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On promised lands: deintrusion as redress and the contrivance of land-grabbing

Sobre terras prometidas: o remediar da desintrusão e o artifício da grilagem

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Abstract

The Brazilian Constitution of 1988 recognized the original right to exclusive use over traditionally occupied lands to indigenous peoples. The fulfillment of this promise depends on the capacity of state organizations to evict invaders from indigenous recognized territory, by means of a legal-administrative instrument dubbed deintrusion. In recent years, alliances between politicians, landowners and religious leaderships have updated traditional mechanisms for land grabbing, by creating funding networks for the settlement of impoverished non-indigenous groups inside indigenous lands. Drawing on documental sources and semi-structured interviews, this text examines the institutional architecture of deintrusion, its legal contours, and its factual limitations. It also inquires about the ways through which exchangeable flows of faith, money and votes intertwine in the birth of local communities forged to challenge indigenous constitutional land rights. To that aim, it delves into the emergence of the occupations Promised Land and Rebirth Village inside the indigenous lands Ituna-Itatá and Apyterewa. Further, the text argues that the strategies of redress employed in the post-1988 period by indigenous peoples and state organizations in order to remove intruders from protected territories and restrain processes of land commodification can be interpreted as expressions of a militant-formalist attitude towards the Constitution.

Keywords: Indigenous rights; Territorial protection; Deterrence; Land commodification; Constitutional theory; Militant formalism.

Resumo

A Constituição Brasileira de 1988 reconheceu aos povos indígenas o direito originário ao usufruto exclusivo de terras tradicionalmente ocupadas. O cumprimento de tal promessa depende da capacidade de órgãos estatais de remover invasores de territórios indígenas por meio da técnica jurídico-administrativa da desintrusão. Nos últimos anos, alianças entre políticos, fazendeiros e lideranças religiosas atualizaram antigos mecanismos de grilagem, operando a partir de redes de financiamento que instrumentalizam a ocupação de terras indígenas por grupos não-indígenas marginalizados. Amparado em fontes documentais e entrevistas semiestruturadas, o artigo examina a arquitetura institucional da desintrusão, seus contornos jurídicos e suas limitações factuais. Ele também descreve as formas pelas quais fluxos intercambiáveis de fé, dinheiro e votos se entrelaçam no nascimento de "comunidades locais" forjadas com o propósito de contestar direitos

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constitucionais territoriais indígenas. Para tanto, foca-se no surgimento das ocupações "Terra Prometida" e "Vila Renascer" dentro das terras indígenas Ituna-Itatá e Apyterewa. O texto argumenta que as estratégias de remediação empregadas no pós-1988 por povos indígenas e órgãos estatais para remover invasores de territórios protegidos e restringir processos de comodificação da terra podem ser interpretados como expressões de uma atitude militante-formalista diante da Constituição.

Palavras-chave: Terras indígenas; Proteção territorial; Dissuasão; Comodificação da terra; Teoria constitucional; Formalismo militante.

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1. Introduction: the constitutional promise of a pluriethnic state

By recognizing indigenous peoples' social organization, costumes, languages, beliefs, traditions, and original rights to exclusive usufruct over traditionally occupied lands, the Brazilian Constitution of 1988 carries the promise of a pluriethnic state. It interrupted a secular chain of constitutional provisions guided by an assimilationist, integrationist policy that sought the "incorporation" of indigenous peoples into the "national communion" (AMADO, 2019, p. 111), an ethnocidal project grounded in the conviction that indigenous communities are an archaic and transitory stage of sociopolitical and cultural organization, one that would (and should) be progressively dissolved in Brazilian society (VIVEIROS DE CASTRO, 2016, p. 9) in an evolutionary process of miscegenation, poverty-alleviation, and consolidation of a homogenized rural middle-class.

The Constitution of 1988 gave birth to a new form to deal with plurality and alterity, opening up the possibility for the preservation, instead of the annihilation, of otherness. With its enactment the state operated a spatial self-closure (LINDAHL, 2018, p. 357), delineating a space of action within which indigenous peoples can autonomously exercise their right to difference: traditional lands, over which their original occupants are entitled to exclusive use. The capacity of the constitutional text to keep and fulfill this promise, however, depends on an intricate institutional framework of ties and bonds for the future. Judicial review – if steered by an enduring faithfulness of the Supreme Court Justices to the principle of self-determination, in its strong sense of both *primacy* and *exclusivity* over land use – is undoubtedly an important component thereof, as the Temporal Landmark Case reminds us.[1] But it is not the only one. Between a favorable court ruling and the actual exercise of a right, there is an abyss that can only be bridged by the regular performance of positive obligations by the state's administration.

Indigenous movements are utterly aware of this gap, and the intensification of their engagement in institutional politics through a steady increase in the number of indigenous candidacies for legislative and executive offices at all electoral levels

[1] The most relevant legal controversy at stake in the so-called Temporal Landmark Case (RE Nº 1,017,365), currently under analysis by the Brazilian Supreme Federal Court, is the "temporal landmark thesis," which restricts demarcation to indigenous groups that "already possessed the land at the time of the promulgation of the Brazilian Federal Constitution (5 October 1988). In case they had already been expelled, the group must prove that an application for reoccupation of the land was pending at that same date. Such a burden of proof is, however, practically impossible to substantiate." Indigenous movements and opponents of the temporal landmark thesis argue that the constitutional criterion of *traditionality* does not imply "that the demarcated land must be continuously occupied since the country was colonized" (SARTORI JR.; VESTENA, 2021).

