




FROM FORGIVENESS TO PROTECTION: THE RECOGNITION OF THE FIRST AMNESTY AND A STEP TOWARDS SAFEGUARDING INDIGENOUS RIGHTS

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ABSTRACT

This article seeks to analyze some of the aspects that permeated the granting of the first amnesty to indigenous peoples in Brazil. Thus, specifically, it is intended to carry out a brief historical analysis, demonstrating the considerable sequence of rights violations suffered by native peoples; then, the work proposes to address specific points regarding territorial conflicts and environmental degradation; and, finally, to expose the importance of the protective procedure for the realization of rights. The work was carried out based on bibliographic research and used the hypothetical-deductive method, having as a premise the importance of recognizing the mistakes made in the past, to guarantee effective public policies.

Keywords: Native Peoples. Protection. Development. Culture.

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INTRODUCTION

The present research intends to highlight the panorama that founded and allowed the granting by Brazil of the first amnesty directed to indigenous peoples. For this, initially a look was drawn within the historical perspective, categorizing the process of colonization of the homeland lands, and situating the condition of the indigenous at that time. Therefore, the abuses committed by financial motivation were demonstrated. The religious objective, exercised by the colonizers with a supposed commitment to the salvation of the native peoples, represented, in fact, the necessary foundation for their territories to be increasingly reduced and their practices increasingly controlled.

Secondly, the central issue about the contemporary debate on the rights of indigenous peoples was analyzed: land. The territory, then understood by many perspectives, is considered as one of the elements of the State, subject to public management. With regard to the claims of the indigenous peoples, this understanding is contested, since the native peoples were in their territories even before the establishment of the Modern State. In this way, properties were – and still are – increasingly restricted to minimal spaces, through the attitude of the state, often omissive, but under the justification of development.

Continuing, the importance of identifying the protective rights of indigenous peoples was put on the agenda as something necessary for the maintenance of the collectivity and its diffuse rights, seen as guarantees inherent to all, in any place and time. Thus, it is wise to emphasize that the search for sustainable development and safeguarding the environment, affirmed even in the Federal Constitution of 1988, has the defense of indigenous peoples, their culture, property and roots as one of its facets.

The devastation that has occurred in cases involving the rupture of dams in recent years has made the eyes turn more closely to the role of the State in strictly inspecting and acting strongly in the fight against irregularities and negligence practiced by companies. In the cases mentioned, which occurred in Mariana and Brumadinho respectively, the resounding number of victims who died immediately, added to the damage caused to the inhabitants and to the ecosystem itself, demonstrated the real price of the search for economic growth without zeal for human life.

National recognition, through the amnesty given to indigenous peoples, seen as collective subjects, represents above all the social maturity that makes it capable of a critical view in the face of their own harmful acts. From this understanding, there is hope for the real, practical and direct conquest of rights that are effectively protective of native peoples, such as, for example, the demarcation of lands, an issue that is the subject of many controversies, but which needs to be understood as a fundamental guarantee.

The work in question was carried out with the help of bibliographic research, in academic articles. Also, the methodology adopted was hypothetical-deductive, considering the importance of granting amnesty, as a milestone for the realization of rights.

BRIEF HISTORICAL ANALYSIS

The discussion about the protection of indigenous peoples has been taking more and more space in the political sphere of Brazil. According to Juzinskas (2019, p.14), in the face of the existence of numerous – and legitimate – claims, attentive looks at the properties of indigenous lands end up becoming the center of the wide range of debates. Such a point demonstrates the existence of necessarily conflicting interests, involving, on the one hand, economic profit, and on the other, the fundamental guarantee of a people.

Guimarães (1968, p.10) shares that, from a historical perspective, there are many contradictions that involved the factors and circumstances in force in the colonization of Brazil. Initially, to justify the exploitation of the lands, the Europeans used the civilizing motivation, claiming that cannibalism and slavery were common practices in indigenous communities, and that due to their barbarism, such conducts should be extinguished. However, according to the author, even if at first peaceful, the contact between the colonizers and native peoples became highly violent, "as a result of the economic needs of the Metropolis", which "was oriented towards making the gentile the main labor force in extractive exploitation".

The colonization of Brazil was based on the inseparable junction of political and religious practices. Ribeiro (2009) proclaims that the withdrawal of the autonomy of indigenous peoples, from their belief to their lands, occurred under the Catholic-civilizational pretext. However, the author draws attention to the fact that coincidentally "surveillance and oppression were more intense in the areas of concentration of wealth, since the political and social order in the colony had the economic order as its purpose".

