

11. Indigeneity, law and performance on the Atlantic Coast of Nicaragua

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The legal battle of the *Mayagna (Sumo) Community of Awás Tingni v. Nicaragua* culminated in 2001 when the Inter-American Court of Human Rights (IACHR) acknowledged the communal ‘property’ rights of Indigenous communities¹ lacking legal land titles and mandated that Nicaragua recognise these rights. The IACHR’s judgment solidified the entitlement of Indigenous peoples to the use and enjoyment of their ancestral land as human rights to be honoured and protected. Recent constitutional reforms in Bolivia, Honduras and Colombia have also affirmed the establishment of Indigenous rights to property (Bryan, 2009; Finley-Brook, 2007).

While this outcome is important for representing the first time that an international tribunal has recognised Indigenous communal property rights, some questions have arisen from the case. Specifically, how are indigeneity and property rights interrelated? How does neoliberalism shape global performances of indigeneity? Building on the work of critical geographers and anthropologists who have drawn attention to the ways in which Indigenous mapping has become a site of neoliberal intervention in Latin America, this chapter examines how the ‘coming into being’ of indigeneity in law is connected to the promotion of green capitalism in Nicaragua. It argues that although territorial rights and Indigenous legal systems are constitutionally recognised, the stabilisation of Indigenous property rights is inscribing new sources of possession that only exist within the rights framework and which are rescaling natural resource management. Through a process of re-regulation, Indigenous territories become ‘property’ and Indigenous peoples’ relationships to such territories are commodified. From this perspective, it is not only nature that becomes constitutive of economic life but also the relationships established between the human, spiritual and non-human realms. The insertion of Indigenous peoples’ worldviews into a global economy, where conservation and natural capital is an advantage, conjures the idealised ‘noble savage’ as the basis for the production of new commodities. As Clarke notes, when neoliberalism

1 I capitalise the term Indigenous as it refers to a political identity but not the concept of indigeneity, which in my view refers to a broader process of producing Indigenous identity.

produces difference it does so by fragmenting existing meanings and enabling new possibilities (2004). By privileging specific types of knowledge, certain cartographic representations and particular ways of seeing and relating to the world, this field of governance places a grid of intelligibility on indigeneity (Hale, 2005).

This chapter invites discussion across disciplines and combines postcolonial theory and critical geography with political economy in its approach, adding to the discussion of how Indigenous places are reconfigured by 'proper' performances of indigeneity. By exploring the production of the noble savage in relation to the green economy, the chapter reveals how a naturalised understanding of Indigenous peoples' relationships to their territories is, in turn, commodifying them. The term indigeneity is understood here as a dynamic field of governance, constituted by legal and political configurations and produced at different scales in which knowledge, discourses, power, and identity are constructed and contested (Altamirano-Jiménez, 2013). First, the chapter explores how law measures difference and how such difference is represented cartographically. Second, it discusses how the Indigenous neoliberal subject is produced in relation to the environment. Next, it provides some background context on the long history of land conflicts along the Atlantic Coast. Finally, some implications are discussed of the commodification of Indigenous peoples' relationships to place.

Mapping rights and indigeneity

The IACHR's 2001 decision in the *Awás Tingni v. Nicaragua* case, which recognised the communal property rights of Indigenous peoples, has triggered processes and studies to demarcate, legalise, define or otherwise consolidate Indigenous property. International conservation organisations, pro-human rights groups and international financial institutions have all promoted the use of mapping among Indigenous communities in Latin America. Although an expensive process, the number of maps made by such communities has steadily increased (World Bank, 2002; Offen, 2003).

Interest in the power of maps as legal tools to secure territorial rights, manage resources and strengthen cultures is not new, having started in northern Canada and Alaska in the 1960s. Intellectual products such as multi-volume studies, atlases, guidebooks and historical-analytical pieces have emerged since then. Examining early mapping projects in the Canadian Arctic, Milton Freeman (1979) explores the advantages of involving Indigenous peoples as environmental researchers in the process of linking social and ecological impacts. Similarly, Robert Rundstrom emphasises process over product, noting the importance of long-term negotiation processes among residents (1995).

Thus, land-use research has provided a necessary visual articulation of existing and potential conflicts between Indigenous land-use patterns and resource development projects (Natcher, 2001).