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(ARTICULAÇÃO DOS POVOS INDÍGENAS DO BRASIL [APIB], 2022a) reads as an auspicious long-term strategy to close it.[2] That notwithstanding, consciousness about the role of ordinary policy-making and capacity-building efforts at the administrative level in the concretization of constitutional promises is still comparatively lower in legal scholarship, which often scorns the topic as minor or "managerial." Evidence thereof is the persistent discrepancy between the volume of literature dedicated to commenting on decisions of the Brazilian Supreme Court and the Inter-American Court of Human Rights on indigenous rights (*Cf.* LOUREIRO et al., 2022; TEÓFILO DA SILVA, 2018; GUALANO DE GODOY et al., 2021; SILVA DE SANTANA & QUEIROZ DE MAGALHÃES, 2022; GUEDES et al., 2020; LIMA JR. & BARBOSA DA CUNHA, 2022; OLIVEIRA et al., 2022; NAVARRO, 2019; OLSEN & VAN DER BROOCKE, 2021; DEBASITIANI et al., 2020; MELO & BURCKHART, 2020; MARÉS, 2013) and the scarce availability of studies on the institutional structure of Funai, Brazil's specialized agency for indigenous policies, which is ultimately the main addressee of commands issued by the Court.[3] A narrow focus on the Judiciary casts a shadow, or at least fails to shed light on, a range of other practices and organizations that, while sidelined to the "operational" realm, uphold the very possibility of realizing constitutional rights, of counterweighting the lighter scale in an unbalanced struggle (CHRISTODOULIDIS, 2021) to redress half a millennium of colonial violence.

Desintrusão is one of these practices. Commonly translated to English – not without a significant shift in meaning, – as "freeing of encumbrances,"[4] *deintrusion,* if we can employ this neologism, refers to the removal of non-indigenous individuals from a territory in the process of recognition as traditionally owned by an indigenous people (BRAZIL, 2019, p. 18). As the latter's claim is rooted in a more ancient, pre-Colombian and pre-colonial, an *original* bound with the land, it takes precedent over the first's, whose more recent occupation of the land was only possible through the violent displacement of its previous inhabitants. Accordingly, the Constitution declares null and void any private

[2] In Brazil's 2022 general elections, five self-declared indigenous candidates were elected as federal deputies and two as senators. Not all of them, though, are aligned with indigenous movements: Sônia Guajajara and Célia Xakriabá, both elected as federal deputies, are the ones supporting the indigenous agenda (MENDES, 2022).

[3] On the impact of judicial decisions on Funai (though still using legal cases as the main documental source) see Nóbrega et al. (2021). For an overview of Funai's performance before the presidency of Jair Bolsonaro see Dambrós (2019). On the dismantling of Funai during Bolsonaro's administration see Aragão dos Santos et al. (2021), Barbosa da Silva & Lunelli (2022) and Indigenistas Associados [INA] (2022).

[4] This was the expression used by the Inter-American Court of Human Rights [IACHR] in the case *Xukuru People v. Brazil,* judgement of February 5, 2018, which held the Brazilian state liable for failing to fully "free from encumbrances" the Xukuru territory.

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ownership title over indigenous lands, denying them legal effects. Non-indigenous occupants are constitutionally entitled to compensation solely for bona fide improvements,[5] while smallholders remain in any case eligible to enroll in governmental resettlement programs.

Described in such a sanitized way, deintrusion almost seems as indeed a mere operational task, an act of pure force empty and undeserving of discourse, a bare executive measure to slightly adjust reality in obedience to solemn constitutional normativity. It so happens that the "encumbrances" that the state must free the land from – and it is not overweening to say in virtually all cases (see Amado, 2019, p. 203) – offer not only local judicial opposition but also armed resistance, often in the form of private militias[6] and, in some situations, with the assistance of police and military forces.[7] Political authorities at different federative levels support and seize electoral benefits from the invasions – when they are not themselves among the invaders.[8] Confrontation is more ostensive in territories whose process of recognition, demarcation and titling still lags uncompleted due to the state's delay and omission, fueled by allegations of "legal uncertainty" by the defiant intruders. Yet, even lands formally titled for nearly two decades failed in being fully unencumbered (IACHR 2018), as non-indigenous occupants continuously resort to lawyers and weapons to withstand eviction, with grave consequences for indigenous peoples.

Villages burned to the ground and entire communities displaced by miners; infants born dead or with malformations as a result of excessive mercury exposure; women sexually abused and murdered for a few grams of gold; children sucked in and drowned to death by dredges while swimming in a river (INA 2022, p. 198). The atrocities committed against the Yanomami people in the first months of 2022 give a sense of what is at stake when the state fails to guarantee territorial protection to indigenous lands. "Indigenous," one must further add, is itself a category invented by us, descenders of colonizers, that mashes together peoples with very different social organizations,

[5] Brazilian Constitution of 1988, art. 231, *caput,* §6º.

