Indigenous-State Relations and Conflict:
Hegemony, Agency and the Mapuche 'problem' in Neoliberal Chile

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Table of Contents

ACKNOWLEDGEMENTS **3**

LIST OF ABBREVIATIONS **4**

1. INTRODUCTION **5**

2. LITERATURE REVIEW & THEORETICAL FRAMEWORK **12**

2.1 ORTNER'S "TWO FACES" OF AGENCY 12
2.2 GRAMSCI'S THEORY OF HEGEMONY 13
2.3 BEING INDIGENOUS 15
2.4 INDIGENOUSNESS IN INTERNATIONAL RELATIONS 16
2.5 INDIGENOUS PEOPLES IN LATIN AMERICA 18
2.6 THE MAPUCHE MOVEMENT 20

3. CHAPTER ONE: A HISTORY OF MAPUCHE RESISTANCE **23**

3.1 CONFLICT WITH THE SPANISH EMPIRE & CHILE 24
3.2 LOSS OF LANDS & RESENTMENT 26
3.3 THE MAPUCHE UNDER THE DICTATORSHIP 28

4. CHAPTER TWO: MAPUCHE AGENCY, HUMAN RIGHTS AND THE STATE **30**

4.1 MEDATING INSTITUTIONS IN THE ARAUCANÍA 30
4.2 DIRECTORATE OF INDIGENOUS AFFAIRS & INSTITUTE OF INDIGENOUS DEVELOPMENT 31
4.3 AGENCY UNDER THE DICTATORSHIP: HUMAN RIGHTS & MAPUCHE SOCIAL AWAKENING 33
4.4 NATIONAL INDIGENOUS DEVELOPMENT CORPORATION (CONADI) & LA CONCERTACIÓN 35

5. CHAPTER THREE: THE RALCO & PANGUE DAM CONTROVERSY **39**

5.1 BRIEF HISTORY OF CHILE'S HYDROPOWER 39
5.2 ENDESA's HYDROPOWER PROJECTS 40
5.3 INDIGENOUS AND ENVIRONMENTAL RESPONSES 42
5.4 LIMITATIONS OF INDIGENOUS AND HUMAN RIGHTS 45

6. CONCLUSIONS **48**

7. BIBLIOGRAPHY **53**

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List of Abbreviations

CA	Corporación Araucana
CAM	Coordinadora Arauco-Malleco
CEPI	Special Commission of Indigenous Peoples (Comision Especial de Pueblos Indigenas)
CODEPU	Committee for Defense of the Rights of the People (Comité de Defensa de los Derechos del Pueblo)
CONADI	National Corporation for Indigenous Development (Corporación Nacional de Desarrollo Indígena)
CONAMA	The National Commission of the Environment
CORFO	Chile's Economic Development Agency (Corporación de Fomento de la Producción)
COTAM	Autonomous Mapuche Working Group
DASIN	Management of Indigenous Affairs (Dirección de Asuntos Indígenas)
ENDESA	National Electric Enterprise (Empresa Nacional de Electricidad)
EIS	Environmental Impact Assessment
GABB	Grupo de Alto Bío-Bío
IACHR	Inter-American Commission on Human Rights
IDI	Institute of Indigenous Development (Instituto de Desarrollo Indígena)
IFC	International Finance Corporation
ILO	International Labour Organisation
IR	International Relations
IRN	International Rivers Network
NCTRR	National Commission for Truth and Reconciliation Report or the Rettig Report (Comisión Nacional de Verdad y Reconciliación)
NGOs	Non-governmental Organisations
PF	Pehuen Foundation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	Universal Declaration on the Rights of Indigenous Peoples
WBG	World Bank Group
WBGIP	World Banks Group's Inspection Panel

1. Introduction

> One observation remains true as it has for more than 500 years – Indigenous Peoples will resist and survive because of their ability to maintain community, find leadership, distribute resources fairly among their people, and above all keep our respect for the land…
>
> Fenelon and Hall (2008, p.1895)

In the last three decades, Indigenous Peoples have increasingly struggled to control and maintain their traditional way of life and lands. Despite wider public awareness of their plight, formulation of laws, norms and regulations extending political rights, and extensive transnational alliances, Indigenous Peoples continue to experience threats to their sovereignty, economic well-being and access to vital resources. Through oppression, exploitation, marginalisation, forced assimilation, and genocide by nation states led either by colonizing populations, or by a dissimilar ethnic group holding political monopoly, Indigenous Peoples consistently clash with their ascribed status, the state apparatus, other cultural groups, and changes to their inhabited environment. On Indigenous land roads are built, forests are felled and power plants constructed on rivers, all part of the 'developmentalist' wave. When pressures to modernise come into conflict with Indigenous concerns, often the original inhabitants of a defined territory are left – rightly so – embittered with existential threats to their livelihood the source of intra-state conflict.

The Mapuche conflict, the conflict between the Chilean state its largest group of Indigenous Peoples, received international and national attention in the 1990s following Chile's transition to democracy. One of various Indigenous resurgences in Latin America, the Mapuche conflict is not surprising given the Mapuche's forced relocation from lands they have inhabited for centuries by a hegemonic state. The roots of the conflict can be found historically, generally from colonisation or political shifts that leave the Mapuche disadvantaged economically, politically and socially. Conflict, spurred by private corporations and landowners, centres on resource rich lands developing into legal and illegal Mapuche resistance often leading to violence. Other members of the Mapuche population choose to assimilate into the majority culture of Chile migrating to large urban areas such as Santiago, Temuco and Concepción.

Following brutal repression under the dictatorship, acknowledged by The National Commission for Truth and Reconciliation Report (NCTRR, 1991), Mapuche activists strove to

revive and reorganise their community vis-à-vis the Chilean state. Their demands for jurisdictional autonomy, return of ancestral lands, and recognition of rights and cultural identity have led to land disputes and violent confrontations in the Araucanía region. Various incidents have included violent land occupations, burning of private property, and demonstrations, which have all ended with fierce clashes with the *Carabineros*, Chile's armed police. In efforts to mitigate rising tensions, an assemblage of politicians, Indigenous caciques, intellectuals, and religious and private sector leaders created the Commission for Historical Truth and New Treatments. Released in 2003, the Commission created a report calling for drastic changes in Chile's treatment of Indigenous Peoples across the entire South American country. In the report, the Chilean government pledged to allow the mediating institution, National Corporation for Indigenous Development (Corporación Nacional de Desarrollo Indígena) (CONADI), further oversight authority for plans, decision-making and future projects concerning Indigenous development and national projects affecting indigenous populations. This thesis will regularly draw upon mediating institutions by looking at the events leading up to the establishment of CONADI, anterior mediating institutions and its limitations. Mediating institutions are crucial, as in many ways, they are deemed as a successful institutionalisation of indigenous participation into the state apparatus where complaints can be addressed and proper consultations processes adhered.

Although the report's recommendations included formal recognition of territorial and political rights of the Mapuche and efforts to promote their cultural identities, Chile is under pressure to develop its economy and infrastructure through a neo-liberal model. Large-scale development projects, such as road construction and dam building on Mapuche lands, have continued to stoke tensions, where Mapuche lands have not been properly conserved. Violent land occupations and protests have continued as the Mapuche demand tougher protection measures. Recently, delicts committed by Mapuche activists have led to prosecution under Chile's Anti-terrorist Law 18.314 – a legislative remnant from Pinochet's dictatorship. Attempts by Mapuche friendly administrations to remedy the problems facing the Indigenous group have run into constitutional constraints imposed during the military regime where right-wing parties are able to wield veto power over any constitutive changes in the social contract (Sznajder, 2003). Often named as a "stateless society" (Langer, 2003, xi), the Mapuche continue to participate in politics in what has been regarded zero sum

game where Mapuche struggle is an existential threat to the perpetuation of the Chilean state (Rivas, 2012). Consequently, media and academics present the Mapuche as marginalised, disempowered, and downtrodden, backed up by historical narratives and statistics.

While it is important to recognise such historical narratives and on-going realities to reach some form of reconciliation, to say that Indigenous social movements, such as the Mapuche, continue to be dispossessed would be inaccurate. Such impression would fail to sufficiently address Indigenous agency. For several decades now, Indigenous groups have had increasing control over their own circumstances. All individuals and communities have the capacity to exercise agency, which is connected to their power to transform subjective social phenomena (Giddens, 1984). Central to this thesis' argument is recognising that Indigenous Peoples have the ability to resist norms and bring about change. Agency must be incorporated into this thesis to ensure that Indigenous populations are not denied a voice or are disempowered. Therefore the research question that this thesis will adopt is: *by applying Sherry Ortner's "two faces of agency" and Antonio Gramsci's theory of hegemony, what can we learn about the Indigenous Mapuche movement and how they resist vis-à-vis Chilean state sovereignty?*

As the question states, this thesis will draw upon two theoretical bodies: Gramsci's theory of hegemony and Ortner's agency two faces of agency. Anthony Giddens' aforementioned mentioned structuration approach, with its focus on both agency and structure, as well as social movement theory, specifically relational theory, will supplant this paper. These theoretical bodies were selected due to their flexibility as an intellectual body providing various frames of analysis – the primary reason for using theories rather than, evaluating their value and applying them to every scenario.

The "two faces" of agency, "as resistance" and "as project" (Ortner, 2006), will be explored as well as notions of structures that constrain and influence individuals found in classical sociology. Agency "as resistance" to power and to domination comes in many forms that surpass "repugnant practices" of those previously mentioned of violent land occupations and setting fire to private property, in other words, protest and activism (Cowlishaw, 2003, p.111). The second face of agency is agency "of projects" where

expression and actions of individuals and communities are centred on intent, and the ability to engage specific activities (Ortner, 2006, p.143). The wide coverage of the "two faces" of agency provides various opportunities for analysis furthering our understanding of agency, structure, race relations, and above all, place Indigenous at the centre of the thesis avoiding their disempowerment.

Structures both empower and disempower agents asymmetrically (Sewell, 1992) whereby classical Sociology has often emphasised the influence of structure on individuals yet, the very same structures are human creations. When agents acquiesce to constraints and undertake action through the very same structures that restrict them, Indigenous agents find themselves empowered within state structures, often working collaboratively with the state. Thus, one cannot analyse agency and ignore the presence of structure in influence the relationship between the rulers and ruled. Anthony Giddens also adds that an agent is purposive, in that there are reasons for their actions, and characterised by reflexivity, "the continuous monitoring of action which human beings display and expect others to display" (Giddens, 1984). Therefore, focusing exclusively on agency is not conducive to understanding the true extent of Indigenous issues. Relationships are embedded in contexts and structures need adequate attention as well. Looking at hegemony, sometimes called invisible power, offers an intellectual body to analyse such structures.

The cleavage between the Chilean state and the Indigenous Mapuche originated historically due to many cultural, economical, political and social differentiations where a Gramscian notion of hegemony offers opportunities for analysis. Gramscian hegemony rests on the idea of consent. By deviating away from the orthodox Marxist view, Gramsci argues that the ruling class is able to maintain dominance (violence without consent) or hegemony (domination without coercion) over the masses through use of various instruments like media, education system, civil society and other means. Through these means, ruling class or the state disperses its political, social, moral and cultural values throughout society leading to the ruled to accept and sometimes even embrace these values as their own. Consent and coercion are *sine qua non* components of hegemony where a broad interpretation will be outlined in the next section.

This paper takes the viewpoint, as outlined in the epigraph, that Indigenous Peoples have faced repression and threats for centuries yet, have managed to maintain a degree of autonomy and survival as human agents. The Mapuche are no different in creatively exercising their agency vis-á-vis the hegemonic Chilean state. This paper's argument is that the Mapuche have been empowered by international legislation, such as the International Labour Organisation's (ILO), the United Nation's (UN) framework for Indigenous rights, and the global human rights movement, to demand changes in Chile's repressive legislative structures that remain from the dictatorship. However, although there was Indigenous participation in the formulation of these frameworks, they remain fundamentally a non-Indigenous political and legal system ultimately based on a subjugating state sovereignty. A clear example of how structures can be both constraining and enabling.

