

# Indigenous Peoples and the Judiciary in Brazil: an appeal for a Legal Anthropology approach

*João Francisco Kleba Lisboa<sup>1</sup>*

<sup>1</sup>Núcleo de Antropologia da Política, do Estado e das Relações de Mercado (NAPER),  
Departamento de Antropologia (DEAN), Universidade Federal do Paraná (UFPR), Curitiba/PR, Brasil

## **Abstract**

The lack of understanding between the Judiciary and Indigenous Peoples in Brazil stems in large part from the state's refusal to recognize the sovereignty of the latter, while asserts its own sovereignty over them. There is little interest from judges and legal operators in knowing and recognizing the specific rights brought by indigenous alterity, recognized by the Federal Constitution of 1988. Academic interest in Indigenous Peoples in Law schools is still low and, in most cases when it occurs, is without the methodological tools of empirical research and the ethical concerns of anthropological fieldwork. I intend to analyze the difference between the typical approach of anthropologists and jurists on this subject, while defending the relevance and contribution of Legal Anthropology to all sides involved: Indigenous Peoples, Judiciary and Academia.

**Keywords:** Indigenous Peoples; Judiciary; Legal Anthropology; Alterity.

# Povos Indígenas e o Poder Judiciário no Brasil: um chamado ao olhar da antropologia jurídica

## Resumo

A falta de entendimento entre o Poder Judiciário e os Povos Indígenas no Brasil decorre em boa parte da recusa do estado em reconhecer a soberania destes últimos, enquanto afirma a sua própria soberania sobre eles. Há pouco interesse por parte dos julgadores e operadores do direito em conhecer e reconhecer os direitos específicos advindos da alteridade indígena, reconhecida pela Constituição Federal de 1988. O interesse acadêmico sobre os Povos Indígenas nas faculdades de Direito ainda é baixo e, na maioria das vezes em que ocorre, carece das ferramentas metodológicas da pesquisa empírica e das preocupações éticas do trabalho de campo antropológico. Pretendo analisar a diferença de abordagem típica dos antropólogos e dos juristas neste assunto, ao mesmo tempo em que defendo a relevância e contribuição que a pesquisa em Antropologia do Direito pode trazer para todos os lados envolvidos: Povos Indígenas, Judiciário e Academia.

**Palavras-chave:** Povos Indígenas; Poder Judiciário; Antropologia do Direito; Alteridade.

# Indigenous Peoples and the judiciary in Brazil: an appeal for a Legal Anthropology approach

*João Francisco Kleba Lisboa*

In this essay, I intend to discuss the possibilities of Legal Anthropology research in observing the relations of Brazil's Judiciary over the Indigenous Peoples. A relationship that was – and to a large extent continues to be – defined by colonial domination and ethnocide (Clastres, 2004 [1974]). I assume that in such relations the rules and cultural values of hegemonic society intervene on Native Peoples, who after all maintain their own social dynamics and juridicities. I also propose that legal forms and discourses, that constitute judicial acts and decisions, express a cultural and historically conditioned view from legal operators (judges, barristers, lawyers, etc.) about the Native Peoples and their customs. Through those points of view, as in a photographic negative, we could observe the Indigenous forms of social life which, when confronted with state law, are denied, censored or punished by the latter.

The need for an interdisciplinary approach that joins theoretical and methodological efforts from Law and Anthropology, to deal with the problematic relationship between Indigenous Peoples (or other ethnic minorities) and the Brazilian state, has already been noted for some time. I highlight the pioneering meetings organized by prof. Sílvio Coelho do Santos, at the Federal University of Santa Catarina, in 1980 and 1983, bringing together anthropologists and lawyers to criticize the current indigenist politics and legislation and propose alternatives. Those interdisciplinary meetings resulted in two collections of articles (Santos, 1982; Santos et al., 1985). Prior to the current Federal Constitution of 1988, such dialogues helped to formulate the innovative understanding about Indigenous Peoples embodied in the new Constitution (Santos, 1989). The present article intends to renew and refresh those debates, by mixing theoretical references, examples of Brazilian judicial decisions and ethnographic data.

In practice, Indigenous rights are quite distant from what the main documents and rules say about it. I empirically observed that during my Master's field research, among the Kaingang People, over ten years ago<sup>1</sup>, and continued to register it through this time. Despite the “multiple faces of the state” for the Indigenous Peoples (Lisboa, 2010b), Brazilian laws, the judiciary and other control institutions impose themselves above Indigenous communities and their social dynamics.

This imposition theoretically stems from state's sovereignty and its territorial jurisdiction, that legitimize (or at least provide legal form to) decisions from non-Indigenous society over Indigenous Peoples, while denying their own sovereignty (Mcneil, 2016). However, court decisions carry with it not only juridical principles and modern impersonal rules, but also contain inaccurate, quick ‘sociological’ analysis and racial stereotypes that aim to explain the functioning of Indigenous communities, or their ‘culture’. As already noted on the litigations of the Tupinambá de Olivença (Bezerra, 2017), those non-juridical contents of judicial decisions reproduce, but also reinforce, a certain mediatic common-sense view about Indigenous Peoples, now covered by the legal authority.

---

<sup>1</sup> Resulting in my Master's thesis, entitled [approximate translation] “The Law among the Kaingang in the West of Santa Catarina: a view from the legal anthropology” (Lisboa, 2010a).

## Law and Indigenous Peoples in practice: beyond the doctrinal debate

I start from Carlos Frederico Marés statement, that the historical condition of success to Latin American states was the forced (and fictitious) integration of conquered Indigenous Peoples. Because of that, the national legal systems of those states maintain a “veiled conflict” with the ways of life and existence of the Indigenous Peoples (Marés, 2014, p. 360). In other words, it’s what Gersem Baniwa defined as “a democracy of the majority over or against minorities” (Baniwa, 2009, p. 99), exemplified both in the absence of Indigenous representatives in the three constituted branches – Executive, Legislative<sup>2</sup> and Judiciary – and in the non-recognition of the Indigenous legal systems.

Surprisingly, and despite providing rich ethnographic and analytical notes, judicial decisions over Indigenous Peoples are still a very unexplored subject, although not unprecedented. Among the research done by jurists on this subject, I highlight the doctoral thesis of Erika Macedo Moreira (2014) “Onhemoirõ: o Judiciário frente aos direitos indígenas”, and the book from the newly appointed judge in the state of Pará, Ib Sales Tapajós (2019) “Direitos indígenas e o Poder Judiciário: o caso da Terra Indígena Maró”.

Among Brazilian anthropologists, many have actively observed the rising of Indigenous rights for decades, and have also begun to analyze the role of the Judiciary in enforcing those laws – or, more recently, the political threats to these legal guarantees (see Carneiro da Cunha et al., 2017). Manuela Carneiro da Cunha stands out in this milieu, since at least her precursor book (1987) “Os direitos dos índios: ensaios e documentos”, which covers a vast period, from colonial and imperial legislation to the 1973 Indian Statute and the 1987 National Constituent Assembly – reviewing also the International Law, Comparative Law and numerous legal documents, including a valuable section named “Indigenous Peoples Documents”. Carneiro da Cunha is probably the main Brazilian anthropology expert on Indigenous rights, and remains very active writing and speaking against the reactionary theory of “time landmark” (marco temporal)<sup>3</sup>, including in her recent book, organized in partnership with Samuel Barbosa (2018), “Direitos dos povos indígenas em disputa”.

The 1988 Brazilian Constitution is very clear when recognizes, to the “Indians”, “their original rights to the lands they traditionally occupy” (BRASIL, 2013, p. 122), in a new legal paradigm that no longer seeks to combat and integrate indigenous otherness (as the previous ones did). Notions such as traditional occupation and territoriality, however, should not be romanticized or naturalized. The creation and recognition of Indigenous lands by the state must be seen from a historical perspective, focusing on the respective processes of territorialization, “pacification” and tutelage of Indigenous Peoples by colonial powers and knowledges, as well as the set of state administrative policies and procedures, called ‘indigenism’, over such populations. This is one of the main research lines led by an important group of Brazilian anthropologists for over three decades, such as João Pacheco de Oliveira (1988, 1998, 2012, 2016) and Antonio Carlos de Souza Lima (1995, 2012 2015).

