



TERRITORIES AND TERRITORIALITIES: POSSIBLE PERSPECTIVES FOR THINKING THE FUTURE OF TERRESTRIAL LIFE IN BRAZIL

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INTRODUCTION

Land demarcation and distribution in Brazil is a long-standing legal issue, which involves different legislative actions from the Colonial Period to the Republic. These legislative actions favored the accumulation of land by a few elite agents, and notably, throughout Portuguese colonization the very designation of land subscribed to a European logic that related property to a regular use of the land. This logic marginalized populations that were considered unproductive, such as indigenous and *quilombola* populations, depriving them of the right to lands that had been historically occupied and resignified by these societies within their own ontologies.

According to Thiago L. V. Cavalcante (2013), a territory is a portion of space appropriated by a human group that builds it according to its social, symbolic, cultural, economic and political aspects in specific ways. This understanding is directly related to territoriality, which is constituted by the “specific relationship with the space that builds a territory” (Cavalcante, p. 198), or as Paul E. Little (2002, p. 253) called it, by the “collective effort of a social group to occupy, use, control and identify itself with a specific portion of its biophysical environment.” The Brazilian jurisdiction deals with the issue in terms of land redistribution, but the territorial affirmation and occupation processes, which permeate the claims, are hardly recognized by authorities (Little, 2002). This happens because in Brazil legal parameters are adopted in accordance with a dyadic property regime, both of public and private land, which makes up the instrumental reason of the State, associated with the bourgeoisie and bureaucracy. The legal perspective took shape since the implementation of the “Land Law” in 1850; despite its existence, appropriations for ownership continued to occur, as the law, among other things, remained silent in relation to indigenous lands while supporting large properties regulated by the market.

The expropriation of indigenous lands in Brazil was legitimized by the *sesmarias* regime, which was first established in Portugal in 1375 and later transported across the Atlantic, being implemented in Brazil in 1532. This regime, according to Márcia Maria Menendes Motta (2012), aimed to combat the economic crisis and the consequent famine caused by the Black Death epidemic in Europe. Based on the distribution of land for agricultural cultivation, the *sesmarias* regime provided an opportunity to stimulate the economy and combat the misery that plagued the population by forcing cultivation on abandoned land. Motta (2012) notes that the *sesmarias* law revived the principle of land expropriation—which dates back to the Roman Empire and the Justinian Code—because if



the lands were not properly used, the designated owners had their tenure rights revoked. In this sense, the *sesmarias* assumed the character of property, subordinated to conjunctural conditions, whose common denominator was cultivation.

Thus, Motta (2012) notes that “[...] as a law that emerged to respond to the food crisis in a territory devastated by war and pests, *sesmarias* became a praxis and a law” (Motta, 2012, p. 19). In favor of *sesmarias*, several social agents defended that land ownership should be conditioned to cultivation: fulfilling this requirement would indeed be the way to legitimize territorial property. With this, the author shows that the *sesmarias* constituted the first attempt of the Brazilian monarchy to regulate its domain over the territory; however, this regime conflicted with the way of life of the indigenous populations. Since *sesmarias* were the concretization of a certain view of property—according to which land was bound to be cultivated within established deadlines—the conflict with the indigenous people, for whom the territory was a place of shelter for both the sacred and the collective memory, was to be expected.

For centuries, the understanding was that indigenous societies had a conditioned freedom due to their “uncivilized nature” and should be protected by the Church, especially through the intervention of catechizing missionaries. During the period of the missions in Brazil, indigenous lands became the jurisdiction of the missionary activity of different religious orders, predominantly the Jesuits, and were, to a certain extent, preserved by a protectionist logic. However, from the 18th century onwards, with the expulsion of the Jesuits and the propagation of Enlightenment thought among the monarchy, the understanding of indigenous freedom changed: if indigenous were to be considered common citizens and not wards, they should have the same rights and obligations as any vassal (Motta, 2012).