[6] An appalling example thereof was the so-called "leilão da resistência," narrated by Amado (2019, pp. 160-164). In 2013, agribusiness associations in the state of Mato Grosso do Sul organized a public auction to raise funds to hire private security and fight against *retomadas,* indigenous land retakes.

[7] In 2022, the military police of Mato Grosso do Sul used a helicopter to open fire against the Guarani-Kaiowá during the Guapoy *retomada*, killing one indigenous person, Vitor Fernandes, and hurting at least 9 others (CONSELHO INDIGENISTA MISSIONÁRIO [CIMI] 2022).

[8] A compilation of politicians accused of illegally occupying and exploiting indigenous lands can be found in Castilho (2016).

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costumes, languages, beliefs, and traditions, erasing their diversity and plurality. Each indigenous people, correspondingly, has a particular history of struggle for land, with a whole spectrum of actors, allies, opponents, events and scripts of its own.

In this scenario, to speak of deinstrusion having as its main unit of analysis not a specific community, territory or judicial case, but rather bundles of promises can seem a bit odd. I believe, however, there are interpretative gains in approaching deintrusion as a legal-administrative technique for territorial protection that can be applied in situations where, despite their singularities, communities today self-identified as indigenous have their constitutional right to the land violated by externals. Drawing on documental sources and 44 semi-structured interviews conducted by the author from October 2021 to May 2022 with civil servants, federal prosecutors, NGO representatives, and agribusiness actors, the remainder of the text reads as follows. Section two analyses the institutional architecture of deintrusion, its legal contours and its factual limitations to realize the constitutional promise of a pluriethnic state. Section three delves into the emergence of the occupations Promised Land and Rebirth Village inside the indigenous lands Ituna-Itatá and Apyterewa. The concluding section elaborates upon three examples of strategies of redress employed in the post-1988 period by indigenous peoples and state organizations in order to remove intruders from protected territories and restrain processes of land commodification, arguing they can be interpreted as expressions of a militant-formalist attitude towards the Constitution.

2. Deintrusion as a legal-administrative technique for territorial protection

There are currently 730 indigenous lands in Brazil, which occupy a total of 117,377,553 hectares, or 13.8% of the country's territory. They are at different stages in the demarcation process: 487 of them were already demarcated and homologated; 74 were declared (a step before demarcation); 43 were identified (a step before declaration); and 124 are still in identification, with use restriction to non-indigenous (ISA, 2022).[9] In 2013,

[9] In a summarized formulation, the demarcation process is composed of seven steps: (1) identification, in which an anthropologist nominated by Funai prepares an anthropological study that subsidizes a report by a working group on ethno-historical, sociological, legal, cartographic, and environmental characterizations of the indigenous land to be demarcated; (2) approval of the report by Funai's president; (3) 90-day period for interested parties to contest the report; (4) declaration, in which the Minister of Justice declares the boundaries of the land and determines its physical demarcation; (5) demarcation, in which Funai sets physical

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the federal government estimated that approximately 20% of all homologated lands were occupied by invaders (BRAZIL 2013, p. 61). In 2021, 305 cases of possessory invasions and illegal exploitation of natural resources affecting at least 226 indigenous lands across 22 states of the country were reported (CIMI 2021, p. 93).

The competency to coordinate and execute deintrusion actions belongs primarily to Funai, whose founding statute entrusted it with the "exercise of police power in matters pertaining to indigenous protection"[10] as an institutional purpose. The agency interprets, however, that, to be legally exercised, the police power to which the statute refers needs additional regulation, something that, more than 50 years after Funai's creation, still did not happen. For this reason, and also given the agency's limitations in terms of budget and personnel, Funai routinely relies on collaboration with police and military forces to ensure indigenous territorial protection, a partnership that is legally provided for.[11]

Typically, deintrusion takes the form of an inter-institutional operation coordinated by Funai and executed by a joint workforce composed of different polices (federal, military, national security), environmental agencies (Ibama, ICMBio and Semas), and the army, the latter usually contributing logistic support. Deintrusion operations are, as a rule, belated state responses to escalating violent conflicts. In many cases, they are only deflagrated after an indigenous community, tired of waiting decades for demarcation or deintrusion, decides to self-enforce their constitutional right to exclusive use over traditional lands and organizes a *retomada,* a retake (AMADO, 2019, p. 207) which ends up prompting an aggressive reaction by the occupants and summoning the state to finally act.

Once a workforce is set up and assigned to intervene in a certain territory, its approach varies according to the purpose and length of the externals' presence on the land. Occupants who have been permanently living and farming on the site for years are first notified to leave voluntarily within a certain timeframe, taking movable assets (cattle, vehicles, etc.) with them. Smallholders are given priority in resettlement programs, and, in some cases, psychologists and social workers assist the workforce in reducing the

marks on the limits of the land and Incra resettles non-indigenous occupants, if applicable; (6) homologation of the demarcation by presidential decree; and (7) registry of the homologated land in land registry offices (ISA, 2022).

[10] Brazil, Law 5371/1967, article 1, VII.

[11] Brazil, Law 6001/1973, article 34.

