

Historical Landmarks, State Policies and Indigenous Self-determination in Brazil and Canada

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ABSTRACT

The purpose of this article is to discuss the historical and political meaning of the struggles for “self-determination” of indigenous movements in Brazil and Canada over the past decades. I propose a comparative study between these two countries, focusing this journey particularly on four sets of similar policies implemented in the two nation-states that targeted, in some ways, indigenous societies. In order to analyze some key milestones since the colony to date, I investigate the main indigenous strategies implemented by both countries that resulted in serious restrictions for indigenous nations to exercise their territorial patterns and many other aspects related to their ancient traditions. Another purpose of this paper is to discuss how these processes shaped the current demands of indigenous political movements. Furthermore, this paper intends to consider the basic premises underlying their fight, the contexts in which the indigenous movements emerged and evolved, as well as the possibilities and developments of their fundamental demands.

Keywords: Indigenous policies, state formation, indigenous self-determination, Brazil and Canada

INTRODUCTION

According to Cardoso de Oliveira (1988), Brazil and Canada can be characterized as former European colonies, and new nations, formally constituted as such in the last two centuries. Although their histories are considerably different, their processes of economic expansion—based on the continuous advancements over indigenous territories—share similarities. In both countries the Indian population represents a small fraction of their total populations. Estimates of the size of native populations vary greatly, depending on the criteria used and the political intentions of the sources. Based on diverse sources of information, the size of the estimated indigenous population in Brazil—including the Indians living in cities and in reserves—fluctuates around 900 thousand, approximately 0.5% of Brazil’s total population. In Canada, where self-determination is the criterion used in the census, the figure for the Aboriginal population is approximately 1.5 million, representing 4% of the total population. In Brazil and Canada, the areas that were colonized first are densely populated: the northeast coast, east and southeast regions in the former; and in the latter, the land strip comprising the 200 km north of the border with the United States in the south-east region. The two countries have other sparsely populated regions of more recent colonization, namely Brazil’s West-Central and Amazon regions, and Canada’s northern territories. It is in these low density population areas where most indigenous societies live, and where they are currently suffering pressures from development projects. Furthermore, indigenous history and identity are critical elements of both countries’ national identities (Baines, 1996).

For European settlers, indigenous issues have always been a sensitive matter in their projects to establish new nations overseas and to impose different territorial patterns over Native American societies. Despite the long history of interethnic contact, it was only until the past four to five decades that the indigenous peoples of Brazil and Canada started to organize themselves politically, seeking to affirm their identities and fight for their original rights, while attempting to avoid assimilation at all costs. This paper seeks to analyze some of the most relevant indigenous policies implemented by these two nation-states and examine the extent to which these influenced the organization and basic demands of indigenous political movements in both countries. Some of the key milestones will be analysed from the time of the colony to date, investigating the main restrictions imposed on native groups to exercise their ancestral practices, and how the policies creating these restrictions are implicit in their current fight for self-determination.

Given that in Brazil and in Canada the most recent indigenous claims are directly or indirectly related to the recognition or extinction of rights, this analysis will use legal frameworks as its main guiding reference. These frameworks are understood as critical landmarks—historically established—that shape the thinking about the meaning of the self-determination struggles held in both countries. Thus, in order to properly understand some of the meanings underlying the indigenous resistance movements of the last four decades, it is essential to explore the colonial and political history of these countries, to identify the key moments that led to the formulation of a “theory of indigenous rights” which ran in parallel with the process of state formation. To this end, our comparison will focus on four similar sets of policies implemented by Brazil and Canada, that either targeted indigenous peoples or decisively affected them in some ways. Noteworthy, these policies were implemented around the same time periods. They were designed to address analogous dilemmas and had similar effects on the future of indigenous nations in both countries. This paper seeks to reveal salient differences in the evolution of indigenous policies in the two countries, as well as some surprising similarities in the responses to such policies in the form of legal and extra-legal challenges in recent years.

In the comparison of some aspects of the indigenous legislation of Brazil and Canada, it is essential to take into account the fact that seemingly similar concepts can have different meanings in diverse legal and cultural contexts. There are many interpretations on international law and indigenous peoples and also on the political jurisprudence of each nation-state. Thus, this paper does not seek to produce a comprehensive account of the complexities involving indigenous peoples-state relations throughout time. Nor is it our ambition to delve deeply into an exhaustive description of the formation of indigenous movements in these two countries. Moreover, we do not have the intention to affirm that what happened in Canada, happened in Brazil in the exact same manner. Rather, the main focus of this paper will be to pinpoint the basic premises underlying certain key government policies—finding interesting parallels between Canada and Brazil—and to explain their main impacts on the formation of indigenous political movements. To take advantage of the comparative method, it will propose in the conclusion a discussion to facilitate a broader comprehension of some of the general patterns that guided the evolution and consolidation of the nation-state, considering primarily how this process relates to the indigenous resistance and the organization of their political movements.

The Genesis of a Theory of Indigenous Rights

In the early years of the colonies, that would later be known as Canada and Brazil, the mercantile goals driven by the particular interests and specific characteristics of each colony guided the initial contacts between the European and the autochthonous societies. The first economic cycle in Brazil was the extraction of pau-brasil, a reddish wood abundant all over the Brazilian coast, used by Europeans mainly to dye fabrics. Portuguese settlers established feitorias (trading posts) and sesmarias (portions of land allocated to production) and enslaved the Indians so they would cut and haul the wood. Aside the pau-brasil, another extractive activity prevailed at that time, namely the drogas do sertão to supply the European spice market and to ensure Portugal's territorial domain, mainly in the Amazon (Del Priori & Venâncio, 2001). In North America, the fur trade contributed decisively to the development of the British and French empires. In Canada, the fur trade was one of the first, and most important, industries to establish rules and patterns of relationships between Europeans and Indians (Bishop, 1974). At first, the Indians traded furs in exchange for goods, such as tools and guns provided by the French and later by the British. The fur trade flourished until the mid-nineteenth century, when the most commonly trapped animals became scarce, and silk hats became more popular in Europe than those made of beaver and other animals of interest.