The separation of native peoples into settlements allowed the Jesuits to better organize catechesis logistics, forming a technical structure for religious education and possible conversion. Santos (2014, p. 35), adds that cooperative peoples were given advantages. Meanwhile, those who offered resistance, both to the Portuguese presence and to religious impositions, were punished, reaching enslavement.

Ricardo (2007, p. 26), portrays that the settlement process was, in reality, a method of segregation, which directly affected the properties of the indigenous people. Through a strategic territorial distribution, in addition to the greater viability of catechesis, there was an

increasingly dense reduction in the space destined to native peoples, mainly affecting the restoration of their socio-cultural conditions.

An example of explicit support was the edition of the Royal Charter of 12/02/1808, which declared as vacant the lands that were "conquered" from the Indians in the so-called Just Wars, attempted by the Portuguese government against the indigenous peoples who did not submit to its domination in Brazil. The condition of vacant land allowed indigenous lands to be granted to whomever the Portuguese Crown wanted, since vacant land was presupposed to be a land in the public domain without any specific destination. (Ricardo, 2007, p. 26)

Regarding colonization, Brighenti (2015, p. 107) attests that violence began to be present within a belief of inferiority, even if at first subtle, of native peoples under the spiritual pretext. Thus, the researcher constructs in a chronological way the different justifications for subjugation. If in the inaugural moment, the motivations were linked to the Catholic faith, in the nineteenth century "the inferiority occurred through the concept of science, since the indigenous people were seen as belonging to societies outside of history". In contemporary times, however, the idea of progress constitutes the greatest basis for the endorsement of violence.

Jesus (2011, p. 05) discusses the same subject, emphasizing that despite population growth, native peoples continue to be seen as alien, "stuck in the past". This factor represents the idea that the existence of indigenous people is linked only to the time of colonization, without them being able to be seen as active subjects in the historical and social construction of current times.

Perrone (2000, p. 109), in writing an article on the ownership of indigenous lands in colonial times, draws some important conclusions. The point of greatest emphasis revolves around the presence, since the colonization period, of legislation that guaranteed – or intended to guarantee – the control of their lands to native peoples. However, contradictorily, it is not possible to affirm that the indigenous people actually possessed property rights. In reality, such normative diplomas, despite their existence at the theoretical level, lacked application.

INDIGENOUS LANDS

In order to enter the legal-normative panorama, Amado (2014, p.18) emphasizes concepts of paramount importance for the cognition of contemporary issues. Initially, the author delves into the distinction between apparently similar nomenclatures: indigenous law and indigenous law. Indigenous rights are understood by the regulatory framework in force in each native community, taking into account different cultures and customs. On the other hand, indigenous law represents the legal body created by the colonizers, without

evaluating the customary law of the peoples. In other words, "Indigenous law is the set of norms elaborated by non-Indians for Indians". This contribution raises, in itself, questions about the legitimacy of normative diplomas on indigenous matters, since they are affirmed under a biased view.

Lira (2018, p.57), in elaborating an analysis with an emphasis on the ideas present in geopolitics, begins his research by unraveling the representation of the State, conceived after the movement of the French Revolution. Thus, the State is considered to be the junction between three basic elements: population, territory and sovereignty. It so happens that, in order to have the best reach of the subject, it is necessary to enter into the primordial difference between the conceptions of territory and space, the latter being prior to the one that, in turn, results from a political process, marked by a relationship of power over a soil.

According to Andrade (1995, p.19), the territory is intrinsically connected to the management of a space, carried out by means of a public power, or even by large companies, which, through their economic influence, are able to reach and break physical and social boundaries.

On the other hand, Lira (2018, p.63) sees the territorial claims of indigenous people as necessarily distinct from the others. This is due to the symbolic and historical factor of the places. The concept of territory, as already mentioned, derives from a contemporary understanding, which establishes the axis of the Modern State. However, for native peoples, the domination in relation to their space is original, having no link with the conceptual creations of national and international politics, which often change frequently.

Kolling (2019, p. 212), when dialoguing about the notions that permeate discussions about the ownership of indigenous lands, is emphatic in stating that the perspective of indigenous territories is, from the beginning, seen with Western eyes, corroborating that the territory is, above all, a "private and individual good, for economic exploitation". In reality, the indigenous land has a symbolic scope of proportions that is often not understood. This is because, in addition to the guarantee of subsistence, the land of the original peoples is the place where culture, relationships, ancestor worship and all social dynamics are manifested.