---

<sup>2</sup> With very rare exceptions, the most important Joênia Wapichana, elected in 2018 for the position of Federal Deputy, representing the state of Roraima through the “REDE Sustentabilidade” Party – the same of Marina Silva.

<sup>3</sup> The controversial thesis of “marco temporal” emerged during the 2009 Supreme Court judgment on the demarcation of the Indigenous Land (IL) Raposa Serra do Sol, in the far north of Brazil, after a very biased reading of the Constitution (which is quite explicit about Indigenous lands in its article 231 and paragraphs) by the judges Carlos Ayres Britto and Carlos Alberto Menezes Direito. Over the time, the thesis was adopted by the Brazilian government and judges, weakening the Indigenous territorial rights, in response to the pressure made by anti-Indigenous agrarian elites. Between August and September 2021, when the Court was about to judge the scope of the “marco temporal”, approximately 6,000 people, including men, women, children and elders, from 150 different Indigenous nations, camped on the Esplanade of Ministries in Brasília. While this huge mobilization took place outside with lots of music, dances, prayers and creative performances, the young Indigenous lawyers Eloy Terena, Cristiane Baré, Ivo Macuxi and Samara Pataxó made the legal defense of their ancestral lands before the 11 Supreme Court judges. On social networks, widespread support for Indigenous rights gathered in the hashtag #MarcoTemporalNao, raising NGOs, indigenists, anthropologists and other allies of the Indigenous Peoples.

Ana Lúcia Lobato de Azevedo (1998), a member of this group, dedicated her research specifically to the role of the Judiciary in defining Indigenous lands. In a proposal quite similar to what I advocate here, she was interested “not in performing an exegesis of legal texts [...], but in trying to understand how the rights contained in the codes are actualized through what happens in the *forum* space and what emanates from there” (p. 153, *own translation*). Through the notion of ‘arena’, Azevedo analyzes the Judiciary anthropologically, “as part of a broader political field with which it articulates, both influencing and being influenced by the social processes that occur within it, and not as an equitable and equidistant sphere, capable of standing above all other powers and decision-making spheres” (p. 154, *own translation*). Azevedo was based on a concrete case study in the state of Paraíba in the late 1970s, about the judicial litigation over the traditional lands of the Potiguara people and against the Indigenous assistance agency (FUNAI), for what she monitored the events inside and outside the process and the performance of FUNAI’s lawyers over the following years.

Also interested in the judicial relationship between the state and Indigenous Peoples, the anthropologist Eduardo Viveiros de Castro (2006), in a well-known interview, questions the power of jurists and the Judiciary in defining who is an Indian and who is not. Viveiros de Castro provokes such pretension by inverting the terms of the common-sense: “In Brazil, everyone is an Indian, except for those who aren’t”. Also, on the same case analyzed by Ib Sales Tapajós, the Maró Indigenous Land, Viveiros de Castro, after being requested by the Public Prosecutor’s Office of Pará, wrote a 28-page “Opinion on the sentence of the federal judge” (*Parecer sobre a sentença do Juiz federal*) who decided about that case.

Such examples allow a bonding of Law and Anthropology research areas and, simultaneously, address both the functioning institutions of Brazilian state law and the dynamic reality of Indigenous Peoples, who live in this territory. Such approximation could combine a broad and accurate monitoring of judicial practices over the Indigenous Peoples with the issues, approaches and distances provided by the anthropological view and the ethnographic practice. The construction and exploration of this (macro) research theme would bring countless advantages to what is meant by anthropology of law – and somehow to Indigenous ethnology too – in Brazil.

The most part of the Brazilian academic production on this subject, however, tends to be focused on a review of the *corpus* of written norms (whether laws in force or repealed, national or international) that rule the Indigenous population, adding to it some legal doctrine discussion<sup>4</sup>. When court decisions are the subject of academic analysis, they are often about the titling of Indigenous Lands – a next step of administrative processes that are federal government’s responsibility.

The issue of Indigenous Lands (ILs) is part of an agenda that is discussed at the highest levels of the Republic offices or the by the international law organizations. These themes, like environmental issues and the protection of the rainforest, are endowed with visibility and public appeal, moving the national and international imaginary about Indigenous Peoples, despite the growing bureaucratization of this field (Ramos, 1992). See, for example, the case of the of Raposa Serra do Sol IL demarcation, in Roraima, which yielded intense debates and discussions in the main national newspapers, between the first and second decade of this century (Miras et al., 2009); or the previous case of the Yanomami IL demarcation, with wide international repercussions (Kopenawa, Albert, 2013). Unnecessary to say that such cases receive most of the attention from researchers and academic works focused on the relationship between Indigenous Peoples and the state law.

---

<sup>4</sup> As demonstrates the book organized by Carlos Frederico Marés de Souza Filho and Raul Cezar Bergold (2013), in which, among fourteen articles, only two seek to focus on the application of Indigenous rights by the Judiciary.

Such demarcation processes, on the other hand, imply a political and bureaucratic recognition that doesn't occur without state's resistance or complete refuse in observing those rights, not only in Brazil (Erueti, 2006; Leuzinger, Lyngard, 2016). Judiciary, therefore, would be the natural way to charge countries to respect the Constitution, the Treaties or the "Land Title" agreements. Unfortunately, even if the Indigenous otherness and territoriality are constitutionally recognized, self-governance and Indigenous justice systems have little or no institutional support in Brazil. This lack is reflected in a low number of academic researches or government actions on this subject, placing us well behind other countries (see, for example, Miller, 2001; ALRC, 1986).

I suggest here that we must look to the effective production and application of judicial decisions on Indigenous individuals and social life. That is, to the precise moments when the state imposes itself, through its jurisdictional role, exercised by the Judiciary, refusing or (less often) recognizing and validating Indigenous forms of conflict resolution and their regulatory systems. In those moments, state's sovereignty makes itself visible, not by the person who sits in the highest position in the political hierarchy, but by legal operators spread in its most diverse instances. Sovereignty, in any country in the American Continent, carry a colonial and everyday face to the Indigenous Peoples.

### **State sovereignty and Indigenous rights: a territorial dispute**

One of the main authors on the definition of the political-juridical concept of sovereignty in the 20th century, the German jurist Carl Schmitt (2006 [1950]) interprets the conquest of the "New World" as the episode that marks the beginning of the modern European Law of Nations, the predecessor of International Law. Following ancient European jurists, like Francisco de Vitoria and Isidore of Seville, Schmitt recognizes the conquest's land-appropriation as the foundational act of any law, on which a new order is established, internally or externally, and from which the whole colonial history unfolds: "the great primeval acts of law remained terrestrial orientations: appropriating land, founding cities, and establishing colonies (...). Land-appropriation takes first place" (p.44)<sup>5</sup>. It so happens that the image of a "state of nature", projected by European philosophers on the Indians, presupposed the idea of a free space to be disputed (among themselves, the Europeans) and occupied. According to Schmitt, "essential and decisive for the following centuries, however, was the fact that the emerging new world did not appear as a new enemy, but as *free space*, as an area open to European occupation and expansion" (p. 87).

The false idea of the New World as a 'free space' is directly related to the international law principle highlighted by Robert J. Miller and Micheline D'angelis (2011) as 'the Doctrine of Discovery', a resource still used by many states in territorial disputes with other countries and, for centuries, to impose sovereignty over Indigenous Peoples:

Portugal and Brazil also used the elements of the Doctrine in their colonial dealings with the Indigenous peoples that inhabited the areas that today comprise Brazil. Furthermore, the modern-day government of Brazil continues to enforce aspects of this legal principle against Indigenous peoples (p. 2).

---

<sup>5</sup> So continues Schmitt: "In every case, land-appropriation, both internally and externally, is the primary legal title that underlies all subsequent law. Territorial law and territorial succession, militia and the national guard presuppose land appropriation. Land-appropriation also precedes the distinction between private and public law; in general, it creates the conditions for this distinction. To this extent, from a legal perspective, one might say that land-appropriation has a categorical character. Kant expounds on this notion with great clarity in his *Philosophy of Law*. He speaks of *territorial sovereignty* or, more preferably, of *supreme proprietorship of the soil*, which he considers to be the 'main condition for the possibility of ownership and all further law, public as well as private'" (op cit, p. 46).