Motta (2012) explains that due to the limited transformations of the Treaty of Utrecht, at the beginning of the 18th century, the Portuguese Crown resorted to the principle of Roman law (*uti possidetis*) to legitimize its claims to occupy lands formerly occupied by Spain in regions of missionary activity. Thus, in those areas, which were originally indigenous territories, the Crown turned the indigenous into vassals (even transferring them to tactically significant locations, if necessary) to evoke the Roman principle and assert its sovereignty and authority over the territory.

With the Proclamation of the Republic in 1889, the indigenous land issue became even more problematic due to the nationalist ideology of the State/Nation that was imported from France by the ideologues of the recent Brazilian state. According to Paul E. Little (2004), the proclamation of specific territories—such as indigenous lands, which do not belong to a nation in a homogeneous sense but rather to specific ethnic groups—represented a direct challenge to the territorial ideology of the State, especially for their notion of sovereignty. Little (2004) explains that the concepts of public and private in Latin America, as explained by the theorist Anibal Quijano, are jettisoned in the Eurocentric logic of instrumental reason; therefore, these concepts fail to address the needs of populations marginalized by the colonial system, such as the indigenous and *quilombola* populations. Little (2004 p. 259) points out that “[...] the private/public binomial, for Quijano, represents two faces of the same instrumental reason, each covering that of the social agents that compete for the place of control of capital and power: the bourgeoisie and the bureaucracy.”

The author explains that the concept of private property does not exist in indigenous societies, as they are not subject to a liberal market logic. Therefore, for these societies, access to resources belongs to the collective and not the individual sphere. Naturally, the



role of this community varies from group to group, but Little (2004) observes that the most common relationship of access to land is through kinship. This has been demonstrated by ethnographic research conducted with indigenous societies of the Upper Amazon by researchers such as Goldman with the Cubeo indigenous group, Arhem with the Makuna and Descola with the Achuar, who concluded that kinship units work as territorial units (Little, 2004).

Another relevant aspect regarding lands among indigenous societies is the symbolic value attributed to biophysical environments. Little (2004) explains, according to the ethnographic literature consulted, that there is a distinction between the notion of “space,” as an abstract concept, and a “place,” which is concrete and inhabited. For indigenous populations, places are identified as sacred and endowed with feelings and meanings. A “place”, therefore, would be a space that has been resignified within the ontology of an ethnic group. The attribution of sacredness to a given space responds to the demands of the group, and the valorization is constituted “with a direct function of the group’s environmental knowledge system and its respective technologies” (Little, 2004, p. 263). According to Little (2004), these variables establish the structure and intensity of the group’s ecological relationships and generate the social category of “natural resources.”

The author still evokes the English concept of “homeland.” According to Little (2004), this concept indicates a place that expresses a relationship of belonging with indigenous peoples as well as groups that emerged as a result of ethnogenesis. The author gives us the example of the Paraná indigenous group, which inhabited northern Mato Grosso until the 60s. After the construction of the Cuiabá–Santarém highway, which crossed the Paraná reservations, this group was violently expelled from its territory by gold miners, ranchers and attacks of the Kayapó indigenous group, who had been armed by missionaries. Around 1975, the Paraná were taken to the Xingu Indigenous Park by the National Indian Foundation (FUNAI), where they remained for two decades, changing places afterwards. Then, in the early 1990s, after a demographic recovery, they decided to reclaim their territory and return to their true home (homeland).

The relationship of indigenous societies with a given territory is not built immediately; on the contrary, it is the result of a long-term historical occupation. The author argues that the fact that indigenous territories do not subscribe to the formal criteria of private property of the Colonial Period or the Republic does not mean that these territories are illegitimate, as they are situated in a historical reason, not an instrumental one. As Little (2004) explains:

The expression of this territoriality, then, does not reside in the figure of laws or titles, but remains alive behind the scenes of the collective memory that incorporates symbolic and identity dimensions in the group’s relationship with its area, which gives depth and temporal consistency to the territory (Little, 1994). For indigenous societies, for example, “the group territory is linked to a cultural history” in which “each village site is historically linked to its inhabitants, so that the passage of time does not erase the knowledge of the group’s movements, provided that the memory of the ancestors is kept alive” (Little, 2004, p. 265).

