determines the issues that must be socially meaningful, as well as its social practices, which are the product of the operation of this "field". Likewise, the logic of this field is determined by two factors: on the one hand, by the specific power relations that determine its own structure, or more precisely, the conflicts over competency that occur within it; and on the other hand, by the inner structure of legal thought, which constantly constrains the range of possible actions and, thereby, limits the realm of specifically juridical solutions (Bourdieu, 1984).

Consequently, the history of law and the history of the internal development of its

concepts and methods have formalized what is now called jurisprudence. This latter sees law as an autonomous and closed system whose development can only be understood in terms of its "internal dynamics".

Implicitly (Douzinas, 2007, p. 2), in accordance with Bourdieu states:

> ...rights do not refer to things or other material entities in the world, but are pure combinations of legal and linguistic signs, words and images, symbols and fantasies. Thus, the autonomy of legal thought and action results in the establishment of a specific mode of theoretical thinking. (Douzinas, 2007, p. 2)

These combinations between power relations and the logic of legal thought, is crucial to understand the right to self-determination and their historical background. This perception is also shared by Moore (2001) and her vision of law as a problem-solving mechanism.

In the work of the legal anthropologist Sally Falk Moore, law comes to be understood into a "semi-autonomous field" (Moore, 2001, p. 103). She asserts that law has a "*rationalist framework used in the legal profession*" as one of the keys of Weber´s sociology. Moore undertakes the essay of the well-known legal realist, Karl Llewellyn[1] to understand law as problem-solving mechanism.

Although Moore knows that law can be interpreted as a means to favour the dominant power, she argues that law has been expanded in favour of the oppressed since the decolonization process in the sixties.

> Law was seen as a representation of social order, but it was understood to be usable in a great variety of ways by people acting in their own interest. The strong and powerful could, of course, further their interests more effectively than the weak (Moore, 2001 p. 104).

Moore (2001) also mentions several authors who find that different legal mechanisms require constant negotiation processes. From an analytic standpoint, she illustrates this idea with some examples towards normative justice that first appeared in Gulliver (1963). This latter author observed that the Arusha people, in colonial Tanganyika, often managed their legal disputes, not by attending the existing (colonial) Native Courts, but by means of an "informal", non-official system where the parties reached negotiated settlements. There, lineage representatives of the contending parties assembled and bargained solutions on behalf of the principals. Gulliver (1963) concluded that the winners of these negotiated settlements were always the more politically powerful parties. In these negotiations, the discourse revolved around norms, but he also argued that such norms did not determine the outcome. He contrasted this negotiation process with judicial decisions, in which he assumed that the outcome was determined normatively. Hence, he not only assumed that a normative system existed, but also that this system was systematically enforced at informal tribunals (Moore, 2001).

Further, Moore incorporates another important element to regard law as a social field: negotiations among different actors turn out to be key to establish who rule the power relations in society, but also within the inner logic of

[1] For more information: Llewellyn, K. & E. Hoebel 1941. *The Cheyenne Way*. Norman, Ok.: University of Oklahoma Press.

law, in agreement with the aforementioned Bourdieu argumentation. The next section will introduce one of the first authors that described the idea of self-determination.

## The concept of self-determination in Locke

Locke represents the values of the bourgeoisie with some remaining traces of the British monarchy. In Locke, the unbreakable relationship between law and morals is revealed; there cannot be any formal law, with no higher moral aspiration. Nevertheless, that morality should be embedded in the state norms. He believed in a natural right granted by God and therefore all men were to hold the same right. "God, as King David says, has given the earth to the children of men—given it to mankind in common." (Locke, 2017)

> If we consider natural reasons, which tells us that once men are born, they are granted the right to survive and thus the right to food and drink and such other things as nature provides for their subsistence, or revelation that gives us an account of the grants that God made of the world (Locke, 1689).

According to Locke, freedom is the way to materialize this natural right. Men are born with the right to perfect freedom, with an uncontrolled enjoyment of all the rights and privileges of the law of nature. Men are equally granted to enjoy those rights with any other man or men in the world. Thus, men, by nature, have power not only to preserve their property but also their freedom. No one can deprive men from their freedom as men all being naturally free, equal, and independent, are also subject to the political power of someone else without their own consent (Locke, 2017).