Only after almost three centuries of contact between European and indigenous peoples, Brazil and Canada established legal terms recognizing original territorial rights and adopted legal instrumental measures to define the space to be occupied by native populations within their wider projects of nation-building. A significant feature of the common law tradition of former British colonies like Canada, Australia and New Zealand is the settlers' assumption that their legal system should be extended to all autochthonous populations. In the lands colonized by the Iberian empire, however, the central premise was to tame the natives and use their workforce to provide wealth to the Crown. Hence, each country developed their own policies in order to fulfill these objectives.

Since the beginning of colonization, to guarantee Portugal's ownership of the territories conquered, the political submission of indigenous peoples was of great strategic interest during the formation of the colonial society, as a precondition for a tamed politically effective workforce (Farage, 1991). This process was consolidated by the Regimento das Missões in 1686, which regulated Indians' settlements under the temporal rule of the missionaries. This structure remained until the introduction in 1755 of the Diretório dos Índios by the Marques de Pombal. The Diretório, the first laic wardship system, led to the secularization and expulsion of the missionaries. With the missionaries' withdrawal, diretores were appointed to manage the villages, institute schools (with compulsory education in Portuguese), encourage miscegenation and the appreciation of labour, and to prohibit nudity (Almeida, 1997). In 1789, the Diretório was abolished (due to various abuses and excesses of the directors) by D. João VI, King of Portugal, known as the most anti-indigenous legislator. Even after its abolition, there was an implicit and explicit recognition of the Indians' titles over their territories, namely the villages and the lands they occupied. This recognition was implicit when he declared that the land taken from the Indians by Guerra Justa were terras devolutas (according to the Carta Régia from 2/12/1808), which means the acknowledgment of the preceding rights over their territories and the permanence of such rights for the indigenous who did not wage war against the Crown. And it was explicit, when he stated

that the villages' territories were inalienable and the sesmarias concessions made over these lands were void and could not be considered devolutas (Carta Régia from 26/03/1819 and two provisions from 08/07/1819) (Carneiro da Cunha, 1987: 63). In the midst of a series of implemented reforms, it was possible to find the genesis of the orphanologic concept of wardship. And this is the key legal basis for the treatment given to indigenous people to date.

In Canada, the Royal Proclamation is the key policy stating the Crown's recognition of indigenous rights over their ancestral lands. Enacted in 1763, the main purpose of the Royal Proclamation was to establish peace after Britain defeated France, in order to organize the emergent North American empire of Great Britain and to stabilize the relations with Native Americans. To accomplish this objective, the Crown understood that it was essential to find a way to clearly demonstrate that it respected natives' ownership over their land. Thus, the Crown allotted a portion of land "reserved" to the Indians and their hunting activities. These territories had not been reserved or purchased by the British Crown, and consisted of lands outside the limits of the new colonies such as Quebec, East and West Florida and the territories of the Hudson's Bay Company. However, the Proclamation also gave the King the exclusive right to appropriate lands from indigenous people and to initiate the procedure of signing land surrender treaties between the British and the native peoples in North America. In the late eighteenth and early nineteenth centuries, a series of land surrender treaties were established in Ontario and the Prairie Provinces, confining natives to small holdings and making vast tracts of land available to settlers (Schouls, 2002, p. 19). Natives were deprived of their lands, through land surrender treaties, the designation of reserves, and the expropriation of reserve lands. The Proclamation of 1763 has the force of a constitutional law and has never been revoked. It continues to be of legal importance to First Nations in Canada and is significant for changes on indigenous status in the United States, since it acknowledges indigenous nations' sovereignty and their political integrity to uphold treaties.

Noteworthy, the first similarity between the policies implemented in Brazil and Canada is that natives' rights over the land were unequivocally recognized, based on their original occupation prior to the arrival of European settlers. Nevertheless, both, the Diretório, as well as the Proclamation, also opened possibilities not clearly expressed in their texts that resulted in the gradual and covert loss of the rights of possession and use of their ancient territories for indigenous peoples. Despite the two governments' apparent willingness to recognize native rights, the needs for occupation, colonization and resource extraction, essential features in any nation-building project, found parallel ways to extinguish indigenous rights. In Brazil, this was reflected in the prevailing notion that being Indian was a condition of disability, above all temporary, and that the government should ensure that the transition to the "civilized world", namely waged labour, happened in the least abrupt way possible. The Lei de Terras (Law of Lands) issued in 1850 served as a pretext to take away indigenous territories under the justification that only "pure" Indians would have rights to the land (Carneiro da Cunha, 1987b). In Canada, indigenous titles were extinct under the argument that bilateral agreements had been signed with the Indians. In the following section we will present another situation, in which the extinction of those rights started to happen deliberately, even though the legal guarantees of the natives have never actually been abolished.