Despite the potential for land-use studies to provide Indigenous peoples with more opportunities and power to protect their lands and resources, critical examinations have questioned both the methodological limitations and the cultural misrepresentations inherent to these approaches. Chapin et al. (2005) question the extent to which mapping projects empower Indigenous peoples, while Offen notes that mapping has been driving environmental agendas (2003). From a postcolonial perspective, Wainwright and Bryan (2009) point out that maps are tools to settle land claims but that they do not necessarily guarantee justice for two reasons. First, maps are not accessible to all; usually older men are considered the bearers of such knowledge. Second, this cartographic-legal strategy is based on Western knowledge and visualisation, not Indigenous knowledge that could potentially counteract hierarchical power relations (Bryan, 2009, p. 25).

These critiques deserve further consideration. This chapter is particularly concerned with how difference is represented cartographically and measured by law, and how this measurement of difference is connected to the emergence of new practices evident in the implosion of commodity forms such as environmental services, ecotourism and Indigenous knowledge, among others. It argues that these practices entail the commodification of 'affective' relationships (Nast, 2006) to nature and also transform what counts as environment. Thus, the commodification of nature involves a variety of practices and is simultaneously cultural, social, emotional, spiritual and economic (Bakker, 2010). Moving beyond nature as a resource to indigeneity as a set of recognised practices, provides insights about how Indigenous relationships are valued.

Both international law and cartography are based on Western knowledge and assumptions. Knowledge systems are cultural products, and are therefore performative. They are both produced and productive, shaping and conditioning the world (Bowker and Star, 2000; Waterton, 2002). Attention to practices and performativity helps one to explore how identities are formed and to analyse how a particular meaning of indigeneity is universalised through law. If knowledge is a social product and is place-specific, then it is possible to argue that there are other ways of seeing and being in the world.

In maps solicited by Western law, Indigenous 'property' is understood as a set of practices that are culturally regulated and which are performed in specific ways. These practices are central to enabling recognition as an Indigenous subject through a process in which difference becomes intelligible to non-Indigenous others. A visual representation of the 'continuity' of such traditional practices requires that indigeneity be triangulated like points

plotted on a map in accordance with Indigenous peoples' close relationship with nature (Bryan, 2009, p. 25). As Bryan notes, Indigenous mapping and the effective legal mobilisation of Indigenous identity is measured in terms of its ability to occupy the 'savage slot', a given idea in which Indigenous peoples are conceived as living outside modernity (ibid., pp. 25, 27). This representation of indigeneity as a 'single, unambiguous class of entity that can be differentiated from other alternative life forms ... transcends spatial and temporal trajectories' (Lien and Law, 2010, p. 4). According to Goett, '[a]ny rupture, discontinuity or mobility in the history of community settlement and any evidence of cultural change or transformation ... provides an opening for the delegitimation of Indigenous territorial claims by the state' (2007, p. 291). Thus, the 'savage' living outside modernity is enacted as a universal reality that nonetheless represents a particular ordering of the world.

While this fixed representation is recognised as 'authentic', Indigenous laws and dynamic relationships to place are reduced and transformed into certificates of title. As Wainwright and Bryan note, 'when indigenous communities and their allies produce maps and lawsuits, they do so under conditions not of their choosing. These struggles unfold within an already-mapped world where one cannot elect to live outside of state sovereignty, territory, or the law' (2009, p. 156). One complication of this analysis, however, is that while these processes universalise a specific performance of indigeneity, it may appear that Indigenous peoples have no room to reclaim alternative ways of being in the world. Exceeding the constraints imposed by the grid of intelligibility may involve enabling difference in order to remain particular without aspiring to be recognised as the same (Lindner and Stetson, 2009, p. 42).

Producing the neoliberal Indigenous subject

A rich body of literature on neoliberalism has developed over the past decades. Neoliberalism has usually been treated as an economic project. However, it exceeds the economy by shaping the constitution of identity and the commodification of difference (Laurie et al., 2002). Studies theorising the neoliberal subject have concentrated on how subjectivities are constituted and policed in public space, as well as on the reconstitution of the citizen into consumer (Sorrells, 2009, p. 1). In his analysis of Indigenous peoples in Central America, Charles Hale notes that neoliberalism has involved a reorganisation of society along the lines of decentralisation, the reduction of the state, the affirmation of basic human rights, the attempt to redirect social policy, and the development of civil society and social capital (2005).