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impact of forced displacement on more vulnerable families. Immovable goods (constructions, swidden, etc.) are inventoried as bona fide improvements and then *desfeitos,* undone. The *desfazimento* (undoing) of any traces of non-indigenous occupation includes, for instance, the demolition of buildings, interdiction of roads, implosion of dams, and tearing down of fences. Resistance from occupants occurs in different arenas: on the field, in court, at the notary, in the media, in city halls, rural unions, and so forth. Sticking to the first, a common field strategy is to evade notification and identification so that Funai is obliged to deposit the compensation for improvements in court, which takes longer than a simplified transfer to an identified citizen within an administrative procedure. Another is to refuse access to unarmed Funai agents into the plots of land they occupy, in order to prevent them from taking inventory of the improvements (BRAZIL, 2015, p. 85).

On the other hand, when the signs of occupation are recent, visibly oriented to short-term extractivism and limited to precarious settlements such as clandestine mining camps, *desfazimento* is more immediate. Tents are blown up, landing strips are dynamited and mining equipment (loaders, dredges, etc.) is destroyed. Individuals found working in conditions analogous to slavery are taken to labor authorities; those working under conditions of voluntariness are criminally indicted – the ambiguities in distinguishing one from the other being a challenge in itself. When intruders are not tenants but looters, whose conduct more evidently appears in the public sphere as crimes (such as illegal mining, forest fires, deforestation, water and soil contamination), resistance moves from public and individualized judicial cases to the more private undertaking of legislative lobby and shady relationships with executive agencies to neutralize administrative sanctions.

Depending on the size of the land, the number of intruders and the intensity of their resistance, the inter-institutional deinstrusion workforces may have to install operational bases in strategic access points to discourage new invasion attempts during the transitional months following an operation. Even when the intruders are successfully removed and peaceful indigenous repossession is to some extent made possible, the work to ensure territorial integrity is far from finished. Often the indigenous communities encounter the lands in a very degraded state due to mining, excessive grazing and monoculture. After repossession, a participative territorial and environmental management plan establishing measures to recuperate degraded areas, among other

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practices oriented to ethno-development such as ethno-mapping and ethno-zoning, is thus articulated by indigenous councils together with non-governmental organizations and Funai.[12]

Deintrusion operations, therefore, in addition to being experienced by non-indigenous groups as traumatic (and as such tirelessly explored by their political representatives in electoral campaigns), are intensively resource-consuming from an institutional viewpoint. They require hundreds, sometimes thousands of agents; can take one, three, six months or longer, and cost a few million reais. For these reasons, Funai works with multi-annual budget planning that foresees as an institutional goal the deintrusion of a limited number of indigenous lands, prioritized by certain criteria. The plan for 2012 - 2015, for instance, set the goal to indemnify and extrude 40 indigenous lands. Its focus on the Amazon region was allegedly justified by a "lack of political determination" and the "intransigence of the occupants" in other regions, which have been for a longer time appropriated by agribusiness. According to the report (BRAZIL 2015, p. 84), by the end of the triennium, 33 of the targeted lands had been indemnified and deintruded.

Evaluating the efficacy of a deintrusion operation is not an easy task. On the one hand, complete removal of non-indigenous presence is rarely achieved, revealing the insufficiency of direct physical force, in its current configuration, as a means to ensure indigenous territorial protection. On the other, to simply discard deinstrusion as a failed instrument resonates with the old reasoning "if enforcement is too difficult, let's review the prohibition," commonly evoked by the invaders' political representatives.[13] As obvious as the previous statement may read, there are not few academic interpretations that naïvely antagonize any institutionalization of violence by the state as governmentality technologies that aim at nothing but controlling bodies and populations for the sake of sovereignty or pure power, rhetoric that sounds like music to the ears of land grabbers.

[12] Brazil, Decree No. 7,747/2012, article 5.

[13] As an agribusiness representative contended in an interview: "We have a serious problem of illegal mining on indigenous lands. [...] The state does not have the capacity to be out there every day taking those guys out. [...] As soon as this activity is legalized and handled to a company with environmental parameters and controls, illegality will end. [...] It is similar to the discussion on drug trafficking. Are we going to legalize drugs? Because we can't combat drug trafficking. So we legalize drug consumption, marijuana, whatever, because we can't, we don't have the capacity to end trafficking. Let's do the same thing with mining. We can't stop illegal mining. We can't. No country in the world can do it. Let's put somebody there that will do it legally, that we will be able to control. [...] Let's legalize because then we can establish environmental, labor, and tax rules for these people and everybody wins." (Interview, April 2022).

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What the Brazilian experience shows is that to fulfill the constitutional promise of a pluriethnic state and take seriously the imperative for decolonial reparation, one cannot forgo the deployment of institutionalized violence. The negative work of destruction and suppression, of *desintrusão* and *desfazimento*, which seeks to eliminate vestiges of non-indigenous presence, freeing the territory from encumbrances that hinder full and effective indigenous ownership, is nothing but the ultimate materialization of political authority. For political collectives always "include in and exclude from a space of action, and this is achieved – ultimately, but not only – by physical force" (LINDAHL, 2018, p. 412-413).