With this, it is easy to identify some similar aspects to the universal principles of Human Rights. In Locke's words "men all being naturally free, equal and independent", it is possible to identify a given precondition to being holders of the fundamental right: ownership of property. In this sense, if someone does not own properties, in accordance with the design of God, then that person does not hold any rights. In consequence, slaves make the rights of the bourgeois possible.

> Master' and 'servant names as old as history, but very different relationships can be characterized by them. A free man may make himself a servant to someone else. But there is another sort of servant to which we give the special name 'slave.' A slave is someone who, being a captive taken in a just war, is by the right of nature subjected to the absolute command and arbitrary power of his master. A slave has forfeited his life and with it his liberty; he has lost all his goods, and as a slave he is not capable of having any property; so he can't in his condition of slavery be considered as any part of civil society, the chief purpose of which is the preservation of property (Locke, 2017, pp. 27-30).

However, his categorization of that person who was incapable of owning any property lied on the concept of "Slave" as being a person who had been made captive in a "just war". Notwithstanding this, he claimed that "wild Indians" did not have any right to property, and consequently, slaves and indigenous were not part of civil society.

> The wild Indians ·in North America· don't have fences or boundaries, and are still joint tenants ·of their territory·; but if anyone of them is to get any benefit from fruit or venison, the food in question must be his—and his (i.e. a part of him) in such a way that no-one else retains any right to it (Locke, 2017).[2]

As a result, Locke's approach was focused on the owners (the bourgeoisie) since they represented the civil society which actually have some sort of social incidence. In other words, Locke understands society balance and correctness as the peace provided by property owners as they bring about a desirable state: "… a state of peace among its members; they are kept from the state of war by the provisions they have made for the legislature to act as umpire, ending any conflicts that may arise among of them". Hence, proprietors are the ones who can exercise the right to self-determination.

> Self-defense is a part of the law of nature, and it can't be denied to the community, even against the king himself; but that law doesn't allow them to revenge themselves upon him. So if the king of hatred sets himself not merely against this or that person but against the body of the Commonwealth of which he is the head. Preservation of property, peace, and unity among themselves, those who set up force again in opposition to the laws do *rebellare,* those who say I am laying a foundation for rebellion mean that my doctrine may lead to civil wars or internal unrest. ·What do they infer from that·? I tell the people •that they are absolved from obedience when illegal attempts are made upon their liberties or properties and •that they may oppose the unlawful violence of those who were their law-officers when they invade their properties contrary to the trust put in them. (Locke, 2017, p. 76)

Although Locke introduces some hypothesis to understand "the ferment of rebellion", for instance, when people are made miserable and find themselves exposed to mistreatment by arbitrary power, he also considers rebellion illegitimate when an inferior imposes upon a superior. For him, it is legitimate to overthrow a bad king and simultaneously, it is inconceivable to attack the body of the commonwealth by its head the king.

> They may push back the present attempt but must not take revenge for past violence; for it is natural for us to defend life and limb, but it is against nature for an inferior to punish a superior… it must be without retribution or punishment because an inferior cannot punish a superior (Locke, 1689, p. 77).

At this point, it is important to refer to Douzinas as the vision of Locke relies on the social contract among 'free men' where the 'rights of men', ultimately refer to a well-off citizen, who is a heterosexual, white male. "This man of rights condenses in his identity the abstract dignity of humanity and the real prerogatives of belonging to the community of the powerful" (Douzinas, 2007, p. 2).

[2] In this paragraph the author describes "All the fruits it naturally produces and animals that it feeds, as produced by the spontaneous hand of nature, belong to mankind in common; nobody has a basic right—a private right that excludes the rest of mankind—over any of them as they are in their natural state. But they were given for the use of men and; before they can be useful or beneficial to any particular man there must be some way for a particular man to appropriate them".

## Self-determination in Marx-Lenin (1848-1960)

In this section, a specific period from the communist manifesto to the legalization of the right to self-determination will be characterized as a transition from the bourgeois concept of self-determination to the proletarian and anticolonialist struggle that ended up with the United Nations' recognition of this right. Therefore, here the focus will be addressed to how the notion of self-determination was reinterpreted taking into account the African decolonization process.