Despite successes in the realm of consultation practice and decision making procedures through the state's mediating institutions with the passing of "Indigenous Law" 19253, the Chilean state rejects the Mapuche's claims for self-determination and has yet to amend the constitution to reflect the South American county's Indigenous component. Instead, the political elite's actions in continued implementation of the Anti-terrorist Law and issuance of Operation Huracán, which involved the detention of eight Mapuche farmers for their involvement in a terrorist group in Southern Chile associated with the separatist Coordinadora Arauco-Malleco (CAM). Although widely criticised by Amnesty International in their 2017-2018 report, and condemned by Inter-American Court of Human Rights (IACHR) citing the Anti-terrorist Law as a violation of the American Convention on Human Rights, political will has not looked to change the status quo. Recently re-elected President Sebastian Piñera promised to "perfect" its Anti-terrorist Laws, opening up the possibility of further repression for the Mapuche people (Wadi, 2018). With intrastate conflict becoming increasingly prevalent worldwide replacing interstate conflict over the past fifty years (Fearon & Laitin, 2003; Kaldor, 2012), this study seeks to complement burgeoning interest on studies specific to Indigenous people (Alfred and Corntassel, 2005; Brysk, 2000). This thesis seeks to explore the idiosyncrasies of Mapuche-state relations by working from a proposed historical framework and applying the theoretical bodies of Ortner's agency and Gramsci's hegemony.

First, a literature review will explore the idiosyncrasies regarding Indigeneity in the world today, the issues involved in using International Relations (IR) as an academic field to address Indigenous issues, and also introduce Indigenous movements that have been sweeping across South America. Power, the overriding concept of hegemony, is important to mention as the Mapuche are a distinct group struggling for political space. Whilst power itself will not be explicitly discussed in this thesis, applying Gramsci's contributions to hegemony will allow us to determine the "where and how, between whom, between what points, according to what processes, and with what effects, power is applied" (Foucault, 2007, p.17). Thomas Hobbes (*Leviathan*, 1651) observes power as hegemony where it is centralised and focused on sovereignty. Thus, hegemony as a type of leadership will also be important to explore as it provides a theoretical tool to examine to what extent there is, or has been, Mapuche consent. Last but not least, agency is intrinsically linked to consent and will be examined as it has granted the Mapuche further freedoms and tools to demand their human rights.

Chapter one will construct a historical framework to understand a wider overview of the Mapuche conflict and its implications for Chile. Here we look to understand the complexities of state-indigenous relations and root causes of the conflict with the understanding that the resentment found in both sides of the relationship has been historically constructed. The timeframe will begin with Mapuche resistance against Spanish colonial rule up to the dictatorship. The objective of this chapter is to highlight and unpack the tensions that existed in the Indigenous-state relationship. Past repressive state policies of domination, education, assimilation and harassment have all played a role in constraining the Mapuche.

Chapter two will take the Mapuche's point of view by looking at their agency and how they have incorporated themselves into the human rights movement by creating non-governmental organisations (NGOs) such as CAM. Their comprehension and adaption of human rights to frame their objectives will be central to the chapter, as well as where successes have been achieved in this respect. Mapuche-state relations were not a simple case of interruptions and hostility; rather, there were instances where there were continuities in the relationship. Mediating institutions throughout the twentieth century: Management of Indigenous Affairs 1953-72 (Dirección de Asuntos Indígenas) (DASIN),

Institute of Indigenous Development 1972-78 (Instituto de Desarrollo Indígena) (IDI), and Special Commission of Indigenous Peoples 1990-3 (Comision Especial de Pueblos Indigenas) (CEPI) are all institutional structures that predicate our general understanding of the Indigenous-state relationship. Each time the state put forward a policy, which the Mapuche disagreed with, the Indigenous community would look to rework their strategy and approach. To complement the above question, the notion that the Mapuche population are a 'problem' to the state will be revisited at various points to determine when and why this notion surfaced. A preliminary hypothesis is that it is the construction of this 'problem' narrative contributes significantly to a strained state-Indigenous relationship. The Mapuche's social awakening and the creation of Indigenous Law 1993 – the greatest legislative achievement to date – will also be included.

Chapter three will introduce a case study to this investigation, namely, the controversial Pangue & Ralco Affair. This involved the unilateral building of hydroelectric dams on Mapuche land without the required permission from either the Mapuche or institutional authorities in place to conserve Indigenous lands. This case is important because it was the first case where laws, in place to protect the interests of the Indigenous population, were in operation. The case study will indicate how effective are mediating institutions in protecting the interests of the Indigenous community and whether they wield sufficient power to combat investor interests. Finally, this paper will offer a conclusion and propose where further research regarding Mapuche-Chilean state relations could be undertaken.

2. Literature Review & Theoretical Framework

2.1 Ortner's "Two Faces" of Agency

In order to provide a rounded coverage of the responses of the Mapuche People vis-à-vis Chile, adequate appreciation of agency is required. Since its inception, the nexus of structure and agency –and the debates surrounding their primacy in shaping human behaviour – has been the central tenet in the field of Sociology and a theoretical cleavage dividing International Relations. The objectivist view argues for the pre-eminence of structure, which pre-exists action, and defined as the arrangements that limit, enable or influence the choices and opportunities available to individuals whereas, agency, or the subjective view, is the capacity for individuals to act independently and make their own free choices (Dessler, 1989, p.452). In less than straightforward fashion, structuralists and proponents for agency theory describe the influences and effects each entity possesses in contrasting ways. Consequently, the agent-structure problem – increasingly agreed to be an ontological issue and not simply a methodological dilemma (Wight, 2006) – now framed as between structure and autonomy, where either individuals act faithfully to the norms and ideologies dictated by a social structure or whether individuals are free to act of their own volition. This problem, as articulated by Carlsnaes (1992), is *the* central problem in social and political theory. However, to say that the two entities, structure and agency, are diametrically opposed, antagonistic partners caught in a zero-sum relationship would be reductionist. Contemporary theorists such as Bourdieu (1989), Giddens (1984), and Ortner (2006) have persuasively questioned structure's top down perspective and the impact this has on agency.

Agency is the capability of social action in a given environment where agents have the possibility of changing their social life. Actions are, however, deeply embedded in contexts and influenced by structures; both structure and agency are so intertwined it is impossible to disentangle one for analysis without referring to the other. Structuration recognises a cycle where agents are influenced by structures but at the same time social structures can be edited and influenced by agents (Giddens, 1984). For Ortner (2006, p.130), social agents "are always involved in, and can never act outside of, the multiplicity of social relations in which they are enmeshed". Individuals can alter, challenge or reinforce structures. The relationship between structure and agency is important to consider when addressing Indigenous issues.

Ortner's concept of "two faces" of agency is a valuable contribution to the discussion. This concept should be considered as two sides of the same coin rather mutually exclusive expressions as there is significant difficulty in separating the two. The first is agency "as resistance" to domination and power (Ortner, 2006, p.143). This form of agency is not limited to overt protests as Scott (1985, p.31) states "passive noncompliance, subtle sabotage, evasion, and deception" are also forms of everyday resistance. Even crime, homelessness and alcoholism may be considered as agency 'as resistance'. The destruction of private property, arson, and land seizures in response to hydropower projects, as well as the prominent hunger strikes in response to the Anti-terrorist Law and the militarisation of the Araucanía (Crow, 2013), can be viewed as a collective action of resistance. Here, the Mapuche are responsible and control of their actions that deliberately challenge hegemony.

The agency of projects is the second face of agency. Here, agency is centred on intent and the ability to enact specific activities (Ortner, 2006, p.143). Ortner (ibid) describes this agency as culturally constituted and more at risk of structural restrictions as the powerful look to negate this expression of agency. Establishing health, legal aid, housing and education are all examples of this kind of project. The creation of the Autonomous Mapuche Working Group (COTAM) under the Lagos administration to compile their own report on Indigenous consultation or the establishment of Wallmapuwen, the Mapuche's first political party, are examples of this second face of agency. Side stepping the imposed system and creating their own small-scale communities is also important of agency and social movement studies.

2.2. Gramsci's Theory of Hegemony

Throughout twentieth century, Marxist theory has had an important role in understanding the relationship between the ruler and the ruled in social sciences. Explaining the world from a historical-economic perspective, Marxist theory was not absolved of shortcomings due to its proclivity to use the economy to demarcate class positions exclusively and meticulously. The economic determinism and class reductionism left Marxist theory struggling to accurately predict and foresee future events. Gramsci tried to tackle these shortcomings with his interpretation by opening up the sphere of superstructure within Marxist theory introducing his concept of hegemony (Gramsci, 2005).

Gramsci used hegemony to not only theorise the conditions required for the proletariat to successfully overthrow the bourgeoisie, but also highlight the imposed structures of bourgeoisie power in late nineteenth and twentieth century Western European States. Gramsci developed a complex usage of the term hegemony, which can be roughly defined as a process of moral and intellectual leadership where subordinated classes *consent* to their domination by ruling classes, in contrast with the application of coercive measures to accept inferior positions. From here there are many ways in which the subordinated group consent to ruling power. It could be the case that the inferior group is not interested in resistance and looks to build their own living or incapable of considering a different type of society (Strinati, 1996, p.174). It should be mentioned that the hegemonic group does not intrinsically hold consent, nor that it demands it. The flow of power is much more invisible in that the ruling power 'educates' subordinate groups to gain consent (Gramsci, 2006, p.259). Therefore, consent is often developed without recognition of its creation.

A broad interpretation of Gramscian theory will be applied to this thesis whereby it can be defined as a social theory of power and control. There are two basic forms of social control and conformity: firstly, external control, which is based upon explicit rewards and punishments and secondly, internal social control which is based on "moulding personal convictions into a replica of prevailing norms" (Femia, 1981, p.24). Internal control has some differentiations as explained by Femia: (1) "fear of the consequences of non-conformity", (2) lack of non-confirmative behaviour and (3) "conscious attachment to, or agreement with, certain core elements of society" (Ibid, p.28). Gramscian hegemony includes both coercion, often at the realisation of the hegemonic process (the first two types of non-conformity) and consent (the third type of conformity). Therefore, in order for a social group (A) to hold hegemonic power over a group (B), B should regard interests of the hegemonic group as their own when they work to realise such interests consciously and instinctively. Consequently, hegemony is not the application of state power but also the manipulation of how people understand the world around them and their everyday lives. An example of specific to this thesis is the use of Spanish in Indigenous-state relations at the detriment of Mapudungun, the Mapuche's traditional language. Further developed in section 2.3, adopting specific languages can be a precursor or a sign of successful internalisation of the Chilean state's hegemonic position.

Subaltern groups and a leading group are not homogenous in nature. Subaltern groups in Chile do not solely include Indigenous communities but also the working class, rural workers, ethnic minorities, and minor political groups. The leading group is currently President Piñera's 'Chile Vamos' political coalition of four centre-right parties. Following the end of a four year term, it is possible that Chile Vamos coalition will break down and there will be conflict between the interests of vying political groups leading to a change in the dominating class. For the purpose of this thesis, the current hegemonic group will be Piñera's Chile Vamos.

2.3. Being Indigenous

Indigenous Peoples are ethnic groups who are understood to be the first inhabitants of a defined territory. They are found in every climate area, as per the Köppen-Geiger classification system, and on every continent with numbers estimated to be around 370 million (Sargent & Samanta, 2016).[1] Descriptions of Indigenous people tend to encompass a cultivation of traditions or early culture associated with a given region, which is contrasted with peoples who have settled or colonised that same area. Indigenous identity is constructed in the politicised context of contemporary colonialism. The communities, clans, nations and tribes we call Indigenous Peoples inhabit lands that are in contention with colonial societies and states that once spread out from Europe (Alfred & Corntassel, 2005). The term 'Indigenous' in itself is a Western construct, created to indicate one's awareness of colonial encounters, yet this construction permeates a world with the constraining state sovereignty as its defining principle.

