UNIVERSIDADE FEDERAL DE MINAS GERAIS

FACULDADE DE FILOSOFIA E CIÊNCIAS HUMANAS

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LEONARDO BARROS SOARES

(UN)CHANGING INDIGENOUS LAND CLAIMS POLICY: EVIDENCES FROM A CROSS-NATIONAL COMPARISON BETWEEN CANADA AND BRAZIL

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Tese apresentada como requisito parcial necessário para a obtenção do título de doutor em ciência política no Programa de Pós-Graduação em Ciência Política da Universidade federal de Minas Gerais sob a orientação do Prof. Dr. Leonardo Avritzer (UFMG) e co-orientação da Profa. Dr. Françoise Montambeault (Université de Montréal)

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FOLHA DE APROVAÇÃO

(UN)CHANGING INDIGENOUS LAND CLAIMS POLICY: EVIDENCES FROM A CROSS-NATIONAL COMPARISON BETWEEN CANADA AND BRAZIL

LEONARDO BARROS SOARES

Tese submetida à Banca Examinadora designada pelo Colegiado do Programa de Pós-Graduação em CIÊNCIA POLÍTICA, como requisito para obtenção do grau de Doutor em CIÊNCIA POLÍTICA.

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Belo Horizonte, 13 de maio de 2019.

Aos povos indígenas da américa e a seus aliados,

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Durante a redação deste trabalho, o Brasil entrou numa crise política grave, culminando na deposição da presidenta eleita Dilma Rousseff por meio de um processo considerado por muitos, e inclusive por este pesquisador, como um golpe contra as instituições democráticas do país. Na sequência, a instalação de um governo ilegítimo e amplamente impopular tornou a vida de todos os brasileiros, incluídos aí os pesquisadores em nível de pós-graduação, uma sucessão de dificuldades. Foram anos de muita ansiedade e tristeza, sem boas perspectivas para o futuro.

Uma investigação comparativa em dois países neste contexto de profunda crise política jamais seria possível sem a ajuda de muitos indivíduos e instituições, ao longo desses anos, que me auxiliaram de diversas formas a chegar até o fim deste longo processo. Gostaria de iniciar agradecendo aos meus orientadores, Professor Dr. Leonardo Avritzer e Professora Dra. Françoise Montambeault, que acreditaram no meu projeto com sua expertise e seu olhar agudo sobre a investigação em seus mínimos aspectos.

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A vocês todos e todas, meu muito obrigado. Foi uma longa jornada e estou feliz de tê-los como companheiros e companheiras de caminhada.

The Federal Executive Branch must demarcate and immediately approve all Indigenous Lands, regardless of location and in what procedural stage it is, including those that are tabled at the Ministry of Justice, fulfilling, urgently, budgetary allocation in the Pluriannual Plan (PPA), human resources and meeting legal deadlines, all stages of the regularization process, from identification to the respective homologation decrees, promoting simultaneous disintrusion and providing clarification to the indigenous peoples on all phases of the process (National Public Policy Conference on Indigenous Policy Final Report- Proposals Prioritized- Axis nº1 - proposal nº 3)[1].

Canadians over the past decade are accepting the reality that within this modern democratic society, technologically advanced and materially powerful, there are and have existed for many centuries before the first white settler arrived on the Atlantic coasts some four hundred years ago, a society of peoples known as aboriginal peoples. These aboriginal peoples occupy today as did their ancestors for countless generations the forests, plains, artic ice, mountains, seacoasts and vast territories within as well as outside the national boundaries of what is today Canada. Canadians today have also accepted the reality that although in the past aboriginal peoples occupation of the land had been diminished through misrepresentation and design, and in spite of every devised attempt since the dawn of our Canadian history to deny the aboriginal peoples the fundamental elements necessary to their survival – land and resources to sustain themselves and the productivity derived therefrom, aboriginal governing structures, spirituality, social and cultural values, teaching and language, they remain. Despite the centuries of misconceptions, prejudice, bitter disputes, deep grievances, and hostile social environment confronting aboriginal peoples, they have managed to survive and continue to survive as an identifiable society of peoples on land which continues to be their only home on this entire planet (Native Council of Nova Scotia summary of submission -16/09/85.)

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[1] From the original in Portuguese: *O Poder Executivo Federal deve demarcar e homologar imediatamente todas as Terras Indígenas, independentemente de localidade e em que estágio processual esteja, inclusive as que estão paradas no Ministério da Justiça, cumprindo, com celeridade e urgência, dotação orçamentária no Plano Plurianual (PPA), recursos humanos e observância dos prazos legais, todas as etapas do processo de regularização, desde os estudos de identificação até os respectivos decretos de homologação, promovendo desintrusão simultânea e prestando esclarecimentos aos povos indígenas sobre todas as fases do processo.*

RESUMO

Brasil e Canadá são democracias federais com grande extensão territorial e população indígena minoritária espalhada por seus territórios, que desenvolveram políticas distintas para o reconhecimento territorial destas populações. Iniciada em 1973, a política de assinatura de tratados territoriais entre o estado canadense e povos aborígenes passou por uma importante revisão de seus principais parâmetros em 1985 por meio de um processo de consulta com todas as partes interessadas no tema. A moderna política de reconhecimento territorial indígena brasileira, por sua vez, estabeleceu-se no início da década de 1990. Em 2016, povos indígenas foram convocados a participar da 1º Conferência Nacional de Política Indigenista do país, instituição participativa que não foi capaz de alterar o desenho da política de demarcação territorial. Para entender a variação na mudança da política de reconhecimento territorial nos dois países, conduzimos dois estudos de caso em profundidade utilizando dados quantitativos e qualitativos. Com o objetivo de prover uma análise contextual das instituições participativas, argumentamos que é necessário levar em conta não apenas aspectos do desenho das instituições postas em prática para incluir os povos indígenas nas discussões sobre o desenho destas políticas, mas também investigar o papel: 1. Dos parâmetros constitucionais; 2. Dos estados e províncias nos processos investigados; 3. Da agenda política dos governos durante os quais os processos de revisão das políticas aconteceram e; 4. Das organizações indígenas e sua mobilização política efetiva. Baseando-se em grande volume de arquivos e em 12 entrevistas coletadas nos dois países, concluímos que, no caso canadense, a interação virtuosa entre o desenho institucional, os incentivos providos pela recém mudança constitucional, o papel cooperativo das províncias e a ausência de oposição burocrática ou política organizadas promoveu o ambiente propício para a mudança observada. No caso brasileiro, por outro lado, a desmobilização interna da Conferência por parte do próprio governo, sua ausência de centralidade política e a forte interferência política de setores econômicos organizados no congresso sobre a política indigenista sem a mediação do chefe do executivo arquitetaram um cenário institucional em que as mudanças almejadas pelos povos indígenas se tornaram inviáveis. Em ambos os casos, a variável "agência coletiva indígena" não parece ter tido papel relevante nos resultados observados.

Palavras-chave: Povos indígenas; participação; política indigenista; demandas territoriais; Brasil; Canadá

ABSTRACT

Brazil and Canada, countries with large territories and with a minority Indigenous population scattered throughout the land have developed distinct ways to address such claims. Started in 1973, the Canadian public policy towards land claims recognition was reviewed in 1985 after a consultative process including Native groups from all over the country. This process was successful in changing some key aspects of the policy, leading to the design of the contemporary Comprehensive Land Claims Policy. The modern Brazilian policy to address native land claims was regulated in the early 1990's. In 2016, Indigenous groups were called to participate in the 1º National Public Policy Conference on Indigenous Policy. However, this participatory institution was not able to change the current demarcation policy. To explain this variation in the observed policy change, we carried out case studies using both quantitative and qualitative data. To provide a contextual analysis of the participatory institutions, we suggest that not only the design of the participatory institutions should be taken in account, but also broader factors such as: 1. Constitutional provisions; 2. The role of the provinces and states; 3. The government agenda during the periods under investigation and; 4. The Indigenous political mobilization and civil society associations. Documental data and 12 interviews collected with key actors in both countries were used as analysis material. We concluded that, in the Canadian case, the virtuous interplay between the participatory institutional design, the incentives for change provided by the recently enacted constitution, the cooperative role of the provinces and the absence of concerted bureaucratic and political opposition provided the political environment which allowed policy change. In the Brazilian case, on the other hand, the internal undermining of the Conference by the government, its lack of political centrality and the presence of strong political interference of economic sectors organized in the Congress without the mediation of the head of the executive provided a political landscape where policy changes proposed by Indigenous peoples became unlikely. In both cases, the variable "Native collective agency" seemed to play no important role in the observed outcomes.

Keywords: Indigenous peoples; participation; Indigenous Policy; Land Claims; Brazil; Canada

ILLUSTRATIONS

Tables

Figures

ABBREVIATIONS

AANDC – Aboriginal Affairs and Northern Development Canada

ACO- *Ações Cíveis Originárias* (Originary Civil Lawsuits)

AI – *Ato Institucional* (Institutional Act)

CA – Citizens Assembly

CIMI – *Conselho Indigenista Missionário* (Indigenous Missionary Council)

CLCA – Comprehensive Land Claim Agreement

DIAND – Department of Indian Affairs and Northern Development

FPA – *Frente Parlamentar da Agropecuária* (a.k.a Ruralist Caucus)

FPIC - Free, Prior and Informed Consent

FUNAI – *Fundação Nacional do Índio* (Indigenous National Foundation)

INAC- Indigenous and Northern Affairs Canada

ISA – *Instituto Socioambiental* (Socialenvironmental Institute)

NCOMIP – National Commission on Indigenous Policy

NCOUNIP- National Council on Indigenous Policy

NPPCIP - National Public Policy Conference on Indigenous Policy

NPPC - National Public Policy Conference

PAC – *Programa de Aceleração do Crescimento* (Growth Acceleration Program)

PB- Participatory Budget

PI- Participatory Institution

PNGATI – *Política Nacional de Gestão Territorial e Ambiental de Terras Indígenas*

PPG7 – *Programa Piloto Para a Proteção das Florestas Tropicais do Brasil*

PQ – *Parti Quebecóis*

PT – *Partido dos Trabalhadores* (Workers Party)

PTB – *Partido Trabalhista Brasileiro* (Brazilian Labour Party)

SCC- Supreme Court of Canada

SPI -*Serviço de Proteção aos Índios* (Protection Service of Indigenous Peoples)

STF- *Supremo Tribunal Federal* (Federal Supreme Court)

TI – Terras Indígenas (Indigenous Lands)

TF – Task Force to Review Comprehensive Land Claims Policy

TABLE OF CONTENTS

INTRODUCTION

From the south of Chile to the northern border of Canada, numerous Indigenous groups[2] are distributed throughout several countries, each with distinct features like language, customs, rituals, cultural activities, spiritual beliefs and political structures[3]. Historically delegitimized as relevant social actors in the Americas, such groups recently observed a growing international consensus concerning their rights related to, among others, self-determinacy, political autonomy, political representation[4], hunting and fishing rights, education in their own language and having their traditionally occupied lands recognized by national governments (ILO, 1989; UN, 2008; RAMOS, 2012b).