As a form of governance, neoliberalism also has a complex connection with the transformation of the environment and the struggles associated with that

process. An emergent literature in critical geography sheds light on the ways in which neoliberalism shapes the constitution of the Indigenous other 'in nature' (see McAfee, 1999; Perrault and Martin, 2005; McCarthy and Prudham, 2004). I would argue that the performance of indigeneity as fixed difference simultaneously reinforces local identities and global forms of governance. Specifically, it imposes a form of 'green development' (McAfee, 1999), or 'green neo-liberalism' (Hanson, 2007), which facilitates the commodification of Indigenous peoples' relationships to their territories. By recognising Indigenous peoples as legitimate forest users and by universalising a meaning of indigeneity, neoliberalism brings previously untradeable entities such as affective relationships and cultural practices into the market.

Since undeveloped ecosystems are often found within Indigenous peoples' territories, these peoples are confronted with tensions between local needs and global wants (Castree, 2004, p. 137). Tensions and contradictions are negotiated through discourses of identity, rights and the environment, which serve to define and normalise certain embodied experiences (Sorrells, 2009, p. 4). Through the linking of indigeneity and the environment to the market, neoliberalism has shaped forms of recognition and systems of environmental governance mediated by international financial institutions, which emphasise accountability and compliance. For example, resource-based communities are simultaneously considered accountable for their ecological degradation and subjected to intensive capital schemes to produce environmental services for export.

While under neoliberalism there is an increasing recognition of difference, there are clear limits to what constitutes acceptable difference. According to Hale, the recognition of cultural difference and the granting of collective rights as compensatory measures for 'disadvantaged' social groups are not in opposition to neoliberalism but integral to it. These cultural rights, along with socio-economic components, distinguish neoliberalism as a specific form of governance that shapes, delimits and produces difference (2005, pp. 12–13). With a vision of indigeneity as a form of human capital, neoliberal governance has focused on rigorous testing and accountability mechanisms that see difference as a source of wealth. In Latin America, financial institutions such as the World Bank and the International Monetary Fund (IMF) have actively promoted the recognition of a permissible difference, which is accompanied by large-scale territorial reorganisation, titling and cadastral surveys, all aimed at building a more dynamic market in the global south (Deininger, 2003). The argument is that stability in property regimes increases the value of land, improves credit and attracts investment.

Demarcation and titling are part of the World Bank's 'green conditionalities' in which borrowing states such as Nicaragua are pressured to restructure their

resource management agencies as well as their land-use regimes (World Bank, 2002). The World Bank has targeted tropical forests located in the Atlantic region of Nicaragua, home to the majority of the Indigenous population, and has acknowledged the importance of including Indigenous communities in the country's forestry sector management (World Bank, 2003). In 2001, according to the World Bank, 45 per cent of the Nicaraguan population lived in rural areas (2010). Sixty-four per cent of these were considered poor due to the unequal distribution of land (Maldidier and Marchetti, 1996). Moreover, decades of ineffective state-led constitutional reforms and failure to fully implement Indigenous rights have produced ambiguities regarding Indigenous lands (Toledo Llancaqueo, 2004; Díaz Polanco, 2006). The IMF's *Nicaragua: Poverty Reduction Strategy Paper* (2005) establishes six lines of action Nicaragua can follow to attract development: i) modernise property registry; ii) title all property; iii) create a rural land market; iv) create the legislation to activate the land market; v) demarcate and title Indigenous lands; and vi) create a national programme to administer land.

Environmental organisations have also supported the idea that unclear property regimes and ineffective land-use regulation are connected to high levels of poverty and environmental destruction. From this point of view, Indigenous property rights are not only about protecting these communities but also about protecting the 'assets' contained within their lands. During the *Awas Tingni v. Nicaragua* trial, the International Human Rights Law Group and the Centre for International Environmental Law issued an *Amicus Curiae*² to the Court in which they noted that this case represented 'an important opportunity for Nicaragua and the Inter-American Human Rights system to promote national and regional interests by fostering an appropriate balance between human rights and environmental and economic interests'. They further noted that forests are conceived as 'important long-term national assets, whose true value to Nicaragua is in jeopardy if the court does not grant an adequate and effective protection to the Awas Tingni community' (The International Human Rights Law Group and The Centre for International Environmental Law, in Picolotti and Tallant, 2003, Appendix 1). Forests are considered natural commodities whose protection requires the recognition of indigeneity and Indigenous property rights. The connection between environmentalism, property and indigeneity is central to the creation of new commodities and areas of economic activity, including climate-change mitigation in which the noble savage becomes an 'ally'.