Indigenous identity is a state imposed conception from perspectives rooted in non-Indigenous cultures and languages, which do not include improvement in areas of justice and positive integration. According to Alfred and Corntassel, these artificial, state created identities imposed on original peoples are indicators of an "on-going colonial assault on their existence" and remain "occupied peoples who have been dispossessed and disempowered in their own homelands" (2005, p.598). Beier develops this idea in what he calls a "hegemonologue": "that a decidedly Western voice speaks to the exclusion of others, heard by all and yet, paradoxically, seldom noticed, the knowledge it bears having been widely

[1] For figure see: https://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf

disseminated as 'common sense' rather than as politicised claims about the world and our ways of being in it" (2005, p15). The path to attempting to avoid colonial ways of speaking becomes even more complicated when groups of original people identify themselves as Indigenous in turn legitimising the term and to a certain extent the state for their aspirations. Unfortunately, subscribing to the notion of Indigeneity lacks neutrality, no matter how benevolent our intentions are. We acquiesce to how the world has been, thus far, formulated according to a Western perspective of IR (Nayak & Selbin, 2010). Any investigations, such as this thesis, into original peoples and their state of affairs will do well to, at a minimum, acknowledge the above if not able to present a novel way of framing Indigenousness to avoid further constriction and contemporary colonial discourse. It is important to recognise *how* subjects are viewed, by *whom* they are viewed and *how* each entity is treated.

2.4 Indigenousness in International Relations

In their brilliant book, *Decentering International Relations,* Nayak and Selbin (2010) posit the claim that IR[2] is 'centred'. IR legitimises the actions and decisions taken by the United States and the global North/West; privileges certain political projects such as neoliberal economic policies, state-centrism, and Northern/Western liberal democracy; and privileges the political players and institutions in the North/West which make decisions that affect the rest of the world maintaining unequal power relationships.[3] As previously explored, indigeneity as a construct sustains these unequal power relationships and any study into this area, as IR must be carefully conducted. According to Agathangelou and Ling, IR "comes to resemble a colonial household … seek[ing] to stave off … 'disorder' ['anarchy'; 'local traditions of thinking, doing, and being'] by imposing 'order'" (2004, p.21). The colonial household that Agathangelou and Ling refer to is one where not everyone is invited. Differing theories, such as realism and liberalism constituting the 'centre' structure, are discussed as the legitimate fundamental narratives on how the world works. Consequently, certain decisions are made by specific actors on some of the problems and issues affecting the world leading to a rigid way of thinking that maintains 'order' and control. Therefore, the challenge that emerges is how can we critically analyse in a meaningful way the world when the discipline through

[2] IR as a body of knowledge, set of discourses, a discipline that scholars and students participate in, and a field of political decisions and structures.
[3] Also argued by Agathangelou and Ling (2004)

which this is conducted is inclined to (neo) colonial order with race, class, ethnic, gender and labour divisions in place? (Nayak & Selbin, 2010) One can conclude that IR is not the appropriate discipline to undertake work outlined above, however, what follows is fully conscientious of IR's shortcomings.

Nevertheless, there is growing literature on regional and international Indigenous movements whose claims for self-determination have been a point of interest for scholars in political sciences (Brysk, 2000; Corntassel 2008) and in international law (Anaya, 2004; Loukacheva, 2009). Yet, although there is significant research into non-state actors (Keck & Sikkink, 1998; Arts, 2000) and research into Indigenous movements is increasing (Lindroth, 2011), the topic in relation to IR remains largely understudied. The case in question, the Mapuche people in Chile, poses as an even larger lacuna in Indigenous scholarship as most of the academic literature on Indigenous-state relations has focused on states, such as Guatemala, Mexico, Bolivia, or Ecuador, perhaps due to their populations composing of a higher proportion of Indigenous Peoples (Van Cott, 2000; Yashar, 2005) or the fact Chile is yet to reform its constitution to reflect its Indigenous population (Colombia in 1991, Bolivia in 1994, Ecuador in 1998, and Peru in 1993) (Vann Cott, 2000, p.47).[4]

Indigenous grassroots movements, such as the CAM in Chile, who seek vindication of Mapuche prisoners and recovery of ancestral lands, have powerfully incorporated their grievances as part of universal human rights through global, solidarist campaigns. Not only is it worthy to study the less known origins of NGOs that have contributed to a human rights movement (Cmiel, 2004), but also how the Indigenous Peoples of Chile have achieved legal successes by invoking international legal frameworks. This is paradoxical in the Chilean case as although the political space of the UN enables Indigenous Peoples, with the UN Charter as the cornerstone of upholding human rights of citizens, it also constrains them with its legitimisation of sovereignty (Nayak and Selbin, 2010, p.32). Thus, states continue to wield power within their borders and ultimately hold authority capable of dictating the rules of the game.

[4] Additionally, literature outside of South America has focused on Native American Indians and Aboriginals in Australia.

2.5 Indigenous Peoples in Latin America

It is challenging to point to the exact moment in time where the Indigenous Peoples began their resurgence or "gran revuelta indígena" (Le Bot, 2013). Cleary and Steigenga state that the "strength and depth" of these movements were publically felt in the years leading up to the Fifth Centenary of Spanish Conquest (1992) where Indigenous Peoples protested the commemoration for overlooking the ruthless acts of violence committed during the conquest (2004, p.1). Langer (2003) supports the above when he asserts the political importance of Indigenous Peoples in many Latin American countries as a recent phenomenon but can also trace its roots back to the 1970s. However, it the Indigenous component of Latin America's republics was largely ignored in national identity and legal debates.

From the moment Christopher Columbus set foot on the island of Hispaniola in 1492, Indigenous Peoples routinely engaged in some sort of politics at a local or regional level to manoeuvre a new perilous context. Not all Indigenous populations set out to fight off the Spanish and Portuguese conquistadors. When it became clear that the Europeans would persevere in their bid to establish themselves on the continent, some Indigenous leaders and tribes sought to strategically ally themselves with the invaders. In many respects, Indigenous groups remain fractured to this day each jostling for favourable positions with fundamental disagreements on which course of action to take commonplace.

Under colonial rule, Latin America was rife with dispossession, exploitation and oppression of Indigenous Peoples. When independence for the Spanish-American republics came about in the early nineteenth century, newly established states were populated by a majority of Indigenous Peoples, however, real power lay with the *criollo* elites – the direct descendants of the Spanish colonial ruling class (Stavenhagen, 2002). Oppressive measures towards Indigenous Peoples were twofold. On the one hand, the first feature that characterised the Indigenous Peoples' relationship within the state was the non-recognition of Indigenous cultural and social identity as part of national society. The Indigenous Peoples were granted formal citizenship rights yet, they were by far consigned to the bottom class with recognition of other rights coming decades, even centuries, later. Coupled with citizenship rights, governments forcibly incorporated Indigenous Peoples into their colonial

economies to create the "completion" or "integration" of societies whose fabric is socio-culturally heterogeneous (Polanco, 1997, p.4). This political obsession centred on the "incomplete" or "inauthentic" character of a nation populated with ethnic groups lead to a deliberate policy of ethnic mixture and the emergence of the *mestizo* population. Latin American governments ignored demographics and based all projects on a Western, Catholic, racially European identity from which Indigenous Peoples and the African populace were excluded. Bengoa (1985) alludes to the intolerance of the Chilean government towards people different to the 'civilised' Spanish *criollos* looking to finish off the 'uncivilised' barbarians and savages inhabiting southern regions.

On the other hand, the second feature that characterised the Indigenous situation in Latin America was the denial and suppression of land, where Indigenous populations were often forcefully removed. The land owning ruling class who cemented their economic powers during the nineteenth century flourished under the benefits of the privatisation of crown lands and ecclesiastical estates. New *latinfundistas* and *hecendados* (large estate owners) were in control where Indigenous populations on some occasions became servants and forced into labour at the estate.

By the 1980s and the advent of a new geo-political context, new spaces opened up for the Indigenous population changing the nature of debates. The Cold War was virtually coming to an end in the Latin American hemisphere, as was the cycle of authoritarian military interventions, often backed by the US, beginning what was called in many states a democratic transition. New or re-emerging social actors could now exercise increased political freedoms by contesting in elections and opening up previously restricted political spaces (Stavenhagen, 2002). Consequently, liberation brought about human rights movement that soon encompassed the issues facing Indigenous Peoples. Established in 1959, the Inter-American Commission and Court of Human Rights were increasingly inundated by petitions and complaints regarding human rights abuses affecting Indigenous People. However, Stavenhagen (2002) has rightly highlighted the agency and freedom Indigenous Peoples have had is most important in their emergence as new social and political actors. Indigenous movements gained traction in the 1970s and 1980s in a fashion that was hard to accurately record due to the sheer volume of associations, committees, councils, and congresses. It is remarkable that from a situation where none or little movements were in

existence to an abundance of social Indigenous movements all clamouring their grievances and calling for change.

2.6 The Mapuche Movement

The Mapuche movement, and that of eight[5] other Chilean indigenous populations, has been publically acknowledged to be important. With the Mapuche population estimated at 1.3 million, forming 85% of Chile's Indigenous population, and 5% of Chile's total population, the grievances of a numerically significant group cannot be ignored (Haughney, 2006, p.4). Additionally, the Mapuche are the only politically active Indigenous group in Chile (ibid) and thus the reason behind choosing them as the topic of this thesis over other Indigenous populations. The sizeable population still faces issues when attempting to integrate thanks to Chile's class based structure, where they are found well below the Chilean national average in yearly income (Bengoa, 1990, pp.239-240). Given their place as the poorest group in the country, many Mapuche have been forced to migrate to urban areas (Aylwin, 2006, p. 8). However, this has not improved their condition as many Mapuche live on the outskirts of major cities in poverty. The Mapuche continue to live comparatively worse off than the non-indigneous population, often without access to running water or mains electricity (Stavenhagen, 2003).

The Chilean state's policy towards the Mapuche population can be characterised by two main features: 'opening up' of Mapuche land to colonial settlers, land owners and transnational companies and the assimilation of Indigenous Peoples into a culturally homogenous nation (Haughney, 2006, p.18). A priority for the Chilean state throughout the twentieth century was to foster economic growth and become a modern, developed nation in line with European states. As a result, Chile's dialogue toward the Mapuche has been tinged with the need to develop the Indigenous group in discourse comparative to the White Man's Burden. It is likely that the state views the development of the Mapuche as a noble enterprise for the benefit of all, however, the Mapuche have yet to reap the benefits remaining pauperised.

Despite a lack of constitutional reform since Chile's transition to democracy, Chile have now ratified ILO Convention 169 yet, the topic in IR has not been addressed where the

[5] Aymaras, Atacameñas, Collas, Quechuas, Rapa-Nui, Yámanas, Kawashkars and Diaguita are the others.

Mapuche conflict is a 'pothole' (Solnick, 1998) where worthy investigation can be conducted into how Indigenous Peoples exercise agency and clash with hegemonic structural constraints.

Joanna Crow (2013) rejects that the Mapuche-state relations can be simplified to a simple classification of repression and resistance. She has asserted that, depending on historical context, Mapuche populations have vehemently resisted, negotiated, and even sometimes willingly take part with the state apparatus. In a similar fashion, the Consertacíon governments[6] have moved away from the repressive policies of the dictatorship to recognise cultural diversity. Under President Aylwin, the Indigenous People's Act (Ley 19.253) was passed in 1993 and is the most significant Chilean laws regarding Indigenous Peoples to date, where it led to the recovery of some Indigenous land. However, many limitations to the law remained in particular in terms of participation and dialogue for Indigenous Peoples.