The Brazilian Indigenous policy, in turn, was based until recently on what Mércio Gomes (2005, p. 435) calls ‘the paradigm of acculturation’, that is, the idea or desire the Indigenous Peoples will disappear. It would be an inexorable process and a “natural event”, resulting from their contact with the “civilization” and their consequent integration into the national society. Such prediction, as we know today, was seriously shaken, if not disproved, by the resistant survival and the surprising growth of many Indigenous Peoples in the last decades. Realizing such changes, anthropologists and other researchers turned to the phenomenon of continuous increase in the total Indigenous population and the risen of political organizations from the last quarter of the 20th century. As shows, for example, the PhD thesis of Poliene Soares dos Santos Bicalho (2010). Also, the historical evolution of Indigenous rights in Brazil, to the present day, has been the subject of some studies, standing out the collection of articles, with the participation of Indigenous lawyers, “Povos indígenas e a lei dos ‘brancos’: o direito à diferença” (Araújo et al., 2006).

The recent recognition, by the national states, of the fundamental connection of Indigenous Peoples with their traditional territory, confirms the existence of other Indigenous rights based on their otherness, that is, on the cultural and ethnic distinctiveness of Indigenous Peoples. The Federal Constitution of 1988, on its article 231, refers to the Indigenous rights and ensures that “Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property”, according to the official translation (BRASIL, 2013, p. 122). The Constitution, therefore, recognizes a mutual and two-way relation between Indigenous Peoples and the land: just as the traditional occupation is what constitutionally guarantee the identification and demarcation of a territory as an Indigenous Land, so too are those lands what, according to the Indigenous themselves, guarantee the existence and perpetuation of their culture and traditional ways of life.

The territoriality of Indigenous Peoples can so be seen as a legal relationship that they maintain with the land, recognized by the Federal Constitution of 1988. In the words of prof. Sílvio Coelho dos Santos:

In this way, the constituents established on the Constitution the intention to design, for the legal sphere, norms that recognize the existence of Indigenous Peoples and define the preconditions for their reproduction and continuity. In recognizing the ‘original rights’ of Indigenous Peoples over traditionally occupied lands, the FC incorporated the thesis of the existence of legal relations between the Indians and those lands prior to the formation of the Brazilian state (Santos, 2005, p 77, *own translation*).

Far from being a passive pole of the relationship with the state (neither with academic research), some Indigenous Peoples seek to articulate their reaction to discriminatory acts and to judicial decisions that disrespect their ethnic and territorial specificity. They do so through a combined use of state’s categories and their own legal notions and concepts, whether individually or collectively. An example of the latter is the collective pronouncement of the Guarani-Kaiowá, in Mato Grosso do Sul, in 2012. Written in response to the eviction order given by a federal judge, the letter generated great commotion for suggesting that the state should decree the collective death of the Guarani-Kaiowá. As shown in their letter:

We ask the Government and the Federal Court not to issue the eviction/ expulsion order, but we do ask to decree our collective death and to bury us all here.

We ask, once and for all, to decree our total decimation / extinction, in addition to sending several tractors to dig a big hole to play and bury our bodies. This is our request to federal judges (*own translation*)<sup>6</sup>.

<sup>6</sup> See: [https://www.bbc.com/portuguese/noticias/2012/10/121024\\_indigenas\\_carta\\_coletiva\\_jc](https://www.bbc.com/portuguese/noticias/2012/10/121024_indigenas_carta_coletiva_jc) (last accessed on 15/01/2021).

Another example of collective resistance to a judicial decision came from the Indians of Baixo Tapajós, in 2014, who wrote a letter questioning the judicial decision that declared the inexistence of the Maró Indigenous Land. Through a simple trick – however able to undo the entire land demarcation – the judge did not recognize the Indigenous identity of its residents (and without Indigenous people there is no Indigenous land). In the decision, which would be annulled only in 2016, by the 1st Region’s Federal Regional Court, the judge stated that the Maró IL Indians were the result of an “artificial process of ‘invention of Indians’, by influence of exogenous ideological activist, focused on the environmental conservation of the Amazon” (Tapajós, 2015, p. 84, *translated by me*). The letter of the Indians, released in conjunction with the occupation of the Federal Justice building in Santarém, stated in response that:

Because of this discriminatory judicial sentence, we, the aforementioned Indigenous Peoples, REAFFIRM our Indigenous identities, we have not accepted throughout history and we will never accept the violence of the colonizing White, the refusal of our beliefs, our culture and our values. We know that laws in general do not favor us, but there is no law that can exterminate us. We are clear that the policy implemented by governments is anti-Indigenous and anti-environmental (*own translation*)<sup>7</sup>.

The frictions between Indigenous Peoples and the Judiciary, however, are not limited – in spite of its enormous importance – to the demarcations of Indigenous Lands and the struggles over Indigenous collective rights, the first of which is territorial. These causes have become the motto and the main claim of the Indigenous movement in recent decades. Even recognizing that, it can be said that the interactions of Indigenous People with the different state’s legal spheres go far beyond the land struggles.

It should be noted that, recently, some very relevant contributions on this subject are emerging. Equally notable is the fact that they have started not from universities and their academic research, but from the bodies linked to or related to the Judiciary, such as the Public Prosecutor’s Office, at federal level (*Ministério Público Federal*)<sup>8</sup>, and the National Council of Justice (CNJ)<sup>9</sup>. Also, in the academy some works have been carried out with the same purposes, bringing to light concrete cases, although its methodology is generally, after theoretical, doctrinal and legal analyzes, based on research in jurisprudence through the computerized search systems of the courts themselves (Wagner, Borges, 2019).

---

<sup>7</sup> See full content of the letter at: <http://www.correiocidadania.com.br/33-artigos/noticias-em-destaque/10329-13-12-2014-carta-circular-dos-povos-indigenas-do-baixo-tapajos> (last accessed on 15/01/2021).

<sup>8</sup> As, for example, the Manual of jurisprudence on Indigenous rights, with 921 pages, carried out by the 6th MPF Coordination and Review Chamber and made available in PDF on the internet (BRASIL, 2019).

<sup>9</sup> As is the case with the Resolution 287, from July, 25, 2019, specifically for the treatment of accused, convicted or deprived Indigenous People, approved by the CNJ after Funai’s provocation to the Council: “By the Resolution, the Judiciary is guided with a view to ensuring rights to Indigenous People in the course of legal processes, observing what dictates the Convention N. 169 of the International Labor Organization (ILO) and the United Nations (UN) Declaration on the Rights of Indigenous Peoples, so that their specificities are properly considered by the organs of the criminal system. Among the new procedures are the duty to forward the case file to Funai within 48 hours; ensuring the presence of an interpreter at all stages of the process, when necessary; the carrying out of an anthropological investigation that must consider, among other aspects, the personal, cultural and social circumstances of the accused person, as well as the uses, customs and traditions of the community to which he is linked” (Source: <http://www.funai.gov.br/index.php/comunicacao/noticias/5507-resolucao-aprovada-pelo-cnj-garante-direitos-de-indigenas-no-sistema-prisional>, last accessed on 15/01/2021, *own translation*).

## Encounters and mismatches

Here is the paradox: Brazilians who do not belong to the Brazilian people – not because they are less Brazilian than other, but on the contrary, because they are more, since, as many Indigenous leaders claim for White interlocutors, “it was you who came from outside”. For an Indigenous person, state considers her or him a regular individual citizen, despite the differential treatment, not to say discriminatory, that is guaranteed to her or him by law. But he or she is also part of an Indigenous community, a people and a land, and is inserted in a web of social relations and meaning (that is, in a culture) (Geertz 2000 [1973]) that is quite distinct from that in which most Brazilians live.

The encounter of the legal dimension of state with other non-state manifestations of juridicity is always problematic, and frequently produces a semantic and institutional friction, if not an ontological and political discontinuity. When Indigenous People face the Judiciary, it is not only about a small difference, solved by the solitary question to inquire the race or ethnicity of those involved in a census questionnaire. What is at stake here is precisely the imposition of a type of law – not only the law and the legal principles behind it, but the judicial rite itself and the labyrinth of acts, forms and procedural standards in which one enters – on another, and therefore of one society over another.