The Civil Code, the Indian Act and the Treaties

Although many court cases and colonial documents have asserted the existence of indigenous rights in Brazil and Canada, the attitudes of the newly autonomous governments did not seem inclined to guarantee, in practice, these rights. In the nineteenth century, the ambition of both governments was to make native cultures disappear. The expectation was that native people would be assimilated, meaning that they would give up their culture, languages and beliefs, and live and act just like the British and Portuguese settlers. Brazil and Canada employed assimilation as a wider ideological guide and the wardship as a pragmatic instrument. The second similarity will be presented by looking at how the two nation-states treated their indigenous populations in comparable ways with the publication of the Civil Code in Brazil, and the Indian Act and the signing of treaties that followed in Canada.

The Indian Act was enacted in 1876 by the Parliament of Canada under the provisions of Section 91(24) of the Constitution Act (1867) and provided Canada's federal government with exclusive authority to legislate in relation to "Indians and Lands Reserved for Indians". The Act defines who is an "Indian" and stipulates legal rights and legal disabilities for registered Indians. Under the act, land title still belonged to the Crown, which would control it on behalf of the First Nations people through the representative of the Minister of Indian Affairs (the Indian agent). A Reserve was deemed Crown Land set aside for the use of a Band of Indians. The theme throughout the new Act remained that of assimilation and "civilizing" the Indians: Indian status was regarded as a temporary stage on the road to assimilation; they were expected to settle down and learn to become farmers. First Nations were allowed virtually no self-governing powers (Cumming & Mickemberg, 1972). The creation of indigenous reserves by means of the treaties signed between 1871 and 1923 (numbered treaties) –a process that followed the acceleration of colonization –resulted in an even more marked distinction between Status Indians and Non-Status Indians–namely those incorporated in the treaties, the enfranchised Indians on the one hand, and the Métis and the Inuit on the other.

In the early years of the twentieth century, Brazilian indigenous societies were seen as childish forms of living that should be brought to civilization by the wardship (*tutela*) system. The Indians would be treated as orphans in all kinds of legal relations. The wardship would cease when the Indians' adaptation to the civilized world was completed. According to the Brazilian Civil Code, dating from 1916 (Law no. 3071, of 01/01/1916, article 6), the Indians were considered relatively unable to perform certain acts of civil life. Being relatively unable, the Indians fell under the realm of the wardship legal system. Their legal tutor was the State and a special Federal agency had the responsibility and authority to exert the tutelage. At first, this role was carried out by the Indian Protection Service (SPI), created in 1910 and later by the National Indian Foundation (FUNAI), established in 1967.

Noteworthy is Brazil's unique practical approach to subject Indians to a position of dependency. Brazil's case is somehow singular for the strategy behind their consistent contacts with the so called "non-contacted Indians", living in the Amazon and West-Central regions at the beginning of the twentieth century. Instead of using guns to tame the population who resisted contact with the national society, the Brazilian government employed seduction. In the first interactions, the Indians received a great variety of consumer goods, presents, tools and other objects that eventually led to an irreversible condition of dependency. While in Brazil the first interethnic contacts happened in this manner, in other countries (including Canada), the "Indigenous problem" was mediated by more impersonal instances, such as treaties, decrees or laws (Ramos, 1998, p. 158).

Inconsistencies and Ambiguities of the Wardship Policy Contained in the Civil Code and in the Indian Act

Since the beginning of the republican government, the Brazilian indigenous policies have been designed and implemented so that social and economic development projects, especially those related to new economic frontiers and the defence of national borders are not compromised. This strategy has been particularly emphasized in the Amazon and West-Central regions after the second half of the twentieth century. Thus, instead of serving as an instrument to protect indigenous people and their culture, the wardship has always functioned as a bureaucratic apparatus to prevent Indians from having independent access to the Brazilian society, and allowing the government to conduct the Indians' future, by placing them in a dependent and marginal position, likely to suffer various forms of discrimination.

In Canada, the Indian Act was constituted as the legal foundation for a huge bureaucratic apparatus that contributed to maintain the Indians in an abject state of dependency from the federal government. In this matter, any self-identity initiative ended up frustrated in the face of the designation of Status Indians and Non-Status Indians, which hindered the development of broader political organizations. Even the more modest provisions included in the treaties were continuously violated by the government through the Indian Actⁱ. The courts have overruled long-standing exemptions by restricting hunting, fishing and rights to cross the reserves' boundaries. The Crown officials justified these kinds of impositions by stating that there was no native law regulating the extraction of natural resources (Harris, 2001). The promises to stimulate economic development in the reserves included in treaties were completely ignored. The Canadian government chose to provide the narrowest possible interpretation of the treaties and unilaterally decided in favour of economic development when in doubt.

Indians' main dissatisfaction with this policy is that the treaties were negotiated between sovereign nations and have great symbolic importance to them. Treaties represent the most important "white men" legal instrument giving them recognition in the eyes of the world as original settlers in the country (Johnson, 2007). Since oral tradition is the most important social mechanism to perpetuate their values, the indigenous peoples of Canada felt betrayed when the government used the ambiguous words written in the treaties to impose to native people and when it diminished the importance of the treatiesⁱⁱ. The provision of services that should be guaranteed by the Federal government such as complete protection for hunting, trapping and fishing rights, educational rights, full medical services, protection and encouragement of economic development of the reserves does not occur in practice. Indian political units changed from being sovereign to being dependent on the Canadian government, and occupy an ambiguous place in the political and cultural life of Canada – this peculiar state of affairs still exists (Sutton, 2011).