2 *Amicus Curiae* refers to a legal opinion used in international law, specifically in reference to human rights, which introduces a concern ensuring that the legal effects of a court decision do not depend exclusively on the parties involved.

The idea of the noble savage is hardly new. It was central to older forms of colonial violence in which romanticised depictions of Indigenous peoples as 'living in harmony with nature' (or the 'vanishing Indian') facilitated the dispossession of their lands. Under the logic of current green capitalism, the production of wealth is sustained through the recognition of a type of cultural difference that 'preserves' forests or natural capital intact. This combination of market forces and cultural rights has disciplinary effects on resource-dependent Indigenous communities, which are pressured to participate in a global environmental governance process. The noble savage is recognised to the extent that his naturalised traditional economic practices, such as hunting, fishing and trapping, are bound to an idealised stewardship of the land. This simple yet enduring classification of Indigenous populations conceals the complexity of their economies and histories. Moreover, as Baldwin notes, through this process the imperial doctrine of *terra nullius*, or lack of human presence, is reenacted through a global environmentalism, which universalises a given definition of indigeneity (2009, p. 241).

As in other regions of the global south, demarcation and titling policies in Nicaragua aim not only at 'regularising' property rights but also at rescaling the governance of natural resources. To spread this new eco-governance, northern financial agencies have invested in building capacity and creating an environmental framework. When the Nicaragua government titled Awas Tingni's land, the management of forest resources was also transferred from the central government to the administrations of the autonomous regions. Neoliberal environmentalism has explicitly targeted the decentralisation of the state's administrative authority as well as its restrictive structures to promote democracy. While decentralisation has been justified on the grounds of increasing public participation and good governance, it has been shaped by the scalar differentials of power and accountability between the global north and south (Kohl, 2002).

Ineffective laws, war, migration, and the state's failure to address these issues have been constructed as facts that have created a complex, legal and 'insecure' framework. In her study of peasants in rural Nicaragua, Broegaard (2005) finds that this complex situation has been characterised by farms that lack formal title, lands that have multiple documents, and land tenure that has historically drawn on other sources of legitimacy, including Indigenous laws. Broegaard's study concludes that perceived tenure security has drawn on social relationships and Indigenous normative systems, which have been more important to people than officially-issued legal documents.

Thus, the complexity of land tenure in Nicaragua not only results from 'uncertain' property regimes, but is also an expression of Indigenous peoples' diverse legal systems, recognised in many Latin American national constitutions.

Although Nicaragua provides constitutional recognition of customary land tenure rights, in practice such recognition has not been accompanied by effective mechanisms to demarcate and title. Moreover, Nicaragua has not provided an effective judicial remedy to contest the violation of Indigenous constitutional and human rights (Alvarado, 2007, p. 616). Arguably, this was the argument for Awas Tingni to take its case to court. But does changing the source of law grant justice? This question will be discussed later in the chapter.

The Atlantic Coast

The Atlantic Coast of Nicaragua has had a history of land conflicts originating from the imperial competition that developed between Spain and England. The Spaniards colonised the Pacific Coast and the English the Atlantic Coast, effectively creating two different geographic regions that barely interacted with each other. On the Atlantic Coast, the English established a relationship of commercial and political cooperation with the Miskito people. The appointment of the first Miskito King in 1687 consolidated Miskito dominance over other Indigenous peoples, including the Mayagna, and guaranteed unrestricted English access to natural resources and slaves in the region. Forced African migration as well as intermarriage between Indigenous people and Black Caribs resulted in the existence of ethnic groups that rejected the Nicaraguan state's project of a monocultural mestizo society (Thompson, 2004, p. 21). By the 19th century, the Atlantic Coast had become the focus of competing British and American interests. In 1870, fearing an American invasion, the Nicaraguan and English governments signed the Treaty of Managua, in which Nicaragua established sovereignty in the region and committed itself to creating an Indigenous reserve in the Mosquitia region (*ibid.*, p. 25).