As the Judiciary gives the last word when it comes to interpreting and applying state law and society values (Rosen, 2006), its relationship with Indigenous Peoples is thus inserted in the field of interethnic relations studies. At the same time, it concerns to the study of the Judiciary as a decision-making body, but also as a dynamic branch of lived relationships, of proper language, customs and habits, that is, also a “web of meanings” woven by its own members. Far beyond an abstract analysis of legal norms, this topic concerns the effective exercise of state sovereignty, through its judicial apparatus, with its own written and unwritten codes, over those Indigenous individuals criminally prosecuted, but also on the non-state forms of Indigenous social life.

Although Constitutional Law and International Law recognize, to some extent, the collective rights and the relative autonomy of Indigenous Peoples, in other areas of Law (especially the Criminal Law) the reality is very different. Spread across the country, there is an infinity of minor cases, with none or little public visibility, involving Indigenous People. Such specific cases may be or not linked to collective rights struggle, but they frequently are a sample of broader social problems faced by Indigenous Peoples. They are also subject to isolated applications of the law, on Indigenous individuals or groups, often without any specialized legal assistance – samples, in turn, of how the Judiciary operates.

Luiz Fernando Villares (2010), for example, points to the mismatch between a Criminal Law based on a liberal model, which in theory (but we know that “in practice the theory is quite another”) applies to all individuals indiscriminately, according to the conduct of each one, and its role of surveillance and control applied by the state over Indigenous Peoples, that occurs “only when their behaviors confront the power of Brazilian society” (p. 21, *own translation*). Most criminal cases involving Indigenous people as defendants originate from local inter-ethnic conflicts – as well as in many other cases where one or more Indigenous people appear as victims of crimes such as homicide<sup>10</sup>.

Villares demonstrates, based on his professional experience at the agency’s Attorney Office, that although the evident relevance of interethnic conflicts around the criminal cases that reach Funai’s prosecutors, “investigations are taken in a different direction, seeking not to elucidate the fact, but on the contrary, simply to identify the guilty” (p. 22, *own translation*). Legal processes, thus, end up losing the view of the conflict as a whole and its historical context, preferring to adopt “a limited view of criminality” (Idem). Villares, who got closely involved with the subject, affirms that there is a profound disinterest on the part of the Justice systems in recognizing the specificities of the Indigenous people when confronted with their agents:

<sup>10</sup> Such cases have been growing in recent years, see CIMI annual reports entitled “Violence against indigenous peoples in Brazil”, despite the difficulty in obtaining total data.

The moment of application of Criminal Law imposes on the Indigenous people repressive legislation and a judicial system (judges, prosecutors, delegates, police) that ignores their customs and judges them with indifference, like any other citizen. In almost all cases, it occurs with deep prejudice, without taking into account the peculiarities about knowing the meaning of the law, the cultural conditions and the understanding of the illicit character of the conduct (Villares, 2010, p. 21, *own translation*).

A similar critical analysis is made by Tédney Moreira da Silva (2016), for whom Criminal Law played a crucial role within the set of integrationist theories and practices that marked Brazilian indigenous policy until the end of the 20th century – and continue to do so today, after the 1988 Federal Constitution. Moreira da Silva thus suggests a notion of ‘civilizing penalty’, according to which the criminalization of Indigenous People continues to be used by the state to impose on them a civilization model that is intended to be unique and necessary. Civilizing, in these cases, has the meaning of erasing its cultural distinctive features and ethnic belonging. For Silva, such an ethnocidal view would be based on the outdated 1973 Statute of the Indian, and on the discourse of ‘unimputability’ (juridical category dedicated to those with incomplete or retarded mental development), through which

generic and quick judicial decisions on the guilt of Indigenous People, that recognize them as criminally liable from the superficial analysis of their interethnic contact, are political instruments for neutralizing or suppressing ethnic diversity, as they signal the success of integrationist politics and the consequent disappearance of subjects who would be marked by failures in the socialization process (Silva, 2016, p. 61, *own translation*).

Prof. Stephen Baines, who has been studying Indigenous People held in penitentiary institutions in Boa Vista, the capital of Roraima, since 2008, noticed numerous problems between legal operators and the imprisoned Indians, especially what he called ‘ethnic mischaracterization’ during the defendant’s institutional journey. As an explicit example of how integrationist doctrine, that was supposed to be overcome after 1988, continues to operate in the decisions of the judicial authorities, one of the statements collected by Stephen Baines brings the following speak: “The prosecutor said that I was not an Indian, no. Because of my signature (I knew how to write)” (Baines, 2009, p. 181, *own translation*). This way, Baines notes that there is a process of

ethnic mischaracterization of Indigenous People by law operators (policemen, police chief officers, prosecutors, judges, state secretaries of public safety, state secretaries of justice and citizenship, etc.). This problem results in an inaccuracy of official statistics regarding the contingent of imprisoned Indians and their “legal invisibility” as subjects with different rights (...).

The categories used in the National Censuses and adopted by the penitentiary system contribute to the invisibility of Indigenous prisoners subsumed in the “*pardo*” [“brown”] category, as well as regional categories such as “*caboco*”, “*caboclo*”, “*civilized Indian*”, “*mestiço*”, “*acculturated Indian*”, among others, in opposition to the “pure Indian”. These terms are used to disqualify the differential treatment that the Federal Constitution guarantees to Indigenous People. In addition, there is no administrative guidance to systematize prisoners according to their ethnic identity (Idem, p. 184).

As we can see, this research subject also deals with the judicial institutions functioning and their agents, when confronted with the Indigenous people who enter “the system wires”. This implies turning the empirical purposes and questions of the research also to the Judiciary and its members. The statistical overrepresentation of Indigenous peoples in the prisons, facing the criminal justice system or as victims of violent crimes is a social problem in some English-speaking countries, such as Australia (Weatherburn, 2014),

New Zealand (Jackson, 1987; Perret, 1999) and Canada (Malakieh, 2019), raising serious reasons for the reform of national justice systems and their adequacy to Aboriginal/Maori systems (although the Indigenous marginalization is a much broader issue than merely criminological or judicial).

Critical analyzes of the Judiciary in Brazil are not uncommon<sup>11</sup>, and may even come from its own members. Eliana Calmon, for example, who became minister of the Superior Court of Justice (STJ) and national corregidor of justice at the National Council of Justice (CNJ) before retiring in 2013, published an essay in 1994 from her own experience as a magistrate, in which she stated that:

unfortunately, we reached the end of the 20th century with a Judiciary in an abysmal situation towards society: a bureaucratic power, oblivious to real needs, because it was uncommitted, due to deformation, with the repercussions of the responses produced. Judges protect themselves in a false impartiality and without an own perspective; a body without a soul in search of an identity it lacks, as Carnellutti warned: “The greatest danger to the Judiciary lies within the Judiciary”.

The danger lies in the ataraxia of ideas, in the transformation of judges into luxury bureaucrats, who gravitate towards a narrow and backward apparatus, mystification of an independence that they do not have, except insofar as they are at the service of an efficient judicial provision (Calmon, 1994, p. 142, *own translation*).

Such criticisms, however, should not be read as personal attacks on the figure of the magistrates, neither should these be the solely responsible for the “encirclement” of Justice or for its excessive bureaucratization. Rather, they are perceptions of structural problems that often affect these judges (and other legal operators), once they enter a judicial (could we say cultural?) system whose normative structure has already been consolidated and can hardly be modified without a large amount of individual and collective effort. Magistrate Eugenio Raúl Zaffaroni (1995), for example, writes about a ‘sociological profile of the judge’ (p. 210), pointing out this structural character of judicial technobureaucracy, that projects itself to the subjective level, often as a survival strategy in recent-born democracies, such as ours:

Bureaucratization is, precisely, a defensive reaction that allows to survive in internal and external dependence, generated through the threat of sanctions, blocking ascents and promotions, arbitrary removals, internal defamatory campaigns, police pressure and administrative agencies etc.

These are the institutional conditions to which people are submitted, but which tend to generate escape mechanisms, which configure what we call “subjective bureaucratization” or bureaucratic deterioration at the operators’ personal level (p. 158, *own translation*).