In both, the Brazilian Civil Code and Canada's Indian Act there is an interesting point of ambiguity coming out of the imposed wardship mechanisms. Despite all the hardships inflicted on native populations as a result of these two indigenous policies, it was precisely because of them that native populations from the two countries reached a point that prompted them to defend the territories they had left, and to refuse assimilation. On the one hand, the wardship does not allow Indians to act as autonomous and independent people, nor does it allow them to express their differences and to seek

guarantee of their rights. On the other hand, this mechanism could not be removed, at least not in a very abrupt manner, since indigenous peoples cannot be rapidly absorbed as ordinary citizens within national society, after years of dependence and suppression of their political will.

The positivistic view embedded in the Civil Code in Brazil led to the encapsulation of indigenous societies in reserves; areas initially preserved, aimed at allowing Indians “harmonious” integration into the national community (Ramos, 1988). The years of confinement in reserves, with no freedom to move throughout the territory as in earlier times, the gradual inclusion of consumer goods without proper regulation, the imposition of the wardship welfare logic by indigenous federal agencies, and the lack of economic development projects placed Indians in a cycle of dependency and fragility difficult to break. In Canada, this dependency was harshly established since 1885 when Status Indians were confined in their bands, and a system of “pass” was imposed, possibly to prevent them from having contact with their Non-Status relatives, the Métis, who were manifesting their resistance outside the reserves. Furthermore, with funding from the federal government, church officials set about to transform indigenous peoples’ lives – and one of the principal means of doing this was through the establishment of Euro-Canadian style education. After 1920, children’s attendance to school was mandatory and harshly enforced, threatening the parents with imprisonment if they did not send their children. These schools were aggressively assimilationist, and it has now become clear that the indigenous children attending residential schools were subjected to systematic physical, emotional and sexual abuse.ⁱⁱⁱ

Critical Events and the Rise of the Indigenous Political Movement

One of the most persistent ideologies in Brazilian and Canadian indigenous policies is the premise that the state protects Indians from mainstream society’s greediness. Then, the question to be addressed is how this protection is accomplished and what sort of foundation sustains its defense, since the state itself (represented by its various agencies and ministries) encourages the expansion over native people and their territories. Furthermore, adding to that question, what happens when the state decides to suddenly and unilaterally promote Indians (theoretically understood as its wards) at the same juridical level of non-Indians citizens, to abolish their legally granted special rights, using a veiled discourse of equality, citizenship and unifying nationalism to mask severe situations of violence and extinction of rights? This was the case in the third similarity, if we analyze the White Paper in Canada and the attempts of forced enfranchisement by the Brazilian military government, both of which ended up causing strong reactions from native people and culminated in the emergence of indigenous political movements in both countries.

In 1969, the Trudeau government unveiled a White Paper proposing a revamped indigenous policy. It recognized that government policies had been seriously flawed. Stringent controls and isolation had hindered the assimilation process and had instead created Indian dependency on government assistance. The government accused itself of driving artificial wedges between Indians and mainstream Canadian society, thereby causing Indian apathy and poverty (Schouls, 2002, p. 19). Equality would be achieved by eliminating the special legislation and the bureaucracy constituted over the years, and by transferring

the responsibility to manage indigenous affairs to the provinces. This document proposed the elimination of special rights, including the Indian Act, the reserves, and the treaties. The White Paper was also in direct opposition to the objectives pursued by the Indians: namely, that their rights be respected and that they could participate in the formulation of policies affecting their future. Since the document was clearly prepared without indigenous participation, the attempt of participatory democracy failed completely. The government efforts towards native people were discredited, and the White Paper was withdrawn even before it was put into practice. This policy, along with the Supreme Court's decision on the *Calder* case,^{iv} triggered a huge wave of distrust amongst Indians—ironically, distrust was one of the main things that the government had hoped to remove (Weaver, 1981).

Enacted in 1973, law no. 6.001, also known as the Indian's Statute (*Estatuto do Índio*), features Brazil's nation-state-indigenous peoples relations. Following the same parameters of the Civil Code dating from 1916, the Statute emphasized two basic topics in its articles: 1) To regulate native peoples' land tenure, indigenous territories were understood to belong to the nation-state and be for the Indians' exclusive possession and use, and as such they were inalienable; 2) To regulate welfare assistance and the indigenous population's legal access to civil society, Brazilian Indians continued to be considered relatively incapable of performing certain acts of the civil life, hence should be wards of the State. The military government approved the Statute without considering indigenous claims or political agreements, seeking primarily to respond to international accusations of violations of Indians' human rights (Luz, 1995, p. 92)^v. This restrictive model of wardship and the isolation in the reserves produced opposite effects than those pursued by the Brazilian government, namely the spontaneous acculturation of Indians and their respective socio-economic evolution. The military government was particularly dissatisfied with the obstacles that the Indian's Statute presented to the implementation of economic projects particularly designed to "develop" the Amazon region. Thus, since 1970 there were some attempts from anti-indigenous congressmen to unilaterally abolish indigenous rights over their lands and to impose compulsory enfranchisement without any kind of previous consultation^{vi}. The reasons justifying such attitudes were very similar to those contained in the White Paper, i.e. the need for an egalitarian model of society, in which no citizen should have privileges. These congressmen stated that the Brazilian nation should be built as a unified nation around common principles (Ramos, 1997).

The negative reaction of indigenous peoples in Brazil and Canada surprised their respective federal governments and triggered waves of protests of considerable range. Indigenous nations and political associations across Canada and Brazil united internally to oppose the White Paper and the attempts to emancipate them. Seeking to draw attention from media, indigenous groups categorically rejected these kinds of policies arguing that it threatened their survival as distinct communities. In the years that followed, there has been a remarkable revival of indigenous culture and a determination to flourish as people. Native people from Brazil and Canada were not advocating for equality, but asserting their differences from mainstream to pursue their future according to their own priorities.

