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Indigenous Policy Review in Brazil: Ideologies, Rights and Perspectives

Rodrigo Martins Santos and Melissa Volpato Curi

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Center on Democracy, Development,
and The Rule of Law Freeman Spogli Institute for International Studies
Stanford University
Encina Hall
Stanford, CA 94305
Phone: 650-724-7197
Fax: 650-724-2996
http://cddrl.stanford.edu/

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ABOUT THE AUTHORS

Rodrigo Martins dos Santos, holds a degree in geography from the University of São Paulo, Brazil and a masters in sustainability together with indigenous people and their lands from the University of Brasilia. Mr. Santos works in the Ministry of Environment of the Brazilian Government with forest mapping and serves as a consultant for projects with indigenous and protected areas. He is currently studying ethno-history of native and traditional peoples in Brazil.

Melissa Volpato Curi is a lawyer with a doctorate in social anthropology and a professor at the Center for Sustainable Development at the University of Brasilia, Brazil.

Contents

Abstract

This is an analysis of the evolution of political actions and legal instruments imposed on indigenous peoples in Brazil since pre-colonization in the fifteenth century. Among the political ideologies that stand out are integrationism and protectionism. Integrationist ideology is seen as a beacon that lights the way and acts in the minds of Indians to constitute an ethnic nation state. However, a permanent recognition of indigenous rights is legitimated in the Federal Constitution of Brazil and in Resolution 169 of the International Labour Organization (recognized by Brazil). Both documents address the outdated Indian Statute. Discussions of the new Statute of Indigenous Peoples in National Congress began in 1991 and still show no prospect of completion. The judgment of the approval of the Raposa-Serra do Sol Indigenous Land brought conditions that, if misunderstood, threaten to set back indigenous rights, particularly in terms of their role and autonomy. This episode demonstrated that the same interests and characters that expanded the colonial frontier over the past five centuries have not relented. Nevertheless, people that were once fooled by legal maneuvers use the same tools that created this society, even in the Brazilian Supreme Court, which is dressed up to satisfy Western egalitarian expectations, but which has not lost its ethnic character. Social networking and bilingual education in the communities have strengthened indigenous societies and are making possible the organization of international legal instruments and movements that are claiming greater autonomy.

Introduction

This paper considers the entire breadth of Indian policy action exerted on indigenous peoples promoted by institutions external to them. In Brazil, it was initially made by the Roman Catholic Church and the Portuguese kingdom. With the secularization of the State, and the independence of the country, the Brazilian government became the main agent of this type of policy. More recently, in the last century, other churches with non-governmental organizations have also begun to promote indigenous autonomy.

These actions had distinct indigenous ideological connotations. Extremely authoritarian and intolerant actions promoted enslavement or genocide (ethnic cleansing), slavery and genocidist ideologies, respectively. Pacifist actions promoted ethnic groups with total preservation of their customs, traditions and institutions, and this became the protectionist ideology.

In the intervening period the ideology that became more evident in Brazilian indigenous policy was integrationist, which sought to assimilate the prevailing culture dominated by the people. During consolidation, this kind of action was a clever way that made a travesty of peace under the robes of the clergy but with authoritarian techniques of persuasion which sought the elimination of ethnic diversity in the territory with a view to consolidating a national ethnic group.

The lexicon has an integrationist sense of the phrase "attitude that defines integration for the defense of a particular minority community in another larger community," where integration is characterized as "a process by which a person or group fits into a society or a culture; assimilation; adaptation." (Porto, 2011)

Villas Boas Filho (2003) states that the integrationist ideology "has at its core the idea that the Indians would be in a lower evolutionary stage of the civilized (...)," and the existence of Brazilian indigenous legislation implies that these individuals reached the same degree of development, participating in the national community. Thus, integration is a form of assimilationist public policy which eliminates ethnic plurality in favor of a large national ethnicity. This process is called by anthropologist Darcy Ribeiro "ethnic transfiguration" and reached all the native peoples of America during the process of European colonization (Ribeiro, 1996).

I. Ideologies in the Indigenous Policy of Brazil

Integrationism was present in the indigenous policy of Brazil from the earliest actions of the Jesuit missionaries in the sixteenth century. It continued from the time when the Europeans decided to appropriate the American territory in the late fifteenth century with the papal bulls that "authorized" the kings of Portugal and Spain to plunder, harry, subdue, enslave, and convert all the lands and peoples found in them.