Since Chile's formal ratification of the ILO Convention 169 in 2008, there have been several cases of Indigenous Peoples making successful use of the law.[7] Chief among them, the Mapuche people filed an injunction against President Bachelet claiming that the government had failed to comply with the Convention 169 clause on the "right to prior consultation". Now the Mapuche have been given the right to either integrate or maintain their cultural and political integrity (Bunn Livingstone, 2002, p.52) – indicative of potential positive change ahead for Indigenous rights in Chile.

International law recognises the collective rights of Indigenous People. It grants the Indigenous population the authority of the Indigenous group to own land and other resources, enter negotiations and regulate its affairs in line with customary laws. Consequently, it can be construed that Indigenous Peoples are recognised as autonomous seats of power within the state (Colchester, 2003, p.16). The significance of this is that these customary laws tend to be at odds with national laws, demonstrating the political

[6] The Concertacíon de Partidos por la Democracia, or Coalition of Parties for Democracy, was a coalition of centre-left political parties in Chile, which won every election from the end of military rule in 1990 to the first election of Sebastian Piñera in 2010.

[7] A landmark case in Indigenous rights concerns was when the Chusmiza and Usmagama communities were granted a water flow of nine litres per second following a unanimous decision of the Chilean Supreme Court. This was the first case in Chile where the judicial application of the ILO Convention 169 resulted in a victory for the Indigenous population.

environment Indigenous rights are addressed. However, certain legal scholars argue universal human rights can only be individual, similarly, political scientists agree that recognising the rights of specific groups is incompatible with universality but also endangers the unity of the nation state – a potential reason to explain why there has not been any positive change for the Mapuche as Indigenous movements have "opened cracks in the strongholds of liberal individualism" (ibidem). In protest, Mapuche communities have mobilised, often violently against multinational companies through arson resulting in many cases of violent repression by the police.[8]

[8] The most violent repressions led to the deaths of Matías Catrileo (2007), Alex Lemun Saavedra (2002) and Jaime Mendoza Collio (2009). Also, the hundreds of Mapuche tortured and humiliated carried out by the Carabineros as part of the conflict where approximately fifty Mapuche have been imprisoned (Donoso, 2015).

3. Chapter 1: A History of Mapuche Resistance

The Mapuche, or "People of the Land" (*Mapu*-land, *che*-people) in Mapudungun, have also been people from Arauco, the region south of Concepción, the third largest city of Chile. From their name, it is easy to imagine the importance of land for the Mapuche. A loss of land or forced migrations incurs a profound effect on the Indigenous People's wellbeing. Sargent succinctly states this (2016, pp.89-90):

> Land is of critical importance to Indigenous Peoples. It forms a core of their cultural and spiritual identity, as well as providing, in some instances, the means of sustenance and livelihood through hunting, fishing and ranching … Often the identity of a particular Indigenous group is inextricably intertwined with a specific landscape.

With the Mapuche, this "critical importance" of land can clearly be seen. Their very survival rests on their deeply rooted bonds with their ancestral land. Inevitably, these deep-rooted ties have fostered a history of resistance against those wishing to take their lands.

Territorially, the Mapuche are found in Chile's IX Region, a valley 800 kilometres south of the capital Santiago (See Figure 1). The Mapuche comprise of four main groups. To the north are the Picunches ("Men of the North"), in the provinces of Arauco, Bío-Bío and Malleco. The Pehuenches ("Men of Pehuen") live among the Andean valleys of Cautín. The Lafkenche, as previously visited, are the coastal Mapuches in the Arauco province, south of the Bío-Bío River. Lastly, the Huiliches ("Men of the South") found in the provinces of Valdivia, Osorno, and Llanquihue (Sznajder, 1995). The Mapuche divide themselves into communities organised around extended families where they preserve their traditional social organisation. These communities, numbered at around 3,068 in 1968, are led by a *cacique* – generally the head of the extended family. There are no formal institutions, no form of social stratification or hierarchy than beyond that of the family among the Mapuche. Interaction between communities tended to be limited to a system of alliances for economic purposes or war.

Figure 1. The Mapuche in South America

(Isabella et al, 2005)

According to archaeological findings, there is evidence of Mapuche culture as early as 600 BC (Bengoa, 2000, pp.16-19). Skirmishes with the Inca Empire have also been reported where the majority of the Mapuche escaped Inca rule (Dillehay, 1988). Their contact with the Inca Empire provided the Mapuche with a collective awareness uniting them into loose political units (Bengoa, 2003) – an example of agency 'as project'.

3.1 Conflict with the Spanish Empire and Chile

The Arauco War is a long-term conflict between colonial Spain and the Mapuche people. Spanning nearly three centuries the Mapuche resisted the Spanish invasion to a greater degree than any other Indigenous group in the Americas. The war, beginning in 1546, brought about deep changes in Mapuche society as they adapted themselves to meet the requirements of war (Sznajder, 1995). Previously the Mapuche were gatherers, hunters and vegetable and fruit growers then cattle raising became the main economic activity, however, the extended family as the basic social unit continued to function (Bengoa, 1991, pp.26-8).

Mapuche resilience allowed them to adapt to challenges posed and resist the Spanish conquest with varying degrees of success for more than ninety years, culminating in the Treaty of Quilín, a peace treaty signed in 1641 between the Spanish monarchy and Mapuche.

Two territories were divided with the Bío-Bío River acting as the natural border allowing the Mapuche to live independently for 260 years of Spanish colonisation of Chile. In this period, the Mapuche proved to be adept in negotiation and war, while also developing trade links with the interior and beyond the Andes with the Indigenous population in what would become to be southwestern Argentina (Sznajder, 1995).

The situation changed dramatically during the struggle for Chilean independence. *Criollos,* or elites, who began to lose affinity with the Spanish Empire, began to change their attitude towards the Mapuche, admiring their rejection of Spanish influence. Bengoa (1991) asserts that the Mapuche were now seen as a symbol of anti-Spanish resistance. Coined by Chilean historian Benjamin Vicuña Mackenna, *La guerra a muerte* – "the war to the death" – was the term given to the period of time leading up Chilean independence where some of the Mapuche sided with those fighting for a Chilean state, whereas others, tied to the Spanish by treaties, chose to adhere them and fight alongside the Spanish Crown. What followed was a ferocious period of fighting leading to the ousting of the Spanish monarchy ushering in the republican era of the newly born Chilean state.

During the Republican era, the relationship between the Mapuche and the Chilean state evolved into new hostilities. Chile, the new state, had several economic needs, which heavily influenced policy towards the Mapuche. Sznajder (1995, p.20) claims that the "territorial discontinuity" in Chile, where the Mapuche region divided Chile in two, was a major factor in Chile's animosity towards the Indigenous group. Mapuche settlements in key areas were perceived to be an obstacle to national integration and a hindrance to the determination of borders between Chile and Argentina. It was under these conditions that witness the start of the negative image that is often used to portray the Indigenous population and the origins of when the Mapuche are deemed as a 'problem'.

Shortly before their military campaign, Chilean propaganda painted the Mapuche in an extremely negative light: as savage, cruel rather than brave, slothful, idle, lazy and drunken which are all stereotypes that remain today (Ibidem). In many ways, this dehumanising element, the sense of 'othering', and offering a total lack of respect towards the Mapuche was employed by the Chilean army to legitimise the very same actions as the Spanish *conquistadors* – only this time to a greater degree. Where the Mapuche gained the

respect of the Spanish empire through resistance and negotiation, the Chilean state only saw uncouth barbarians (Bengoa, 1991, pp.148-9). What followed was a severe deterioration in relations and of established borders. In 1860s, plans to occupy the Araucania included Cornelio Saavedra's idea to advance into Indigenous lands, build fortifications, conquer territory on behalf of the state, and finally, subdivide and colonise by settling Chileans and immigrants in it (Ibid, pp.170-4). Two violent waves of military conquest referred to as the Occupation of Araucanía, the first in 1869 and the second following a Mapuche uprising in 1881, achieved Chilean sovereignty and an end to territorial discontinuity. Mapuche control over their ancestral lands and their independence, which they had fought for centuries, was over.

3.2 Loss of Lands and Resentment

After defeat to the hands of the Chilean army, the Mapuche were forced into Indigenous reservations. From 1884 to 1919, the Chilean state granted 3,078 titles of property to Mapuche communities comprising of 77,751 individuals with total land area awarded to the Indigenous population and white settlers amounting to ten million hectares (24,700,000 acres) (Sznajder, 1995). Where the Mapuche received on average 17 acres per person, non-Mapuche settlers received on average 1,235 acres (Mariqueo, 1979, p.20). Bengoa (1991) has calculated that if 77,751 were allocated land until 1919, around 40,000 (nearly 37 percent of the total Mapuche population) were left landless and destitute.

The loss of land has been the source of powerful resentment among the Mapuche. After centuries of war fighting off invaders and where stories of resistance undoubtedly would have passed down among generations, the ultimate defeat to Chile is perceived to be the root cause behind the Mapuche's degeneration, pauperisation, and marginalisation and discrimination in Chilean society (Sznajder, 1995). The loss of land greatly impaired the Mapuche's ability to raise cattle with the land that they did own was not suitable for grazing. These marginal and less fertile lands led to emigration and disintegration of large families (Bengoa, 1990, pp.242-44). The result of the above process was essentially turning the Mapuche into *Campesinos* – labourers of the land. Again, land at their disposal was inadequate for agriculture as was the training and tools the Mapuche received from the state further exacerbating the problem (Mallon, 2004). Additionally, the much-dispersed

Mapuche society lost much of the little initial cohesion it possessed yet, despite the external pressures to integrate, the Mapuche adjusted their way of life to the realities of Chilean domination (Sznajder, 1995) – instead of outright resistance, the Mapuche generally practiced consent. Their social and cultural identity was preserved and in many ways strengthened when faced with subjugation and pressures to abandon their traditions.

However, the relationship soon deteriorated even further following further land usurpations from 1910 to which the Mapuche pursued new socio-political options. The Mapuche, suffering from the bad image the Chilean state continued to paint them as, were sometimes branded like cattle and had their ears severed (Ibid). It did not take long for the Mapuche to respond with a protest movement, adopting a new form of resistance by engaging in political participation in Chile's public life (Bengoa, 1991, pp.370-382) – classic agency "as resistance'. The first political entity of the Mapuche that marked their presence in the framework of Chile's civil society was the creation of Sociedad Caupolicán Defensora de la Araucanía (Caupolicán Defense Society of the Araucanía) named after Caupolicán, a Mapuche warrior leader who fought off Spanish invaders. This organisation aimed to promote the ethnic preservation and education of the Mapuche. In 1924, a member of the organisation, Francisco Melivilu Henríquez, was elected a deputy of Chilean parliament as part of the Partido Demócrata and became the first Mapuche to integrate into the apparatus of the Chilean state (Bengoa, 1990). This was a significant moment as for the first time, some Mapuche opted to integrate themselves socio-politically with the state thus, legitimising it to a certain extent. By practising consent in the face of hegemony, the Mapuche were able to explore new avenues of resistance where they had the opportunity to resist the state politically. However, the Mapuche conformed to the state's organisation in order for this to happen.