Recent scholarship on Amerindian groups discusses a "fourth wave of Indigenous mobilizations[5]" (TREJO, 2006), especially in Latin America, where national movements supported by strong Indigenous organizations were successful in electing the presidents of Bolivia (2006) and Ecuador[6] (2007) (VAN COTT, 2006). On one hand, there have been significant advances in Indigenous issues in Latin

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[2] As Donakowski and Esses (1996, p.90) argue, *"Attitudes toward Natives can differ considerably as a function of the label used to identify the group."* Thus, it is important to clarify the choice of words in this investigation. This study uses the terms "Indigenous peoples," "Indians," "Native groups," "Aboriginal" and "autochthones" and "First Nations" (in the Canadian case) interchangeably, considering these terms are either used by these groups in both Brazil and Canada to define themselves or are used in official publications (VOYAGER; CALLIOU, 2001. Section 35 of the Canadian Constitution (CANADA, 1982) states that Indigenous peoples (or First Nations), the Métis people with mixed ancestry of European settlers and Natives, and the Inuit, who are the original inhabitants of Arctic Canada, are considered Aboriginals. In Brazil, Indigenous peoples are usually regarded as part of the broader category of "traditional peoples" (ALMEIDA, 2006). Considering the controversy concerning the meaning of these terms, and given the number of countries where Native groups do exist, this dissertation uses the definition advanced by the United Nations, which includes: 1. Self-identification as an Indigenous person, along with acceptance by the community; 2. Historical continuity with pre-colonial and pre-settler societies; 3. Strong link to territories and surrounding natural resources; 4. Political, economic and social systems and cultures, beliefs and language distinct to the settler society; 5. Minority groups within a country; 6. Aiming to keep their traditional way of life and environment (UN, 2006).

[3] It is hard to state the precise number of Indigenous peoples around the world due the lack of confidence of many national records and the world's Native populations' growing rate. Nevertheless, a comprehensive estimation can be found in Bellier (2013, p.335), from which it can be inferred that there are about 370 million Indigenous peoples globally, with over 5,000 Native groups in 70 countries. In 2010, Canada had around 1,142,815 autochthones, representing approximately 3.6% of its population. Brazil had 896,917 Indigenous persons, around 0.4% of its population, in 2012.

[4] For a comparative, though insufficient, analysis of Indigenous political representation in Latin America, see Burks (2015). Codato et al. (2017) have recently published a paper on the Indigenous candidates in the 2014 Brazilian elections, showing that, within a universe of 22,000 candidates, merely 73 self-declared as Indigenous and only one was elected.

[5] Following this author, the other waves of Indigenous mobilizations happened in the 16th century after the conquest (first wave), at the end of the 18th century (second wave) and from the second half of the 19th century to the beginning of the 20th century (third wave).

[6] See, among others, Linera (2010), Yashar (2005) and Neves (2003).

America mainly regarding constitutional provisions that aim to protect Indigenous rights[7]. In North America, Canada's policies toward Native groups have taken interesting steps, particularly in symbolic terms, after the spark of the 2012 national movement, Idle No More[8] (COATES, 2015; CÉLERIER, 2014).

On the other hand, the growing consensus to implement international legislation for Indigenous rights has not translated into a strong commitment to forward these policies at the domestic level. As many scholars have noted, Indigenous groups are usually socially vulnerable populations with high rates of extreme poverty and suicide, substance abuse and alcoholism, precarious housing and sewage systems and fewer years of formal education (PLANT, 1998; BRASIL, 2010; CANADA, 2009, 2011, 2013; CIMI, 2012; CORNELL, 2006). Their traditionally occupied lands constantly face threats by private mining companies, property owners and the national governments themselves, which is due to the construction of huge projects such as hydro dams or roads. In such adverse scenarios, Indigenous groups are forced to play *the autonomy game* (BLASER et al., 2010), which means that these individuals must form relationships with the national governments to achieve their goals within the framework of globalized market economies that are highly dependent on the exploitation of primary natural resources (BELLIER, 2013; KNAFLA; WESTRA, 2010; MANEIRO, 2006; MURRAY LI, 2010; OCAMPO, 2017).

After centuries of genocide that, in some sense, continues today, threats like land grabbing, forced displacement and reallocation to small reserves, destruction of the soil, water, fauna and flora due mining challenge the very existence of Native groups across the world. However, contemporary Indigenous peoples have endured and become organized into, though not limited to, social movements that strive to

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[7] In Latin America, despite the remarkable advances in this regard, Ortega (2004, p.15) points out that there are some common problems in this region's legal framework for the recognition of Indigenous lands, such as: 1. The failure to develop a body of laws that could make the constitutional provisions concrete; 2. The time-consuming, overly complex or poorly conceived procedures for gaining legal recognition of Indigenous lands; 3. The imprecision of some of the concepts used in the writing of legislation; 4. The failure to adequately consult Indigenous communities; 5. The lack of a legal definition for ownership rights over many aspects of Indigenous life; and 6. The lack of an adequate definition of the management of Indigenous territories that overlap with national parks or protected areas. Other important sources with detailed accounts of this issue include Baldi (2017); Dantas (2013, 2017); Fajardo (2009); Marés (2003); Rodrigues (2002); Albuquerque (2012). For a historical overview of the Brazilian case, see Marchini (2011).

[8] The Idle No More! Movement in Canada started in the winter of 2012 as a reaction of First Nations to the broad changes proposed by the omnibus Bill C-45 to legislations governing crucial aspects of communities lives and spread all over the country during 2013 expressing the grievances of such groups towards the Canadian government (COATES, 2015). Since then, major events include the establishment of the Truth and Reconciliation Commission by Prime Minister Stephen Harper and the appointment of an Indigenous woman to the Ministry of Justice by Prime Minister Justin Trudeau (2015).

obtain "*the restoration of the rights denied to them by history, principally to a secure territorial land base and self-determination*" (ERUETI, 2006, p.547).

Among the multiplication of "rights claims" characteristic of the post-Universal Declaration of Human Rights era, one of the most pressing issues of the beginning of the 21st century is Indigenous peoples' claims to land (OXHORN, 2012). As Chase (2002, p.2) states, "*the claim to cultural difference, especially in the case of Indigenous people, usually involves a demand for territorial integrity of the places that have historically provided them with a livelihood and with their identity as a group*." Thus, for this study, "Native land claims" is considered as all claims for state recognition of land that has been traditionally occupied[9] by a country's Native groups. It is important to highlight the particularity of such claims in contrast to the general land claims made by peasants addressed by governmental agrarian reforms. This comparison assumes that the Native's land claims have both symbolic and material components that are necessary to the very existence of a Native group as a distinct society[10].

It is useful to examine the figures involved in the debate to better understand the magnitude of the issue. Valuable data regarding the pattern of land tenure recognition in the Americas can be found in the comprehensive global research titled *Who Owns the World's Land? A global baseline of formally recognized indigenous & community land rights* (RRI, 2015), which states that Indigenous peoples and local communities in Latin America own or control 23% of the land area, compared to 18% globally. In Mexico, an astonishing 52% of its territory is owned by Native groups or local communities[11] and, combined with Brazil, accounts for 67% of the region's

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[9] It is important to clarify, from the outset, that there is a whole debate about the concepts of "land" and "territory" whose complexities would not fit into the scope of this work. For the sake of concision, we have opted for using both land and territory because the actors involved use them for their own purposes without losing sight of their symbolical and material dimensions. By the same token, we have opted for the term "traditionally occupied" in opposition to "immemorially occupied" to stress that the actual occupation and the mode of existence, production and culture are dynamic and lively rather than something frozen across the time. To a deeper discussion of all those aspects, see Almeida (2006); Gomes (2013); Marés (2003); Haesbaert (2007); Baines (2012; 2014).

[10] It does not mean that we do not acknowledge that neither the claims made by Native groups across the continent are usually much broader than territorial ones nor that they are often intertwined with claims for political autonomy (HAESBAERT, 2007). Still, we consider that this claim is the one that is common to all Native groups of the countries under analysis.

[11] The methodology used by the RRI is mostly concerned with community-based tenure, making no distinction between Indigenous groups and peasants in the case of the *ejidos*, agricultural land communally held by peasants. However, it can be assumed that the majority of the *ejido*s are cultivated by local Indigenous communities. Half of the population of the Free and Sovereign State of Oaxaca, for instance, is composed of Indigenous groups and 85% of its land is held by *ejidos* (BROWN, 2004). This disclaimer is important to consider this data *cum grano salis*.

formally recognized Indigenous-owned land. In contrast, Indigenous control and ownership of land in Argentina and Chile is less, accounting for, 2.93% and 3.12% of the territories, respectively. The data are no less striking when comparing the USA and Canada because, regardless of the fact that these countries span territories of similar size, only 1.95% of the former's land is controlled by traditional groups, whereas the latter stands out with 43.86%. Therefore, land claims recognition[12] warrants investigation considering its impact on the dynamics of some of the largest countries in the world.

However, this data should be taken into perspective. While some countries are increasingly acknowledging Indigenous claims to land, the world is facing the greatest wave of land buying to produce biofuels and other related activities since the 1980s (SASSEN, 2016). The progressive acquisition of land by private businesses and foreign governments in Africa and Latin America is increasing pressure on traditionally occupied lands, which is regarded by many domestic and external actors as uncultivated land that should enter the market[13]. For this reason, as Erica-Irene Daes, the United Nations Special Rapporteur on Human Rights, states in her final working paper *Indigenous peoples and their relationship to land*,

> In terms of frequency and scope of complaints, the greatest single problem today for indigenous peoples is the failure of States to demarcate indigenous lands. Demarcation of lands is the formal process of identifying the actual locations and boundaries of indigenous lands or territories and physically marking those boundaries on the ground. Purely abstract or legal recognition of indigenous lands, territories or resources can be practically meaningless unless the physical identity of the property is determined and marked. (UN, 2001, p.17).