When reflecting on the role and influence of the media with regard to the protection of indigenous lands, Gallois (2004, p. 37), in the first step, explains that, despite the large number of news broadcasts broadcasting information on the subject, the majority of the population remains uninformed. With this, the researcher portrays the media as responsible for often reinforcing distorted images of native peoples, by trying to demonstrate, at all

costs, the engagement of indigenous people in activities presented as disconnected, when compared to the colonial view, because they have an economic bias. In this way, peoples who do not fit into the "romantic image of Indians nomadizing through large untouched territories" do not have their claims legitimized by society.

It seems, in fact, essential to highlight that the media's focus on conflicts between Indians and non-indigenous occupants almost always seeks to characterize as evidence of their "acculturation" the engagement of Indians in activities previously monopolized by non-Indians or their articulation with the regional economy. For example, cattle ranching, mining, etc., are presented as aspects incongruous with their territorial rights. (Gallois, 2004, p. 37)

The invisibility of indigenous peoples, portrayed by Curi (2007, p. 222), becomes latent when one visualizes the robustness of the economic planning of companies that develop activities related to the land, as is the example of mining. To the extent that it guarantees the realization of such "advances", it is, in reality, the decimation of native communities. Furthermore, broadening the debate, the researcher, when dealing with sustainable development, highlights the incongruity of neoliberal thinking, which indiscriminately crosses the concepts of economic growth and development. Economic growth refers only to the increase in *the per capita* income of a country, which is therefore considered by many to be the ideal of progress. On the other hand, development, even if it seeks economic values, inseparably connects the cultural, social and political context of a nation, propagating at its core that prosperity is an essentially multifactorial conception.

Araújo (2022), points out directly in the title of his work that "Mining in Indigenous Lands does not bring social progress". In an incisive but at the same time succinct way, the author highlights the exponential increase in mining in the Amazon and states that about half of the exploitation takes place within indigenous territories. By highlighting the marker of social progress as being the fulfillment of "basic human needs, the foundations of well-being and opportunities", the work argues that in lands where illegal mining is present, the indicators of humanitarian development are consequently lower. With this, it is important to highlight the strong political impulse manifested mainly by Congress, which insistently defends mining as a driver of economic growth in Brazil, absolutely disregarding fundamental rights, when they may come to hinder interests of an exclusively economic nature.

MARCO TEMPORAL

Within the theme of the right to property, the thesis of the Time Frame has been occupying great relevance. As Pegorari (2017, p. 246) explains, the Federal Constitution of

1988 expressly provides that original rights are considered those performed by native peoples on their lands, and it is up to the Union to demarcate them so that they are protected. Thus, the Carta Maior classifies such territories as inalienable and unavailable.

The author brings up the Raposa Serra do Sol case as the occasion that initiated the time frame thesis. In this context, the demarcation of lands was promoted, guaranteeing indigenous peoples their due safeguard. However, in the decision handed down by the Federal Supreme Court, through Justice Carlos Britto, proof of the time frame of the occupation was defined as one of the requirements of the demarcation. On the subject, Pegorari establishes:

which establishes that indigenous lands will be those in which there was effective occupation by indigenous populations on the date of promulgation of the Constitution (October 5, 1988)¹⁷. This parameter draws attention, in the first place, because it restricts the right to land below what is grammatically brought in the constitutional text itself. Pegorari (2017, p. 249)

Even though it lacks binding effect, the time frame was used as a paradigm in similar judgments, which is why, after questioning, the STF, in the judgment of an Extraordinary Appeal, declared the unconstitutionality of the thesis with general repercussion throughout Brazil.

According to Borges (2024, p.368), one week after the declaration by the Supreme Court, a new bill was approved by the Senate, in accordance with the interests of the ruralist caucus and in disagreement with the Judiciary, establishing the application of the time frame as a legal requirement. The project had so much force that it was able to overturn the presidential veto to ensure the enactment of the new Law.

Antunes (1995, p. 02) is clear when he mentions that it is through the demarcation of territories that the effective collective safeguard is manifested, but that the coexistence of various political and economic impediments makes the practice impossible.

Despite admitting the advances that have occurred within indigenous protection, Silva (2019, p. 44) highlights the seriousness of the slowness of the demarcation process. The 1988 Carta Maior stipulated the year 1993 as the limit for proper regularization, however, according to the researcher, more than half of the territories in question are unprotected.

COLLECTIVE DEGRADATION

Aggression, understood in its amplitude, encompasses action and omission, causing damage that is difficult to repair. From accidents caused by the negligence of large

companies to the direct action of armed groups in indigenous lands, many atrocities have been committed on national soil without giving due importance.