European arrogance toward indigenous peoples was a remnant of ancient Roman imperialist thinking. The Catholic Church, which was consolidated in the years after the fall of the Roman Empire, gave support to Eurocentrism, and the Pope declared himself to be the true spokesman of God, condemning the observances and practices of other religions as secular, satanic, heretical or pagan. This amounted to a death sentence for people who embraced polytheistic religions, practiced witchcraft or black magic, or professed ideas that contradicted the church.

The church also legitimated the Crusades, which were holy wars against peoples who were true followers of monotheistic faiths of the Middle East, namely, Judaism and Islam. This supreme ecclesiastical power centered on the figure of the Pope to the extent that popes came to regard their decisions as divine manifestations. Thus, papal decisions could determine the fate of many people. An example of this sovereignty is the Treaty of Tordesillas, the first European political determination on the status of Amerindian peoples. It was the first Indian policy of law and "granted under the blessing of God, by the lawful attorney on Earth," as contained in the bull *Inter Coetera* of 04/05/1493, of Pope Alexander VI:

> By our mere liberality and certain science, and because of the fullness of apostolic power, all islands and lowlands found or by finding, discovered or undiscovered. [...] You and your heirs and successors [kings of Spain and Portugal] by the authority of Almighty God bestowed upon us in S. Peter, as well as the Vicariate of Jesus Christ, which exert on the earth, forever, the content of these, grandfather them donate, grant and deliver to all areas, cities, forts, places, towns, rights, jurisdictions and all belongings. And to you and the aforesaid heirs and successors, do you, we constitute and depute by masters of the same, with full, free and *omnimodu* power, authority and jurisdiction [...] submit to you, please the Divine Mercy, land and islands aforesaid, and the residents and inhabitants of them, and reduce them to the Catholic Faith. (Ribeiro, 2006).

Thus, the Portuguese held divine authority to be sovereign over half the planet, which included part of the current Brazilian territory.

During the pre-colonial years of the sixteenth century, when the country was called "Land of Santa Cruz" by the Portuguese, the relationship between Portugal and the natives was peaceful, and the earliest maps showed areas occupied by indigenous people, identifying their territories. More than having "sovereignty" over the territory, the main Portuguese interest was to ensure its monopoly of the spice trade of the East Indies and of some American resources such as Brazil wood. Bartering with people on the coast, Portuguese traders delivered metal utensils (knives, shears, hoes, axes, and mirrors) in exchange for Brazil wood and other local products.

Barreto Filho (2011) points out that the first non-Indian settlers of Brazil were adventurers, shipwreck victims or deserters, who were forced to "become indigenous" to survive. They became related to indigenous peoples through *cunhadismo* (marrying daughters of chiefs). Some of these became famous in Portugal, such as João Ramalho (in Sao Paulo) and Diogo Alvares, the Caramuru (in Salvador). There was previously an integrationist Indian policy put into effect by the Portuguese.

However, from the official start of colonization, with the creation of the village of Sao Vincente in 1532, and the implementation of the government-general in 1549 in Salvador, colonial policy focused on the

territory of Brazil[1] and enacted the laws and Lusitania institutions, and therefore the slave system, already well-established in Europe.

During this period, the natives of the coast experienced first contact with Europeans. The Lusitanian policy followed the Roman Catholic Church thinking at the time, which allowed the enslavement of Africans and Amerindians. Several Indians were enslaved beginning in the sixteenth century. The Lusitanian policy regarding Indians was divided between slavery and genocide—defended by settlers—and integrationist—promoted by the Church.

The Church, particularly through the Society of Jesus, instituted enclaves, missions or villages, where many indigenous women and children were converted to Catholicism, re-educated in Christian culture, taught crafts and received some status in Western society. They became artists, artisans, farmers, shoemakers, carpenters, sculptors, musicians, and masons. Furthermore, they learned the Portuguese and Latin languages, all of which reflected the principle of integration policy started in 1549 by the Jesuit priest Manuel da Nobrega and disciples such as José de Anchieta.

This work was part of the catechism plan of the Catholic Church and the intention of the Iberian kings to rule the vast American territory without having to wage war. The re-culturalization policy focused on women and children and left aside the elders and leaders of the people.

While the church was "taming" the Indians, the settlers—who were used to the slave economy but not financially able to implement it—organized trips to the South American hinterlands to capture Indians fleeing the coast or who had not yet shown evidence of European contact. The Indians were hunted and enslaved in regions where there were no European institutions or Catholic missions.