The government's responses did not vary a considerable amount in their policy towards the Mapuche. The majority of governments, Carlos Ibañez (1952-1958) and Eduardo Frei (1964-70), attempted to integrate the Mapuche through education and teaching of Spanish (*castellanización*). On the other hand, the revolutionary left took a different perspective by calling for a socialist revolution to which a solution to the problems of the Indigenous Peoples could be found. Consequently, the Indigenous uniqueness and specific character was lost and blurred within the plight of the proletariat, becoming enmeshed with

the wider geo-political debates of the era. Under Salvador Allende's government (1970-1973), general agrarian reform encompassed the policies towards the Mapuche. In 1971, thanks to the socialist government's agrarian reform, 70,000 hectares of usurped land was returned to the Mapuche (Chonchol, 1978) where being part of the proletariat offered them better treatment. However, did this not completely alleviate the problem as the Mapuche were generating low income and still suffering from agricultural marginalisation. Despite the active participation of the Mapuche community leaders, difficulties arose with respect to restoring the rights of Mapuche as well as providing them with the technical and organisation assistance and enacting appropriate judicial reforms to improve state-Indigenous relations. This positive step did not last long as Pinochet's military coup d'état eradicated all progress.

3.3 The Mapuche Under the Dictatorship

Pinochet's military government led to further impoverishment of the Mapuche and additional loss of land. The implementation of neoliberal economic policies also brought further negative effects to the Mapuche with division of lands in most of the 3,048 Mapuche communities by 1987. However, it was the Mapuche leadership's affiliation with the left that initiated harsh suppression as acknowledged by The NCTRR where the severest cases of repression involved the Indigenous group. Just as the Indigenous population experienced successes in joining wider working class, leftist movements, they were also included in its indiscriminate repression, caught up in the violence. Again the response was fractured among the Mapuche. The radical approach was to confront the military dictatorship by forging ties with other parts of the left-wing opposition whereas, others, concerned with the danger of losing Mapuche identity, looked to recreate it through cultural centres. However, the consensus was that affiliations with political radicalism again would risk bringing about a total disappearance of Mapuche identity (Maybury-Lewis, 1991). This distrust meant it was unlikely that allied subaltern groups would overthrow the hegemonic centre.

Pinochet's administration applied law 2568, which affected the Mapuche in three main ways. Firstly, the limit for agricultural farms in Mapuche held lands (197 acres) were revoked. Secondly, corporations could not establish themselves in Mapuche areas, and thirdly, the division of Indigenous land was allowed to enable individual titles of property

(Decreto Ley 2568, 1979) – both resulting in difficult struggles for the Mapuche. The establishment of corporations is most significant as it attracted many timber companies eager to exploit the ancient forests of araucaria, the Mapuche's sacred tree. To this day, corporations continue to fell Mapuche forests for its timber with little or none of the profits ending up in the hands of the Indigenous populace. The Mapuche reservations no longer held special status and the situation now was a social Darwinian struggle between the Mapuche and powerful Chilean neighbours where the playing field was unevenly skewed towards the non-Mapuche settlers.

Consequently, once again the Mapuche were facing loss of lands and impoverishment. Free-market policies of the Chilean government brought about an end to communal ownership where individual possession of lands made the Mapuche eligible for taxation yet denied them access to social healthcare (Sznajder, 1995). Additionally, the Chilean legal system was far from impartial, often awarding verdicts against the Mapuche leading to further destruction and resentment (Bengoa, 1990). Thus, the Mapuche were left to fend for themselves in a brutal free-market society with little government sympathy, lacking in necessities to survive: economic power, advanced education and a mentality geared towards individual entrepreneurship. Economic modernisation, Christian and Western values were all in complete opposition to the connection the Mapuche held with land, forests and culture resulting in a steady economic and social decay for the Indigenous group. However, it was in this context that real Mapuche agency and their 'social awakening' occurred – the subject of chapter two.

4. Chapter Two: Mapuche Agency, Human Rights, and the State

As parts of the state structure, mediating institutions are political instruments intended to conduct and foment the relationship between the state and Indigenous Peoples (Vergara et al., 2004). This chapter will explore the relationship from the perspective of Indigenous People who consider themselves to be 'empowered' within state structures. These are individuals who are educated and may work directly with the state, exercising agency 'as project'. As previously mentioned, the Mapuche who violently clash with the state, its structures, and corporations exercise a different type of agency 'as resistance'. Although difficult to disentangle, Ortner's distinction between agency 'as project' and agency 'as resistance' provides vital nuance to agency in understanding which portion of the Mapuche community decide to work within the structure of the state, and in turn legitimise it but contradictorily also generates added agency, whilst others seek to undermine state structure completely, often through violent means.

Taking care not to adopt the perspective of institutions, this chapter will primarily be interested in the agents who operate within the mediating institutions who are themselves mediators, balancing the demands of the state on the one hand, and the community grievances, needs and expectations on the other. This unique position should bring to light the varying ways the Mapuche resist and hegemonic state position. The creation of the state and its identity – the decision to include certain groups and exclude others – is not a process that happens over night; rather narratives contained within borders are constructed over time with origins steeped in history (Balibar, 1991). Consequently, researching agency must also include an analysis of the structural elements to determine how they influence individuals when they make decisions and carry out actions (Kaspersen, 2000, p.38).

4.1 Mediating Institutions in the Araucanía

The context of these mediating institutions is crucial as depending on the repressiveness of the government; the Mapuche adapted and tailored their actions accordingly. What is shown in this chapter is the importance of the Indigenous movement, the difficulties faced by said movement, the beginnings of a constitutional crisis regarding Indigenous state policy, identical problems facing the mediating institutions and a redefinition of state relations with

ethnic minorities. The redefinition in the 1990s is particularly important as it was perceived that the Indigenous population could make valuable contributions to the state, making it necessary that they are protect and treated with respect (Vergara et al., 2004).

Mediating institutions have a long history where their origins can be traced back to Spanish colonial times. Through mediating institutions, the Spanish crown was able to maintain a line of communication with the *caciques*, a native chief. However, once the Chilean republic was established, mediating institutions were discontinued and replaced by general state governance structures with little regard for the Indigenous population. The rationale behind this was that the original mediating institutions were there to assimilate the Indigenous population into the Spanish Crown, and then the nation state. Thus, they were established a "transitory" or temporary political instruments to foment the "definitive" integration of the Indigenous populace (Ibid, p.73). After successful conquest of Indigenous land towards the end of the nineteenth century, reality took a different path with mediating institutions now working underneath a centralized administration where Indigenous Peoples were now Chilean citizens.

4.2 Directorate of Indigneous Affairs & Institute of Indigenous Development

From 1930, the integration process of the Mapuche into the Chilean state began to take root in society. Education projects geared towards the Mapuche began to take hold, compulsory military service transformed into a social mobility strategy for thousands of young Mapuche, and migration to urban areas intensified slightly alleviating the demand for land (Donoso, 2015). With this backdrop, key Mapuche leaders, such as Venancio Coñoepan, who were integrated into Chilean society, took control of the Mapuche movement by founding Corporación Araucana (CA) in 1938 in Temuco. These leaders, and many others, were well known professionals or entrepreneurs who strove to achieve the Mapuche's social and political integration. From a prestigious Mapuche family, Venancio Coñoepan (1905-1968) achieved the most success when he was elected congressman for the Conservative Party during (1945-1949, 1949-1953 and 1965-1969), and first director of DASIN (1953-1958) (Foerster and Montecino, 1988). His primary concern was achieving integration for the Mapuche at an equal level as the rest of the Chilean population – agency 'as project'.

DASIN was the first political space that the Mapuche movement could now control and define in order to introduce changes that would help the Mapuche situation. Working through DASIN, CA's main objective was to fundamentally change the state policy towards the Mapuche. The practice of seizing lands needed to be stopped where from 1932-1948 733 Mapuche reserves were divided up (Ibid). The CA also looked to combat poverty, land worker ignorance by rational use of resources, and conserve community ownership of land. From the perspective of CA, directed and controlled state institution building, was the way to exercise resistance and improve the overall situation of the Mapuche.

However, DASIN regularly clashed with the structural constraints positioned by interventions from Executive Power and Judicial Power fostering massive opposition in parliament. Not only that but complaints were rife from the other side of the balance as well with frequent conflict with Indigenous tribunals. León Erbetta Baccaro, prosecutor at the Court of Appeals, described the effect of the mediating institution in terms of how the Mapuche resisted: "In carrying out his duties, Mr. Coñuepán has frustrated the action of the Indigenous Tribunal, accomplishing the reasons behind creating the institution (DASIN)" (Foerster and Montecino, 1988, p.231). Erbetta's comments highlight the difficulties in presenting a united front in resisting against the state. Although hard to prove, hegemony is likely to be at work here dividing the Mapuche movement.

DASIN's internal problems proliferated, as it could not cope with the enormous demands of the Mapuche, buckling under the volume of land conflicts. Consequently, the organisation and resistance of the Mapuche was effectively nullified due to a lack of human resources and materials (Vergara et al., 2004). The power and the capability that this institution was able to wield and enact change for the Mapuche people was negligible largely due to parliamentary obstacles and executive power to repress resistance.

These long-term problems were addressed and a solution put forward with the passing of a new Indigenous law DFL 1/950 in 1961 establishing a new relationship. DASIN continued to carry out agency 'as project' as the Mapuche took advantage of any flexibility offered by the state. Additionally, Allende increased the budget of DASIN by 250% (Vergara et al., 2004). But this did not change the general treatment of DASIN:

> A centralised institution, characterized by its inefficiency (lack of personnel and appropriate funding but above all a lack of real political will (Jeannot, 1972, p.14).

Shortly before the dictatorship, Law 17.729 was passed in 1972 creating the Instituto de Desarrollo Indígena (IDI). This time the institution will comprise of seven-elected land worker Mapuche, voted on in secret by the Mapuche. IDI's main objectives were to promote the social, educational, economical and cultural development of the Indigenous population ensuring their integration into the national community with respect to their idiosyncrasies and traditions (Law 17.729, Article 34). IDI's existence took a dramatic halt when Augusto Pinochet carried out his coup d'état in 1973. Mediating institutions continued to exist but with very limited power. In 1978, IDI was closed and there was a return to oppressive policies with the division of lands and the old desire of individual ownership reinstated. Social change for the Mapuche was not completely repressed as scholarships, support programmes, and subsidies (agency 'as project') were maintained.

4.3 Agency under the Dictatorship: Human Rights & Mapuche Social Awakening

Surprisingly, many members of the Mapuche movement accepted land division, even voting for Pinochet (Vergara et al., 2014). As Oscar Manquilef, Indigenous mayor of Nueva Imperial, claimed Pinochet was the first president who cared about housing for Mapuche. This demonstrates the weaknesses of the Mapuche movement, incapable of halting the land division procedure and insensitive to the interests of the land workers. It also suggests that even in the face of fierce repression, Mapuche leaders continually consent to hegemonic state structures and policies in order to work with and maneuver within the system.

As acknowledged in the National Commission for Truth and Reconciliation Report, the product of a commission investigating human rights abuses namely death and disappearance under the military dictatorship, the Mapuche were one of the groups that experienced the harshest repression:

> We should emphasize the harsh treatment given to the 510 Mapuches and their families and how difficult it has been for these people in the most rural areas to have to live alongside those who killed their loved ones, sometimes even to the present.
>
> (NCTRR, 1991, pp.509-10)

Although there are key admissions in the report, the Mapuche are a surprise omission from the prevention of future human rights section. Additionally, given the fact that the report is 1128 pages long, the fractional 12 mentions of the Mapuche suggest that perhaps they may not have achieved the same attention as non-Indigenous victims of human rights abuses.

Despite repression and limited political room to exercise agency under the dictatorship, the late 1970s and 1980s was a key moment in the Mapuche movement. The Mapuche began framing their demands as basic human rights. The attraction of human rights inclusivity where anyone, anywhere, no matter who they are or where they were born is entitled to the same rights and privileges was a powerful tool ready for adoption by educated Mapuche activists. As stated by one of the most modern affirmations of human rights, the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, all human rights are universal and inalienable laying the basis of human rights law. Among the thirty articles listed in the Declaration, basic civil and political rights, as we as social, economic, and cultural rights.