Recognizing that constitutional promises of redistribution cannot be fulfilled without state capacity to potentially use physical force to uphold boundaries can be emancipatory in two ways. To acknowledge deintrusion as institutionalized *violence* shifts the discussion away from attempts to bend the right to exclusive usufruct over traditionally occupied lands to the need for "conciliation," as if the conflict derived from the absence of "prior dialogue" in search for an "amicable solution." This argument has been evoked (even if later revised) by Justice Gilmar Mendes to give an appearance of normality to asymmetrical concessions disguised as negotiations, agreements that can only result in territorial losses for the indigenous communities.[14]

Further, affirming deintrusion as *institutionalized* violence also helps to dispel the aura of hiper-complexity, unfamiliarity, and incomprehensibility in which the instrument seems to be shrouded before the eyes of jurists. This line of reasoning – "deintrusion as a very complicated thus unattainable state of affairs" – was employed by Justice Luís Roberto Barroso to deny an eviction request made by the Articulation of Indigenous Peoples of Brazil [APIB] during the Covid-19 pandemics (GUALANO DE GODOY et al., 2021). Removing thousands of people from a territory is not a peaceable task, but it is also far from being an "armed war"[15] between equals. Over the years, Funai, the Federal

[14] In Justice Mendes' words: "Considering that a large number of the lawsuits related to conflicts between farmers and indigenous people often result from the absence of prior dialogue about the possibility of an amicable solution, the Union should be notified about its interest in the conciliation attempt proposed by the Municipality of São Félix do Xingu." (Brazil, Federal Supreme Court, decision issued in 26 May 2020 by Justice Gilmar Mendes in the scope of the writ of mandamus "Mandado de Segurança" No. 26,853, p. 2).

[15] In Justice Barroso's words: "[N]o one should imagine that twenty thousand people - in just one of the seven communities – will be removed with the snap of a finger, with a stroke of a pen. Planning is necessary, also because no one wants an armed war within the indigenous community. What is needed is a plan and, possibly, a relocation of these people, or the mere removal - I don't know. What I do know, from my urban experience in contrast to that with forest areas, is that these evictions are not simple, nor can they be carried out with truculence, pure and simple." (Brazil, Federal Supreme Court, decision issued in 5 August 2020 by Justice

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Police, Ibama and ICMBio have acquired experience and developed techniques and protocols that allow the complexity underpinning an operation to be, to some extent, ordered and brought to language. The expertise incrementally built by those organizations, though always liable to criticism, prevents their interventions from turning into chaos and is what makes deintrusion plans nonetheless executable.

If physical force remains the ultimate means to uphold the boundaries of a political collective, it is not the only one. Innumerous economic instruments could be used to incentivize occupants to move out from indigenous lands voluntarily. Some of these tools – particularly enrollment in resettlement programs, restrictions to credit, and commercial embargos – have been employed, though inconsistently and, accordingly, with apparent low efficacy (BRAZIL, 2015, p. 85). A parallel, more promising line of command and control enforcement targets upstream and downstream supply chain actors involved in the economic activities fueling appropriation of indigenous lands. This type of investigation requires a mix of field and cabinet intelligence work to trace the commodities' chain of custody and identify who are the companies and individuals profiting from invasion. At the national level, the two organizations taking the lead in building institutional capacity to develop such investigation techniques are Ibama and a branch of the Federal Police. Their performance, though, was severely impaired due to setbacks and blockages imposed by the government holding office from 2019 to 2022 (GROSSI & LIMA DE MEDEIROS, 2022).

As every agent involved in interinstitutional deintrusion workforces likes to assert, invasion of indigenous lands is not a linear, mono-causal phenomenon, but a multifactorial, dense web of historically determined relations. General theories of Earth-grabbing and enclosures of commons – some denouncing imperialist capitalism for dooming peripheral countries to the production of low-value-added commodities,[16] others blaming modernity's "great divide" between subject and object for subjugating nature,[17] – retain validity at a formal level. Yet, in the account of field agents, what more immediately motivates a concrete act of appropriation differs case-by-case. Middle-level explanations relate the intensification of invasions of indigenous lands in Brazil from 2016

Roberto Barroso in the scope of the constitutional claim "Arguição de Descumprimento de Preceito Fundamental" No. 709, p. 9).

[16] On land grabbing from Marxian and dependency theory approaches see Ianni (2019), Marques (2019), Constantino (2016) and Özsu (2019).

[17] On the enclosure of commons from a critique of modernity's onto-epistemological principles see Viveiros de Castro (2016), Dussel (1995), Descola (2013) and Guattari (2000).

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to 2022 with an increase in the international demand for gold, timber, soy and beef combined with the deliberate dismantling of domestic enforcement mechanisms by an authoritarian, openly anti-indigenous and unrestrictedly pro-agribusiness government (MENEZES & BARBOSA JR. 2021; SIQUEIRA-GAY & SÁNCHEZ 2021; HARDING et al. 2021).

A thread in the dense web of historically determined relations bringing about this state of affairs can be brought to the forefront through the notion of promise. This section dealt with deintrusion as a legal-administrative technique indispensable to the fulfillment of the constitutional promise to a pluriethnic state. In the next section, we turn to a competing promise that to this day fills the imaginary of certain non-indigenous groups and structures their motivation to appropriate indigenous territories, a promise revealing of the ways in which faith, money, and votes intertwine to contrive land grabbing.