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[12] In this research, "recognition" and "acknowledgment" are used as synonyms, focusing on the legal commitment of the nation-states to formally declare a tract of their territories as traditionally occupied by a Native group. The problem in this research can be viewed through the lens of the so-called "Recognition Theory," advanced by authors such as Honneth (1996) and Mendonça (2011a; 2011b; 2014). This recent and voluminous body of literature concerns a variety of "*multilayered recognition struggles for voice and visibility*" (WILLIAMS, 2003, p.121; LAKE, 2003); Natives' struggle over the recognition of traditional lands fits into this category. However, this research takes another theoretical direction by stressing the importance of institutional and organizational aspects of the topic at hand rather than using important concepts to this theoretical framework such as dignity, self-esteem and self-realization.

[13] This is especially true for the Brazilian case, where there is a historical trend of extreme land concentration in the hands of a few larger farmers, businessmen and politicians (CASTILHO, 2012). Santos (2014) provides an interesting ethnographic account of how land grabbing occurred in a traditional community in Minas Gerais, Brazil.

Hence, it is important to highlight policies' tangible outcomes and on-the-ground realities. In Canada, nearly 70 recognized treaties were signed between Canadian First Nations and the Canadian state before 1975; since then, 24 modern treaties have concluded. These treaties concern around 40% of the country's land area and 95 Indigenous communities (ANAYA, 2014). The Brazilian state officially recognizes no fewer than 588 Indigenous lands as being traditionally occupied, representing approximately 12.88% of the country's total area. Regardless of the flaws and contentious issues that may arise from the implementation of Indigenous policies in both Canada and Brazil, policies addressing Natives' claims for the recognition of traditional occupancy areas have been implemented across the countries, as shown in the Figures 1 and 2 below.

Figure 1: Brazilian Indigenous lands in 2017. Source: Instituto Socioambiental (https://terrasindigenas.org.br/)
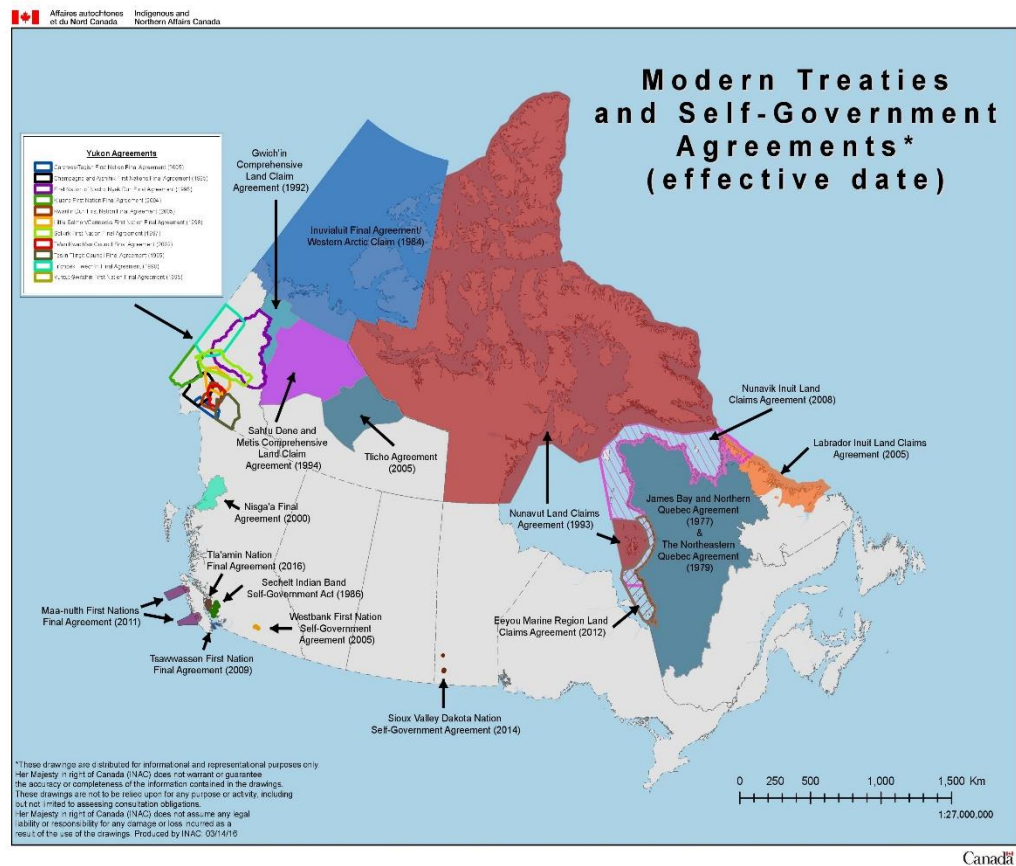
Figure 2: Comprehensive land claims agreements in Canada after 1973. Source: Aboriginal Affairs and Northern Development Canada (https://www.aadnc-aandc.gc.ca/eng/1290453474688/1290453673970).

If the acknowledgment, albeit reluctant[14], of the legitimacy of territorial claims is a fact of many countries' contemporary democratic life, a few research questions arise. For example, what are the concrete ways through which these countries address Indigenous land claims? Furthermore, do Indigenous peoples play a role in the design of these policies?

These questions are interesting, especially in the contexts of Brazil and Canada, the two countries analyzed in this dissertation. Both countries are considered leaders of democratic innovations, developing path-breaking cases such

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[14] Professor Leonardo Avritzer (personal communication) used the expression "reluctant acknowledgement" to designate the resistance of the Brazilian Supreme Court to incorporate in its jurisprudence international conventions and agreements, including the ones related to Indigenous rights. We extend this understanding to the Canadian case, given the fact that the Indigenous and Tribal Peoples Convention of the International Labour Organization was not ratified by its government and the United Nations Declaration on Indigenous Rights was officially supported only three years after its declaration in 2007. The official statement regarding the latter can be found in: http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142 (access in 02/11/2017).

as the Participatory Budgeting (PB) in Brazil and the Citizens Assemblies (CA) in Canada, hallmarks of the literature on participatory and deliberative democracy (ABBERS, 2003; AVRITZER, 2009a; MONTAMBEAULT, 2016; PAL, 2012; ROSE, 2007). In addition, both Brazil and Canada are signatories of the Indigenous and Tribal Peoples Convention of the International Labor Organization (No. 169) and of the United Nations Declaration on the Rights of Indigenous Peoples; these are the main international legislations that stress the importance Indigenous peoples' participation in all aspects of the nations in which they live, including in the formulation and implementation of public policies concerning them. It can be expected that the importance of citizen participation, which is commonplace for certain policies in Brazil and Canada, will be extended to Indigenous policies.

However, the reality is a bit trickier. Contemporary nation-states have developed distinct ways to handle Indigenous land claims, aiming to address the historical conflict between settler societies and autochthones (SCHOLTZ, 2006); scholars would have trouble characterizing any of these policies as "participatory," in the strict sense of the term. These processes might be regulated by a national constitution and complementary laws or be more dependent upon presidential decrees that are carried out by federal, provincial or state-level agencies. Furthermore, certain procedures might be more-or-less participative and transparent, whereas others might be designed in a more technocratic or paternalistic manner. Despite its features, though, all are conceived as legal responses developed by nations to transform legitimate territorial claims made by Native groups into actual territorial recognition that is simultaneously legally regulated and institutionally effective.

Skocpol and Amenta (1986, p.131) affirm that policies are meant to be "*lines of action pursued through states*" attempting to "*extend coercive control and political authority over particular territories and the people residing within them.*" Indigenous policies in Brazil and Canada can be described as the set of public policies carried out by the national states that target Indigenous groups as socially and culturally distinct. For instance, these policies concern all aspects of Indigenous life, including healthcare, social care, schooling, housing and cultural and historical heritage. This thesis focuses on the specific policies developed to address the settlement of Native groups in territories claimed as traditionally occupied by these groups.

The research question: in search of the puzzle's missing piece

In 1985 in Canada and in 2016 in Brazil, political processes that included Indigenous groups in attempts to influence major aspects of national Indigenous land claims policies took place.

After five months of consulting with Native groups, provincial governments and federal agents across Canada, the 1985 Task Force to Review Comprehensive Land Claims Policy (henceforth TF) delivered the Coolican Report, later published as a booklet titled *Living Treaties, Lasting Agreements* (CANADA, 1985). This report significantly impacted the 1973 Land Claims Policy and largely incorporated First Nations concerns regarding aspects such as titling, cultural rights, self-governing and fishing and hunting rights. In sum, the report transformed the previous policy into a comprehensive process that extended far beyond a mere real estate transaction between the Canadian government and First Nations.

The 2016 *Primeira Conferência Nacional de Política Indigenista* (First National Public Policy Conference on Indigenous Policy, henceforth NPPCIP) in Brazil was the latest development among federal initiatives to repair the damaged relations with Brazilian Native groups, in the context of the turmoil of the Brazilian politics started in 2013[15]. The conference aimed to include numerous Indigenous groups in the discussion on Brazilian Indigenous policy, including proposals to the land claims recognition policy, comprising several local stages and one final national meeting (BRASIL, 2016). However, the proposals were never considered by the Brazilian state in any shape or form. In fact, the contemporary Brazilian legislative agenda is filled with proposals for change of Indigenous policy that goes in the opposite direction of the ones proposed at the NPPCIP[16].

Brazil and Canada experienced major constitutional changes that secured Indigenous rights in the 1980s. Moreover, both countries showed an increasing

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[15] In June 2013, the violent police repression of a peaceful protest to the increase of the public transportation fare in São Paulo sparked a massive wave of solidarity across the country. Huge demonstrations took place at hundreds of Brazilian cities, ultimately channeling the widespread popular discontent with issues such as corruption, and lack of adequate infrastructure and public services towards the governments of the day (ALONSO; MISCHE, 2016). The interpretation of its causes and meaning is still open to discussion and has given place to a heated debate in the Brazilian academia and media outlets.