The First Organizations and the Debate about Nations within the Nation

In 1980, several indigenous groups from different parts of Brazil met in different parts of the country to create the Union of Indigenous Nations (UNI – *União das Nações Indígenas*). This movement was a natural consequence of the awareness process initiated a decade earlier. UNI was formed to meet the demands for better coordination at the national level to surmount the limitations of regional encounters held in a very sporadic way. The term “nations” was chosen with the goal of drawing national attention to the existence of entirely constituted societies, within the Brazilian nation, experiencing specific problems and requiring specific solutions as well (Ramos, 1997, p. 3). During the Federal Constitution-making process in 1987/1988, UNI with support from the Brazilian Anthropological Association (ABA) and the National Coordination of Geologists (CONAGE) was largely responsible for the efficient “Indian lobby”, which obtained tangible gains for the Indian movement, including the elimination of the assimilation principle that prevailed until then^{vii}.

Similarly, in Canada, as the efforts to achieve national unity advanced, ethnic diversity and poverty gained prominence in the 1960s. Indians had become more visible to the general public and were placed among the disadvantaged minorities in society (Borovoy, 1966). As the population became aware of Indians’ poverty and alienation, a collective sense of guilt for the historical mistreatment to Indians emerged and the federal government received strong criticism. In response to the White Paper, indigenous peoples drafted the Red Paper openly acknowledging the Indian Act as a symbol of discrimination and racism (Fidler, 1970). Intellectuals thought of reserves as ghettos where the Indians were forced to live. The notion of segregation was commonly attached to the reserves^{viii} (Weaver, 1981).

The formation of the National Indian Council in 1961 was the first attempt in Canada to establish a national network among indigenous peoples. The objectives of this council were to promote indigenous culture and to assist in the development of native regional and provincial organizations. Their leaders were mainly urban people and included both Status and Non-Status Indians (Weaver, 1981). Two conditions may have contributed to its division: they lacked support in the reserves, and the differences between Status and Non-Status Indians began to cause problems. With the separation, two new associations were created: the National Indian Brotherhood (for Status Indians) and the Native Council of Canada (for Non-Status Indians)^{ix}. Another important moment in the strengthening of the indigenous movement was the granting of permission to Indians to access the archives of the Department of Indians Affairs in 1978. There they found serious irregularities since the signing of treaties, including some illegitimate sale transactions of their lands and many other kinds of information that could demonstrate the illegality of the extinction of rights and motivate their fight for compensation.

Indigenous peoples’ reactions in Canada and Brazil revived an issue that has always been intrinsic to their political claims over the centuries: should native peoples be included in nation-building projects, or, should their status as autonomous nations be considered or ignored? (Baines, 1996). In Canada, the term sovereignty has prevailed as a critical foundation to elaborate indigenous policies. Under this concept, natives could manifest themselves as different societies insofar as they remained well-behaved servants of the British Crown, following the Crown’s more convenient interpretation of the treaties. In

Brazil, the problem arises when minorities and indigenous societies claim self-determination status in a country with a strong tradition of authoritarianism. Both governments' responses have been based on the perception of a threat to national sovereignty, especially because of the use of term nation by indigenous peoples. In Brazil, some anti-indigenous congressmen raised allegations of the existence of an international conspiracy aimed to "denationalize" the lands occupied by Brazilian Indians (Ramos, 1997)^x. For the advocates of the modern nation-state, concepts such as people, nation, state and sovereignty are all part of an inviolable package.

The Constitution Act of 1982 and the Federal Constitution of 1988

The fourth similarity is found in the drafting of the most recent Constitutions in both countries. The Constitution Act of 1982 was initially enacted to "patriate" the Canadian Constitution providing full legislative powers over amendments to the Canadian Parliament, and permanently removing the formal authority of the British Parliament on this realm. From the indigenous nations' point of view, the Act seeks to restore the importance of the treaties, since they have never been revoked, and to place indigenous peoples and the Canadian government as sovereign people at the same level. The indigenous movement argues that the imposition of the Canadian legal system has not brought order to their lives. On the contrary, it took away the existing order and replaced it with one that is foreign and inadequate. The many legal issues regarding the identity and rights of the various native groups in Canada were among the main themes of the agenda during the negotiations on indigenous rights contained in the Constitution of 1982. The main achievement of indigenous peoples was the restoration of the crucial rights contained in the treaties, which were suppressed by the Indian Act, especially those recognizing the original rights to the land and to the unification of the indigenous nations and the Canadian nation in an egalitarian manner (Johnson, 2007). One important achievement by the Indians is expressed in Section 35, which recognizes all indigenous groups, including the Métis and Inuit, as a wider category of citizens, subject to be granted special rights, than that imposed by the federal government through the Indian Act. At this point the government realized the importance of signing treaties (comprehensive land claim treaties) with the peoples who have been excluded from the numbered treaties.