The Portuguese kingdom usually sided with the colonists and missions and hardly ever with the indigenous who had not been captured. It handed down several laws to regulate relationships between settlers, ecclesiastics and indigenous peoples.

During the seventeenth century Portugal passed legislation to formalize integrationism as its Indian policy. In 1609, 1611 and 1680, laws recognized indigenous ownership of land and freed some of its slaves on the condition of keeping them under the aegis of the Catholic missions (Vilas Boas Filho, 2003).

The Indian policy of the kingdom favored the Catholic missions and also the official policy of suppressing slave raids. However, the lamentations of the poor settlers who were unable to acquire black slaves sought to justify the captivity of indigenous peoples.

Some Jesuits even took a stand with the Indians and advocated something much closer to a range of people: an ideology of protectionism. This ended in a conflict between the Jesuits and colonists.

The central figure of this episode was the king's prime minister, the marquis of Pombal, who instituted major changes in Portuguese colonial policy. Every Jesuit missionary came under the direct control of the Portuguese State, through the law entitled Directory of Indians (1755). This was the strongest and most comprehensive colonial legislation that ended slavery of indigenous peoples and reaffirmed the rights granted to indigenous people, such as possession of land. It created the position of tutor, exercised by the Director of Housing estate. A few years later, in 1759, the kingdom decreed the expulsion of the Jesuits from their territories and confiscated all property of the Society of Jesus (Prezia & Hoornaert, 2000).

The Directory of Indians was a breakthrough for Indian policy in Brazil, considering that before it there was no institutional mechanism for the state to engaged in indigenous issues. Instead, a subject's case was administered exclusively by the Church or resolved by the local lords.

The institutionalization brought greater security to indigenous survival; however, it was a policy of integration, in which the natives gradually lost their cultural roots and would enter society as farmers.

[1] In the period 1621 to 1775 the north had an independent administration of the Government-General of Brazil, reporting directly to the Portuguese kingdom. This was the State of Maranhão, which included the Amazon.

Thus, the state assumed the role that the Church had been developing. Even so, many churches continued their missionary activities and created many villages promoted by the Directory (Ribeiro, 1996).

The imperial period, the first time Brazil gained independence from the Portuguese kingdom, was characterized by continuity of state policy of settlements; however, this policy gradually weakened. Chaim (1974) shows that the nineteenth century was marked by the super-exploration of settlements and by designating even fewer resources to their maintenance. Many indigenous peoples abandoned these nuclei, and the few who remained lived in small villages of shifting cultivators, or they lost any sense of their indigenous identity. The integration project of the colonial period eventually succeeded in its purpose: to eliminate indigenous cultures without recourse to violence.

Villas Boas Filho (2003) points out that there was no citation of any Indian policy in the first letters of the Magna Brazil, either in 1824 (the Empire) or in 1891 (Old Republic). The nineteenth century was also marked by nativist movements and romantics seeking the construction of a national identity for the young independent country. Some people invoked the memory of the pioneers, whereas others sought an indigenous element in the link with the homeland.

It was this discussion of nationalism and the quest to form a Brazilian identity that consolidated ideas for protecting the Indians. Among the most famous debates was the confrontation between Domingos José Gonçalves de Magalhães and Francisco Adolpho de Varnhagen at the very height of the Second Empire. Another debate was between Candido Mariano da Silva Rondon and Hermann Friedrich Albrecht von Ihering in the Old Republic. The latter, who would culminate in the creation of the Indian Protection Service (SPI), also initiated the task of locating national workers.

The ideology of protectionism, as it appeared for the first time in Brazilian law, however, was based on ethnocentric ideas that Indians lived at a stage of evolution prior to civilization and therefore needed time to mature so that they could be integrated into the national community. Protectionism was reserved for purposes of future, not immediate, integration.

Diacon (2006) states that Rondon and his allies were acting on their positivist ideology and that they believed that "the Indians are not rationally inferior, but rather living in a different state of social evolution." The same author claims that the military was confident that in the combination of races, men would be more apt to understand love as the basis of positivism.

Rondon, like the Jesuits of the colonial period, was confident that education could help the indigenous peoples become members of the national society. His thought influenced the formation of the first indigenous professionals in Brazil, members of the SPI framework, as well as the first anthropologists, such as Darcy Ribeiro. He promoted a policy of respect for the internal organization of indigenous societies; the state was not to interfere or force a contact, and the introduction into the community of any foreign element had to be preceded by consultation with the leaders.