It is well known that Marx did not believe in "the rights of man" as inherent to the human condition, thereby he was clearly against the notion of *natural* law. As opposed to Locke, he considered that rights are determined by a specific context, rejecting Locke's Universalist concept. On the other side, for him –Marx–, rights are not innate; rather, these rights have been taken away from the *status quo*, in that case, the bourgeoisie. This perspective led several of the main critical subsequent currents of human rights. For example, in his famous book *On the Jewish Question*, Marx (1843) briefly analysed some of the following arguments:

> The question is whether the Jew as such, that is, the Jew who himself admits that he is compelled by his true nature to live permanently in separation from other men, is capable of receiving the *universal rights of man* and of conceding them to others.
>
> For the Christian world, the idea of the rights of man was only discovered in the last century. It is not innate in men; on the contrary, it is gained only in a struggle against the historical traditions in which hitherto man was brought up. Thus, the rights of man are not a gift of nature, not a legacy from history, but the reward of the struggle against the accident of birth and against the privileges, which up to now have been handed down by history from generation to generation. These rights are the result of culture, and only one who has earned and deserved them can possess them (Marx, 1843, p. 10).

Moyn (2010), on the other hand, ingeniously shows how the true concept of "the rights of man" is subject to the category of citizen, "the 'rights of man' were about incorporating people into a state, not a few foreign people criticizing another state for its wrongdoings" (Moyn, 2010).

Additionally, Marx proposed the communist state as the state in which private property would be abolished, completely opposed to the bourgeois precepts, because it is a *sine qua non* condition that turned out to be admissible to exercise rights, including self-defence. In his Manifesto, he addresses the issue on how a new social order would be like. "In fact, the abolition of private property is, doubtless, the shortest and most significant way to characterize the revolution in the whole social order" (Marx & Engels, 1969, p. 47).

With this, it is possible to infer that Marx's understanding of self-determination had to do with a fight against the origin and values of the bourgeoisie. For instance, his manifesto mentions how…

> The discovery of America, the rounding of the Cape, opened up fresh ground for the rising bourgeoisie. The East-Indian

> and Chinese markets, the colonization of America, trade with the colonies, the increase in the means of exchange and in commodities generally, gave to commerce, to navigation, to industry, an impulse never before known, and thereby, to the revolutionary element in the tottering feudal society, a rapid development (Marx & Engels, 1969, p. 15).

Likewise, Marx thought the proletariat would overthrow the bourgeoisie not just in Europe, but elsewhere around the world, by identifying another crucial phenomenon called colonialism. Marx and Engels (2008) wrote in several letters on colonialism. They described how it was first developed in China and India, and set out their plausible resistance against European colonizers:

> The Chinese revolution will throw the spark into the overloaded mine of the present industrial system and cause the explosion of the long-prepared general crisis, which, spreading abroad will be closely followed by political revolutions on the Continent. It would be a curious spectacle, that of China sending disorder into the Western World while the Western powers, by English, French and American war-steamers are conveying "order" to Shanghai (Marx & Engels, 1850-1888, p. 25).

Furthermore, Lenin consequently adopted Marxist precepts about the "right of man", and colonialism. He was the first to consider the implementation of self-determination through rights. He went back to question what self-determination of nations meant.

> Naturally, this is the first question that arises when the attempt is made at a Marxist examination of what is known as self-determination. What should be understood by that term? Should the answer be sought in legal definitions deduced from all sorts of "general concepts" of law? Or is it rather is sought in a historical-economic study of the national movements? (Lenin, 1972).

Lenin´s dilemma could easily be solved from a materialistic approach; by which I mean focussing on a historical-economic analysis.

> If we want to grasp the meaning of self-determination of nations, not by juggling with legal definitions, or "inventing" abstract definitions, but by examining the historical-economic conditions of the national movements, we must inevitably reach the conclusion that the self-determination of nations means the political separation of these nations from alien national bodies and the formation of an independent national state (Lenin, 1972).

To sum up, this Marxist interpretation contributes to the process of African decolonization, although African leaders did not initially believe that self-determination should be achieved through human rights. Franz Fanon (2004) was one of the most sceptical about it. Briefly, I highlight some points that Fanon took from Marxism to construct a theoretical proposition that would contribute paradoxically to the constitution of self-determination as part of the body of international law.

## Self-determination implemented by means human right discourse

Regarding the evolution of the right to self-determination, the truth is that it was not

initially considered a part of human rights. Additionally, its restricted scope generated scepticism and disillusionment, not only within the movements of African decolonization, but also in the so-called *third world* and against the European colonizer. At this point, it is necessary to go back to Moyn (2010) who argued that the right to self-determination was a consolation prize for the anti-colonialist struggle: "Anticolonialism rarely framed their cause in rights language before 1945. The Colonial Subject was painfully aware that Western 'humanism', had not been kind to them so far" (Moyn, 2010 p. 87).