By employing human rights language and discourse, not only were the Mapuche able to reactivate grassroots organisations to recompose the social fabric and mobilise actors to initiate the long road to democracy (Stern, 2006, p.6), but also receive increasing international visibility and support in their struggle. Stern states:

> What is so remarkable about the late 1970s and early 1980s is precisely the proliferation of initiatives – which included but went beyond those of political parties and intellectuals – to build a civil society that could insist on democracy, social justice, and remembrance of human rights. (Stern, 2006, p.206)

This “ant’s work” was not a linear process neither was it steady or directed from Santiago. As mentioned previously, the opening of cultural centres in 1978 by the Ad-Mapu Association inspired a cultural revival by rediscovering Mapuche values, identity and traditions. By 1982, this form of organisation reached 1,500 Mapuche communities demanding the state to recognise Indigenous rights and managed to transcend party lines, loyalty and religious affiliation, which had divided the Mapuche in the past.

Galvanised by the international human rights framework, two major groups emerged: Comisión Chilena de Derechos Humanos (Chilean Commission of Human Rights) 1978 and

CODEPU (Comité de Defensa de los Derechos del Pueblo, Committee for Defense of the Rights of the People) 1980. These groups did more than just superficially resist impending land divisions and provide cover for the "ant's work" to rebuild a civil society that could demand democracy, they also inspired a strong cultural revival and reassertion of Mapuche identity, values and community rituals (Stern, 2006, p.216). Now a vast network of empowered activists and communities, the Mapuche had better leverage when asserting their rights as Indigenous Peoples and demanding a new commitment to Indigenous rights as human rights that transcended political and religious lines. However, this pressure for humane policies, as sustained as they were, was not enough to bring down a repressive regime.

4.4 National Indigenous Development Corporation (CONADI) & La Concertación

In the late 1980s, the dictatorship's days were numbered. Largely as a result of events, such as the 1982 economic collapse (Klein, 2010) and the subsequent mass civil resistance, the military regime gradually allowed greater freedom of assembly, speech, and association together with greater freedoms for trade unions and political activity (Hunneeus, 2009). Often described as a "miracle", the Chilean economy was also reoriented during the 1980s following the policies of a group of economists – Milton Friedman's 'Chicago Boys'. Economic reforms included: deregulation; privatisation of state industries, the central bank, and pension system; and the reduction of tariffs and taxes. Neo-liberal policies profoundly altered the political and social context for the Mapuche, initiating a process of revalorisation of Indigenous cultures and rights inconceivable decades before. Now the state's role as the centre of social relations, providing social cohesion and "synthesis of civil society", ceased to operate as the Market took over as a new institution for organising and regulating social relations (Vergara et al., 2004; Peña, 2010). The neo-liberal model was radically applied to many aspects of social life, but skipped the Indigenous population.

Civil resistance forced Pinochet's authoritarian regime to accept defeat in a plebiscite in 1988 paving the way to civilian rule in 1990. This peaceful regime change explains President Aylwin's government's commitment to a policy of truth and justice for crimes and human rights abuses committed during Pinochet's dictatorship 1973-90. Aylwin's administration was the first of the *Concertación* governments, a coalition of centre-left

parties that won elections from 1990 to 2010. Free market economics continued into the 1990s manifesting in the policies of the *Concertación* governments, improving the quality of life of Chilean citizens and generating new recognition and appreciation of Indigenous populations (Vergara et al., 2004). As Chile started to come to terms with its repressive past during the transition to democracy, the public moved to make social needs known and demand, if necessary by protest or other means, an appropriate state response. The state responded by creating a new grant application system that would record these demands and processed via a solidarity and social investment fund (FOSIS) that assessed local development initiatives and microenterprise proposals (Stern, 2010). As Mapuche activist Don Heriberto Ailío stated when considering his community's long history of land struggles: "Before struggle was about taking over a road, writing up a list of demands. Now struggle is about writing grants" (Ibid, p.47. This shows an example of evolving agency 'as resistance'.

Consequently, "frictional energies" shaped relations between community groups and political elites (Stern, 2010). Now that democracy had been achieved, there was muted citizen participation with discontent now channeled via more subtle forms of government-citizen participation. Open protest and social mobilisation – agency 'as resistance' – did not disappear but it was much more anachronistic now that the political environment had been altered.

It was in this context, that in the 1990s the Mapuche communities in the south, particularly in the IXth region, increasingly clashed with investor interests regarding hydropower projects. Their conflicts symbolised the gross imbalance between social equity and the drive for economic interests. Tensions escalated here between the Mapuche and the government where the former sought to reclaim lands lost under their ancestors and demand greater participation in decisions that affected their livelihood while the latter gave primacy to timber exports and hydroelectric projects to feed Chile's energy needs (Susskind et al., 2014). Official government policy in the 1990s espoused the idea of democratic respect for Mapuche rights, including land restoration and protection of environment and sacred sites. Largely a response from sustained pressure from a strong Mapuche movement below, the Mapuche agency 'as project' here seemed to give way to concessions and success for the Indigenous group. The government's *convivencia* project incorporated the Mapuche where the idea of "social debt" emerged where Indigenous rights needed to be listened to

after harsh repression under the dictatorship and centuries of injustices. Later, these promises would be the cause of further disenfranchisement where the problem was no longer the historic injustices by the perpetual postponement of the promises made under the *concertación* governments.

The Mapuche fully took advantage of changing national and social contexts. Internationally, as part of Indigenous movements in South America, the Mapuche gained visibilisation during the 500th anniversary of Columbus' expedition, successfully objecting to the paradigm of a mono-cultural nation. Social policy towards the Indigenous was anchored in a Special Commission of Indigenous Peoples in 1990, which lay the foundation for a new Indigenous law (19253) in 1993. At last there was a tangible legal development that looked to erase the repressive policies of the Pinochet era. In legal terms, the Indigenous Peoples gained recognition thanks to law 19253– a success for their identity-based demands. However, the legislation had its limitations and did not improve the Mapuche's situation and the extent to which they could promote their rights and concerns. The Chilean Indigenous Law only recognised the Mapuche as an ethnic minority, distinct to a people or a nation, thus denying the existence of different sociopolitical and cultural groups in Chilean society (IEI, 2003, p.16).

The 19253 Indigenous Act also reflected the implementation of the duty to consult Indigenous Peoples. One of the first consultative bodies in Latin America was the National Commission on Indigenous Development (CONADI), a synthesis of the previous mediating institutions DASIN and IDI, and explicitly expressed the exercise of Indigenous Peoples' right to consultation and decision-making (Rodríguez-Piñero Royo, 2010). Through this institution, negotiations for property exchanges could occur only with the assent of affected families and communities. Consequently, Indigenous populations cannot be forced to move from their lands. Even with this advancement, the notion that Indigenous communities needed to be 'developed' from their 'backward', 'uncivilised ways' prevailed in state implemented consultative bodies.

After over a century of struggle and resistance following Chilean conquest, the Mapuche people received state recognition and a clear political space to air their demands. As part of a new force in international and national politics, Indigenous activists were

realistic in their goals and strategies, well informed, creatively dexterous in political maneuverings within the state, and committed to the fight for human rights, freedom of expression and the rule of law. By employing human rights discourse and frameworks, the Mapuche movement was able to speak about the past in new ways and articulate the impact of repressive state policies on their livelihoods. The notion that each person, no matter who they are or where they were born, were entitled to the same rights and freedoms, which cannot be granted or revoked, supported by the ILO-Convention 169, the international treaty exclusively dealing with the rights of Indigenous Peoples, successful merged with forces looking to topple Pinochet's dictatorship – in other words toppling the hegemonic centre that had prevailed during the dictatorship.

5. Chapter 3: The Ralco and Pangue Dam Controversy

A well-documented critical moment regarding the conflict over Indigenous land and rights was the Ralco Dam controversy. Empresa Nacional de Electricidad (National Electric Enterprise) or ENDESA Chile, the South American country's largest electric utility company, was looking to carry out various hydropower projects to meet Chile's growing energy demand. Economic interests tilted towards the powerful elite and the state effort to support the Indigenous communities following the 19253 Act was under threat. The militarisation of Chile's IXth region, and the determination for economic growth orientated towards investor interests, became a focal point of conflicts representing the gross imbalances in social equality present in a neoliberal, democratic Chile (Stern, 2010).

5.1 Brief History of Chile's Hydropower

Hydropower was not a new inclusion to Chile's energy matrix – it held a presence since the 1880s (Bernstein, 1991). From then on, the private sector was responsible for the electricity generation, transmission and distribution for the next fifty years. For much of the twentieth century, the Chilean state increasingly took greater control of electricity development and planning lasting into the 1980s. In 1943, the government created ENDESA, a publicly owned utility company tasked with the generation, transmission and distribution of electricity throughout Chile. Created as a subsidiary of Corporación de Fomento de la Producción (Corfo), Chile's Economic Development Agency, ENDESA received the task with implementing the First National Electrification Plan whereby electricity would be accessible to consumers including agricultural users and distribution companies up and down the country.[9] By the 1960s, disagreements rose due to environmental and social issues but did not lead to conflicts such as the Ralco Affair. This was primarily due to the fact there were no tangible environmental legal frameworks and very little awareness among the public.

The coup d'état in 1973 and the military government's implementation of widespread free-market orientated reforms changed the nature and makeup of the electricity sector. ENDESA was privatised as well as legislative modifications. Bauer (2009, p.615) describes the impact behind restructuring the national electricity according to free

[9] For the plan (Spanish) see: 'Plan de Electrificación Nacional' (Memoria Chilena) www.memoriachilena.cl/602/w3-article-93677.html (Accessed 27th of June 2018).

market principles where newly created frameworks and regulations encouraged decentralisation and privatisation. Also another key change was the establishment of the Water Code, through DFL No. 1.122 in 1984. Subsequently, almost all water rights were distributed among private parties (Susskind et al., 2014). With the electricity sector's de facto property rights to water, the water and energy industry became arenas of economic and political struggle where courts would look to award cases in favour of development and hydropower water rights.