Diacon (2006) states that Rondon "felt the weight of historical mistakes and realized it was time for the remission of our old sins."

Jaborandy (2011), in turn, argues that Rondon descended from Terena and Bororo by his father and from Guaná by his mother, so his close blood ties with Indians probably influenced his thinking and brought about a revolution in the military realm.

The SPI, a government institution created and managed by Rondon, assumed guardianship initiated by the Directory of Indians and established a new legal form, the demarcation of indigenous land, without even considering the actual space necessary for the survival of ethnic groups or taking into consideration the conflict between security areas reserved for indigenous people and the action of the free market in land, or property claims by squatters. Thus, the SPI was given the role of protecting Indians from the surrounding society, while also protecting settlers from Indian attacks. (Ribeiro, 1996).

While some indigenous peoples have remembered the extent of their lands since colonial times, many others lost this knowledge because they were forced to sign documents that conceded their possessions,

even though they had no idea what they were doing. They were ignorant of both the legal system and even the Portuguese language. The concept of tutelage, strengthened in the Civil Code of 1916 and present in the Indian Statute of 1971, is one of the measures that prevented Indians from being fooled by *esbulhadores*.

Curi (2011), however, warns that over the years, the authority exercised over the Indians was more in favor of the guardians than the wards. So many ethnic groups have become extinct, impacted by large enterprises, killed by deadly epidemics, or forcibly transferred. The author notes that "on the other hand, it is important to consider a positive aspect of this instrument: the possibility of annulment of a legal act performed in a way detrimental to the indigenous community."

The demarcation of indigenous lands, while ensuring a portion of land to indigenous groups, enabled the non-demarcated areas to be used for agricultural settlement promoted by the state. Thus, the natural resources necessary for the survival of indigenous culture were vandalized. As a result, many indigenous cultures were forced to integrate into the surrounding society. They had to practice alien agriculture and fit into an unfamiliar economy, which impoverishing them because they were unable to compete with the settlers. Thus, the goal of the old integration project, which was to repurpose the Indian as a national worker, once again fulfilled its mission.

Orlando Villas Boas Filho summarizes the legal evolution of the Brazilian indigenous rights as follows:

> The problem that involves the lands of indigenous communities was expressed in the Portuguese colonial legislation from the early seventeenth century, the Royal Letters 07.30.1609 and 09.10.1611, and especially in Permit 01.04.1680, which confirmed the law of Pombal 07.06.1755, created [...] the institute of *indigenato*, namely the direct recognition of the originating indigenous communities over their land. Despite the silence of the Constitutions of 1824 and 1891 [...] as well as the Land Law (Law 601/1850), the fact is that the institution of *indigenato* passed over the centuries, having been constitutionally approved by the Federal Constitution of 1934 which, in its article 129 for the first time recognized the obligation to respect the 'land ownership by indigenous people who find themselves permanently located therein' [which eventually became part of the Brazilian Constitution]. (Vilas Boas Filho, 2003).

II. Permanent Recognition of Indigenous Rights

The recognition of indigenous rights in Brazil has not yet been consolidated. The Brazilian state, the result of a European policy of economic and territorial expansion, still carries a model of society mirrored in the roots of that continent. The ethno-racial repair policy was suppressed by the power of the owners, holders of the means of production, and holders of the land. The Indians, like Africans, suffered from the mercantilist expansion inaugurated by Europeans in the waning of the middle ages.

Villares & Yamada (2010) argue that the history of our country presents episodes of recognition of indigenous rights since the arrival of the first European settlers. However, in most of these cases, the recognition had the intention facilitating ownership of lands and resources. Therefore, Villas Boas Filho (2003) states that indigenous law in contemporary Brazil must encompass an understanding that goes "beyond the strictly legal dimension, historical, anthropological and social" framework.

Curi (2011) points out that currently the laws imposed on indigenous peoples consist basically of the Federal Constitution of 1988, the Indian Statute (Law 6.001/79) and Decree 5.051/04, which recognizes the resolution 169/89 of the International Labour Organization (ILO). The author reveals that one of the innovations in resolution 169 of the ILO was to recognize the common law or customs of indigenous peoples. However, it subordinates international human rights to the fundamental rights of states. Thus, "individual rights related to freedom and equality [...] do not have sufficient length to protect the rights and collective interests."