Further, Moyn (2010) asserts, "when the decolonization resulted in enough new states to matter at the UN, the phrase Human Rights itself came to be incorporated in the master principle of collective self-determination" (p. 97). He concluded that the anticolonialism lesson for the history of human rights is not about the growing relevance of the concept across the post-war era. "It is about the ideological conditions in which human rights in their contemporary connotations become a plausible doctrine" (Moyn, 2010, pp. 87-88).

Although Moyn's critique is crucial to remember the category of law as a "social field", it also considers the duality of human rights. Certainly, Human rights could emerge as a consolation prize whether one compares the real dimension of the African decolonization, yet it has also become an important tool to meet other social claims. In that sense, as Terreta posits (2013), it is wrong to minimize the empowerment of the human rights discourse acquired after the period of African decolonization.

> The human rights movement parted ways with liberation politics in order to achieve the prominence it eventually did in the global North, where human rights were narrowly redefined as negative protections for individuals, a safeguard against physical pain and trauma. But I date this divergence to the end of the UN trusteeship system circa 1960 and demonstrate that the new sort of human rights movement that swept in muted—but did not fully displace—the revolutionary one that had preceded it (Terretta, 2013, p. 398).

With this brief background in mind, I will now focus on how the Latin American indigenous movements have reinterpreted the right to self-determination in terms of achieving autonomy and emancipation through the figure of the State, opposite to the African decolonization demands as they claimed autonomy toward State.

It should be noted how the reconfiguration of the right to self-determination has been developed in a context where the indigenous claims go beyond anthropocentrism, classical legal thought, individual rights, and respect to Mother Earth (also referred to as Pachamamanism).

## The right to self-determination applied by Latin-American Indigenous movements

The way indigenous people of Latin America have understood this right is outside of both Locke's social contract and his concept of citizenship and civil society, and the Marxist approach, where the indigenous communities were discarded (Wallerstein, 1991).

This article will describe the kind of theoretical framework that would be necessary to

determine what the right of self-determination means for the Latin-American Indigenous movements. Hence, the Indigenous claims will be analysed, including, for example, the conception of cosmopolitan legality by De Sousa Santos (2005).

This latter concept is useful to understand the indigenous claims in terms of self-determination. De Sousa Santos (2002) approaches consists of recognizing legality as a counter-hegemonic discourse and practice. According to him, "law is not all about state law and individual right, the idea of autonomy and the idea of rights are both means and ends of social practice" (2000, p. 30).

Furthermore, this author identifies three new characteristics created for the Indigenous social movement to be included in cosmopolitan legality.

Firstly, this neo-law was regarded as the indigenous struggle for legality having, in turn, a double struggle: the struggle for a collective right to create laws and rights, including the recognition of their collective rights, and their self-determination into the national state law and international law. Thus, these indigenous claims notoriously transcend the legal modern nation-state model.

Secondly, a neo-state considers the roots of the struggle of indigenous people as a radical critique of the nation-state model, since it exposes the implicit social exclusion and suppression of minorities. The indigenous movements open an ideological space for a profound revision of the liberal state in terms of sovereignty.

Lastly, the author refers to neo-community understood as the claim for "the principle of the community", by which I mean the idea of a horizontal politics obligation between the indigenous groups and the states.

These categorizations are key to interpret how the Latin American indigenous movements have developed their social struggle. The Neo law, new state, and new community concepts are included into the Bolivian Constitution. This lays out foundations to analyse how the right to self-determination was applied in that context.

Another remarkable research in this analysis is Tomeselli's (2016). He states that there are three macro-categories of autonomous or self-determined indigenous territories recognized by their states, namely: a). indigenous autonomy arrangements that have been legally established as a result of conflict resolutions (Chittagong Hill Tracks in Bangladesh; Papua and Aceth in Indonesia; the Atlantic Coast in Nicaragua, etc.), b). Self -government arrangements derived from high-level debates followed by incisive constitutional or domestic law reforms (the Indigenous Peasant Native Autonomies in Bolivia; the *circunscripciones* in Ecuador; the indigenous autonomies of Mexico, the reformed autonomy of Greenland from Denmark, etc.), and .c). Arrangements developed into new legal autonomy understanding by constitutional or other amendments of domestic laws (the *resguardos* systems in Colombia).