[16] Following the monitoring of legislative proposals related to Indigenous peoples by the Brazilian *Ministério Público Federal*, in 2018 there are currently 34 legislative initiatives proposing substantial changes in Indigenous land demarcation policy, the halting of new demarcations and the revision of the ones already settled, transferring competences from the FUNAI to the Congress, among other provisions targeting Indigenous rights and policy. Available at: (access in 19/07/2018).

organizational capacity of the Native groups. Finally, they have an impressive record of participatory experiments in the recent decades. However, they have achieved different outcomes regarding changing the country's Native land claims policies. How was that possible? This result is puzzling and therefore, the question that drives this research is: to which extent do contextual factors help to explain the differences regarding the potential of participatory institutions to effectively change public policy parameters?

The observed result is both a theoretical and an empirical puzzle. In the first case, National Conferences such as the one here studied are considered participatory institutions designed to include hundreds of thousands of people, thus enhancing the legitimacy of their deliberations and providing executive and legislative branches of government with a policy agenda in tune with civil society aspirations and ready to be implemented. On the other hand, *ad hoc* consultations and meetings with stakeholders such as the ones carried out by the TF are considered institutions that provide low-intensity participation and likely to fail in promoting any significative policy change. Contrary to the outcome that could be expected from the theory of participatory institutions, it was the latter institution that succeeded.

Empirically, the puzzle refers to the challenges that arise when dealing with participatory institutions designed and implemented in significantly distinct cultural, social and political landscapes. Importantly, we discuss political processes that happened with a distance in time of a bit more than 30 years, what poses the immediate task to the researcher to carry out a great deal of historic research to accurately describe the political landscape at the time of the events under study. Finally, although there is a considerable body of scholarly research on the topic of participatory institutions, participatory democracy and deliberative theory, participatory channels designed to include Indigenous peoples are understudied and therefore reduces the prospects of the researcher in relying in previous accounts of the objects of interest.

There is a significant lack of studies accounting for Indigenous participation in policy design. Surveying the most recent literature in the political science field uncovers investigations concerning the role of Indigenous groups in building political parties in the Andean countries (YASHAR, 2005; VAN COTT, 2006); Indigenous participation in economic activities in Canada (PAPILLON, 2015; MACDONALD; FORTIN, 2014); Indigenous participation in local and federal-level elections in Brazil

(PAULA, 2017; CODATO et al, 2017); factors explaining why some Native groups accomplish comprehensive land claims agreements more-or-less rapidly (ALCANTARA; 2013); the cooperative pattern of interaction between Indigenous groups and municipalities (ALCANTARA;NELLES, 2016); the emergence of negotiating land claims policies in Commonwealth countries (SCHOLTZ, 2006); the so called "treaty federalism" and the emergence of Indigenousl multilevel governance (WHITE, 2002; PAPILLON, 2012; PAPILLON, 2014;); and the importance of land claims agreements for the quality of life of Canadian First Nations (SALÉE, 2006; PAPILLON, 2008; PAPILLON; SENÉCAL, 2011; PAPILLON;LORD, 2013; PAPILLON et al, 2013). Regardless the quality of those researches, however, there is still "*too little Indigenous political science*" (BERG-NORDLIE et al, 2015, p.3), meaning that "*the discipline of political science does not take Indigenous politics seriously*" (BRUYNEEL, p.1)[17].

On the other hand, the recent debate on the participation of Natives has strongly focused on "Free, Prior and Informed Consent" (FPIC) of Indigenous peoples, especially after main international banks adopted this policy as a requirement for funding any infrastructure initiative that could potentially harm Indigenous populations (DAVIS; SOEFTESTAD, 1995; RODRIGUEZ-GARAVITO, 2010; NATCHER, 2001). However, none of those studies concerns the participation of Native groups in political decisions via formal channels designed for their inclusion in major policy processes.

This study attempts to fill this gap by focusing on the involvement of Native groups in the reviewing of policies carried out by the nation-states that have been designed to materialize the official acknowledgment of a land as traditionally occupied by Indigenous groups. In which ways do the Indigenous participate, if at all? If Native groups have actively been a part of the process, has this participation affected the outcome? Alternatively, can the participation of Native groups in making a decision that affects them suggest a more normatively compelling outcome[18]?

The dependent variable of this research is, therefore, policy change. It is defined in this dissertation following Bennett and Howlett (1992) as the incremental

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[17] The Brazilian academic landscape is no less disappointing in this regard. An investigation of 2.621 papers published between 1996 and 2017 in the seven most important Brazilian political science journals revealed that only two of them discussed some issue related to Indigenous peoples. Recently, Londero (2015) presented her doctoral dissertation on the Indigenous participation at a State-level Indigenous policy council in Brazil. Still, we can affirm that the interest of Brazilian political scientists on Indigenous-related issues is virtually inexistent.

[18] This expression is taken from Kohn's (2000, p.420) critique to deliberation.

change of any parameters of an existing public policy or the adoption of innovative policy procedures or instruments. The participatory policy review was successful in the Canadian case and unsuccessful in the Brazilian one regarding minor changes in both previous Indigenous land claims recognition policies. In this sense, policy change is a categorical and dichotomous variable.

Participation and policy change: explanatory frameworks

Policy change is a classical topic of research within the field of public policy studies. The answer to the question why does public policies' shared goals, instruments or paradigms change over time instead of remaining the same is crucial to policymakers and elected officials and attracted considerable scholarly attention in the last decades. No wonder then that several explanatory models and distinct theoretical approaches were developed to address the issue.

Pierson's (2000) path dependence model, for instance, stresses the "sticky" nature of political institutions and public policies and emphasizes that policy continuity is more likely to happen than change. Once political actors take a course of action, the costs of its reversal are high and therefore discouraged. Change only happens when the costs of keeping the *status quo* becomes higher than the costs of changing it.

However, as useful as this framework may be to the study of Indigenous policies – a policy domain where political institutions and policy instruments have been developed over centuries and show a remarkable resilience- the empirical difficulties of establishing the costs and incentives created by past choices and how they influence future decisions suggests that this framework should be discarded.

Sabatier and Jenkins-Smith (1993) so-called Advocacy Coalition Framework (hencerforth ACF), on the other hand, proposes that political actors have ideas about causation, values and the very nature of the problems they want to address through public policy. Governmental and non-governmental organizations sharing common worldviews, concepts and values may organize in coalitions with the goal to push such ideas forward and ultimately shaping public policy's goals, instruments and paradigms. Policy change happens when different advocacy coalitions espousing

distinct "policy beliefs" interact with each other and are successful in benefiting from opportunities for change that may arise from external shocks coming from the political system writ-large.

The ACF is certainly a thought-provoking theoretical model designed to explain policy changes in policy domains with highly contested goals and technical uncertainty about policy instruments, as Indigenous policies undoubtedly are. Though, unsolvable methodological challenges would prevent us of using it. To map all advocacy coalitions that may exist within the institutions in charge of carrying out the participatory processes here under scrutiny would have required an unprecedented and unlikely access to a relevant number of political actors and policy agents often unwilling to talk. More fundamentally, ACF stresses the importance of ideas as key drivers of policy change, whereas there is no evidence in the cases under study that major shifts in policy beliefs in how to deal with Indigenous land claims have occurred.

Finally, the Punctuated Equilibrium model developed by Baumgartner and Jones (1991) again highlights the importance of external shocks from the political system into policy domains to explain abrupt policy changes. Notwithstanding, since we are dealing with small-sized processes, this theoretical model seems to be inadequate to understand them.

The virtual absence of literature regarding the link between participatory institutions, policy change and Indigenous policy leaves us with a "clear slate" to opt for any of such approaches and, as Cerna (2013, p.17) affirmed, "*it seems reasonable to mix and match convincing elements of the theories depending on the policy area and context*". As it will be clear in the next section, we advance an exploratory hypothesis based on macro-institutional factors that will be tested in their capacity to explain the observed outcomes regarding the attempts to change Indigenous native land claims recognition policy through participatory institutions.

The account for institutional factors as useful variables to explain policy change is in keeping with the theoretical approach proposed by Streeck and Thelen (2005). The authors distinguish between processes of change – that may be incremental or abrupt – and results of change – either continuity or discontinuity. Moreover, policy changes may happen through 1. Displacement – when old policy parameters are replaced by new ones; 2. Layering – when the continued producing of incremental changes juxtaposes distinct institutional layers that will interact and

eventually produces new changes; 3. Drift – when policy design, goals or instruments do not adapt to a changing political and institutional environment; 4. Conversion – when previous policy goals are completely converted into new ones and; 5. Exhaustion – when the public policy simply collapses under its flaws. This sophisticated and nuanced theoretical framework offers a broad range of processes that may be helpful to explain the puzzle we are dealing with.

If policy change literature is important to help us to meaningfully navigate through the uncharted waters of Indigenous land claims recognition policies, the same is valid for the literature regarding participatory democracy. Warren (2002) has affirmed that participatory theory must manage a new defying political landscape, where globalization and the continuous differentiation and complexification of social systems are ineluctable facts. Moreover, the "*changing patterns of individualism*" (p.686) have challenged the very fabric of society. In this sense, even though the "*reduction of complexity*" (LAVALLE, 2011b, p.40) is a desirable goal in research, this reduction must not sacrifice the understanding of this complexity for decision-making processes like those analyzed in this dissertation.

Lavalle (2011b, p.33) has argued that it is not trivial to discuss "*if participation is a value in itself or a cause of desirable effects*." This author has advanced the idea that it is important to keep the normative power of participation as the *leitmotiv* of democratic societies but has urged its transformation into variables that help to understand its practical effects. Research on participatory practices must demonstrate that the quality of the results of political processes involving citizen participation cannot only rely on normative claims but must also be concretely accountable. In other words, the "problem of effectivity" of participatory institutions is both a theoretical and an empirical puzzle challenging participatory democracy scholarship (AVRITZER, 2011).

Wampler (2011b) considers of "vital importance", "fundamental" and "crucial" to understand how participatory institutions are inserted in broader institutional, social and political environments. Moreover, the interests and actions of a larger set of political actors should be considered in the analysis. The literature on participatory institutions points out that there is a plethora of contextual factors that converge to influence the achievement of the desired outcome of a public policy. These factors will be further discussed in the next sections.