Ramos (1990) corroborates this view and argues that the Universal Declaration of the Human Rights, adopted and proclaimed by the United Nations in 1948, is at heart, "an act of ethnocentrism" because despite having emerged "as the common standard of achievement for all peoples and all nations," it defines man as "an individual and not as a member of a group." So, when this international legal instrument proclaims that "everyone has the right to life, liberty and personal security," the author states that "it would be judging others by Western values."

Clearly this is a controversial position, but it is necessary given that many societies, indigenous or not, have practices that violate this principle of individual equality as a means of preserving the very existence of the community as a distinct ethnic group. Examples include infanticide, cannibalism, genital mutilation, and death sentences among their own ethnic members.

The Indian Statute (Law 6.001/73) has another important piece of indigenous legislation in its article 4. That article divides natives into three categories: isolated, in the process of integration, and integrated. Curi (2011) points out that, under this legislation, "the natural path would be traversed by indigenous communities out of isolation towards integration (...) once integrated, the Indians would become 'white,' losing their rights advocated by special legislation." At that point the Civil and Penal Codes would finally be enforceable on these individuals.

Curi states that the introduction of Chapter VIII provisions of Title VIII (Articles 231 and 232) "was one of the innovations of the 1988 Constitution, which went on to assure the Indians the right to perpetuate their culture, no more trying to integrate them into the national community." Therefore, the current Constitution breaks with the integrationist vision, makes obsolete the classification of the Indians into the three categories listed in the Indian Statute, and so removes its validity.

Even within the first two articles of this Statute there is already a contradiction between integrationist and protectionist ideologies:

> Article 1. This Law regulates the legal status of Indians or forestry and indigenous communities, in order to preserve their culture and integrate them, progressive and harmoniously into the national community. [...] Article 2. Meets the Union, the States and Municipalities, [...] for the protection of indigenous communities and the preservation of their rights: [...] IV - ensure the Indians the opportunity to choose freely their livelihoods and subsistence; V - to ensure the Indians remain voluntarily in their habitat, providing them with resources there for your development and progress; VI - respect, the process of integrating the Indian into the national community, cohesion of indigenous communities, their cultural values, traditions and customs; [...] VIII - use cooperation, initiative and personal qualities of the Indian, with a view to improving their living conditions and their integration into the development process. (Law 6.001/07 - Indian Statute - portion of the Articles 1 and 2 – our emphasis).

The Indian policy just described entails the integration of Indians into the national community, while at the same time respecting their values and customs. It is a clear contradiction since it allows freedom of choice of their livelihoods and also guarantees security of permanence in their habitat, which is an ideology of protectionism.

Villas Boas Filho (2003) warns that although the statutes "do caveat that 'integration' does not entail loss of traditions, customs and cultural traditions," the same law has a "loophole opened so that they questioned their own ethnic identity," permitting their rights in the territories to be questioned.

However, even the Indian Statute provides loopholes for other communities to decide whether or not to integrate to the surrounding society. This option will be more assured with the promulgation of the 1988 Constitution.

The presence of integrationist ideology in the Indian Statute but not in the Constitution shows that newer legislation is less ideological, but that change will only be consolidated, from a legal point of view, when the new Statute of Indigenous Peoples is published. As highlighted by Curi (2011), the statute in effect

focuses more on the individual rather than on the collective, a fact that can be solved with the publication of the new Statute, which has been under discussion in Congress since 1991.

Despite legal advances, the ethnocentric culture present in most national elites and in the society itself is another challenge to be faced by indigenous peoples. It is common to hear the terms such as *forest*, *late*, *savages*, and *primitives* as pejorative adjectives for Indians, in addition to jargon such as "they still live like Indians," implying that the imagination of the Brazilian is still superior to that of indigenous peoples.

Furthermore, as Villas Boas Filho (2003) states, "the 1988 Constitution cannot be conceived as a panacea when it comes to the rights of the Indians [...] because it also fits into the context of our peripheral modernization, in which the law has not yet acquired a systemic functional autonomy sufficient to implement themselves without direct interference of the economic and political systems," and why not add the very mentality of the Brazilian people?