A look at the judicial environment and the personal profile of this workers, in turn, cannot be disconnected from a concern with the ‘way of production of Justice’, especially about the Criminal Justice system and its flow, with a potentially wide research field, involving identification and location of processes, data collection and critical reflection (Rifiotis et al., 2010). This would imply an opening of legal theories to the day-to-day dynamics of forums, courts and tribunals, along the lines of what has been called “empirical research in law”, as in the book published by the Institute for Applied Economic Research (Ipea), originated from a seminary on the subject (Cunha, Silva, 2013). In the presentation of the book, Marcelo Neri, at the time the President of Ipea, defended the ‘smart solutions’ of this reality-grounded way of research:

---

<sup>11</sup> See, for example, the repercussions caused by the paper “The cost of Justice in Brazil: an exploratory comparative analysis”, published by Luciano Da Ros (2015), which provided headlines in the press as “The most expensive Judiciary in the world” (*Estadão*: <http://opinio.estadao.com.br/noticias/geral.o-juditario-mais-car-o-do-mundo.10000060068>) or “The most expensive justice in the world” (*O Globo*: <https://oglobo.globo.com/opinio/a-justica-mais-cara-do-mundo-19689169>).

On the one hand, they provoke the theory of Law to stick their feet in the reality of the application of the laws, in the functioning of the courts, of the judicial processes, of the trials, of the adverse-parties, of the conflict. The connection with society, social sensitivity and reality are, more than premises of method, conditions for understanding the law in the complex and distinct scenario of contemporary society and the state. On the other hand, demand for research in Law, long contaminated by the logic of the opinion, that frees itself from any commitment to the pre-established response, that recovers the zeal with the method, the fidelity to the investigation procedures, the centrality in an investigation guided by a problem, some hypotheses and a profusion of analyzes in which the truth is a consequence, not the cause of the research work (Idem, p. 9, *own translation*).

The Law research field is traditionally a mixture of universal conjectures, hermeneutic debates and theoretical-analytical abstractions. But Law is gradually been challenged to deal with social and subjective phenomena that escape the classic definitions that date back to the beginning of the modern age, with which Law faculties were established in Brazil. In face of the new problems (a word I use in the sense of both “social problem” and “research problem”) of contemporary society – the globalized, interconnected world and intercultural, interethnic conflicts – we can’t find sufficient answers among the traditional conceptual equipment of the academic-legal environment, such as the “social contract”, “popular sovereignty” and the “property rights”. Nor in the most recent, progressist categories such as “human dignity” and “diffuse rights” we are able to solve those problems. That’s why anthropology would have much to contribute, either through an ethnographic approach “up close and from the inside”, as defined by José Guilherme Magnani (2002), or because of its challenging attitude face to given truths, unquestioned habits and apparently stiffened systems.

First of all, there would be an urgent need to reconnect the Law that has been taught in public and private faculties across the country<sup>12</sup> to that which constitutes the daily practice of graduated professionals, whether they are civil servants or not. According to a recent study that raises the panorama of research in Law in Brazil, this is one of the main reasons for what the authors consider the low quality of legal research in the country:

It is necessary to clarify that the low scientific quality of the works is understood as the research reproducing the abyss between the law of the manuals and codes from that practiced by lawyers and courts. There is a described break between an idealized law and an empirically verified one. Such a situation is little explored in research in Law in the country, revealing the fragility of these works (Barros, Barros, 2018, p. 32, *own translation*).

To overcome this gap portrayed by the researchers above, we need to take a few steps in the direction of interdisciplinarity (both theoretical and mainly methodological) and the non-isolation of the Law in relation to other disciplines in the social sciences (applied or not). I then proceed to advocate the viability and the relevance of Anthropology in working together and within the field of legal studies. Historically bonded to research with Indigenous populations, anthropology in Brazil, as an academic body represented by the Brazilian Association of Anthropology (ABA), founded in 1955, has been for decades acting emphatically in the defense of the rights of Indigenous Peoples, with a deep involvement in the latter constituent process and in several land demarcation campaigns. To do this, anthropologists had to get to know closely the functioning of the country’s legal mechanisms over the Indigenous issue, which ended up producing numerous specialists in this area<sup>13</sup>.

12 I wrote about the contemporary challenges of teaching Law and the role of legal anthropology in a previous article, see Lisboa, 2014.

13 The role of anthropologists is crucial and institutionally attributed in the judicial processes over Indigenous Lands. An agreement continuously signed between the ABA and the Federal Attorney Office (PGR) since 1990 provides for the appointment of anthropologists to work in the preparation of expert anthropological reports, which allow technical support for the work of the PGR on issues involving the rights and interests of Indigenous populations, maroons (remnants of quilombo communities), ethnic groups, minorities and others. These institutional attributions of anthropological reports are frequently subject of collections of articles and publications such as Silva et al., 1994; Leite, 2005; and Pacheco de Oliveira et al., 2015.

## The Legal Anthropology Approach

The lack of mutual interest between Law and Anthropology can be very damaging to Indigenous Peoples. On the one hand, there is a complete lack of preparing among the legal operators to deal with the specificities of the Indigenous Peoples, since the Law courses pay little attention to or despise the topic. On the other hand, however, there is very little interest from the academy in promote research or specific material to support those professionals, although many of them work in local, poorly equipped courts, far from urban centers and academic discussions. This seems to deepen the lack of understanding when it comes to applying general legal principles in cases involving Indigenous Peoples.

The Judiciary, nonetheless, can be seen as another ‘political field’ (Bourdieu, 1991), and at the same time as an ‘interethnic arena’ (Ramos, 2012), where interethnic relations take place, now through a legal discourse that will hardly open loopholes for the Indigenous justice systems. An inside, ethnographic view of the Judiciary will allow to glimpse, with the due proximity and from a privileged locus, this unequal and imperative relationship, as well as the possible forms of resistance interposed to it.

By suggesting that Legal Anthropology can offer a significant contribution to the study of this troubled relationship between Indigenous Peoples and the state, specifically the Judiciary, I would like to point up both the theoretical and conceptual apparatus accumulated by this discipline and the anthropological method and its ethnographic research practice – although the latter is quite discredited today. This appeal is also based on the statement of Luís Roberto Cardoso de Oliveira that there is a ‘critical vocation of anthropology’, descendant from its radical dialectic between “domains of knowledge and experience”, that is, “between science and philosophy, between empiricism and metaphysics, or between the data and the meaning” (Oliveira, 1993, p. 67, *own translation*).

This approach would make it possible to overcome what Oliveira himself defines as the “distance that legal education in Brazil maintains in relation to the empirical world or the ethnographic perspective, which is at the heart of Anthropology” (Oliveira, 2010, p. 452, *own translation*). Such a gap may seem paradoxical in a course aimed at the training of lawyers and jurists, who at first would be interested in elucidating the facts as a guiding substance in the judicial processes in which they will work.

Working for decades to bring the courses of Law and Anthropology (at least in graduate school) closer together, Oliveira updates and brings the “interpretive turn” into the Brazilian legal context, comparing it to other Countries legal systems, and actualizing the Geertz’s classic book, “Local Knowledge” (1983). Drawing attention to the contextual dimension of specific cases and to the equity of decisions (and opposing it to the application of norms as absolute values), Oliveira (1992) makes a constructive critique of Geertz’s ethnographic example of the Balinese case of Regreg, proposing that Legal Anthropology should seek to identify what he calls the ‘structural tendencies to reification’, beyond the cultural translation goals proposed by Geertz.

For Oliveira, however, the gap mentioned above arises from the context of the practice and teaching of Law in Brazil, in which predominates the ‘contradictorial rhetoric’ [*retórica do contraditório*]<sup>14</sup>, more destined to persuasion than to elucidate facts, something that “suggests that the facts have very little value in the outcome of judgments” (Idem, p. 453). Hence, the observation that an approximation of legal knowledge with empirical research would be more than necessary to overcome the distance between Law and society itself.