Investigation hypothesis

To be sure, both political processes here under analysis are initiatives of the executive branch and, given the fact that Indigenous policy is a federal matter in both contexts, it is reasonable to think that the institutional parameters set up by the federal agencies and their officials have had a strong impact in the explanation of their success or failure. However, only looking for a silver-bullet explaining factor can be misleading. Policy changes are usually complex political phenomena involving not only actors formally included in the policy review and design processes, but also a set of external factors that may play a role in its final framing. In other words, political processes engaging people in politics do not exist in a vacuum, but rather in a world populated by a myriad of groups with distinct interests and own political agenda, and it might be taken into consideration if we want to have a more accurate account of the real capacity of participatory politics to change society.

There is a recent concern on the literature on participation and deliberation regarding the effectivity of institutional interfaces between governments and civil society on different aspects of governance, including increasing public policy performance, eliciting legislative proposals or establishing the budgetary centrality of a certain issue, showing mixed conclusions (PIRES, 2011; PIRES; VAZ, 2012).

In this thesis, we suggest that the variation in the form of inclusion of Native groups in decisions related to the Native land claims policy design is just one factor that helps to explain the policy change. The full explanation of the causes behind the success or unsuccess of the attempts to change the policy parameters lies in the need to include more variables in the analysis of the phenomena. The key assumption here is that "*participatory institutions are inserted in a specific environment- historically, politically and legally built- which open opportunities but also imposes constraints to their deliberative processes*" (SILVA, 2011, translated by the author).

Petinelli's (2011; 2015) recent work on the capacity of National Public Policy Conferences (henceforth NPPC) of influence in setting public policies agendas in Brazil between 2003 and 2010 suggested that these participatory institutions are more likely to effectively shape the policy agenda when the secretary or ministry promoting the participatory process is politically relevant, involves economic actors

and the issues discussed have economic impact. The author acknowledges that several factors could influence her findings, including the degree of institutionalization of different public policies, distinct levels of organization and resources of policy communities, the political dynamics among the participants, the degree of contentiousness of the proposals, among others. However, Petinelli fails to incorporate those variables in her explanatory model.

Similarly, Pogrebinschi's work focusing on trying to establish correlation between the proposals in NPPCs and legislative initiatives in the Brazilian Congress during the same period analyzed by Petinelli found unexpected high levels of influence of those participatory institutions in the legislative activity (POGREBINSCH; SAMUELS, 2014). The author also described the process of transforming and incorporating NPPCs proposals into legislations (POGREBINSCHI, 2013). Moreover, the author and her colleagues claim that NPPCs were instrumental in expanding the scope of the political representation of the civil society and increasing the responsivity of the Brazilian National Congress to the demands of the civil society, ultimately increasing the quality of the Brazilian democracy (POGREBINSCHI; VENTURA, 2017).

We argue that while Petinelli's and Pogrebinschi's works are useful to understand the challenges involving participatory practices in large scale and are serious attempts to argue for the effectivity of such institutions, they fail to provide a more complex account of the factors that may come into play in the processes they analyzed. First, both authors seem to understand the synergy between NPPCs proposals and legislative initiatives or policy parameters as the evidence of a causal link between the former and the latter. Secondly, despite the acknowledgement that other factors rather than just the institutional design itself may play a role in the processes, both authors fail to include broader contextual factors in their analysis. In both works, there is no mediation between NPPCs and their "targets" – the public administration or the parliament – and therefore the explanation misses the important roles of some key political actors that may be involved in the decisions regarding the participatory processes studied. In other words, we argue that their explanatory accounts of the effectivity of participatory processes may be omitting important variables.

This thesis aims to contribute to this literature arguing that to overcome such liability, scholars on participatory and deliberative practices should take into

consideration the importance of contextual factors and the political landscape at large to better understand the phenomena they want to explain. We argue that several other variables come into play when it comes to explain the prospects of changing a policy as controversial as the one designed to acknowledge Indigenous control over a certain part of a nation-state territory.

Contemporary research in political science is incompatible with the idea of unicausality of a political phenomenon; it is not reasonable to think that a single factor can explain the variations in the outcomes of such complex processes—in this case, the policy changes concerning Native land claims. Therefore, it is important to assume that there can be different methods used to achieve the same result, which means seriously taking into consideration the possibility of the outcomes being multi-causal (REZENDE, 2011; 2015).

Thus, instead of focusing in a single factor to explain the variation in the level of success of the policy change under scrutiny, this research proposes the inclusion of broader contextual factors in the equation. In our model, four independent variables may help to explain the outcome's variation: 1. The institutional design of the processes designated to facilitate Indigenous inputs and the constitutional framework governing policy parameters; 2. The regional differences between states, provinces and territories regarding their roles in the policy process; 3. The political and economic agenda of the federal government; and 4. The collective agency of Native groups. To fully understand the role those variables may play individually or in interaction among them to explain the concrete cases here studied is the main goal of this investigation.

Each of the variables will be discussed at length in the first chapter of this dissertation. In this introduction, however, we quickly introduce their main assumptions and the sub variables involved in some of them to help the reader to navigate in the explanatory model proposed.

Independent variable 1: Institutional design

Institutions are a set of formal and informal rules, symbols and social practices structured to achieve collective goals and are considered important predictors of the

effectivity of participatory institutions (FUNG; WRIGHT, 2003; FUNG, 2004; GOODIN, 2008; FARIA; RIBEIRO, 2011; AVRITZER, 2014). In this dissertation, the institutional design variable comprises two different but intertwined factors: 1. The actual design of the process that aims to include Native groups in the policy's review, which seeks to understand how the components of the policy design process can help explain a certain outcome; and 2. The constitutional framework setting the parameters, within which the actors involved can structure their interactions, advance their arguments and propose policy changes.

In the first case, the NPPCIP and public hearings, informal and formal meetings and formal submissions to the TF are considered institutions designed to include Indigenous peoples in the policy review and policy-making processes. The variation of the participatory institutional design considers the direction of its implementation (bottom-up versus top-down) and its relation to their ability to enhance deliberation among their participants. These aspects are measured by taking into consideration each institution's mandates and formal rules and the plethora of documents produced during the policy processes.

In the second instance, both national constitutions present explicit provisions related to Native rights. However, the policies vary due to constitution-making processes, the timing of the constitution's promulgation and the scope of the rights acknowledged. Both constitutional documents and the historical processes that led to their implementation are analyzed to measure the differences between the processes.

Independent variable 2: Federalism

The role states and provinces in participatory processes is filtered in most of the specialized literature through the debate regarding the classical contradiction established by Robert Dahl between the scale of democratic processes and the feasibility of political participation (FARIA, 2005). In this dissertation, however, the federalism variable accounts for the role that subnational entities play in Brazil's and Canada's policy-making processes following Scholtz's (2006) recommendation. The assumption is that provinces, territories and states play crucial roles in either

supporting or criticizing the policy, even though the ultimate responsibility of Native issues lies within federal jurisdiction. This support or opposition to proposals to change the policies is critical to understand the variation in the dependent variable.

This variable concerns federations that span along a continuum of decentralized to centralized systems, meaning the degree of autonomy assigned to the subnational entities in each polity is considered in this thesis. The formal and informal dynamics of the federations in both countries are analyzed. As the first sub variable, we suggest that the representation of landowners and mining companies within the Parliaments are different and are worth investigating. Following, we also investigate the pattern of interaction between the states/provinces and the federal government related to Indigenous issues as an indicator of the resistance regional governments may oppose to Native land claims policy change.

The participation of subnational bodies in the processes is measured through official records, the content of the proposals made by the representatives of each group, the official statements of prime ministers and governors and interviews with participants.

Independent variable 3: Government agenda

The interests of governmental and non-governmental political actors are an unavoidable variable when it comes to understand the broader context of participatory institutions. The literature on the topic typically refers to the political agenda or political will of the government of the day as determinant to the prospects of success or failure of the participatory endeavor (ABERS; KECK, 2009; DAGNINO et al, 2007). Native issues are the responsibility of the federal government in both Brazil and Canada and, as such, the agenda-setting power of the executive branch may play a significant role in the policy changing process. Therefore, the degree of centrality of Indigenous issues within the ruling party's political agenda is of interest for this research.

Secondly, each government has a strategy to enhance economic growth that may include the exploitation of natural resources within traditional territories. Any attempt to change an already established Native land claims policy may be perceived

as a threat by economic actors and therefore spark resistance. In this sense, to understand the variation of strategy across the contexts may be useful to figure out the broader economic landscapes in both countries and how they can be used to delay or even block policy change proposals.

The differences in the functioning of Brazil's and Canada's government systems are described to show the decision engineering involved in each case. The centrality of Indigenous issues within each country's government agenda is measured by examining the budget allocated to Indigenous land claims policies, policy statements, official reports and publications and interviews with participants. The economic strategy of the governments of the day will be discussed in historical terms following official publications and other relevant sources.

Independent variable 4: Native groups' collective action capacity

The examination of the constellation of social forces around participatory institutions was one of the first contextual factors analyzed by scholars on the field. The premise was that social movements and their organizations were in critical dialogue with participatory institutions and this interaction could have impacts in both parties involved (TATAGIBA, 2011; ABERS; SERAFIM, 2014). Native groups' collective action capacity suggests that the increasing organizational capacity of Native groups plays a major role in achieving a satisfying outcome. The existence of political organizations of Indigenous groups allowed them to participate in the process in a meaningful way, providing information and the possibility of communicating and negotiating. Organizational capacity is also necessary for mobilizing the group to use actions that are more contentious when dialogue is blocked or unsatisfactory.

Official documents, booklets and historical reports are used to measure this aspect. Quantitative and qualitative data is used to show the extent to which Indigenous groups were previously able to present themselves as "credible threats" (SCHOLTZ, 2006) to the government.

Table 1 below presents the variables used in this research.