With this context, the purpose is now to introduce some theoretical frameworks carried out by Latin-American indigenous movements, from what I call "insider perspective", in terms of the right to self-determination claim. I especially consider crucial Tomaselli's category of "Self -government arrangements

derived from high-level debates followed by incisive constitutional or domestic law reforms" (2016). This concept could explain several cases of constitutional reforms undertaken by indigenous peoples such as Bolivia and Ecuador.

## The Bolivian constitution of 2009

The Bolivian constitution represents the new right to self-determination; this process has been regarded as part of the Latin American constitutionalism, confronting the classical notion of legal thought.

The Socialist Movement of Workers, MST (Movimiento Socialista de Los Trabajadores in Spanish), set one of the most important backgrounds for this Constitution. They took parts of the *ayllu*[3] model and adapted them to structure their political organization at the community, regional, and national level (Fabricant, 2012, p. 79).

The state had previously divided land and territory through a model of citizenship that assigned property rights to individuals, but MST claimed that the land ownership had to do with more than a piece of individual property—it is rather a collective right. The occupation of land, or what they call a "reconquest" of sorts, is about reclaiming and reterritorializing indigenous control and autonomy over those lands and their critical resources (Fabricant, 2012, p. 79).

Likewise, Marcia Stephenson (2000), describes the political, cultural, and ideological uses of the *ayllu*, and explains how this model is articulated as an Andean political body in which the four parts of the *Tawantinsuyu* and the Inca Empire, the largest empires in pre-Columbian America, are intertwined.

Concerning the constitutional text, according to Copa Pabón (2015), the first article of the constitution should be understood beyond the classic state structure as well as the regulations of the political charter. This article of the Bolivian Constitution establishes that: "Bolivia is constituted as a Social Unitary State of Plurinational Community Law. [...] Bolivia is based on plurality and political, economic, legal, cultural and linguistic pluralism, within the integrating process from the country.

> The configuration "Social Unitary State of Plurinational Community Law" (without commas), reflects the constitutional, social and political transition of the Bolivian State. In simple words, this transition, in our opinion, seeks the "overturn" of the old to the new, of the alien to the own; of a Social Rule of Law anchored in the Republican "Nation-State", towards a Plurinational Community State, founded on the plurality and pluralism of nations and peoples (Copa Pabón, 2015, p. 263).

As a result, the African-self-determination is overpassed, since it focussed on the relationship between a colonizing and a colonized state. In the Bolivian case, the concept of plural nations is located in the contours of the nation-state. In addition, it turns away from the classic notion of self-determination by Locke, because the concept of the property-owning

[3] The traditional form of a community in the Andes, especially among Quechuas and Aymaras. They **are** an indigenous local government model across the Andes region of South America, particularly in Bolivia and Peru

citizen and individual rights has no bearing. Here too, different actors appear indigenous, community, *Pachamama* and the rights of Mother Nature (Copa Pabón, 2015, p. 264).

Although these rights were not enacted in 2009, the Constitution recognizes the importance of protecting nature, it does not constitutionally entrench the rights of nature, as does its Ecuadorian counterpart. However, the rights of nature (or Mother Earth) and their protection were instead set out in two statutes: (i) Law 071 of the Rights of Mother Earth of 2010 (*Ley 071 de Derechos de la Madre Tierra* -Law of the Rights of Mother Earth-), which enumerates specific rights to which Mother Earth is entitled, and (ii) Framework Law 300 of Mother Earth and Integral Development for Living Well of 2012 (*Ley Marco de la Madre Tierra y Desarrollo Integral para Vivir Bien*) (Villavicencio & Kotze, 2018, p. 3).

Similarly, in Bolivia, there is a plurinational representation. I refer to Pacari (1984), who says, "the solution for the colonial situation would be the "transformation of the current power of the Uninational. […] State toward a plurinational state". This truly multinational and pluricultural state in which each nationality has the right of self-determination and the free choice of social, political and cultural alternatives.

Additionally, the concept of self-determination is fully recognized within the principles of the Bolivian constitution. Thus, plurinationality as the succinct expression of the diversity of Bolivian reality is founded on four fundamental bases: a) The "self-determination of peoples", b) "Plurality" and "pluralism", c) "Decolonization" and d) *Sumak Kawsay*. With this, it is possible to say that the self-determination of indigenous peoples is exercised through the recognition of collective rights, which is an anticolonialist discourse in harmony with nature, and respect for community values from a holistic way. For example, the notion of *Sumak Kawsay* aims to restore collective life in all its dimensions, as an alternative reaction to the dominant development model (Macas, 2010).