<sup>14</sup> The ‘contradictorial rhetoric’, or ‘contradictorial logic’, is something that is not to be confused with the adversary procedure, or adversarial system, a method of exposing evidences in court, through which the opposing sides can bring out pertinent information and present and cross-examine witnesses (definition of the Encyclopedia Britannica). In Brazil, the Constitution (art. 5, LV) ensure the right of the parties to manifest themselves at all stages of the process, judicial or administrative. Roberto Kant de Lima, however, defines the contradictorial logic as a specific Brazilian Judiciary way, originated in medieval scholasticism. It’s the way Brazilian legal (and juridical-academic) tradition faces the challenge of building truth, through an infinite opposition of theses, only solved by the intervention of a third part, detached from the dispute (the judge). It also produces the ‘manualization’ of knowledge, in which proliferate “manuals, treaties and dictionaries, which are perennial sources of controversial doctrinal opinions, to be instrumentalized according to the specific needs of the actors in the field at a given moment” (Kant de Lima, 2012, p. 36-7, *own translation*).

For Roberto Kant de Lima, empirical research – mainly anthropological research, built through the interlocution with other (co)producers of knowledge – can bring a great contribution:

Promoting empirical research in the field of judicial practices, for example, can spell out some carefully hidden paradoxes, such as those usual in the criminal justice system, when the practice of the actors in the system obeys a distinct theory from that the books explicitly propose and taught in the legal courses (Kant de Lima, 2012, p. 37, *own translation*).

Conducting empirical research in the judicial environment, however, is not a matter of trying to discover ‘the truth of the facts’ through unquestionable data. Instead, it is a matter of listening and making the so-called ‘native theories’ – observed during the researcher’s interaction with other subjects in the fieldwork – dialogue with the legal theories already recognized by the judicial tradition. As empirical proximity and theoretical profundity are mixed in anthropological practice, it becomes difficult and unproductive to try to separate these two domains. As Mariza Peirano has demonstrated, this dichotomy between theory and empirical work is already overcome since, although many decades have passed, the better monographs of classical anthropologists continue to be read. Their work continues to provoke our interest mainly because they bring theoretical and ethnographic formulations that derive from their observations on the field, which in turn dialogue with theories formulated by older authors from their own observations. In Peirano’s words, there is no doubt about this double character of ethnography:

Ethnography is not a method; all ethnography is also theory. I always warn students to be suspicious of the claim that a work has used (or will use) the “ethnographic method”, because this claim is only valid for the uninitiated. If it’s good ethnography, it will also be a theoretical contribution (Peirano, 2014, p. 383, *own translation*).

Simultaneously, Anthropology differs from the model of questionnaires and inquiries practiced by judges and other legal professionals, or what Roberto Kant de Lima (1989) pointed out as the ‘inquisitorial tradition’ of our penal system, which resonates even in legal science and theoretical debates. Such differences are due not only to the way of formulating and directing the questions, but also in the answers that the two areas of applied knowledge seek. For as Eduardo Viveiros de Castro says about the question “who is an Indian in Brazil?”, this is not an anthropological question, but a legal one: “this is where the anthropologist is distinguished from the jurist: in the type of question they have ‘the right’ to do and, therefore, to answer” (Viveiros de Castro, 2006, p. 44, *own translation*). In other terms, as Ana Lúcia Pastore Schritzmeyer points out, there is a dialogical disposition of Anthropology that, instead of being guided by the signs of failure or success to reach a decision, resides

in the fact that anthropologists should not settle for seeing informants as mere affirmative echoes for their inquiries – a common and generally successful practice among inquisitors and defendants – but create situations in which dissonant and contradictory voices remain poorly ‘fitted’ into models and theories (Schritzmeyer, 2012, p. 228, *own translation*).

What stands out here as the great differential between anthropological practice and judicial inquiry is, in certain way, included in what Clifford Geertz (2000 [1973]) proposed as the main anthropological task: instead of intending to formulate the laws of functioning of a system, trying to understand the “webs of meaning” woven by the people who are involved in it, seeking to interpret them within the context with which they relate. This does not intend to carry out an anthropology disconnected from any function or social responsibility, nor an anthropology that falls into the absolute relativism of immeasurable or solipsist cultural facts.

With regard to the relationship between the state and ‘its others’ – to use a notion of historical alterities (Segato, 2007) – Brazilian anthropological research (which must recognize that is itself also part of the state, usually bonded to some public university or government agency) must proceed through an ethics that can give the field of interethnic relations a horizontality between all the subjects involved, including the researcher.

As an outline of a research plan, I highlight the following initial steps in order to delimit this field: **a)** addressing the historical role of the Brazilian Judiciary in the process of forced integration of Indigenous Peoples into national society, including the acts motivated by the principle of acculturation. Those acts presupposed the inherent inferiority of Indigenous People and their progressive disappearance. As well as ascertaining the continuity of such ethnocentric practices in the context of the 1988 Federal Constitution; **b)** to analyze the presence of Indigenous People in legal proceedings, especially in the criminal area (including those who are serving the sentence), and how officers and civil servants treat them, seeking to identify the recognition or the unrecognition of their ethnic identity; **c)** to observe how legal discourses about Indigenous Peoples are constructed by the legal operators, how these discourses relate to the current Indigenous legislation and how they support decisions and procedural acts related to Indigenous People, and finally; **d)** seek the manifestations of Indigenous justice and self-government that reach the Judiciary and have their validity refused or recognized by it, as well as confront such examples of Indigenous law with the equivalent state law.

## Conclusion

True anthropology occurs when one is willing to “open oneself to the viewpoints of the interlocutor, instead of despotically imposing his cultural certainties” (Rouanet, 1990, p. 119). This is not just about a data collection procedure, so that it occurs “in a respectful way”, but it concerns the equivalent treatment that the speeches, texts and analyzes, “native” or not, receive in the very process of understanding the world, or in a legal dispute resolution. This undertaking does not seem comfortable at all: taking equally seriously the point of view of a magistrate and that of an Indigenous defendant can, it seems, cause serious upheavals in the valuation hierarchy of power and positions typical of our society and of our Judiciary.

Finally, this preliminary bibliographic survey points to a delimited research problem, little explored and that promises relevant knowledge about the Brazilian Judiciary and contemporary Indigenous Peoples. This ‘double subject’, so to speak, instead of making a research diffuse or badly tied, makes its two poles delimit each other, searching for the intersectional points and mutual perceptions, even if permeated by ‘misunderstanding’ (Viveiros de Castro, 2015) or the ‘lack of interethnic understanding’ (Ramos, 2014). Above all, it makes research in Legal Anthropology not limited to intellectual debates around themes that – although urgent and noble – prove to be abstract and distant from the daily lives of both Indigenous Peoples (and other groups that traditionally awaken the interest of anthropologists) and legal professionals.

Received: January 31, 2021

Approved: November 11, 2021

Translated by the author.