On the afternoon of November 5, 2015, as explained by Dias et al (2018, p. 21), there was a rupture of the Fundão Dam, located in Mariana/MG, belonging to the company Samarco Mineração/AS. At that time, about thirty-five million m³ of mining tailings were dumped, and a good part of this amount was carried by the river towards the sea. The immediate result of the disaster was 329 families without shelter and 19 people without life. Lopes (2016, p.02) states that the collapse of the Fundão dam caused "dramatic and perverse" effects, which will surpass generations, especially affecting communities living in the Rio Doce watershed. The research brings to light the Bento Rodrigues district, emphasizing that "the small village simply disappeared – buried in a sea of mud."

Aleixo et al (2016, p. 285) reinforce that the activities of the dam in question began at the time of the Military Dictatorship, and that the license was issued from a "developmental perspective". Several irregularities were noticed during the operation, among them, the absence of the possibility of participation of the community involved, in disagreement with the determination of the United Nations. Thus, the riverside population, a direct victim of the disaster, was silenced for years. The authors also emphasize, in addition to corporate liability, the role of the Brazilian State in the case, which omitted its inexcusable duty to supervise.

Within the indigenous panorama, the Krenak peoples were not spared, and suffered strict consequences, since they had an intrinsic relationship with the Doce River, using it for fishing and supply. In addition, the river was called *Uatu*, and, more than a natural resource, it was considered an integral part of the community, which believes in the indissoluble separation between man and nature. In this case, the impact of the river by the disaster was mentioned as "the death of a relative".

For some time now, we in the Krenak village have been mourning our Doce River. I didn't imagine that the world would bring us this other mourning. Everyone is stopped. When engineers told me that they were going to use the technology to recover the Doce River, they asked my opinion. I replied: "My suggestion is very difficult to put into practice. Because we would have to stop all human activities that affect the body of the river, a hundred kilometers away on the right and left banks, until it came back to life." Then one of them said to me: "But this is impossible." The world cannot stop. And the world stopped. (Krenak, 2020, p. 04).

Years later, in 2019, a disaster was again announced. As explained by Costa et al (2020), the B-I Dam, located in Brumadinho, broke, immediately killing 272 people. The situation once again brought to light the non-compliance with environmental standards for occupational safety and its harmful consequences.

According to Pereira et al (2019, p. 123), the most serious and direct impact of the case was the human loss, which occurred in such a brutal way due to the location of the company's administrative sectors and residences, both found close to the dam. Regarding the socioeconomic and environmental impacts, the authors highlight the contamination of nearby rivers by heavy metals, the direct effect on wildlife, since the disaster occurred in a place rich in biodiversity, and even the involvement of marine fauna, since the contamination could reach the sea through the São Francisco River.

Silva et al (2019, p. 196) highlight the effects of the dam collapse on the Pataxó community, which lives on the banks of the Paraopebas River, nurturing a bond of multiple spheres with it. Faced with the contamination of the river with toxic waste, the indigenous people had their livelihood, regarding supply and food, severely compromised. The authors explain the relationship of the native peoples with the river, qualifying it as millennial, evidencing that the "intimacy with the waters, from which sustenance, satiety, leisure and mythological and explanatory stories of the origin of the people are derived."

In this area, Lacerda et al (1992, p. 01) discuss the harmful consequences of mercury contamination of human beings. The researchers clarify that mercury is a metal capable of causing death, so much so that many countries adopt strict emission controls, in order to increasingly reduce its use.

Using mining in the Amazon as a background, the authors draw attention to the use of mercury within the process of separating fine particles from gold. They also add that the disposal of the tailings from the procedure is carried out in the rivers and in the soil itself, contaminating not only the environment, but the entire population that is around.

According to Vianna et al (2022), the effects of mercury usually attack the brain and kidneys, and can compromise the lungs and even the intestine. The riverside community that lives around the Tapajós River is the main one affected by the contamination, since it has a diet based on the consumption of fish, which are perhaps directly exposed to the tailings of the metal dumped in the rivers.

The search for a constant balance is what characterizes the social search. This consequently reflects on the constitutional order, as taught by França (2014, p. 623). The coexistence of interests and concrete conjunctures gives rise to demands that tend to seek resolutions in the context of the Charter. Sustainability is an example of a constitutional provision that aims to establish moderation between financial expansion and attention to preservation.

As discussed, the connection of indigenous peoples with nature is clear, both in terms of maintaining basic needs related to material and spiritual life. The management of

resources by native peoples has the power to demonstrate how the manipulation of space in a respectful and sustainable way can make environmental conservation a reality that remains constant even as time advances.

THE AMNESTY COMMISSION

On April 2, 2024, the Krenak and Guarani-Kaiowá peoples were amnestied, during an unprecedented procedure in the plenary session of the Amnesty Commission, linked directly to the Ministry of Human Rights and Citizenship. In the case in question, the claim for collective reparation regarding the violations suffered by the indigenous people was analyzed. Fasolo et al (2024), mentions that other lawsuits of this nature had already been filed by the Federal Public Prosecutor's Office, however, they were denied by the then president of Brazil, Jair Bolsonaro.