3. The biblical promise, or the providential contrivances of land-grabbing

In 2020, a team of Ibama agents conducted an operation to halt deforestation in the indigenous land Ituna-Itatá, an area of 142 thousand hectares in southwestern Pará inhabited by one indigenous community in voluntary isolation (the uncontacted Igarapé-Ipiaçava).[18] Ituna-Itatá had been ranked as the most deforested indigenous land in Brazil the previous year. Upon entering the territory, the team encountered (then either destroyed or seized) sawmills, thousands of cattle, gas tanks, bridges, roads, landing strips, grass seed bags and all sorts of machinery. So far, nothing extraordinary; just the well-known illegal structure of land grabbing through the spearhead activities of logging and grazing, driven by the expectation of profit. Coexisting with this atmosphere of sheer plunder, however, a different sign of human occupation caught the agents' attention: in the south part of Ituna-Itatá, a village was being built. The settlement was still in an early stage, there were only a few wooden sheds and manioc and pumpkin swiddens. Inside the shacks, the agents found a clue to why and how the settlers ended up there: almost all families had calendar posters of a neo-evangelical church, "not with an image of Jesus in a cross," as one perplexed agent recalled, but with a "photo of the church's pastor" (Interview, March 2022).

[18] The territorial rights of the Igarapé-Ioiaçava are guaranteed by Their territorial rights are guaranteed by an internal act of Funai ("Portaria") No. 50 of January 21, 2016. There are research authorizations for four mining companies (MONTEIRO 2021, p. 204).

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The settlers, the agents came to learn, were landless persons who lived in miserable conditions in different places in Pará and Maranhão. Enticed by the pastor to leave behind their Egyptian captivity of material oppression and search for Canaan, the land flowing with milk and honey, the faithful were transported all the way from their hometowns to the indigenous land Ituna-Itatá with financial support of the church. The initial expenses for setting up the village, meaningfully baptized as "Promised Land," came from divine providence too: the church leader had an arrangement with a local mayor and a senator, the latter also a pastor himself. The investment paid off. In a single day, more than two thousand settlers voluntarily changed their electoral district to the municipality of their financial and spiritual backers (Interview, March 2022).

The plan was architected so that the occupation would appear as a spontaneous settlement of the dispossessed, an organic migratory movement of poor peasants, the birth of a local community. With one single stone, its idealizers would kill two birds: to consolidate and legitimize occupation over an indigenous land by forging a "social question" that would greatly obstruct future deintrusion efforts, on the one hand, and to remove undesired social groups from areas already opened to agribusiness in Pará and Maranhão, on the other. The enduring presence of an expanding population living, farming, grazing and logging in the territory provides the very substrate for a politics of the fait accompli, a strategy repeatedly mobilized by large landowners and their political representatives to argue for the review of indigenous constitutional land rights. After the small settlers fulfill their function of displacing the indigenous communities, their plots tend to be gradually bought up by large landowners with enough political connections to push for regularization, either by lobbying for the interruption of ongoing demarcation procedures or by pressuring for negotiations to reduce the size of already demarcated indigenous lands.

In the exercise of its competence and to the best of its capacity (which at the time was significantly constrained by an anti-indigenous and anti-environment government), Ibama intervened to interrupt the land grabbing process in Ituna-Itatá. To prevent the settlement from becoming a village, the agents tore down the sheds before they gave way to masonry houses. The intervention, predictably, aroused anger among the settlers and their sponsors. It must only have confirmed, in the neo-evangelical imaginary fueling their enterprise, that if the uncontacted Igarapé-Ipiaçava play the role of Jericho's inhabitants from whose hands Canaan must be conquered, Ibama rangers are equivalent to the

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Egyptian troops sent by the Pharaoh to persecute God's people and prevent them from taking what they have been promised. The moment when the conflict between the two promises of the future outbursts is finely depicted in this interview fragment:

> Do you know what was the news at the time? That Ibama destroyed the church and the school. Because they were actually some shacks that were being built out of wood that people took from [the trees] there and said 'here will be the church, here will be the school.' And we said: 'no, it won't be any of those things, this won't be a village, there won't be anything here.'

A similar process of fabrication of a local community through the entanglement of faith, money and vote is also in motion, but alarmingly in a much more advanced stage, in the indigenous land Apyterewa. The area is inhabited by the Parakanã people, totalizes 773 thousand hectares and is located in southeast Pará. Its demarcation process was concluded in 2007, yet the land was never fully deintruded.[19] In 2019, it ranked as the second most deforested indigenous land in Brazil. Besides being threatened by the advance of mining, logging, monocrops and cattle raising, Parakanã collective ownership is also endangered by a settlement that has been putting down roots in the territory since 2016. In 5 years, the occupation turned from a handful of wooden shacks into a seedling neighborhood, baptized "Rebirth Village." Passing by its streets one finds shops, grocers, restaurants, hotels, a school, and even a medical center, all regularly provided with electricity and internet. One of the village's first constructions was, unsurprisingly, a neo-evangelical church. The first settlers attribute their migration to Apyterewa as motivated by the purpose of founding a temple (MCCOY & DO LAGO 2022).