## Bibliographical References

- ALRC, The Law Reform Commission. 1986. "The Recognition of Aboriginal Customary Laws: Summary Report". *Publications of the Law Reform Commission, Report*, 31. Canberra, Australian Government Publishing Service.
- ARAÚJO, Ana Valéria et al. 2006. *Povos Indígenas e a Lei dos "Branços": o direito à diferença*. Brasília: Ministério da Educação, Secretaria de Educação Continuada, Alfabetização e Diversidade; LACED/Museu Nacional.
- AZEVEDO, Ana Lúcia Lobato de. 1998. "A participação do poder judiciário na definição da terra indígena". In: João Pacheco de Oliveira (org.), *Indigenismo e territorialização: poderes, rotinas e saberes coloniais no Brasil contemporâneo*. Rio de Janeiro: Contra Capa. pp. 153-170.
- BAINES, Stephen G. 2009. "'Esperando para ser Julgado': Indígenas no Sistema Penitenciário de Boa Vista em Roraima". In: Maria Inês Smiljanic, José Pimenta, Stephen Grant Baines (orgs.), *Faces da indianidade*. Curitiba: Nexo Design. pp. 169-186.
- BANIWA, Gersem. 2009. "A conquista da cidadania indígena como direito, pluralismo jurídico e o fantasma da tutela no Brasil contemporâneo". *Revista da faculdade de direito da FMP*, 3:76-101.
- BARROS, Marco Antonio L. L. De; BARROS, Matheus de. 2018. "Os desafios e os novos caminhos da pesquisa em direito no Brasil". *Revista de Estudos Empíricos em Direito*, 5(1): 25-48.
- BEZERRA, André Augusto Salvador. 2017. *Consenso e força perante a mobilização Tupinambá: o discurso de poder dos meios de comunicação e do Judiciário*. Tese de doutorado, Programa de Pós-Graduação em Humanidades, Direitos e Outras Legitimidades da Universidade de São Paulo, São Paulo, 295 p.
- BICALHO, Poliene Soares dos Santos. 2010. *Protagonismo indígena no Brasil: movimento, cidadania e direitos (1970/2009)*. Tese de doutorado, Instituto de Ciências Humanas, Departamento de História, Universidade de Brasília, 468 p.
- BOURDIEU, Pierre. 1991. *Language and Symbolic Power*. Edited and Introduced by John B. Thompson. Translated by Gino Raymond and Matthew Adamson. Oxford, UK: Polity Press.
- BRASIL. 2013. *Constitution of the Federative Republic of Brazil: Constitutional text of October 5, 1988, with the alterations introduced by Constitutional Amendments no. 1/92 through 72/2013 and by Revision Constitutional Amendments no. 1/94 through 6/94*; translated and revised by Istvan Vajda, Patrícia de Queiroz Carvalho Zimbres, Vanira Tavares de Souza. – 6th rev. ed. – Brasília: The Federal Senate, Undersecretariat of Technical Publications.
- BRASIL. Ministério Público Federal. 2019. Câmara de Coordenação e Revisão, 6. *Manual de jurisprudência dos direitos indígenas / 6ª Câmara de Coordenação e Revisão, Populações Indígenas e Comunidades Tradicionais*. – Brasília: MPF, 920 p.
- CALMON, Eliana. 1994. "Do Poder Judiciário na Constituição – Justiça Federal". *Cadernos do CEJ*, 6: 131-143. Centro de Estudos Judiciários / Conselho da Justiça Federal.
- CARNEIRO DA CUNHA, Manuela. 1987. *Os direitos do índio: ensaios e documentos*. São Paulo: Brasiliense.
- CARNEIRO DA CUNHA, Manuela et al. 2017. "Indigenous peoples boxed in by Brazil's political crisis". *Hau: Journal of Ethnographic Theory*, 7(2): 403-426.
- CARNEIRO DA CUNHA, Manuela; BARBOSA, Samuel (orgs). 2018. *Direitos dos povos indígenas em disputa*. São Paulo: UNESP.
- CLASTRES, Pierre. 2004 [1974]. *Arqueologia da violência – pesquisas de antropologia política*. Prefácio de Bento Prado Jr.; tradução de Paulo Neves. São Paulo: Cosac & Naify.

- CUNHA, Alexandre dos Santos; SILVA, Paulo Eduardo Alves da (coordenação e organização). 2013. *Pesquisa empírica em direito: Anais do I Encontro de Pesquisa Empírica em Direito*, Ribeirão Preto, 29 e 30 de setembro de 2011. Rio de Janeiro: Ipea.
- DA ROS, Luciano. 2015. “O custo da Justiça no Brasil: uma análise comparativa exploratória”. *Newsletter: Observatório de elites políticas e sociais do Brasil*, 2(9): 1-15.
- ERUETI, Andrew. 2006. “The demarcation of Indigenous Peoples’ traditional lands: comparing domestic principles of demarcation with emerging principles of International Law”. *Arizona Journal of International & Comparative Law*, 23(3): 543-612.
- GEERTZ, Clifford. 2000 [1973]. *The interpretation of cultures: selected essays*. New York: Basic Books.
- GEERTZ, Clifford. 1983. *Local Knowledge: Further Essays in Interpretative Anthropology*. New York, NY: Basic Books.
- GOMES, Mércio Pereira. 2005. “O caminho brasileiro para a cidadania indígena”. In: Jaime Pinsky (org.), *História da Cidadania*. São Paulo: Contexto. pp. 419-445.
- JACKSON, Moana. 1987. “The Maori and the criminal justice system: A new perspective – He Whaipanga Hou”. *Study Series*, 18, part 1. Policy and Research Division, Department of Justice. Wellington, New Zealand.
- LEITE, Ilka Boaventura (org). 2005. *Laudos periciais antropológicos em debate*. Florianópolis, NUER / ABA.
- LEUZINGER, Márcia Dieguez; LYNGARD, Kylie. 2016. “The land rights of indigenous and traditional peoples in Brazil and Australia”. *Revista de Direito Internacional*, 13(1): 419-439.
- LISBOA, João Francisco Kleba. 2014. “O valor da diversidade: desafios no ensino de antropologia jurídica para o curso de direito”. *Pós – Revista Brasileira de Pós-Graduação em Ciências Sociais*, 13(1): 172-188.
- LISBOA, João Francisco Kleba. 2010a. *O Direito entre os Kaingang no Oeste de Santa Catarina: um olhar a partir da antropologia jurídica*. Dissertação de mestrado. Curso de Pós-Graduação em Direito, Universidade Federal de Santa Catarina, Florianópolis, 168 p.
- LISBOA, João Francisco Kleba. 2010b. “As múltiplas faces do Estado para os Kaingang do oeste de Santa Catarina”. *Cadernos do CEOM*, 23(32): 163-182.
- KANT DE LIMA, Roberto. 2012. “Antropologia jurídica”. In: Antonio Carlos de Souza Lima (coord.), *Antropologia & Direito: temas antropológicos para estudos jurídicos*. Rio de Janeiro/ Brasília: Contracapa/ LACED/ Associação Brasileira de Antropologia. pp. 35-54.
- KANT DE LIMA, Roberto. 1989. “Cultura jurídica e práticas policiais: a tradição inquisitorial”. *Revista Brasileira de Ciências Sociais (RBCS)*, 4(10): 65-84.
- KOPENAWA, Davi; ALBERT, Bruce. 2013. *The falling sky: words of a Yanomami shaman*; translated by Nicholas Elliott and Alison Dundy. Cambridge, Massachusetts; London, England: Harvard University Press.
- MAGNANI, José Guilherme Cantor. 2002. “De perto e de dentro: notas para uma etnografia urbana”. *Revista Brasileira de Ciências Sociais (RBCS)*, 17(49): 11-29.
- MALAKIEH, Jamil. 2019. “Adult and youth correctional statistics in Canada, 2017/2018”. *Juristat Article: Statistics Canada — Catalogue n. 85-002-X*. Mimeo.
- MARÉS, Carlos Frederico. 2014. “¿Antropología o Derecho? Crítica a la autosuficiencia del derecho”. In: Milka Castro (org.), *Los puentes entre antropología y derecho: orientaciones desde la antropología jurídica*. 1a ed. Santiago do Chile: Universidad de Chile, v. 1, pp. 359-379.
- MARÉS, Carlos Frederico; BERGOLD, R. C. (orgs.). 2013. *Os direitos dos povos indígenas no Brasil: desafios do século XXI*. 1ª. ed. Curitiba: Letra da Lei.