Angatu (2024) emphasizes the importance of the manifestation by the Brazilian State that the abuses committed against native peoples represented, above all, violations that affect the entire social body. In this context, the first precedent was created, ensuring the safeguarding of respect for collectivities.

Continuing, the historian connects the indigenous struggle to the search for the realization of property rights, since native peoples have gone through – and still go through – strong processes of land dispossession. With this, the amnesty collaborated to outline the initial steps towards the adoption of protective measures for indigenous peoples. Therefore, among the possible public policies appropriate to the issue are included "the payment of compensation, the demarcation of lands and the recognition of crimes against non-indigenous people."

Rodrigues (2024), highlights some data collected through reports by the Truth Commission, which, in 2014, after about two years of investigation, concluded that more than eight thousand indigenous people were killed during the period of the military regime, disregarding the countless cases of violence and abuse. During the Amnesty Commission, the Federal Public Prosecutor's Office declared that the Krenak and Guarani-Kaiowá peoples suffered a profound "governmental and business intervention in their territories" capable of dissolving even their cultural and social roots.

By recalling the position of indigenous people during the Military Dictatorship, Trinidad (2018) demonstrates the need of the time to echo the idea that indigenous people were beings alien to society, not belonging to the world under construction. Such a discourse served arbitrary interests well, because in addition to making a part of the community invisible, it made possible the dissemination of violence, physical and cultural.

Cabral et al (2020, p. 108), emphasize the importance of effectively understanding the damage that the Military Dictatorship caused to native peoples. In this way, the authors recall the inclusion of indigenous people in the National Security Doctrine (DSN), marked as a strategy to maintain authoritarian politics, "considering them internal enemies, with tendencies to impede the development of the country." As a result, the process of land plunder, which already existed, took even greater strides, spreading to the present day.

On the subject, Brighenti (2020, p. 01) proclaims that, despite the existence of protective legislation, in the dictatorial years the norms were completely set aside, and that this was caused by the "promiscuous relations of public servants with economic sectors and the structure of exploitation of the natural resources of Indigenous Lands".

Federal Public Prosecutor Edmundo Antônio Netto, in an interview with Agência Pública, emphasizes that Brazil's recognition of the humanitarian violations suffered by native peoples is the initial step in the reparation process. Thus, there is room for agencies and entities to establish guidelines and recommendations in order to recompose the indigenous scenario and prevent new violence.

The reinforcement promoted by the government helps both in the visibility and identification of the issue, and provides bases for the consolidation of protection measures, mainly linked to demarcation procedures. The guarantee of land symbolizes a great leap in the history of the original peoples, strengthening their ties and enabling the glimpse of a more dignified and just future.

FINAL CONSIDERATIONS

The vulnerability of indigenous peoples is capable of being attested to in the study of history and in the glimpse of the present. The invasion of lands, the control of customs, religious impediments and punishments were some of the policies adopted in the colonial period, with effects that last until today.

One of the most discussed points in conflicts is the possession of territories. Given the spatial vastness and abundance of resources, such locations are targets of interests of classes linked mainly to agribusiness and mining. Political articulations on different fronts are strengthened in defense of the economic exploitation of land, under the pretext of the relevance of economic growth.

The polarization is noticeable by the clear division between those who value the financial boost, seen as the main social pillar, and those who see the constitutional limits. In the last year, the Time Frame gained special prominence precisely because it deals with this theme. The possibility raised during the trial of the Raposa Serra do Sol Indigenous

Land, by the Federal Supreme Court, brought to light the possibility of requiring proof of land occupation on the date of the promulgation of the 1988 Constitution as one of the requirements for demarcation.

Even without binding effect, the decision served as a paradigm and raised reflections on how it could represent, in the concrete plan, a great impediment to the protection of land. Subsequently, the measure was judged unconstitutional by the Court, but even so, a new law regulating the Time Frame was enacted.

From another perspective, the protection of indigenous territories reinforces the promotion of development based on sustainability. The responsible management of resources and millennial understandings of nature mean that native peoples have a lot to teach about preservation practices. Land protection, therefore, strengthens and corroborates environmental conservation.

The granting of the first amnesty to indigenous peoples by Brazil represents the beginning of a long process, which begins with the recognition of the mistakes made in the past. The impetus now given allows the creation of measures involving, for example, the payment of compensation and the demarcation of lands, the first step to make viable and factual the just protection that has been sought for years.

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