Table 1: Independent and dependent variables used in the study

Independent variables (x1-4)	Dependent variable (Y)
Institutional design (x1)	
Sub variable 1: participatory institutional design	
Sub variable 2: constitutional design	
Federalism (x2)	
Sub variable 3: interest representation within parliament	
Sub variable 4: pattern of interaction between sub-federal governments and Indigenous peoples	Native land claims policy change (Y)
Government agenda (x3)	
Sub variable 5: political centrality of the issue	
Sub variable 6: economic strategy	
Indigenous collective agency (x4)	
Sub variable 7: repertory of action	
Sub variable 8: associative density	

Research methodology overview and selection of the study sites

Wampler (2011a; 2011b) acknowledges that participatory institutions are part of broader policy cycles and political processes and are more likely to produce incremental rather than dramatic changes on public policies. This author considers "extremely difficult" to establish a causal link between the decisions taken by participatory institutions and changes in public policies. The same reminder is made by Souza (2011, p.208, translated by the author), to whom "*there are difficulties in verifying the influence of a conferential decision in the processes of designing and implementing a public policy*". To further complexify the researcher's task, "*the lack of systematic and methodologically rigorous comparative studies* [on the field of participatory institutions] *is a serious obstacle to the production of analysis and evaluations which, while attentive to diversity, are able to identify recurrences and similarities*" (SILVA, 2011, translated by the author).

It is hard to precise the number of Indigenous land claims recognition policies in place in the Americas nowadays, let alone knowing how many of them were designed or reviewed by participatory institutions including Indigenous peoples in

their decisions in the last decades. To contribute to fill this gap we designed a qualitative research focused on two cases of participatory institutions (BAUER; GASKELL, 2002; MUNCK, 2004).

Firstly, this study focuses on few cases, as is mandatory in case studies research. Its primary concerns are the exploration of the variable's diversity, the search for causal mechanisms and the generation of hypotheses. Furthermore, case studies tend to present stronger causal strength, internal validity, and deal with a heterogenous population of cases with rare useful variation. Moreover, they are the best suited research method to be carried out when the state of the field is indeterminate and there is concentrated data availability. Finally, they rely on "thick" and culturally sensitive descriptions of the objects under investigation, which reconciles historical particularities of each case with the goal of generalization of the findings to a broader number of cases (GERRING, 2007; GERRING; THOMAS, 2011; GERRING, 2012; SATYRO; REIS, 2014).

Secondly, this research provides a cross-national comparison which entails concerns with the development of concepts and terms that can cut-across distinct cultural contexts. The main methodological challenge here is to increase the homogeneity of the meaning of the variables used in the study without losing sight of the specificities of each context of analysis (GAZIBO; JENSON, 2015).

Finally, although the overall research design is qualitative, we used both qualitative and quantitative data in our analysis. We consider that the pragmatic use of the broad range of data available regardless its nature promotes a deeper understanding of the research problem at hand and further increases the researcher's confidence in his/her findings. Moreover, as Codato et al. (2017) warn, if Indigenous issues are to be viewed as legitimate objects of study in political science, then this discipline should discard methodological purism and move towards more creative approaches. In this sense, this study aligns itself with the recent debates regarding the use of "fuzzy sets" and mixed methods in political science (KIRSHBAUM, 2013; SILVA, 2015)

The first place that was searched for information concerning the Native land claims policies participatory review processes under scrutiny was, naturally, the bureaucratic records of the governmental agencies in charge of Indigenous issues in both countries.

For Canada, the primary data was collected at the National and Library Archives Canada during the summer of 2017. The researcher was able to gather 44 formal submissions (official briefs sent to the TF by all participants) and 22 minutes of the meetings that were open to public consultation, all of which are in the annex of this thesis[19]. Moreover, the complete transcriptions of a few meetings were available, in addition to background papers and legislation. The secondary data used were the vast array of official documents related to Canadian Indigenous policy open to public at the *Bibliothèque et Archives Nationales du Québec* in Montréal and at the Aboriginal and Northern Affairs Canada (AANDC) library in Gatineau. Complementary information was collected through websites and media records, comprising a plethora of valuable sources that helped to understand the political landscape of the early 1980s and how the debate was addressed by the media; these sources also shed light on points not covered by the public files.

For the Brazilian case, the researcher analyzed NPPCIP's files, which are available on the organization's homepage. As the documents were insufficient, the researcher consulted documents stored at the *Fundação Nacional do Índio* (Indigenous National Foundation, henceforth FUNAI) and the documents kept privately by participants of the NPPCIP[20].

Though detailed, the files were unable to fully explain the entire political process; many gaps could be better understood through personal testimonies, as the rich experiences of the Native groups could provide crucial information about the research subject. In addition, the bureaucrats in charge of the processes investigated also had their unique way of analyzing the cases. The researcher used the elite interviewing technique, which draws "*a sample that includes the most important political players that have participated in the political events being studied*" (TANSEY, 2007, p.2).

For the Canadian case we were able to interview six members of the TF at the time: the TF's Chair, Mr. Murray Coolican, Mr. Ronald Doering, Hon. David Crombie's advisor and Mr. John Merritt, the link between Doering and the Task Force.

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[19] Due to the huge number of files, we opted to storage them in a dropbox account with access allowed to the members of the Ph.D committee. The access to the material can be made available upon request to leobarros.prodep@gmail.com.

[20] We requested the files related to the NPPCIP through the Information Access Act. The answer, however, was unsatisfying, providing us with very limited and fragmented information. Later, in a off record confession, one FUNAI agent told us that the NPPCIP files were in possession of one of its coordinators at the time of the research and they have never been handed out to the Brazilian government.

Moreover, we were able to reach out to Madam Justice Constance Hunt, legal advisor of the TF at the time, Lynn Jamieson, secretary-executive and Roger Jones, a First Nation lawyer. They were reached through e-mail in January 2018.

The researcher was able to interview 6 high ranked public officials directly related to Brazilian Indigenous policies. Three of them were organizers of the NPPCIP. The others were indirectly involved with the process, since they were in crucial points in the chain of command at the FUNAI. These individuals provided first-hand, colorful testimonies of the process and explained obscure points that would have been difficult to understand without their inside perspectives[21].

Unfortunately, we were not able to interview Indigenous leaders who had participated in the participatory processes studied. Contacts with Indigenous peoples must be carefully handled in order to ensure compliance with ethical requirements with researches with historically disadvantaged groups and the establishment of mutual trust between the investigator and the interviewees can take a great deal of time. Moreover, there are practical obstacles when it comes to interview Indigenous peoples who often live in remote areas with limited access. Those difficulties, which doubled in a cross-national comparative research, proved to be persistent.

We also were not able to reach out to politicians whose views on the processes under analysis could contribute to their explanation. In the Canadian case, we did not have any answer to our interview's requests via e-mail. Besides, it would be unlikely that former representatives would recall a policy debate that took place more than thirty years ago. In Brazil, ruralist caucus members are usually distrustful of researchers and refuse to cooperate. Remarkably, researches on rural sociology about this parliamentary caucus usually use data from secondary sources in the absence of personal testimonies. Such deficiencies of the state of the art of data available in the field could not be overcome in the present study.

The net outcome of the lack of interviews with other key actors of the participatory events is that the argument presented in this dissertation is heavily

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[21] In Brazil, the interviews were conducted between 2017 and 2018 at the FUNAI's headquarter in Brasília, at the *Acampamento Terra Livre* (henceforth ATL)- the annual gathering of the Brazilian Indigenous Movement- and even at one individual's house. One of the interviewees answered our questions through e-mail. Indigenous policy in Brazil is a highly contentious issue and their agents suffer with political pressures and lawsuits (and even death) threats. No wonder, then, that they are so reluctant to give interviews or manifest their political viewpoints publicly. For those reasons, Brazilian respondents requested total anonymity and any proper name or hint that would allow for their recognition was erased in the final transcripts of their interviews. I am thankful to those brave men and women that trusted me enough to share with me sensitive information and a unique perspective of the inner works of the Indigenous policy in Brazil.

framed by the specific point of view of public officials involved. This is certainly a source of bias which should not be hidden or dismissed but clarified and discussed. Importantly, we consider it a reminder that further research must be undertaken in the future to incorporate such distinct perspectives, what certainly will enhance accuracy and scientific rigor.

Finally, wherever possible, we have tried to triangulate interview data with data from documents and opted to provide direct quotations from interviewees rather than paraphrasing, methodological choices that increases both reliability and transparency.

Why Brazil and Canada?

Comparability in cross-national comparative research is important to ensure that the research design is concerned with phenomena within the same category and present different values regarding the dependent variable. Canada and Brazil are comparable cases for several reasons, as the ones presented in the following non-exhaustive list:

a) First, the researcher selected countries in the Americas with vast territories. It was believed that these countries would have had less difficulty in recognizing Indigenous land rights due to the abundance of vacant lands;

b) Second, countries with market economies strongly based on the extraction of natural resources were selected, as these factors decisively impact the relationship between the state and Indigenous communities;

c) Third, each country's application of democratic regimes and the rule of law, which provide a minimum constitutional framework of rights protection for traditional populations;

d) In each of these countries, the Indigenous population is a minority (less than 4% of countries' populations), fragmented (with many different Native groups that have distinct cultural features and social and political organizations) and spread over the territory rather than concentrated in

a single region. It can be argued that this implies a more individualized relationship between the state and Indigenous groups, which is an entirely different approach than countries with major Indigenous populations, such as Ecuador, Guatemala and Bolivia. Moreover, the dispersed and fragmented nature of the minority Indigenous population poses challenges to the collective action of these groups on a national scale;

e) Brazil and Canada are federal states and Indigenous peoples fall under federal jurisdiction, which means that the states or provinces might also play a role in the land claims policy;

f) Finally, the selected countries have Indigenous groups that claim large tracts of the states' territories. These claims call into question the territorial sovereignty of the states in relation to the demands of lands traditionally occupied by the Indigenous groups.

The USA could not be used as a comparable case for this research due to the simple fact that this country does not have any Indigenous policies concerning Native land claims recognition; thus, the USA could be described as an example of a "non-negotiation policy option" (SCHOLTZ, 2006). While Venezuela, Colombia and Argentina might have provided interesting cases, it was, unfortunately, impossible to find reliable data concerning each country's legal recognition of Indigenous land claims[22].

Brazil and Canada usually serve as contrasting examples in order to highlight their differences more than their similarities, especially concerning indicators on human development, education and welfare. Nonetheless, both countries are much more alike regarding their Native populations. This likeness can be seen in the figures and features summarized in Table 2 below.