- MCNEIL, Kent. 2016. "Sovereignty and Indigenous Peoples in North America". *Osgoode Digital Commons* [Articles & Book Chapters], 2642. pp. 81-104. Available at: [http://digitalcommons.osgoode.yorku.ca/scholarly\\_works/2642](http://digitalcommons.osgoode.yorku.ca/scholarly_works/2642) Consulted on 15/01/2021
- MILLER, Bruce G. 2001. *The problem of justice: tradition and law in the Coast Salish world*. Lincoln and London: University of Nebraska Press.
- MILLER, Robert J.; D'ANGELIS, Micheline. 2011. "Brazil, Indigenous Peoples, and the International Law of Discovery". *Brooklyn Journal of International Law*, 37(1): 1-64. Available at: <https://brooklynworks.brooklaw.edu/bjil/vol37/iss1/1>. Consulted on 15/01/2021
- MIRAS, Julia Trujillo et al. (orgs). 2009. *Makunaima grita! Terra Indígena Raposa Serra do Sol e os direitos constitucionais no Brasil*. Rio de Janeiro: Beco do Azougue.
- MOREIRA, Erika Macedo. 2014. *Onhemoirão: o Judiciário frente aos direitos indígenas*. Tese de doutorado. UNB; Programa de Pós-Graduação em Direito, Brasília.
- OLIVEIRA, Luís Roberto Cardoso de. 2010. "A dimensão simbólica dos direitos e a análise de conflitos". *Revista de Antropologia*, 53(2): 451-473.
- OLIVEIRA, Luís Roberto Cardoso de. 1993. "A vocação crítica da antropologia". *Anuário antropológico*, 90: 67-81.
- OLIVEIRA, Luís Roberto Cardoso de. 1992. "Comparação e interpretação na antropologia jurídica". *Anuário Antropológico*, 89: 23-45.
- PACHECO DE OLIVEIRA, João. 1988. *O nosso governo: os Ticuna e o regime tutelar*. São Paulo/ Brasília: Marco Zero/ MCT/CNPq.
- PACHECO DE OLIVEIRA, João. (org.). 1998. *Indigenismo e territorialização: poderes, rotinas e saberes coloniais no Brasil contemporâneo*. Rio de Janeiro: Contra Capa.
- PACHECO DE OLIVEIRA, João. 2012. "Terras Indígenas". In: Antonio Carlos de Souza Lima (org.). *Antropologia & Direito: temas antropológicos para estudos jurídicos*. Rio de Janeiro/ Brasília: Contracapa/ LACED/ Associação Brasileira de Antropologia. pp. 369-374.
- PACHECO DE OLIVEIRA, João. 2016. *O nascimento do Brasil e outros ensaios: "pacificação", regime tutelar e formação de alteridades*. Rio de Janeiro: Contra Capa.
- PACHECO DE OLIVEIRA, João et al. (orgs.). 2015. *Laudos antropológicos em perspectiva*. Brasília: ABA.
- PEIRANO, Mariza. 2014. "Etnografia não é método". *Horizontes Antropológicos*, 20(42): 377-391.
- PERRET, Roy. 1999. "Dual Justice: The Māori and the Criminal Justice System". *He Pukenga Kōrero*, 4(2): 17-26.
- RAMOS, Alcida Rita. 2014. "Ensaio sobre o não entendimento interétnico". *Série Antropologia*, 444: 1-29.
- RAMOS, Alcida Rita. 2012. "Indigenismo: um orientalismo americano". *Anuário Antropológico*, 2011(1): 27-48.
- RAMOS, Alcida Rita. 1992. "The Hyperreal Indian". *Série Antropologia*, 135: 1-17.
- RIFIOTIS, Theophilos et al. 2010. "Reflexões críticas sobre a metodologia do estudo do fluxo de justiça criminal em caso de homicídios dolosos". *Revista de Antropologia*, 53(2): 689-714.
- ROSEN, Lawrence. 2006. *Law as culture: An invitation*. Princeton, New Jersey: Princeton University Press.
- ROUANET, Sérgio Paulo. 1990. "Ética e antropologia". *Estudos Avançados*, 4(10): 111-150.
- SANTOS, Sílvio Coelho dos. 2005. "Direitos humanos e os direitos dos povos indígenas no Brasil". *Ilha - Revista de Antropologia/UFSC*, 7(1-2): 73-82.
- SANTOS, Sílvio Coelho dos. 1989. *Os povos indígenas e a Constituinte*. Florianópolis: EdUFSC/ Movimento.
- SANTOS, Sílvio Coelho dos et al. (orgs.). 1985. *Sociedades indígenas e o direito: uma questão de direitos humanos*. Florianópolis: EdUFSC.
- SANTOS, Sílvio Coelho dos (org). 1982. *O índio perante o direito: ensaios*. Florianópolis: EdUFSC.

- SCHMITT, Carl. 2006 [1950]. *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*. Translated and Annotated by G. L. Ulmen. New York: Telos Press Publishing.
- SCHRITZMEYER, Ana Lúcia Pastore. 2012. *Jogo, ritual e teatro: um estudo antropológico do Tribunal do Júri*. São Paulo: Terceiro Nome.
- SEGATO, Rita Laura. 2007. *La nación y sus otros: raza, etnicidad y diversidad religiosa en tiempos de políticas de la identidad*. Buenos Aires: Prometeo Libros.
- SILVA, Orlando Sampaio et al. (orgs) (1994). *A perícia antropológica em processos judiciais*. Florianópolis: UFSC.
- SILVA, Tédney Moreira da. 2016. *No banco dos réus, um índio: criminalização de indígenas no Brasil*. São Paulo: IBCCRIM.
- SOUZA LIMA, Antonio Carlos de. 1995. *Um Grande Cerco de Paz. Poder tutelar, indianidade e formação do Estado no Brasil*. Petrópolis: Vozes.
- SOUZA LIMA, Antonio Carlos de. 2012. “O exercício da tutela sobre os povos indígenas: considerações para o entendimento das políticas indigenistas no Brasil contemporâneo”. *Revista de Antropologia*, 55(2): 781-832.
- SOUZA LIMA, Antonio Carlos de. 2015. “Sobre tutela e participação: povos indígenas e formas de governo no Brasil, séculos XX/XXI”. *Mana. Estudos de Antropologia Social*, 21(2): 425-457.
- TAPAJÓS, Ib Sales. 2015 “Direitos Indígenas no Baixo Tapajós, entre o Reconhecimento e a Negação: o caso da Terra Indígena Maró”. *Revista InSURgência*, 1(2): 82-117.
- TAPAJÓS, Ib Sales. 2019. *Direitos Indígenas e Poder Judiciário - O Caso da Terra Indígena Maró*. Curitiba: Juruá.
- VILLARES, Luiz Fernando (coord.). 2010. *Direito penal e povos indígenas*. Curitiba: Juruá.
- VIVEIROS DE CASTRO, Eduardo. 2006. “No Brasil todo mundo é índio, exceto quem não é” (entrevista à equipe da edição). In: Beto Ricardo, Fany (edição geral). *Povos indígenas no Brasil: 2001/2005*. São Paulo: Instituto Socioambiental (ISA), pp. 41-49.
- VIVEIROS DE CASTRO, Eduardo. 2015. *Metafísicas canibais: elementos para uma antropologia pós-estrutural*. São Paulo: Cosac Naify.
- WAGNER, Daize Fernanda; BORGES, Luana de Carvalho. 2019. “O reconhecimento das fronteiras étnicas indígenas em decisões judiciais: o Tribunal Regional Federal da Primeira Região”. In: *Anais do VIII Congresso Brasileiro de Direito Socioambiental*. Curitiba: CEPEDIS (Caderno de resumos; v. 5), pp. 517-527.
- WEATHERBURN, Don. 2014. *Arresting incarceration: pathways out of Indigenous imprisonment*. Canberra: Aboriginal Studies Press.
- ZAFFARONI, Eugenio Raúl. 1995. *Poder Judiciário: crise, acertos e desacertos*. Tradução Juarez Tavares. São Paulo: Ed. Revista dos Tribunais.

### Consulted Websites (15/01/2021)

- <http://opinio.estadao.com.br/noticias/geral,o-judiciario-mais-caro-do-mundo,10000060068>
- <https://oglobo.globo.com/opinio/a-justica-mais-cara-do-mundo-19689169>
- [http://www.bbc.com/portuguese/noticias/2012/10/121024\\_indigenas\\_carta\\_coletiva\\_jc.shtml](http://www.bbc.com/portuguese/noticias/2012/10/121024_indigenas_carta_coletiva_jc.shtml)
- <http://www.correiocidadania.com.br/33-artigos/noticias-em-destaque/10329-13-12-2014-carta-circular-dos-povos-indigenas-do-baixo-tapajos>
- <http://www.funai.gov.br/index.php/comunicacao/noticias/5507-resolucao-aprovada-pelo-cnj-garante-direitos-de-indigenas-no-sistema-prisional>
- <http://direitosocioambiental.org/wp-content/uploads/2019/06/Anais-de-resumos.pdf>

*João Francisco Kleba Lisboa*

Anthropology Nucleus of Politics, State and Market Relations (NAPER)

Department of Anthropology (DEAN)

Federal University of Paraná (UFPR)

Curitiba/PR, Brazil

<https://orcid.org/0000-0002-2443-7050>

<http://lattes.cnpq.br/0171811084621459>

E-mail: [jfklisboa@gmail.com](mailto:jfklisboa@gmail.com)