The Constitution of 1988 was the first to be enacted after the end of the military regime in Brazil. Following international human rights standards, Brazil included several constitutional guarantees in order to provide more effective protections for fundamental rights. It also endowed the Judiciary with power in cases of registered harm or threat to Brazilian citizens' basic rights. The growth of the indigenous political movement since the 1970s, the increasing pressure from indigenous leaders at the national and international levels to secure their rights, and an intense mobilization of Indians together with non-governmental organizations during the constitutional process culminated in consistent amendments in the Federal Constitution of 1988. These changes brought about the potential to change the terms of the relationships between Indians and the state involving the Brazilian society. The first major achievement is that the Constitution refers to the Indians in a general and uniform way, recognizing, however, their cultural and historical specificities, and their original rights over the lands

they have traditionally occupied. These lands would still remain property of the Brazilian state and the Indians would have the absolute and permanent right to use them, with the exception of underground natural resources (Art. 231). Another important innovation was the revocation of the secular policy of assimilation embedded in the Jesuit missions, the *Diretório* and in the positivistic projects that guided indigenous policies in Brazil and all previous Constitutions.

Conclusion: Citizenship and the Different Versions of Self-determination in Brazil and Canada

Tolerance of cultural diversity is not a strong attribute of the culture of economic development sustaining the modern globalized nation-state model. According to dominant nation-state ideologies, the appearance of unified cultural uniformity is essential. The territorial pattern of mobility maintained by many indigenous societies with the surrounding environment is very often in conflict with the control needs of the nation-state. The social organization based fundamentally in kinship relationships and obligations generally clashes with the prerequisite for individualism that is a characteristic of capitalism. Still, indigenous peoples normally organize their social meanings following more egalitarian patterns than industrial societies, reducing peoples' needs to assert their status through commodities or private ownership. Finally, and perhaps most significantly, indigenous societies regularly control resources – land, mineral rights, forest products, and intellectual resources – that are desired by members of the culture of capitalism.

In order to establish itself as a permanent and consolidated entity, nation-states need to make concessions and impositions when facing different political and territorial systems of indigenous cosmologies. In the four similarities presented between Canadian and Brazilian indigenous policies, it is possible to see a pattern that evolves into four major moments. First, in the absence of a nation-state and of regulations that legitimize the European occupation of indigenous lands, colonizers were forced both to recognize indigenous rights over their ancestral territories, and to try to maintain the native population under some level of control and confidence. Second, the first national legislations that were promulgated granted Indians some rights, but placed them in a position of dependence. They also legalized the invasion of their lands and stated that being an Indian was a temporary condition, until full assimilation into mainstream society was achieved. Third, with the perceived failure of isolationist policies, more drastic measures were put in place by the governments to accelerate the assimilation process, including forced enfranchisement. Fourth, as a consequence of indigenous' resistance and public demonstrations to vindicate their right to be different, both governments have included indigenous peoples' right to defend their differences and their original rights over the land in their Federal Constitutions. They have also acknowledged that being an Indian is a permanent and legitimate condition.

However, despite recent achievements, an important obstacle remains a challenge, especially considering the structural premises of the nation-state and the indigenous social organizations. Namely, Canada's Constitution Act (section 35) and the Brazilian Constitution represent empty shells to be filled, because they do not provide a definition of the ways in which indigenous peoples' rights should be recognized, and how these peoples could assert self-determination. While the federal governments

recognize limited powers to indigenous groups, they fail to establish mechanisms that would enable better interaction between those societies and their non-Indian neighbours. Hence, it is critical to find reasonable ways to situate the indigenous demands in a proper place, allowing these groups to exert their right for difference, without challenging the constitutional principles.

The concept of citizenship included in the more recent Constitutions in Brazil and Canada stipulates that each member of the society should be treated equally. This model treats the individual as a universal being, regardless of the individual's cultural origin, hence forgets to address the history of marginalization and dependency that indigenous groups have suffered during the years of state formation in Brazil and Canada. The problem with this concept of citizenship is that it focuses only on the legal status of the members and produces no self-confidence or personal responsibility. This kind of law encourages passivity, hinders less privileged people's capacity to reach more representative positions and consolidates dependence on public institutions (Borrows, 2002).

In the Brazilian case, a new voice called ethnicity has been invited more recently to join the dialogues organized by the indigenous societies' on the models for self-determination (Carneiro da Cunha, 1987b). Certainly, ethnicity is a voice that allows indigenous peoples and other minorities to raise awareness about their cultural distinctiveness and get recognition by some means, as an integral part of the nation in a way they never had before. However, ethnicity cannot on its own rearrange the classic citizenship model; rather it appears to be a way in which conquered people can express their differences, but not reach the status of a more elaborated kind of political autonomy.

An argument that is not very well developed in the Brazilian version of indigenous self-determination is the notion of legitimate differentiation. This notion could provide indigenous people with equality of conditions that would not be grounded on similar shared experiences with the rest of the Brazilian population (which would be some kind of artificial imposition), but rather on granting their demands and recognition of their historical rights equal value. In sum, there are very limited tangible possibilities for indigenous peoples to express their difference in an ethnic space that is legitimized as such and that is appropriate to the Brazilian multi-ethnic complexity. This entails the need to make room for the Indians, not just so that they become Brazilian citizens, but above all to allow them to be full members of their own societies, to preserve their morality, their cosmological concepts in this interethnic field of constant cultural exchanges. The recognition in the 1988 Constitution that the Indian identity was a legitimate state and not temporary condition is no doubt a remarkable achievement. However, indigenous peoples' ancient patterns to relate with the land are only respected when they do not confront the nation's higher ideals of economic development. Even when providing accurate demonstrations of civic knowledge and ability in national life, Indians in Brazil still live under the mould of wardship and are afraid of the consequences if they try to exert their right for autonomy enshrined in the Federal Constitution. This is the reason why some indigenous leaders have overtly manifested their preference to live under the state's tutelage.