Table 2: Figures and features of the Native populations in Brazil and Canada

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[22] The Colombian case is interesting regarding the unprecedented extent of Indigenous rights guaranteed by the Constitution of 1991. However, the country has discontinued the creation of a coherent Indigenous policy and, therefore, Colombia's policies are not comparable to the other cases (RAMOS, 2012b). Finally, in Argentina, there is clearly a resurgence of Aboriginality, leaving behind the nationalist intents of the 19th century to eradicate Indigenous peoples (BRIONES, 2005; BRIONES; CARRASCO, 1996). The recently developed policy of *relevamientos territoriales* has the potential to be an interesting intermediary case for comparison. Unfortunately, it was impossible to find comparable data regarding this policy.

	Brazil	**Canada**
Constitutional status	Indigenous peoples	Autochthones or Indigenous groups[23]: First Nations or Indians (status or non-status), Métis, and Inuit
Number of native groups	+230	+ 600 (First Nations)
Number of linguistic families	19	11
Number of languages	+ 230	53
Size of the officially recognized territories	12.88% of the national territory	2,300 reserves (28,000 km^2) plus the territory under the direct control of Native groups (861,683 km^2)
Demography[24]	896,917 (2010)	1,172,790 (2011)

Sources: CANADA, 2009, 2011, 2013; BRASIL, 2010.

Conclusion

The small number of cases, though comprehensive, can lead to the development of an explanatory model that links a set of institutional and non-institutional variables to policy changes, which might be useful for analyzing a larger number of cases.

Moreover, despite the shortcomings of comparing only two countries while virtually all the countries in the Americas face challenges related to their growing Indigenous populations, this investigation provides knowledge to international comparative studies concerning relations between national governments and Indigenous peoples. As Ramos (2012a) states, the heuristic value of comparison is promoting a better understanding of a unique national context and going beyond the provincialism of studies focused on only one country.

Importantly, although this dissertation largely benefits from the scholarship of the two major disciplines—law and anthropology—that concern Indigenous land

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[23]The First Nations are classified as: 1. Status Indians, or persons registered as Indians under the provisions of the Indian Act; or 2. Non-status Indians, or persons who are not registered under the Indian Act but self-identify as Indian (CANADA, 2013). These individuals can be also treaty (or non-treaty) First Nations, as long as they have (or have not) signed an agreement with the federal government.

[24] Besides the comparable size of their Indigenous populations, both are composed of a young and fast-growing population, due high fertility rates and a growing number of self-identifications.

rights in both Brazil and Canada, this thesis situates itself in the field of political science in an attempt to make use of this domain's research logic, methods, theories and assumptions. Scholtz (2006, p.9) correctly points out that, due the research interests of the above-mentioned fields of study, the state, its executives and administrators are left "under-explored" and, for that reason, "*greater attention needs to be allocated to the decision-making environments of executive and administrative actors.*" In this sense, this work aims to contribute to the investigation of how the states interact with Indigenous groups.

Finally, it helps to scrutinize the relations between Native groups and states regarding policies for repairing historical injustices (in this case, the expropriation of the territories belonging to the millions of people now recognized as the original inhabitants). The case for the participation of Native groups in decision-making processes of territorial policies is in strengthening the citizens that suffered the historical burden of colonialism in the New World.

Overview of the chapters

The first chapter provides a comprehensive theoretical framework to explain the research question. This chapter discusses classic works on participative and deliberative theories, federalism, executive agenda-setting powers and Indigenous collective agency, showing how they relate, in theoretical terms, to the dependent variable under investigation. In addition, this chapter acts as an explanatory tool to investigate the research question.

The second and fourth chapters delve into the details of Native land claims recognition policies as two different models of approaching and processing Native land claims. The history of such policies in Brazil and Canada within the last centuries is discussed in-depth, from the paternalistic and racist policies at the beginning of the 20th century to the more professional and respectful policies of the most recent decades. The aim of this chapter is to accurately portray all the dimensions involved in the policy design process, setting the background to the empirical chapters.

The third and fifth chapters describe the cases analyzed in this thesis. The goal is to capture the complexities of each case and establish a chain of events that could shed light on the research question, drawing heavily on the bureaucratic files of the national governments and the responses of the interviewees.

The concluding chapter examines the major findings of this research and, from a political science perspective, discusses a feasible research agenda concerning Native land claims recognition policies in Brazil.

1. CHAPTER 1: REVIEWING THE LITERATURE: FOUR CONTEXTUAL FACTORS TO EXPLAIN POLICY CHANGES

Ya rugen las votaciones,
Se escuchan por no dejar,
Pero el quejido del indio
¿por qué no se escuchará?
Violeta Parra, "Arauco tiene uma pena"

Explaining political phenomena that are as complex as the processes that led to the adoption of Canada's Comprehensive Land Claim Policy in 1985 and the failure of the Brazilian government in adopting the policy proposals presented in the final report of the 2016 NPPCIP requires conceptual clarification and precision. This chapter provides a literature review of the four independent variables listed as possible explaining factors: 1. The institutional design of these processes (the participatory design and the constitutional framework within which political actors structure their goals and strategies); 2. The role of the subnational entities in blocking or supporting the proposals for policy changes (in terms of representation of interests in the parliament and conflictive/cooperative interaction between Indigenous groups and sub-national entities); 3. The centrality of the issue on the government's agenda at the time (regarding political aspects and economic strategy), and 4. The native collective agency (investigating the role of the Indigenous peoples' political mobilization and associative density in pressing governments to adopt the policy proposals).

Rather than carrying out an extensive and exhaustive account of a voluminous body of literature related to each of these variables, this study opted to focus on concise theorization, spending more time discussing a few concepts in-depth that directly relate to the problem in this dissertation.

In this sense, this research concentrates on recent literature concerning participatory politics, deliberative theory and the debates regarding the constitutional processes in Brazil and Canada. Second, it turns to the theories that explain the role of subnational entities in federal countries and highlights the similarities and differences between the two countries. Third, it discusses the political agenda in both

countries during the time of the events here discussed. Finally, this dissertation discusses the ability of Indigenous groups to form organized social movements with different capabilities and to pose as credible threats to their national government.

This chapter's final remarks provide an overview of the discussions, summarizing its main claims and its implications on the research question.

1.1. Factor 1: Institutional design

The processes carried out by the TF in Canada, with the goal of changing the at-the-time current land claims policy, and the NPPCIP in Brazil were designed to include Indigenous peoples in major policy review activities. However, these countries differ in how they included these groups, the types of discussions held and ultimately the outcomes. To account for such variations, it is necessary to discuss the importance of institutional design as a tool to advance democratization and efficiently channel citizens' aspirations into formal political decisions.

Institutions have indisputably been one of the core objects of interest within political science. The expression "institutions matter" has become commonplace among scholars focusing on a range of research questions and political phenomena, despite the various interpretations of the concept of "institution" and how institutions organize the social lives and the behaviors of political actors. This research argues that institutions are key to understanding and ultimately explaining the differences in the outcomes of the two political processes under scrutiny.

Classical institutionalist approaches have conceived institutions as a set of formal rules governing the interactions of competing social actors in the context of finite material resources, emphasizing the importance of political institutions as the building blocks of a polity. This narrow conceptualization of institutions was later broadened by the emergence of new institutionalist theories that have highlighted the importance of symbols, informal rules and historical context in understanding the nuances and complexities of political life in modern societies. This expanded concept covers a broad range of political phenomena, such as informal rules within civic associations and the effects of electoral rules on the voting behavior of constituencies; in addition, it states that institutional design is simply one of the

numerous factors that explain political processes (TAYLOR; HALL, 2003; MARCH; OLSEN, 1989).

Sub variable 1: Participatory institutional design

The sub variable participatory institutional design is a categorical variable that can describe a bottom-up, a top-down and a hybrid process. In the first category fit all participatory institutions that are primarily fruit of grass-roots mobilization and strong pressure of civil society organizations; the second is concerned with processes started by a governmental initiative; lastly, the third category describes institutions that are the result of a conjoint effort of governments and civil society organizations (FUNG, 2004; FUNG, 2008).

Avritzer (2008) has concurred with the new institutionalist critique to the classical concept of institution and has added that the old definition excluded participatory institutions that are not formally embedded in legislations. Moreover, this definition opposed participation to political stability, an understanding that has prevailed in mainstream democratic theories since the Second World War. The classical concept's narrow scope of institution has failed to grasp the reality of many political processes, which include citizens in the policy design and decision-making processes, and virtually all dimensions of public administration in many countries around the world.

Citizen participation in politics has, for decades, been an important field of debate among political scientists, agents of public policies and politicians, concerning whether to refuse or accept its premises, ideas and concepts (HILMER, 2008). The canonic democratic theory has emphasized the importance of a restrained concept of democracy as a method of elite selection, where popular participation was desired only in the electoral process (SANTOS; AVRITZER, 2005). This familiar argument has stated that people are too busy with their affairs to care for politics and feel relieved to have the chance to delegate their decision-making power to somebody else. Moreover, politics has become an increasingly sophisticated domain that involves a myriad of technicalities and information that laypeople simply do not understand. Finally, there have been problems concerning scale, because, in modern

societies, it has become impossible to provide every citizen with opportunities to meaningfully participate in political decisions. Therefore, the rational conclusion is that citizens should be able to participate by casting a ballot in free and fair elections but return to their routines—distanced from politics—as soon the process is over (SCHUMPETER, 1942).

As Faria (2005) has pointed out, the classical notion of participation was understood as antithetic to the complexity of public issues and to the large size of nation-states, both of which have made citizen involvement in politics not only undesirable but also unfeasible. Moreover, as Avritzer (2000) has explained, participation has also involved other "anti-argumentative elements" such as the notion that cultural pluralism has become difficult to conciliate with democracy and that the social actors' preferences are unlikely to change throughout the political process.

This fairly narrow definition of democracy and popular sovereignty as the only viable political option for modern and complex polities has been strongly criticized since Pateman's seminal work in the early 1970s. Advancing a sophisticated argument that stressed the importance of citizen participation in all domains of public life, with particular emphasis on participation in the workplace, Pateman was one of the first political scientists to present participation as the central axis of a society that aims to be called democratic (PATEMAN, 1970). Since then, a large body of literature concerning citizen participation in politics has been published, and activists and government officials around the world put many participatory experiences in place.