MATERIALS AND METHODS



For this research, our historiographical sources were studies previously conducted by historians and anthropologists. The literature review was chosen because the territorial issue has been widely discussed in the academy and presents useful material. For the analysis, the ethnohistorical interdisciplinary approach was chosen, combining data and methods from anthropology and history as tools to enable the construction of an ethical historiography, which corresponds to the complexities and pluralities of non-Western Eurocentric thought.

RESULTS AND DISCUSSION

In view of such different concepts of territory for indigenous societies, on the one hand, and private/public property for the State, on the other, how is the demarcation of indigenous lands carried out today? According to Lima & Guimarães (2009), demarcation is a complex process and does not always have an objective value for indigenous populations since although many lands are demarcated, indigenous people do not own them. Land tenure regularization, which is the process that grants the right to use certain territories, is broader than demarcation and encompasses three stages: the administrative process, the judicial process and the political process. These processes are complementary and involve different social actors, institutions and powers.

In the first stage, the administrative process involves “[...] the executive power, via the Ministry of Justice and FUNAI, the Presidency of the Republic and communities, and it is formally characterized by obedience to the provisions contained in the Caput of Art. 231 of CF/88 and in the procedural steps contained in Decree 1775/96” (Lima & Guimarães, 2009, p. 1). In the second stage, the process passes through the judicial spheres, thus involving magistrates and other law enforcement officers. The third stage is political in nature and includes social actors who are either against or in favor of the regularization of indigenous lands.

Initially, the land status of an indigenous population is examined through a historical and anthropological investigation of that society. After a working group (WG) is formed, the land identification and delimitation process begins. The authors explain that the WG is coordinated by a qualified anthropologist together with an environmental technician and a landowner. Frequently, FUNAI employees and professionals appointed by the President of FUNAI after a selection process also compose the team. The report written by the anthropologist must strictly comply with the rules of Ministerial Ordinance No. 14/96 (Lima & Guimarães, 2009).

The summary of this report is published in the Official Gazette of the Union and in the Official Gazette of the State, and the interested parties have a period of 90 days to present a reply. According to the authors, after the land is attested as indigenous, there is a the conclusion is declared by the Minister of Justice through a detailed analysis of the procedure and the arguments of the contradictory by FUNAI. Then comes the physical demarcation and approval by presidential decree. All of these steps, the authors note, have deadlines; however, these deadlines are rarely met, which explains why the completion of such steps takes years.

The general idea among indigenous populations is that FUNAI only works under pressure and, therefore, the groups’ demands are constant. The authors give the example of the Guarani Kaiowá indigenous group, from southern Mato Grosso do Sul: faced with the



inefficiency of the demarcation process, this group constantly sends letters with demands to FUNAI. According to Lima & Guimarães (2009), collections are also made during visits to Support Centers, Regional Administrations and even to FUNAI's Presidency, in Brasília. However, as the authors point out, the general rule on the indigenous land issue in Brazil is still negligence: communities regularly present their demands, but they are never fully met.

CONCLUSION

The logic that legitimizes property through the constant use and productivity of the land, established by the *sesmarias* regime during the Colonial Period in Brazil, started a gradual process of expropriation of indigenous societies from their territories of origin—those historically occupied by them. During the Republic, the liberal logic of property became hostage to the modern instrumental reason that, based on the concept of “private,” disregarded the ethnic singularities of indigenous peoples. Since indigenous societies do not consider the territory as an individual good but rather as a collective good and proper to the kinship relations of a community, the logic of private property becomes an antithesis of the indigenous land issue. This way, our study concludes that the territories claimed by indigenous populations are legitimate not for an instrumental reason, but for a historical reason that circumscribes the occupation of indigenous societies for long periods in spaces that have been resignified as places of the sacred and collective memory of a people. However, due to historical reasons, the right to territory conflicts with the notion of public/private in the Brazilian state (whose structure underwrites the coloniality of power), and the results of this conflict marginalize indigenous demands for their places of belonging, a conflict that will not be resolved soon.

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