The settlement started very near a Funai operational base, which was positioned at the entrance of the indigenous land to discourage invasions. In 2020, an interinstitutional task force composed of Ibama, Funai and National Security began field procedures to deintrude Apyterewa. The agents issued notifications for the occupants to leave the land voluntarily, destroyed heavy mining machinery, seized guns, crippled trucks and tractors. The settlers reacted by setting up barricades with tires and wood to block the agents' access to the operation base. They also circulated videos of women in tears denouncing Funai and Ibama for "abuse of power" for "burning houses, poisoning wells,

[19] A timid deintrusion process began in January 2016, with the transfer of small farmers to a settlement project nearby. In September 2016 an interministerial group was created to conduct the eviction, and in 2017 a plan to remove other 400 families was drawn. In 2018, however, due to pressure from the agribusiness caucus, the government of Michel Temer suspended indefinitely the deintrusion process. There are at least 71 mining claims targeting Apyterewa (MONTEIRO 2021, p. 176-177).

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tearing sacks of rice, destroying corn fields, and beating up working people."[20] Though none of these allegations were true, the invaders' outcry was skillfully exploited by political representatives of landowners and neo-evangelical groups. Insisting on the narrative that deintrusion is a violation of "basic human rights of non-indigenous colonist families to subsistence"[21] and, finding ready resonance in judicial authorities, they used the episode to carve out a "conciliation proposal" that would reduce Apyterewa almost by half.

The artificers of land grabbing employed similar modus operandi in Ituna-Itatá and Apyterewa. By providing the material means and the spiritual impulse for the transportation and settlement of impoverished non-indigenous populations inside the boundaries of indigenous lands, the holders of political, economic and religious power counterfeited a "human rights-based" justification to challenge indigenous constitutional land rights. Faith is converted into money and votes in an unbridled device of land commodification that pits one marginalized group against the other, while the latifundium structure remains intact.

4. Militant formalism and the constitutional redress of indigenous rights

The transitional constitutional provisions of 1988 that ruled the transfiguration from a dictatorial regime into a democratic order fixed a period of 5 years for the Brazilian state to conclude the demarcation of all indigenous lands. The breach of this promise has resulted in three decades of accumulated conflict and the loss of many lives. Even lands that have long been demarcated failed to be adequately protected, and the complete removal of non-indigenous groups from their borders remains to this day the biggest challenge to indigenous exclusive ownership over traditional territories.

This persistent difficulty of the Brazilian state in keeping intruders out of constitutionally protected lands, however, must not be regarded as fulfilling some kind of law of necessity, as a shred of evidence that processes of land commodification are

[20] These videos were hosted on the profile *São Félix do Xingu Notícias*: https://www.facebook.com/watch/?v=711794589747999. Accessed 13 August 2022.

[21] See, for instance, a memorandum issued by the Ministry of Woman, Family, and Human Rights led by Minister Damares Alves during Jair Bolsonaro's administration, which details meetings held in Apyterewa with the purpose of investigating violations of "basic human rights of non-indigenous colonist families to subsistence" (BRAZIL. 2020).

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inexorable. If redress is not to be understood as "a compensatory gesture" towards "the already defeated site of a skewed equilibrium," but rather as a counterweighting that allows to "imagine alternatives and equip them with a 'gravitational pull'" that interposes a "distance from what impacts as compulsion," it is possible to reclaim a space of contingency and conceive that reality can be otherwise (CHRISTODOULIDIS, 2021, p. 4).

Potential strategies of redress for indigenous territorial protection against land commodification are not to be found in pseudo-conciliatory notions of "dialogue" and "negotiation," for they can only mean the negation of indigenous land rights and a re-actualization of the historic ethnocidal project the Constitution promised to break away from. The "gravitational pull" that counterweights land commodification in favor of indigenous ownership necessarily pivots on the eviction of invaders, an old demand of indigenous organizations and the very first claim of APIB's manifesto launched in the Free Land Camp of 2022: "the elaboration of a feasible plan for the immediate deintrusion of all indigenous lands invaded by ranchers, grabbers, loggers, miners, and other invaders" (APIB, 2022b).

So that feasible deintrusion plans become instruments less unfamiliar to judges, who eventually end up having to decide about them, deintrusion must be detached from the image of a war operation and more properly seen as a legal-administrative technique for territorial protection. This technique is neither inherently arbitrary nor chaotic. In fact, it meshes rather well with the idea of "militant formalism." In contrast to conventional formalisms which underline law's self-referentiality and normative closure in order to forestall social change, a militant formalism "exploit[s] the formal achievements of the constitution" to hammer out a (provisional) space of autonomy from politics and economics with the purpose of bringing forth the conditions for social transformation (CHRISTODOULIDIS, 2021, p. 466).

Amidst the conundrum of events discussed in the previous sections, it is possible to single out three moments in which formal achievements of the Constitution of 1988 were leveraged by indigenous communities and state organizations to effectuate deintrusion against the defiance of pervasive political, economic and religious networks. The first is instantiated in the indigenous self-executing retake of land (the *retomadas*) and in Funai's legal-administrative framework restricting non-indigenous use over lands whose demarcation process is still in progress. Both measures are supported by the judicially consolidated interpretation that presidential homologation, the final official act

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in the long chain of legal documents composing a demarcation process, does not *constitute* the indigenous right to land; it merely *declares* the recognition of a pre-existing, original right (BRAZIL, 2019, p. 216).