Likewise, Houtart (2011) explains what the *Sumak Kawsay* means. This explanation highlights how this concept aims to create another paradigm, which would be outside of the capitalist logic in the interest of becoming an instrument to encourage any social movement.

> Sumak Kawsay is a new word for integral development, inspired by the tradition and the discourse of the indigenous peoples, and that wants to propose, with an original contribution, a change of paradigm in front of the capitalist conception of the development. Similar intellectual efforts exist in African and Asian societies, and it is the set of all these initiatives that will help to specify the objectives of the various social movements and political organizations that fight for a change of society (Houtart, 2011).

At the same time, *Sumak Kawsay* is grounded in some values, which are intrinsically connected: *Pakta kausay*, (Balance): Through communal work, individual and collective equilibrium is achieved*; Alli kausay* (harmony): the balance allows sustaining the collective and individual harmony; *runakay (know-how to be)* is the sum of all the elements noted above. Runa literally means the person, the human; the *runakay* synthesizes the realization of the human being, to achieve this dimension. It is essential to learn

how to gradually comply with each one of the values described above.

Consequently, the notion of self-determination implemented in the Bolivian constitution has other parameters, which are born in their own cultural practices, without the classic division between "man" and "nature". That explains why Indigenous peoples intend to preserve their culture and cosmogony as a political act.

## Conclusions

After the different issues addressed and discussed within this article, there are several remarkable reflections concerning the right to self-determination to have in mind.

1) The materialization and evolution of human rights has led to a permanent duality. Its disambiguation relies upon several factors, such as acknowledging who writes the human right to consider (Baxi, 2006). This discourse can be considered sometimes regressive for social movements and concomitantly supportive to capitalist logics (Kennedy, 2003). Human rights can equally become the ultimate utopia (Moyn, 2010) of contemporary societies in order to achieve higher levels of democratization, emancipation and collective well-being. At this point, we should consider the incorporation of the right to self-determination within the body of international law of the peoples' rights. If this right had not been incorporated and recognized within the language of human rights, it would have not contributed to struggles as dissimilar as those of the indigenous movements in Latin America.

2) It is valuable to review Locke's objectives (1689) –who favoured the bourgeoisie, although purportedly, he talked of the rights of all men-, together with Lenin's ideas (1972) –who represented the proletariat, but subsuming minorities–, and the indigenous movements, who surpassed the legalistic concept and nation-state notion-. The latter achieve such surpassing with an initiative that started as an anti-capitalist project that addressed this self-determination by means of *Sumak Kawsay,* a different episteme, and the rights of Mother Earth- as a means to understand the specific case of self-determination as a human right,

This article did not conduct a historical development of the right to self-determination, it rather illustrated how Bolivia's indigenous movement have developed political theories from a different episteme to defend certain interests by means of law. From my personal point of view, I consider that, if we understand these dynamics from the Bourdieu and Merry's approaches, we will find law as an indeterminate social field and a concept hard to reconcile from two different perspectives: the relationship between power relations, and the inner logic of law.

As I have remarked in another unpublished article, the right to self-determination has been used at the international level by different means: the first, by the United Nations Declaration on Indigenous People (2007). It has also been nationally implemented in countries like Bolivia, and also against the law (Zapatista movement) as well as a mean to surfing the national law (CRIC-Colombia´s case[4]. This information has been collected through Legal Consciousness Studies in the United States.

[4] Abbreviation in Spanish: (*Consejo Regional Indígena del Cauca*). Regional Council of the Cauca)

3) Although the Latin American indigenous movements use law as a strategy to achieve self-determination, its claim arises from an ancestral right that is outside the western logics, sovereignty and civil society of the nation. This right is exercised concomitantly with other rights. For example, the right to self-determination is unimaginable if the right to territory is not exercised. Here, territory means an ancestral place, where the indigenous peoples' worldview takes place and the *Sacha Pacha* (the forest) shares the same origin and destiny.

Hence, the Bolivian case evidences how social movements, represented by MST, resorted to their ancestral believes, *ayllu*, together with political strategies in order to assure better conditions for their political struggle. Such efforts set the foundations for the new Bolivian Constitution established in 2009.

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