However, once the treaty was signed, the Nicaraguan state took advantage of a legal ambiguity regarding the definition of communal lands and instead tried to advance a mestizo, centralist policy that had devastating effects in the region. Feeling legitimised, mestizo farmers colonised and invaded Indigenous lands while the government attempted to integrate Indigenous communities into mainstream society. The Miskito resisted the central government's integrationist policies but the movement was repressed (*ibid.*, p. 27). Indigenous resistance opened the space for the signing of another treaty between Nicaragua and Britain, the Harrison-Altamirano treaty, which recognised usufruct rights (rights of enjoyment) for Indigenous communities. Although legally binding, this treaty mostly benefited Creole communities, while the Miskito and the Mayagna were often ignored (Instituto de Estudios Políticos para América Latina y África, 1986). In the 1970s, mestizo peasant encroachment into Indigenous lands fuelled new conflicts that were addressed by titling land for

a few Miskito and Mayagna communities (*ibid.*). To the Nicaraguan state, the Atlantic Coast was inhabited by 'savage tribes' who could not govern themselves and who needed to be reconquered (Pérez-Baltodano, 2003, p. 397). As Hale et al. argue, Indigenous communities within the Atlantic Coast have revolted against the dispossession of their lands and the assimilationist state project (1998).

The conflictive relationship between the Nicaraguan state and Indigenous communities was further exacerbated by the Sandinista Revolution in the early 1980s. The revolutionary movement, concerned with overthrowing oppressive class relationships, ultimately undermined the relevance of Indigenous identity. The economic causes that precipitated the fall of the Somoza dictatorship in the Pacific region eventually reached the Atlantic Coast as industrial agriculture and cattle ranching displaced thousands of poor mestizo peasants, who began to invade Indigenous lands (Gordon et al., 2003, p. 375). The Sandinista government's nationalist approach to fighting American imperialism clashed with an emergent Indigenous nationalist consciousness that emphasised conceptions of territory and self-determination (Hale, 1994). In this context, coastal peoples interpreted the Sandinistas' 'progressive' land distribution for poor peasants as being yet another wave of colonisation.

Resentment and discontent incubated the conditions for recruiting Miskito militia and creating the 'contra revolution' movement financed by the United States against the Sandinistas. Lasting almost ten years, from 1980–9, the civil war influenced the creation of the North Atlantic Autonomous Region (NAAR) and the South Atlantic Autonomous Region (SAAR) on the Atlantic Coast of Nicaragua. These regions represent approximately 42 per cent of the national territory and contain important marine and terrestrial resources, including major forests (Kaimowitz, 2002). Established in 1987 to undermine Miskito support for the contra revolution movement, the Autonomy Law recognised Indigenous peoples' rights to i) benefit from their natural resources; and ii) practice their traditional subsistence activities. The law states that communal property consists of 'land, water and forest' (Asamblea Nacional de la República de Nicaragua, 2007, p. 25).

Three years later, following the electoral defeat of the Sandinistas in 1990, Miskito leaders were elected to the NAAR government and were committed to advancing Miskito land rights. At this time, neoliberal reforms brought about a wave of changes and since then adjustment policies have only deepened. Some have argued that structural adjustment programmes in Nicaragua have been harsher than in other places in Latin America because they were intended to undo Sandinista economic reforms (Babb, 2001, p. 155; Prevost and Vandén, 1999, pp. 6–7). In addition to cutbacks in state-sponsored services and subsidies, industry, health and education were all privatised (Pisani, 2003). The

country has been suffering from high unemployment as well as from declining levels of health, education and living standards among the majority of the population (Henriksen, 2008). Moreover, the post-war central governments have consistently undermined the territorial rights of the two autonomous regions, making Indigenous peoples who are small in number, such as the Mayagna, even more vulnerable than others.