A second example of militant formalism regards Ibama, which, despite not being an agency specialized in indigenous policies and having no competence to coordinate deintrusion operations, is responsible for combating environmental illegalities within indigenous lands. In almost all cases, this task demands evicting invaders caught logging, mining, farming or raising cattle therein. Ibama's capacity to deal with deintrusion was substantially strengthened by its interpretation of police power. Whereas Funai still today considers the statute granting the agency police power as "generic and insufficient," therefore requiring additional regulation to be fully applicable (BRAZIL, 2014, p. 171), Ibama decided to interpret its police power provision – which had a similar wording and legal status to that of Funai[22] – in a radically different fashion.

In the 1990s, one field agent came to the conclusion that Ibama's police power was not strictly bound to any complementary regulation, the normative availability of the necessary tools and measures for law enforcement being implied in the agency's founding statute itself. Such interpretation would speak to at least one constitutional principle enshrined in Brazil's constitution regarding public administration, namely, the principle of efficiency. The agent managed to convince the institution's leadership of his exegesis, overcoming opposition from colleagues who had a different organizational vision for Ibama. The agency then started acquiring weapons and training its servants in firearms handling (Interview, February 2022), while simultaneously working on the draft of an internal regulation detailing rules for the exercise of police power, later enacted in 1998.[23]

The last expression of militant formalism can be found in the development by Ibama, at an infra-statutory level, of a strategy to make deintrusion efforts more effective (or less ineffective). Over the years, the agents have drawn three guidelines of action from their field praxis and bureau intelligence: prioritization of targets of high visibility (focusing scarce resources on cases of greater scale and repercussion), immediate

[22] Against my claim, it could be argued that the authorization granted by the Forest Code of 1965 to "forestry officials" (*funcionários florestais*) to possess weapons encompassed Ibama but not Funai, which would justify the latter's need for additional regulation. Both organizations, however, were created after 1965, the question on whether their servants fit or not into the category of "forestry officials" for purposes of claiming armed empowerment being thus a matter of reception and interpretation, especially if one considers that the Code contained a general reference to "forests that integrate indigenous patrimony."
[23] Brazil, Ibama, Internal act ("Portaria") 53-N, 22 April 1998.

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economic incapacitation of the offender (destroying equipment used in the wrongdoing), and shared responsibility across the supply chain (tracing the commodity's chain of custody and identifying downstream/upstream suppliers). These guidelines emerged out of an incremental process of trial and error with progressive scalability, were gradually incorporated into Ibama's internal rules, and today compose the core of what came to be called the "doctrine of deterrence" (Moulin, forthcoming). This set of precepts unfolded from a prolific understanding of police power and a percipient application of the efficiency principle, which allowed enforcement to cut through the sluggishness of judicial attachment of assets for fine payment by imposing an immediate financial loss on invaders and accomplices.

In all these examples – *retomadas*, protection of areas under demarcation, the "implied powers" of police power, and the doctrine of deterrence – indigenous peoples or reform-oriented state organizations availed their action with normative constructions derived from formal constitutional achievements (such as general principles of public administration or the self-executing nature of original rights) to elaborate instruments, practices and techniques that interrupt, even if momentarily, the impulse of land commodification over indigenous lands. The socio-political motivation underlying occupations such as Promised Land and Rebirth Village – pressuring for the removal of legal protections to allow more lands to be incorporated into the market, in a logic of all-encompassing expansion – collides with the constitutional mandate of safeguarding traditional territories. A militant-formalist attitude towards the Constitution strives to build institutional arrangements that deactivate this impetus of appropriation, in the effort of making redress concrete.

5. Conclusion

This article examined the institutional architecture of deintrusion, approaching it as a legal-administrative technique for territorial protection. It also unveiled some of the mechanisms through which faith, money and votes intertwine in the birth of communities forged to challenge indigenous constitutional land rights. At an empirical level, it delved into the emergence of the occupations Promised Land and Rebirth Village inside the indigenous lands Ituna-Itatá and Apyterewa, drawing mainly on interviews with civil

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servants involved in deintrusion operations. At a theoretical level, the text argued that the strategies of redress employed in the post-1988 period by indigenous peoples and state organizations in order to remove intruders from protected territories and restrain processes of land commodification can be interpreted as expressions of a militant-formalist attitude towards the Constitution.

By shedding light on the role of ordinary policy-making and capacity-building efforts in the concretization of constitutional promises, this work contributes to expanding the range of organizations recipient of scholarly attention within the literature on indigenous rights. In terms of research agenda, taking the realization of constitutional rights seriously requires looking beyond the Judiciary and developing analytical approaches that encompass administrative organs responsible for policy implementation at the street-level. When it comes to indigenous land rights, the legal and organizational tools available to Funai, Ibama, and other agencies involved in deintrusion operations come to the fore for legal scholarship.

Deintrusion is far from being a sufficient measure to fulfill the constitutional promise of a pluriethnic state. It does not implode the innards of the latifundium structure, just scratches its surface. Neither does it provide impoverished invaders with alternatives for income generation, nor does it address the origins of ethnic intolerance and hatred of alterity. Deintrusion remains, however, the most urgent strategy of redress to guarantee indigenous territorial protection, a necessary and ceaseless counterweighting in a long-unbalanced force field.

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