5.2 ENDESA's Hydropower Projects

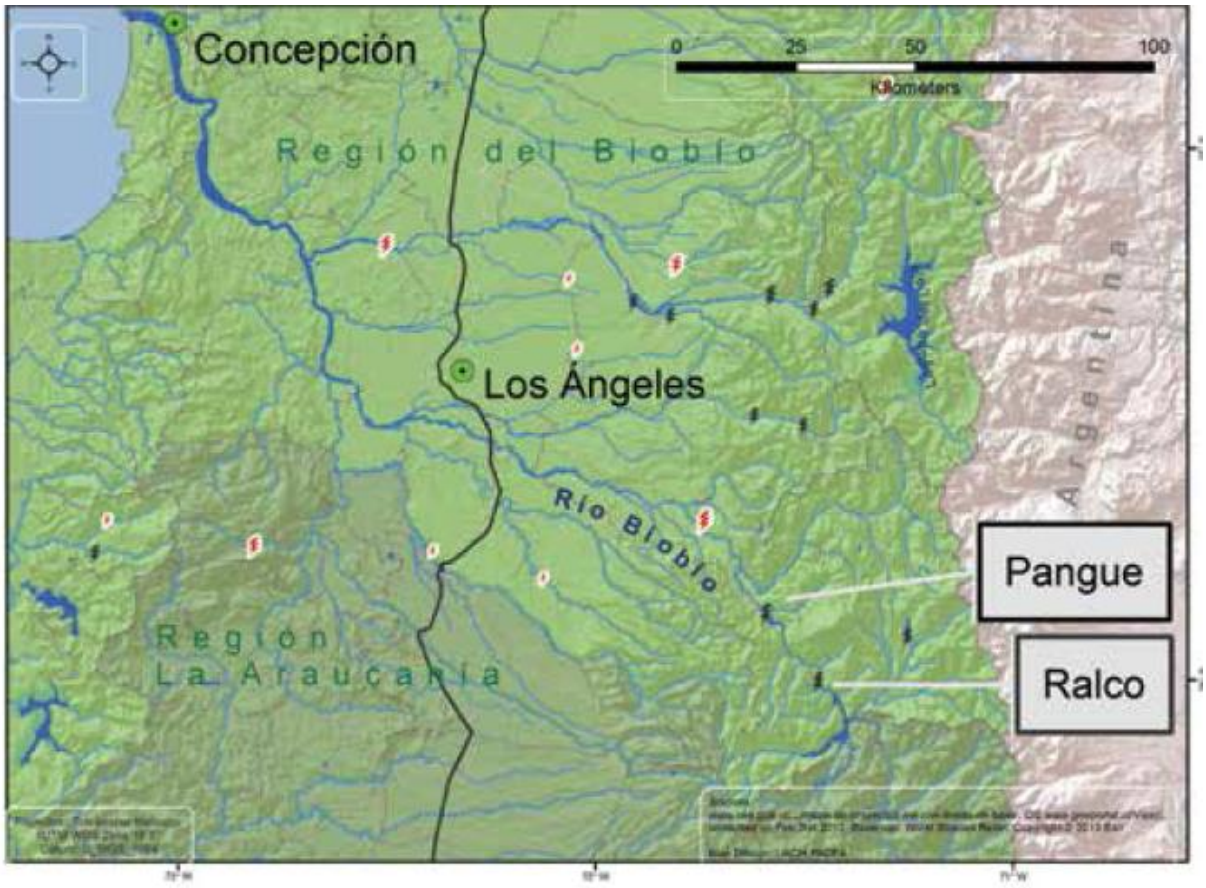
By the time the military government reached its demise in 1990, Chile's electricity sector was nearly completely privatised, remaining unchanged since its orientation towards free market reforms. Hydropower's important position in the electricity matrix remained as, however, they increasingly became tinged with controversy generating national and international attention. One of the first hydropower conflicts began in the 1990s when ENDESA planned to construct two dams on the upper Bío-Bío River (see Figure Two) in areas inhabited by the Mapuche Pehuenche community. The first project, Pangue, began construction in 1990 under Patricio Aylwin's administration – prior to the 1993 Indigenous Law and the establishment of CONADI. Consequently, the legal frameworks and consultation processes were not in place to evaluate the potential impact dam construction could have on the Mapuche community. With no environmental or international laws to halt construction and protect vulnerable communities, the country's need for economic growth was prioritised over fifty Mapuche-Pehuenche who were forced to relocate as five hundred hectares of there land was flooded (Johnstone & Garcia-Downing, 2004). The Pangue Dam was a dangerous precedence of what was to come.

There was a climate of confusion and distrust present as ENDESA began to comply with international law and consultative processes in the planning stages of the Ralco Dam. In order for the Ralco Dam project to continue, ENDESA needed to receive approval of their mitigation plans from all regulatory institutions – not only CONADI but also CONAMA (The National Commission of the Environment) – who would also initiate investigations into the project (Tomaselli, 2012, p.167). The Ralco project would affect one hundred Indigenous families who would need to be relocated as well as 3,500 hectares of Mapuche land flooded. CONADI ruled that the plans violated the 1993 Indigenous Law while CONAMA assessed

ENDESA's environmental impact assessment (EIS) to be unsatisfactory (Ibid). During the process, ENDESA operated through regular misinformation campaigns, employing technical and complex terminology by experts and politicians to confuse and render poor communication with the Indigenous community. Additionally, ENDESA promised to employ Indigenous Peoples, however, what transpired was the company bringing in its own people failing to train or hire from the local community – adding further trauma to an already distressing set of events (Johnstone & Garcia-Downing, 2004).

The state also contributed to the toxic climate of confusion by failing to question its own projects, approving the Ralco project despite rejection from the regulatory institutions (ibid). Chile deemed it a necessity to develop and modernise with Ralco vital to this goal, which was to take precedence over other concerns. This orientation, together with private investors, companies, the government and markets, all contributing to the demise of the Mapuche, one would predict Indigenous lands were doomed to disappear. However, again the Mapuche rallied and demanded their rights to participation in decision-making, while also drawing international attention the abuses and inequalities they faced – employing agency 'as resistance'.

Figure Two



Sources: www.sea.gob.cl/contenido/mapa-de-proyectos-eia-con-lineas-de-bases; IDE, http://geoportal.cl/Visor/, accessed 2 February 2013; 'World Shaded Relief' © 2013 Esri. Map design: UACH FACEA

5.3 Indigenous & Environmental Responses

In order to understand where and when Mapuche empowerment and protest generated results, we must first explore the major stakeholders involved in the Ralco hydropower project. ENDESA first proposed the Pangue project in 1990 to the newly elected Chilean government who approved the implementation plans by invoking the 1982 the Electrical Services Law to privatise affected Pehuenche reservation. To fund the project, ENDESA would apply to the International Finance Corporation (IFC), the private-sector arm of the World Bank Group (WBG) (Ibid). At the time, ENDESA did not indicate that further hydropower projects, such as Ralco, would also be tabled when in reality a further six would be planned for the region. In 1992, the IFC board approved the request and invested US$150 million into the Pangue dam project (Ibid). Both parties signed an investment agreement assigning New York as the legal jurisdiction and in secret where the Pehuenche had no way in knowing that such arrangements were made. These plans, which determined the fate and livelihood of the Indigenous nation, were formulated without knowledge or permission of

the Indigenous community –investigators would consider this a human rights abuse. Consequently, the major stakeholders in Chile's hydropower projects operated in a clandestine manner as well as falsely informing the Indigenous community of their intentions.

Environmental organisations, such as the Grupo de Alto Bío-Bío (GABB), individuals from the Mapuche-Pehuenche, non-Indigenous Chilean citizens and non-governmenal organisations, such as the International Rivers Network (IRN) became a major force in Chilean politics. The construction of the Pangue dam demonstrated to the community the deep environmental and social impact hydropower projects had where hillsides were cleared, roads built, and forest felled in preparation for reservoirs. In the face of the Pangue constructions, the Pehuenche community and their advocates began to work tirelessly to express opposition to Pangue and future dam projects as well as vocalising their intention to retain ancestral lands. Features of their resistance included letter writing campaigns, public protests and providing testimonies to the Chilean public, Chilean government and international forums (Ibid, p.213) – a mixture of agency 'as project' and 'as resistance'. Bringing the issue to the awareness of tens of thousands of activists around the world would inevitably provoke reactions.

The coalition of Indigenous and non-Indigenous activists achieved their greatest success when their testimonies of their struggle and public protest gained coverage, and appealed to, international media. When stories of human rights complaints, unresolved issues, and gross misconduct in following consultative processes and legal frameworks, private investors became concerned of their public image. Belligerents, such as the WBG, were adversely affected by international scrutiny. The Chilean government was not left unscathed as they were also continually challenged to enforce legislation designed to protect human rights. Unfortunately, the administration lacked the political will - nor did they wield sufficient power to enforce the law – which led to political fallout and international scrutiny.

Indigenous protests also provoked an array of responses from the IFC and ENDESA and uncovered further damning evidence of gross negligence and misconduct. In 1995, under pressure from international advocacy scrutinising hydroelectric dam development in

the Bío-Bío region and human rights abuses, the IFC hired Dr Theodore Downing, President emeritus of the Society of Applied Anthropology, to carry out an impartial audit on the socio-economic impacts of the Pangue Dam (Downing, 1996). Downing's evaluation would entail an evaluation of how effective the Pehuen Foundation (PF) – an organisation created by IFC and ENDESA to address the socio-economic impacts of hydropower projects – were at resettling Indigenous communities and awarding adequate compensation. The audit concluded that the PF violated the WBG's Indigenous safeguard policies by failing to incorporate the rights of Indigenous Peoples. Consequently, Downing filed this complaint with the WBG's Inspection Panel in 1996.[10] Meanwhile, Chilean NGOs led by the GABB (unaware of Downing's report) had produced their own environmental assessment as well as a complaint filed to WBG's Inspection Panel (WBGIP). In light of the complaints, WBG President, James D. Wolfensohn, promised an "impartial, internal review" of the Pangue loan and reiterated that the IFC has no plans to channel financial support for Ralco (Cockburn, 1997, p.9). The WBGIP rejected the complaints on the grounds that whomever the WBG decided to collude in a private partnership with fell outside of the Panel's jurisdiction (Johnston & Garcia-Downing, 2004, p.215). Clearly, the internal mechanisms of maintain the integrity of the WBG's safeguarding policies were weak further contributing to a clandestine climate.

ENDESA were also guilty of withholding the release of and covering up information. IFC staff, two weeks after receiving Downing's report, submitted a summary to ENDESA for their approval before releasing to the Pehuenche community. ENDESA rejected Downing's report and threatened to sue the IFC and Downing if the report made its way to the Mapuche community or the public (Ibid). The IFC suppressed the report and terminated Downing's final phase of the investigation that included releasing the findings and recommendations to the Indigenous families and the wider Chilean public. Wolfensohn, looking to deflect public scrutiny for the failure of WBGIP, appointed Jay Hair, President Emeritus of the National Wildlife Federation, to evaluate ENDESA's compliance with it's funding agreement with the IFC, review the Downing report, and also assess the environmental and socio-economic mitigation plans (Ibid). This action meant that the findings from the Downing report could remain secret until Hair had carried out his

[10] The Inspection Panel is a fact finding-finding body that works on behalf of WBG's Board investigating performance of the Bank. It does not investigate where funds come from.

investigation. Incredibly, the evidence that explicitly detailed the shortcomings and impact of the Pangue dam as well as PF's failures would now be withheld from public knowledge until after Ralco's comment period had passed thus approving the second hydropower project. Succumbing to political pressure and evidence of project failures, the IFC notified ENDESA that failure to meet the environmental conditions of their loan would lead to a declaration of default. Seemingly trapped, ENDESA would yet again find a way out by simply seeking finance elsewhere (Dresdner Bank), repaying the loan and diminishing the WBG's power. Undoubtedly, ENDESA's actions show complete disregard to the due processes and the adverse impacts their hydropower projects had on the community.

5.4 Limitations of Indigenous & Human Rights

The Ralco dam had passed its comment period but still had to go through the consultation processes at CONADI and CONAMA. In 1997, CONADI released a report stating that the Ralco project was illegal and in violation of the 1993 Indigenous Law (Tomaselli, 2012). The families continued to protest the proposed Ralco Dam project and the director of CONADI, Mauricio Huenchuluf (a Mapuche activist before working for CONADI), pointed toward ethnocidal implications as the reason behind CONADI's rejection of the project (Stern, 2010). President Frei sacked Huenchuluf replacing him with Domingo Numuncura, without Indigenous consultation. Initially, Numuncura was over compliant with the government but he too, by 1998, was sceptical of ENDESA and their efforts of pushing on with the Ralco Dam construction with no formal approval from CONADI. Numuncura and CONADI filed a lawsuit with the agency's director requesting a meeting with President Frei only for him to be sacked as well (Ibid).

Unambiguously, the government had decided, without consulting the Indigenous population, that the Ralco hydroelectric project was vital for Chile's development and would continue with Frei's public support (Nesti, 2002). Therefore, it was soon announced that the construction of the dam would continue where over a thousand Mapuche-Pehuenche were displaced, and sacred land where the Indigenous buried their ancestors and undertaken farming would be flooded. The Mapuche's life was severely undermined, as was the legitimacy of CONADI, which would be branded a "puppet organisation" for prioritising neoliberal economic policy and energy needs over Mapuche rights (Muñoz, 2003). The Ralco case emblematically shows the shortcomings of Indigenous and environmental institutions in

Chile. In the Gramscian sense, state power was conferred to CONADI in order to produce consent. However, when the hegemonic centre was threatened (the nucleus of economic activity), society institutions (CONADI) are sacrificed in order to defend the hegemonic system (Gramsci, 2005).