After Awas Tingni

While neoliberal structural reforms were being implemented in the early 1990s, environmental groups and international financial institutions pressured the government of Violeta Chamorro to stop the overexploitation of forests. As a consequence, President Chamorro created the Bosawás Natural Reserve without informing its Indigenous residents. The Mayagna and Miskito, who had previously inhabited the area before fleeing from the war, found out when they returned from Honduras that they were living within an ecological reserve and were suddenly being pressured to preserve the area. Ironically, while Indigenous communities were made accountable for their economic practices, illegal logging within the Bosawás Natural Reserve did not necessarily come to a halt. In search of economic alternatives, the community of Awas Tingni signed a conservation agreement in 1994 with the Nicaraguan government and the Nicaragua-Dominican lumber company, based on a forest management project that was considered to be economically beneficial, environmentally sound and respectful of human rights (Vuotto, 2004, p. 230). To further comply with the agreement, the community initiated studies to document their traditional land use and occupancy. In 1995 Awas Tingni found out that, without their knowledge, another logging concession had been granted by the central government to a Korean timber company. When they protested about this action, the Nicaraguan government argued that Awas Tingni had neither land title nor was 'using' the land in question. Moreover, the government noted that Awas Tingni had separated from the mother community, which was located in a different area, and therefore the disputed lands could not be considered 'ancestral' to the Mayagna.

Although the Autonomy Law recognises the rights of all Indigenous communities in the Atlantic coast, and the Nicaraguan state recognises Indigenous legal systems, Awas Tingni could not register their lands in any way, creating the conditions for the government's infringement of their rights. As a result, the *Awas Tingni v. Nicaragua* case was brought before the Inter-American Court in 1995 under the argument that Indigenous land rights were crucial to protect both the Mayagna and the environment. The Court drew from several sources to determine that proof of traditional land-use and

occupancy is sufficient for Indigenous communities lacking legal land titles to obtain recognition of their property, and ruled that the Nicaragua government had violated this right with respect to the Awas Tingni community. The Court found that, although Article 21 of the American Convention and Nicaraguan legislation recognised communal property, this legislation lacked the mechanisms to *title* and *demarcate*. As a remedy, the Court recommended that the Nicaraguan state title Awas Tigni's lands and also develop the mechanisms to guarantee property rights, not only for Indigenous but also for black communities. In 2008, the Nicaraguan state granted title to Awas Tingni but the demarcation took longer due to overlapping land claims.

While the case was being taken to court, the World Bank provided funds to survey the land tenure of Indigenous communities within the entire Atlantic Coast of Nicaragua. Researchers produced the report 'Diagnóstico general sobre la tenencia de la tierra en las comunidades indígenas de la Costa Atlántica' ('General diagnostic on Indigenous communities' land tenure in the Atlantic Coast') in 1998. It demonstrated the existence of unclear and often overlapping local perceptions of land tenure and recommended immediate demarcation and titling to avoid conflict among communities. While the report emphasised the need to homogenise property regimes, James Anaya noted that Indigenous peoples possess their own unique legal systems for governing their lands and resources. Because of this diversity, there cannot be a universal 'one-size-fits-all definition of property' (Anaya, cited in Anaya and Williams, 2001, p. 34).

So, why the insistence on regularising Indigenous property rights? A number of reports, including the Eliasch Review (2008) and the Focali Report (Westholm et al., 2009), state that secure property rights, on paper and in practice, are a pre-condition for long-term investments in sustainable management of forest ecosystems. As noted earlier, by homogenising property rights and authorising a fixed understanding of indigeneity, climate mitigation services can be brought into the market both to produce wealth and to fight poverty. Indigenous peoples are not only considered poor and marginalised but are also blamed for relying too much on the ecosystems they live in for fuel, shelter, medicine, food and water. The imperatives of climate-change mitigation demand that these peoples reduce their carbon footprints and learn to protect the environment since only preserved ecosystems have value. In this context, although Indigenous property rights are recognised, a narrative of cultural survival disciplines these peoples to limit their political and economic aspirations to a way of life that emphasises the stewardship of forests instead. In this regard, Baldwin notes that the idealised legal personality of the noble savage is indispensable to forest management (2009, p. 246). Without a noble savage who protects forests, there is no carbon emission offset. To conceive Indigenous peoples differently renders them unintelligible.