In Canada, native peoples' recent fight for self-determination has been different from that in Brazil, and has moved away from the stances taken when the Red Paper was drafted and the claims were making calls for some kind of indigenous revolution. The large majority of indigenous leaders are not looking for solutions that will separate them from Canada. The proposals they advocate seek to promote a

political relationship based on mutual respect and co-operation (Ash, 2002, p. 73). Indigenous movements demand a non-revolutionary model of participation in the Canadian society that would ensure moving towards a self-determination model that takes into consideration the historical and traditional relationships indigenous establish with the land (Borrows, 2002). That seems to be the reason why Canadian indigenous peoples prefer to define themselves as political societies instead of ethnic groups. The participatory model they advocate needs to consider the different perceptions that people maintain within their communities and these views must be occasionally combined to create a common understanding and a broader view of who they are as fellow citizens. They do not advocate separatism, but rather the opportunity to negotiate in order to live with hybridization, exploring the best opportunities for a positive exchange between cultures and laws. Hybridization does not mean assimilation, since the latter implies loss of political control, culture and difference.

In fact, Canada's embrace of a constitutional theory of differentiated citizenship is unique among western nations. Actually, the status achieved by Quebec is constantly used by the indigenous movement as pre-existing jurisprudence to reach autonomous status. Certainly, the indigenous historical connections with the land, their political and legal systems, the emphasis in oral history and many other features pose an additional and strong challenge to the Canadian model of citizenship. To deal with these specificities of indigenous societies, the government set up the Office of Native Claims in 1974. In the past few decades, a number of land claims have been settled with various native groups, resulting in the formation and enlargement of reserves, special rights to land use, and cash compensations. Several treaties, known as Comprehensive Land Claim Settlements, have recently been signed with a number of groups. As a result of one of these agreements, Nunavut, a new Canadian province, was created in the eastern part of the current Northwest Territories. Most of the population living in the new province is Inuit, where this group heads the government (Sutton, 2011). However, what level of autonomy and dependence this self-governed territory will have remains an open and controversial question.

In order to summarize our journey, two basic principles constitute the foundation of more recent demands for self-determination in Brazil and Canada, and can be considered to be directly related to the four similarities previously presented. The first principle rejects the view that the Americas were a legal void at the time of European contact. It sustains that the Americas were the domain of a variety of indigenous polities, possessing autonomous status, territorial bonds, jurisdiction laws, and land rights, with the capacity to enter into several kinds of relations. The second principle denies that native laws, jurisdiction, and land rights were automatically terminated when European powers settled in indigenous territories. It sustains that these rights presumptively remained in vigour under the new regime and were never officially revoked. In sum, these two principles suggest that nation-states should consider indigenous peoples as dynamic participants in the generation of basic norms in Canadian and Brazilian societies, not as people on the fringes, helpless victims, or recipients of constitutional handouts from the government or the courts, but as contributors to the advancement of Constitutions and most fundamental laws.

References

- Albert, B. (2000). Associações indígenas e desenvolvimento sustentável na Amazônia brasileira. In Ricardo, C (Ed.), Povos Indígenas no Brasil, 1996-2000 (pp. 197-207). São Paulo: Instituto Socioambiental.
- Almeida, R. (1997). O diretório dos índios; um projeto de “civilização” no Brasil do século XVIII. Brasília: Editora Universidade de Brasília.
- Altbach, P. & Kelly, G. 1978. Education and colonialism. New York: Longman.
- Anderson, B. (1983). Imagined Communities. Reflections on the Origin and Spread of Nationalism. London: Verso.
- Ash, M. (2002). Self-Government in the New Millennium. In Bird, L., Land, L. & Macadam, M (Eds.), Nation to Nation: Aboriginal Sovereignty and the Future of Canada (pp. 65-73). Toronto & Vancouver: Irwin Publishing.
- Baines, S. (1996). Primeiras impressões sobre a etnologia indígena no Canadá. Série Antropologia, no.196, pp.1-24. Retrieved on November 24, 2011, from www.dan.unb.br.
- Borovoy, A. (1966). Human rights and racial equality. Toronto: Ontario Woodsworth Memorial Foundation
- Borrows, J. (2002). Recovering Canada: the resurgence of Indigenous law. Toronto: University of Toronto Press.
- Cardinal, H. (1969). Unjust society: the tragedy of Canada's Indians. Edmonton: M.G. Hurtig.
- Cardoso de Oliveira, R. (1988). Sobre o Pensamento Antropológico. (Biblioteca Tempo Universidade; nº 83). Rio de Janeiro: Tempo Brasileiro; Brasília: CNPq
- Cardoso de Oliveira, R. (2000). Ação indigenista, etnicidade e o diálogo interétnico. In Estudos Avançados, 14(40), pp. 213-30.
- Carneiro da Cunha, M. (1987). Os direitos do índios: ensaios e documentos. São Paulo: Editora Brasiliense.
- Carneiro da Cunha, M., (1987b). Etnicidade: da cultura residual mas irreduzível. In Carneiro da Cunha, M. (Ed.), Antropologia do Brasil: mito, história, etnicidade (pp. 96-108). São Paulo: Editora Brasiliense.
- Cumming, P & Mickemberg, N. (1972). Native rights in Canada. Toronto: Indian-Eskimo Association of Canada / General Publishing.
- Del Priori, M & Venâncio, R. (2001). O livro de ouro da história do Brasil. Rio de Janeiro: Ediouro.
- Farage, N. (1991). As Muralhas dos Sertões: os povos indígenas no rio Branco e a colonização. Rio de Janeiro: Paz e Terra; ANPOCS.
- Fidler, D. (1970). Red Power in Canada. Toronto: Vanguard Publications.
- Harris, D. (2001). Fish, law and colonialism: the legal capture of Salmon in British Columbia. Toronto: University of Toronto Press.
- Hoxie, Frederick. (1984). A Final Promise: The Campaign to Assimilate the Indians, 1880–1920. Lincoln: University of Nebraska Press.
- Johnson, H. (2007). Two families: treaties and government. Saskatoon: Purich Pub.