III. Demarcation of the Raposa-Serra Do Sol Indigenous Land

The case of the demarcation of the Raposa Serra do Sol is typical when it comes to viewing the current situation of indigenous Brazilian politics and the mentality of our society. Many statutes and interests overlap in the areas concerned, and the land is the country of origin of the Macuxi, Patamona Tauperang, Wapixana and Ingaricó. Beyond these facts, the land:

- Is in the border region
- Overlays a nature preserve
- Possesses areas under rice paddy cultivation
- Covers an international highway linking Manaus (Amazonas Estate's capital), to Caracas (Venezuela's capital);
- Is a strategic location for Roraima, a business political elite.

According to Curi (2011) the consolidation of the legal situation was started in 1977 and completed in 2009, after a trial in the Supreme Court (STF), because, as listed above, the dispute included interests in several sectors of our society, with all rights guaranteed by the Constitution and laws in force.

Villares & Yamada (2010) argue that the conclusion of this process exposed the STF as a positive legislator because the "so-called institutional safeguards, made in the 19 exceptions to the action of the executive and the rights of indigenous peoples. [...] Some threaten to reverse the recognition of rights of ethnic minorities in the country, in contrary to international human rights commitments made, especially regarding the interpretation of the original right of the Indians on their traditional lands."

The 19 exceptions, according to these authors, "allegedly sought to reconcile the interests of indigenous peoples, national defense and preservation of the environment." But if on one hand it threatens the legal progress of national indigenous issues, it also reinforces the legality of many points that were previously weak.

Yamada & Villares argue that the case "also revealed that local governments promote and see the natives as foreigners in their own territories." The process reached the Supreme Court only because of a Public Civil Action issued by the state of Roraima in contesting the legality of the administrative process that approved the continuous demarcation of indigenous land. Curi (2011) states that this action was supported by the economic power of rice farmers.

The threefold merits of (1) recognizing the legality of the administrative process and (2) of respecting the tradition of the legal recognition of indigenous territories and (3) of non-acceptance of dispossession as a way of acquiring property, showed that there was no harm to national sovereignty in the continuous demarcation of indigenous lands in the border area, or any threat to the federal principle and the

development of the nation. Furthermore, it recognized the protection of people and cultures that make up the Brazilian nation (Villares & Yamada, 2010).

However, these authors warn that some uncertainties can also arise in future cases of a similar nature. The fact that the Supreme Court fixed the date of enactment of the 1988 Constitution as a milestone may affect analysis of situations like those in which indigenous communities were either voluntarily removed or fled.

Moreover, the constraints 5, 6, 7 and 11 imply that indigenous communities could not maintain the autonomy of their social organizations and could not have authority over the entry, transit and residence of non-indigenous people on their land. Numbers 7, 12 and 13, if not interpreted properly, can grant areas for the deployment of infrastructure unrelated to the needs of the Indians. Finally, constraints 8, 9 and 10, ignore proven and effective policies of environmental preservation in indigenous lands. (Yamada & Villares, 2010).

However, it is still early to ask what the real implications of these constraints are.

Conclusion

As we have seen, the practice of Indian policy in Brazil is a process where the primary victim has always been the indigenous peoples themselves. In this process, the integrationist ideology is a beacon that lights the way and acts in the minds of Indians to constitute an ethnic nation state along the lines of European thought, whose bases are the laws imposed on the natives and built to enable the ethnic-national integration plan.

However, the ideology was not able to complete its purpose. And today, as Fernandez (1997) advocates, because of the current atmosphere of postmodernity, with global social networks and bilingual education in communities, indigenous societies are being strengthened in America and worldwide. Emerging leaders are connected with international organizations and are willing to use these instruments as a form of self-assertion.

This same moment is enabling global communication and the organization of international legal instruments and movements claiming more autonomy for people, as opposed to a neo-liberalism that privatizes and commoditizes everything.

The conflict is ongoing, as dramatized by the episode in which the Supreme Court ruled on the validity of the approval process of the indigenous land Raposa Serra do Sol. The same interests and characters that expanded the colonial frontier over the past five centuries have not relented.

Today, people that were fooled by past exploitation use the same tools created by the non-indigenous society to fight for their rights. As a paradigmatic example, we give credit to the indigenous lawyer Joênia Wapixana in the pulpit of the Brazilian Supreme Court. Dressed in the judicial robes of Western respectability and without losing his temper ethnic, Joênia spoke in defense of the demarcation of the Raposa-Serra do Sol Indigenous Land, representing his people and relatives.

Despite these advances, only when our society finally honors ethnic differences with an indigenous policy pursued for the Indians and with the full participation of these people in formulating that policy will Brazil become a great country and be able to celebrate both its biological and cultural diversity.

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