Despite erosion of institutions, Indigenous movements and individuals, such as Downing, showed similar determination and agency when disseminating their human rights complaints. Downing endeavoured to seek public dissemination of his audit generating internal ripples but no tangible resolution. Downing would file the first human rights complain ever inside the WBG (Downing, 1996), alleging that management staff of the institution had wilfully violated the human rights of the Mapuche-Pehuenche. Included in the complaint was the fact that the WBG were withholding information containing evidence of failures when meeting obligations. Ultimately, this did not help the Pehuenche Sotomayor family who had to wait five years before receiving thirty hectares of land and a new house in 2001. No compensation was arranged for the five year of suffering due to their involuntary displacement.

Similarly, Mapuche families resorted to legal action against the CONAMA decision and the continuation of the Ralco dam construction. Their case was centred upon violations of the 1993 Indigenous law (Nesti, 2002) where they achieved success with the courts ruling in their favour and construction halted in 1999. However, ENDESA would not allow this and soon filed an appeal overturning the decision within a month and construction was resumed. Further court cases were stalled in court where the impasse allowed for construction to continue (Tomaselli, 2012). This turn of events demonstrates how neoliberal ideas together with the nation's need for energy (or an obsession for generating business and profit) supersede Indigenous rights. Neoliberal frameworks, or the nucleus of economic activity, appease private interests in order to preserve state hegemony whereby economic development is continually prioritised over the Mapuche.

With little alternative options, the Mapuche resorted to public protests over dam construction and forced resettlement – agency 'as resistance'. Specifically to Ralco, massive protests took place in March 2002, where Pehuenche protestors blocked the road halting the transport of a generator tasked to power the hydroelectric plant at Ralco dam.

Carabineros responded violently arresting fifty-five people – the majority Indigenous – and charging them in military courts for attacks against the police (Johnston and Garcia-Downing, 2004). One of the Mapuche leaders, Victor Ancalaf, was charged for his participation in the protest that led to the explosion of an ENDESA subcontractor truck. During his arrest, ten men in plain clothes surrounded him, broke two of his ribs, and took him to a police station where he was doused in cold water to cover up the blood. Ancalaf spent five years in prison and was the first Mapuche to be tried under the Anti-terrorist law 18.314. Recently, the IACHR ordered the Chilean state to abrogate his, and seven others', sentences citing the application of the Anti-terrorist Law as discriminatory and disproportionately applied to the Mapuche (Parra, 2018). There has been no apology from the Chilean state. The Mapuche are fearful that their movement may be recast as a terrorist movement but this will not stop them protesting and exercising agency.

The 19253 Indigenous Law was meant to be a turning point in Indigenous-state relations of, which the Mapuche fought hard to achieve following years of repression and tension. Now it was expected that the Indigenous community could combat policies dictated by a hegemonic state using legal frameworks and where institutions, such as CONADI, promised to usher in welcome change to the relationship. In practice, the Ralco and Pangue controversies proved that these laws lacked robustness, were easily manipulated by private corporations who were able to exploit loopholes, stall decisions, and withhold key information. Those who protected Indigenous interests were removed and legal challenges blocked all while hydropower projects continued to be carried out on Indigenous land. The neoliberal consciousness is detrimental to the Mapuche way of life where although Chile has improved exponentially economically, there is a long way to go before Chile's democracy works equitably with Indigenous paying an unfair high price for development.

6. Conclusion

The paper concludes that invoking and framing human rights as Indigenous rights have been the most effective tool of resistance in achieving improvements to the Mapuche's impoverished situation. Supported by a well organised network of charismatic Indigenous and non-Indigenous community leaders, the Mapuche struggle to reclaim their lands, present and historic, has become an international cause whereby human rights defenders from across the globe continue to join.

However, the limitations of the Mapuche movement highlight the weaknesses of universal human rights. It is hard to assess how instrumental adopting human rights as a tool was in establishing new rights-protective legislation, such as the 19253 Indigenous Law, but there is clear synchronicity between the two. Human rights may seem straightforward (inalienable and universal) but it becomes complicated when put into practice. CONADI's creation looks to have appeased certain portions of a resistant Mapuche movement dividing them in the process. Whether this is a conscious tactic by the state is impossible to tell but what is clear is that dividing subaltern groups maximises the possibilities of the hegemonic centre of staying in control. As we saw with the demise of the dictatorship, the subaltern groups managed to collude and topple the hegemony.

During the Ralco affair, CONADI's power was illusory where Indigenous consent was not required when economic needs trumped human will. We continue to live in a Westphalian world where sovereign states ultimately dictate what occurs in its borders. Chile exercises its hegemonic power when choosing which human rights apply and how they are implemented (if at all) through their established state structure. This neoliberal structure, largely formed by the free market reforms of the dictatorship, extends partiality towards civil political liberties over socio political rights and of individual over group or collective rights. In Gramscian terms, this would be the nucleus of economic activity exercising hegemony.

Even though UDHR stresses the universality, indivisibility, and interdependence of the principles and claims that no right is more important, there is an inclusivity issue when Indigenous populations are considered. Moreover, the greatest reason as to why Indigenous populations are yet to have their human rights properly respected is because there is a

severe flaws when it comes to enforcing human rights principles. Despite the UDHR's and the UN's authority, the mechanisms to address human rights violations are weak. This was clear when UN Rapporteur, Emmerson, ordered the Chilean state to pay compensation to the Mapuche who were victims of the disproportionate application of the Anti-terrorist law. However, the UN's main bodies can only monitor and investigate violations and not force Chile to change their policies. State interests to continue developing will not cease in capitalist Chile were we are likely to see more instances where Chile's economic need is prioritised over Indigenous rights. The Anti-terrorist law would be in the Gramscian sense "the apparatus of state coercive power which 'legally' enforces discipline and dominates those that do not 'consent'" and does not look to change soon (Gramsci, 2005).

Traditionally Third World countries, such as Chile, looked to develop and modernise their states in order to increase their legitimacy and respect among other states and institutions like the UN. President Piñera highlighted the importance of a developed Chile as recently as April 2018 during the 8th Summit of the Americas. He described the South American continent as having "everything", "a large swathe of land with a generous quantity of natural resources … despite this, many countries of Latin America have been unable to unlock our potential and defeat underdevelopment and poverty" (Piñera, 2018). Consequently, it is highly unlikely, certainly in the next five years of Piñera's administration, that Chile changes its policy of the state's economic interest above all else. Therefore, it is likely that Indigenous populations such, as the Mapuche, continue to be considered as a 'problem', in the way of state development and an obstacle to modernisation.

Although there lacks political will to adequately protect Indigenous rights, the Mapuche will continue to struggle and combat by any means. This thesis explored Mapuche agency and witnessed the myriad of ways that the Mapuche fought for their rights from the underground, grassroots 'ant's work' during the dictatorship to public protests and hunger strikes in response to hydropower initiatives and implementation of the Anti-terrorist Law. The central limitation of this thesis has been the inability to collect first hand Indigenous testimonial material in order to add another layer of Mapuche subjectivities. This is not to say that the Mapuche 'voice' was lost or neglected but all of the Mapuche testimonial references were complied from secondary sources. Unfortunately, sufficient time and funding or the means to personally interview Mapuche activists were lacking in order to add

testimonial research to this body of work. Additionally, this thesis has been focused on the Mapuche relationship vis-à-vis the state. In hindsight this was a general focus, and perhaps future research would find it fruitful adopting a legal approach in assessing Mapuche participation in Chilean courts, the United Nations Permanent Forum on Indigenous Issues and the IACHR. There would be much to learn regarding Mapuche agency as the Indigenous community look to work within unfamiliar legal frameworks to express their grievances and demand respect for their rights.

The neoliberal globalisation of the world allows for Indigenous activists to voice their concerns and ill treatment to the world through new technologies enhancing connectivity such as the Internet and social media. Chile and private corporations are wary of their public image and look to avoid criticisms from other states, regional organisations, distinguished individuals and NGOs. Under international scrutiny, actors, who hold positions of power which contribute to Mapuche marginalisation, are forced to at least respond often leading to some gains from the Indigenous perspective. For example, when the WBG became increasingly concerned with their image, they began to investigate the destination of IFC funds. In this case, ENDESA acted swiftly to ensure that their would be no cash flow issues to their project by seeking funds elsewhere. Thanks to globalisation and the embedding of human rights, the inequalities of the Mapuche's well-being and life chances are no longer hidden by ignorance or distance difficulties. However, the mechanisms to address human rights abuses and social problems experience by the Mapuche are weak where the state maintains a hegemonic presence. In other words, only the Chilean state can transform the Mapuche's lives for the better.

Accusing multinational corporations for committing crimes or complicit in human rights abuses is not a new phenomena. Considered as the first multinational corporation, Dutch East Indies Company, was guilty of committing genocide of the inhabitants of the Banda Islands in the seventeenth century (Hanna, 1978) demonstrates that criminal multinational corporations have a history of wrongdoing and committing gross human rights violations. ENDESA's negligence, or clear lack of respect for Indigenous rights, is not at the severity of genocide, yet in the aftermath of colonialism in a globalised world, we are witnessing multinational corporations who hold far too much power. Multinational corporations now join, or have replaced the traditional perpetrator: the nation state, in

committing human rights abuses, maintain the status quo, and serve their private investor interests. Dark, clandestine figures, multinational corporations operate in the shadows with little to no transparency with the public regarding their actions. It is noteworthy to point out that there is no international, cross border regulator with the mandate to monitor the behaviour of multinational corporations which poses a problem of how they are brought to account if they commit crimes. Nation states are powerless to do so and seemingly so are regional institutions. Human rights organisations and other NGOs are all we have that currently collate information, conduct research, and produce awareness of abuses. Further investigation into ENDESA, and their actions past and present, would be a worthy area of investigation where it can be determined how culpable they are in further marginalising and impoverishing the Mapuche.

In a neoliberal, globalised world where democratic values of equality improve the lives of once marginalised populations, one can assume that Indigenous livelihoods will only improve. For over two decades, the liberal global order and inclusive climate has even brought about the election of presidents who touted their Indigenous heritage during their campaigns: Alejandro Toledo and Ollanta Humala in Peru 2001 and 2011 respectively; Evo Morales in Bolivia 2006. Sadly, the path to improved Indigenous rights and empowerment is far from a linear one as the liberal global order and inclusive climate established for the past twenty years looks to be under threat. An unintended consequence of globalisation has been the creation of 'left-behind' populations – these are people whose jobs and way of life have depreciated or disappeared making them susceptible to populist and authoritarian leaders. Certainly in Bolivia, the Indigenous populace could be deemed as those 'left-behind' populations, however, ethnic nationalism and authoritarianism has returned in many countries – USA, China, Russia, Turkey, Hungary, the Philippines, Poland – where suppression and intolerance towards all minorities (not just indigenous minorities) is on the agenda.

Indigenous populations remain omitted from Chile's constitution which will remain a key sticking in point in state-Indigenous relations no matter how many times the administration tries to reset the relationship. As a result, it is likely that the Mapuche will further rely on the support received from their global activism network as they look to maintain the gains they have achieved and limit the disproportionate use of the Anti-terrorist Law rather than demand further legislative advances from a conservative Chilean

administration. Identity debates have not featured prevalently in this thesis where the Mapuche identity and Chilean nationhood is continually constructed and renegotiated. Chilean nation building and their place vis-à-vis broader racial paradigms and multiculturalism, and where the Mapuche 'fits' in is also worthy of further research. Indigenous advances and regressions are subject to changing contexts where today's appears to be in a state of flux. What is certain is that Indigenous Peoples will adapt and continue to exercise their agency and rights creatively according to their demands for greater participation and equality.

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