The *Awás Tingni v. Nicaragua* ruling resulted, in 2002, in the adoption of a new Communal Property Law, or Law 445, which established the mechanisms for demarcation and titling of communal lands in the Atlantic Coast. Law 445 explicitly defined the concept of a 'community of the Atlantic Coast', used in the Constitution, and also the terms 'ethnic community', 'Indigenous community', and 'Indigenous people'. Officially, the demarcation and titling process started in 2003 (Rodríguez Piñero Royo, 2004, p. 233). Following the recommendation of the World Bank, the Nicaraguan government promoted a model of land tenure based on an individual community's 'actual' use. According to Gordon et al., the idea was 'to create little islands [of Indigenous lands] in a sea of development' (2003, p. 376). However, Miskito, Creoles and Garifuna communities opted for a pragmatic approach to mapping, arguing that all lands on the Atlantic Coast are communal, and that as Indigenous peoples they have the right to govern them collectively. This resulted in the so-called 'block of communities', comprising numerous communities adjacent to each other with no unclaimed space separating them.

Are Indigenous lands more secure after the IACHR's decision and the passing of Law 445? Titling and demarcation have produced some unintended consequences. First, these mechanisms have reignited old land conflicts and driven communities that used to share lands to think of them in terms of exclusive property. Continuous waves of invasion and encroachment upon these lands are producing once again a conflict between the mestizo Pacific region and the predominantly Indigenous Atlantic Coast. In resisting illegal logging and intrusion, Indigenous communities have organised surveillance activities and claimed that mestizo peasants are to blame for the continued deforestation of their ancestral lands. The Nicaraguan Army also admitted recently that land invasions and deforestation have reached the very heart of the Bosawás Natural Reserve, considered the 'lungs of Central America' (cited in Kaimowitz, 2002, p. 191). Second, protection of the environment and the defence of land have created a scenario where some Indigenous communities are conceptualised as being stewards of the land, while poor, landless, mestizo and Indigenous peasants from the Pacific area are being portrayed as illegal settlers who destroy the land. While green neoliberalism praises hunting and gathering, farming is being dismissed as a viable economic activity. Third, although Indigenous peasant communities also inhabit the Pacific region, simplistic classification of their economic activities leads to the perception that 'authentic' Indigenous peoples, stewards of the land, live on the Atlantic Coast. Such a perception has posed some difficulties for the claims of those who self-identify as Indigenous but may not be recognised as such.

To further complicate this analysis, a universalised performance of indigeneity based on historical continuity with a pre-colonial past, and anchored in land-use patterns and subsistence economics, is excluding Indigenous peoples from reaping full benefit from their lands. According to this framework, these peoples lived with nature and performed 'traditional' activities that did not involve profiting from the land, so by extension their aspirations to participate in the logging industry are perceived as not being 'traditional'. As hegemonic assumptions about Indigenous identity and ethnic difference shape the recognition of collective rights and the tenets of green capitalism, the discourse of rights simultaneously requires Indigenous peoples to conform to certain expectations, limiting their use of their natural resources (Muehlmann, 2009, p. 470).

Conclusion

The scenario discussed above forces a critical examination of how certain places are targeted in neoliberalism and how certain performances of indigeneity have the ultimate effect of failing the Indigenous subjects. The relationship between indigeneity, the environment and property rights enables the maintenance of existing power relations and exclusions. Property rights are never neutral. Paul Nadasdy argues that, as a socially constructed concept, property reflects the set of norms and values embodied in the nation state (2005, p. 232). By accepting the notion of property, Indigenous peoples authorise judges, government institutions and bureaucrats to impose those norms and values upon their communities, foreclosing the possibility of envisioning alternatives according to their own laws. While government and financial institutions promote environmental resource management, Indigenous peoples seek to control their natural resources.

The 'coming into being' of indigeneity in law universalises a form of fixed difference that simultaneously reinforces local identities and global forms of governance that naturalise and discipline the ways in which difference must be embodied. In this framework, Indigenous aspirations towards the modern are considered an anomaly. A focus on mapping and neoliberal governance demonstrates that although territorial rights and Indigenous legal systems are constitutionally recognised, the reregularisation of property rights incorporates new forms of commodity into the market. This approach offers insights into how universalised conceptions of indigeneity bring forth a set of limits and possibilities for changing people's living conditions. While the mobilisation of both indigeneity and environmentalism secures some support for these communities, mapping and lawsuits do not necessarily guarantee justice.

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