- Luz, L. (1995). A revisão do estatuto do índio e a legislação indigenista. In: Silva, A. & Grupioni, L. (Eds.). A temática indígena na escola: novos subsídios para professores de 1º e 2º graus (pp. 91-93). Brasília, MEC/MARI/UNESCO.
- Oliveira Filho, J. P. (1998). Indigenismo e territorialização: poderes, rotinas e saberes coloniais no Brasil contemporâneo. Rio de Janeiro: Contra Capa.
- Ramos, A. (1997). A convivência interétnica no Brasil: os índios e a nação brasileira. *Série Antropologia*, no. 221, pp. 1-17. Retrieved on November 24, 2011, from www.dan.unb.br.
- Ramos, A. (1998). *Indigenism: ethnic politics in Brazil*, Madison: University of Wisconsin Press.
- Ramos, A. (1999). Projetos Indigenistas no Brasil Independente. *Série Antropologia*, no. 267, pp. 1-16. Retrieved on November 24, 2011, from www.dan.unb.br.
- Schouls, Tim. (2002). The basic dilemma: Sovereignty or Assimilation. In: Bird, L., Land, L., & Macadam, M (Eds.) *Nation to Nation: Aboriginal Sovereignty and the Future of Canada* (pp. 12-26). Toronto & Vancouver: Irwin Publishing.
- Sutton, Mark. 2011. *An introduction to native North America*. Boston: Pearson.
- Weaver, S. (1981). *Making Canadian Indian Policy: the hidden agenda 1968-1970*, Toronto: University of Toronto Press.

ⁱ The Indian Advancement Act of 1884 tried to give wider powers over to local governments and to allow for the raising of money. Yet it took away the same powers by appointing the local Indian Agent as chairman of the Council. Over the next hundred years, the Indian Act was amended a number of times but each time it was changed to achieve more efficient means to assimilate First Nations into the white society. The Act was amended to ban the "Sundance" an important ritual among the Lakota and other Plains aboriginal cultures. On the west coast the "Potlatch", an elaborate ceremony of feasting and gift giving was also banned. With an eye to forced assimilation, the Act authorized the forced removal of children to residential schools and stripped Indians who obtained university education or ordination of their rights under the Act.

⁷ While studying how the natives of British Columbia were gradually losing control over fishing resources, Harris (2001) put forward the idea that there was an intention by the government to colonize a resource to establish a non-violent and gradual kind of domination. In fact, this seems to be one the most remarkable principles guiding Canadian colonization, whereby decisions were made without the participation of Indians and colonization was made through a gradual imposition of one legal system over the other.

ⁱⁱⁱ Some critics argue that besides the traumas caused by residential schools, these also played an important role in providing the Indians with the linguistic and bureaucratic apparatus necessary to organize the more recent and significant political movements (Hoxie, 1984; Altbach & Kelly, 1978).

^{iv} In 1973, the Supreme Court of Canada delivered its landmark decision in the case of *Calder v. Attorney-General of British Columbia*. The case involved a land claim by the Nisga'a people of British Columbia. Although the Nisga'a lost the case on a technicality, six out of seven judges agreed that Aboriginal title existed in law and continued to exist until explicitly extinguished by the Crown. The repercussions of this decision were profound. The court's recognition of Aboriginal title led the Trudeau government to perform a dramatic about-face and establish a policy of comprehensive claims in those parts of Canada where no land cession treaties had ever been signed.

^v The decisive factor for the elaboration, approval and dissemination of Law 6.001 was the government's concern with its international image so negatively affected by allegations of human rights violations. Since 1967, the government faced a systematic international campaign accusing it of omission and implication in ethnocide practices, after the international press informed about massacres of Indians (Oliveira Filho, 1998).

^{vi} As it happened with other government's attempts to create subterfuges to suppress indigenous people's rights, including the emancipation project dating from 1978, the decree no. 94.946/87 was not ratified due to fierce criticism from indigenous leaders, indigenous organizations and other organizations supporting the indigenous cause.

^{vii} The end of UNI in the early 1990s came without surprise. Problems, including its restricted management and distorted representation, manifested most of the times in top-to-bottom decisions, were never resolved. In addition, UNI failed to reflect the ethnic reality of indigenous people in Brazil with its multiplicity of small fragmented and not well articulated societies. The trend was the establishment of several regionally-based indigenous organizations.

^{viii} *The Unjust Society* was Harold Cardinal's personal response to the Chrétien/Trudeau White Paper. It became an immediate Canadian best-seller and was reprinted in 2000 with a new introduction by Cardinal. *The Unjust Society* was instrumental in the abandonment of the assimilationist policy of the White Paper by the Canadian government.

^{ix} The Métis and the Inuit had to discuss separate forms or agreements with the Canadian government.

^x Farage (1991) highlights an interesting paradox: while in the eighteenth century the indigenous peoples who lived close to the national boundaries, mainly in Amazonia, were seen as "frontier guardians", in the twentieth century they came to be seen as a threat to the integrity of the national territory.