Pateman (1970, p. 43) has suggested that a "participative model" of democracy is one "*where maximum input (participation) is required and output includes not just policies (decisions), but also the development of social and political capacities of each individual.*" Therefore, she has concluded that this is a political system in which there is "*feedback from output to input.*" Following Almond and Verba (1963, p.2), it can be added that there is a system where "*the belief that the ordinary man is politically relevant – that he ought to be an involved participant in the political system - is widespread.*" The strong political statement that was implied in this theoretical idea of democracy is that democracy would be a mere skeleton, having neither flesh nor soul, if it lacked vibrant and intense political participation to

animate the daily life of modern democracies (SANTOS; AVRITZER, 2005; UNGER, 2005).

The researcher agrees with Melucci's (1966) concept of political participation as an individual or collective action through which the agent that participates *legitimizes* a dominant system because the agent agrees with the rules that govern the interactions between the state and civil society. Moreover, participation happens within the *competitive context of strategic interests* that seek to influence the *distribution of power* to benefit a particular group. This thesis focuses on Native groups that legitimize the national political system when they participate in activities like public meetings and public audiences with the stated goal of achieving a beneficial outcome.

Nowadays, the normative desideratum of citizen participation in political decisions concretely translates into institutional practices in many political contexts. However, how can the varieties of participatory institutions be assessed without a concept that helps the researcher make sense of the institutions' features and effects?

It can be argued that Avritzer's concept of participatory institutions (PIs) can enhance the understanding of citizen participation in public policies. Avritzer (2008, p.45, translated by the author) understands PIs as "*different forms of inclusion of citizens and civil society associations in policy deliberation*s." Different institutional designs will vary in how the scheme organizes citizen participation, how the state relates to civic engagement and whether PIs are mandatory by law or are completely dependent upon the political will of the governments of the day. Moreover, the designs will vary regarding the capacity of democratization of the government (MONTAMBEAULT, 2016).

Importantly, these institutions will vary depending on whether they are implemented in a bottom-up or a top-down fashion. Participatory Budgeting in Brazil is a well-known example of a PI that was designed to promote mass participation, open to all citizens interested in the budgetary process (AVRITZER, 2009a). National Public Policy Conferences are also institutions that have been designed to allow mass participation in the first stages and then scaling up the proposals to the national level (AVRITZER; SOUZA, 2013). As civil society and governments play complementary roles in designing and promoting NPPCs "*have proven to be,*

simultaneously, a bottom-up and a top-down process" (POGREBINSCHI, 2013, p.225).

On the other hand, public hearings and bilateral meetings, like those carried out by the TF, are considered low in intensity in terms of the scope of the participants. They are invariably summoned by governmental action and can occur without any previous participation of civil society's political actors. However, these hearings and meetings can be effective in targeting interested audiences and key stakeholders (PIRES; VAZ, 2012).

Finally, different institutional designs for citizen participation have aimed to enhance the ability of participants to exchange arguments, debate controversial issues and eventually reach a conclusion through a consensus or classical modes of preference aggregation. In both institutions analyzed in this thesis, Indigenous peoples had the opportunity to discuss their concerns with public officials regarding certain issues and to propose policy changes. The *liaison* between participation and deliberation in PIs is further clarified in the next section.

Deliberation within participatory institutions

The researcher agrees with Hilmer (2008, p.8) in that, if it is true that modern-day deliberation is not the type of participation that early proponents of participatory democracy had in mind, then it is equally true that deliberation "*constitutes a form of political participation that has the potential to be democratic- perhaps deeply so.*"

Former advocates of participatory democracy have not only stressed the importance of direct participation—without representatives or mediators of any kind—as the only process through which to exercise popular sovereignty, but also the "civic learning process" as the key feature of this model (BARBER, 1984). The emphasis on both aspects has led to a kind-of false opposition between participation and representation[25].

The researcher does not deny the existence of the tension between participation and deliberation but rather stresses that this tension can be productive.

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[25] Warren (2012) has argued that the costs of the decision to frame deliberative development in this way have been high.

Both theoretical fields have highlighted the importance of the growth of democracy towards a political system that is both more open to the participation of lay citizens and aims to ensure that people's point of view will be taken into account once it can verbalize its concerns and arguments (THOMPSON, 2008). Moreover, the practitioner of political participation experiments[26] knows, *in fieri*, that participation and deliberation are practically articulated, even though the relative importance of each depends on variables like the policy and institutional designs, stated goals, the role of the social actors involved and the good under dispute (MANSBRIDGE et al., 2006).

Hilmer (2008), in a short paper on the state of participatory democracy in contemporary political science, has clearly stated the question: Has the contemporary theory of participation turned itself into a theory of deliberative democracy?

The author seems unsure of whether to affirm that this conversion occurred or, if so, whether this alteration can be positively judged once "*'participatory democracy' has come to mean something less participatory than it once did*" (HILMER, 2008, p.15) in deliberative studies. Indeed, recent works on deliberative democracy fall short in proposing general guidelines for societal change with massive proportions, choosing, in contrast, to focus on more specific policy domains.

Mendonça (2010, p.59) has acknowledged that deliberative theory is not *"a unified theory, but a family of approaches, often contradictory*[27]." Regardless of this variety, however, all of these approaches agree that democracy is the political regime under which discussions among free and equal citizens can transform, rather than merely aggregate, the preferences of individuals.

This theoretical evolution can largely be attributed to the influential work of Habermas (ELSTER, 1998). Beginning in the 1950s, this German philosopher was the first to point out that the emergence of the public sphere in the wake of Europe's 18th-century revolutions meant the advent of a civil society that desired to understand the rationale that informs and sustains legal domination. In other words, Habermas, through the conceptual reconstruction of a historical and philosophical category- the concept of public sphere- has argued that political domination through

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[26] By this term we mean public officials, civil servants and militants that take part on the organizing participatory processes, facilitators of deliberative moments with all sorts of backgrounds and experiences.

[27] Originally, "[...] uma teoria unificada, mas de uma família de abordagens, muitas vezes contraditórias."

the mere public display of power was no longer acceptable (HABERMAS, 2014 [1989]); the citizenry wants to be convinced that they have sufficient reason to participate in democracy. That is to say, "*social integration accomplished by democratic means must pass through a discursive filter*" (HABERMAS, 1996, p.318).

One of the core concepts of deliberative democracy is that the mere aggregation of preferences is a less qualitative method of collective decision-making than a decision reached after careful considerations of all the parties' points of view. These participants exchange reasonable arguments to solve a collective problem through the coordination of actions because the "*centerpiece of deliberative politics consists in a network of discourses and bargaining processes that is supposed to facilitate the rational solution of pragmatic, moral, and ethical questions*" (HABERMAS, 1996, p.320).

Avritzer (2009b, p.8), has summarized what he calls the "*core of the deliberative democracy canon*" and points out four of its elements: 1. The overcoming of the idea of democracy as the aggregation of preferences expressed through voting, 2. The identifying of political rationality with the idea of changing and justifying preferences, 3. The presupposing of a principle of inclusion, and 4. Individuals preferring a broader debate of their political preferences implies the searching for institutions that can meet this need. Thompson (2008, p.498) has been even more concise in stating that, among the numerous approaches, all comply with "*what may be called a reason-giving requirement.*"

The literature that has advanced or criticized Habermas' ideas is vast, ranging from micro to macro accounts of deliberative democracy (HENDRIKS, 2006). The growing number of institutional arrangements or public policies around the world with some degree of public participation as part of their formulation, management or implementation is an irredeemable fact and is a testimony to the pervasiveness of participatory and deliberative ideals throughout many different political contexts[28] (SMITH, 2009; FUNG 2004).

Participatory institutions in Brazil and Canada

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[28] A witness to this fact is the recently launched website, Participedia.net, which is a joint effort between Canadian and Brazilian political scientists to survey and make available to the community the largest crowdsourced database on participatory institutions and policies around the world.

In both Brazil and Canada, the participatory debate has been dominated by a growing body of literature on institutional mechanisms that promote mass participation (e.g. Participatory Budgeting in Brazil) or representation and deliberation (e.g. the public policy councils in Brazil) or specifically designed fora in which to promote the careful consideration of a certain controversial issue (e.g. the Citizens' Assembly on Electoral Reform in British Columbia and Ontario, Canada). Claims for new political participation arenas or democratic innovations have become common and have attracted significant attention to describe their central features, to survey participants and to evaluate their impacts on policy outcomes.

Lavalle (2011b, p.33) has argued that, in the Brazilian political context, participation is simultaneously a native category of political actors, a theoretical category of democratic theories and institutionalized procedures of some policies. Its importance in the contemporary academic debate has been considerable, as shown by Horochovski and Clemente (2012); it would be impossible to provide a full account of the numerous, recently published works in Brazil on this subject. Among the most recent, it is possible to highlight a few, including those that consider the capacity of participatory institutions in coping with clientelism (MONTAMBEAULT, 2016; 2015); Baiocchi's and collaborators (2011) account of the importance of local-level agents in shaping the outcomes of Participatory Budgeting; the work of Pires (2011) on the importance of measuring the effectiveness of participatory institutions; the account of Pires and Vaz (2012) regarding the interface between society and government administration during the two terms of former Brazilian President Luiz Inácio Lula da Silva; and Romão's (2013) work on the relationship between Participatory Budgeting and political parties.

Further relevant literature for this dissertation is the recent scholarship on NPPCs in Brazil (AVRITZER, 2012; CUNHA, 2012). The NPPCs have been among the experiments of the decentralization of power carried out by Brazilian governments after the military rule; they have consisted of a political process to widen the scope of the stakeholders involved in a certain policy domain or executive-related activity. 138 NPPCs on various policies have been carried out between 1941

and 2014, comprising an estimated 9 million participants[29]. Due to the scope and far-reaching effects of NPPCs, Pogrebinschi and Samuels (2014, p.321) have affirmed that "*they are by far the world's largest experiment with such practices in terms of* the *number of participants, policy scope and potential impact*."

Typically, NPPCs are summoned by a presidential decree after pressure by civil society and policy communities or following legislation that provides a fixed schedule. The NPPCs can comprise thousands of municipal and regional conferences that involve presentations for policy proposals by local stakeholders and the election of delegates to the national conference. The NPPCs aim to provide policymakers and high-level officials with proposals to amend or create policies and, more broadly, to set the political agenda of a given policy field (POGREBINSCHI; SAMUELS, 2014).

Petinelli (2011) has argued that the capacity of an NPPC to influence policies derives from its relation to the legal background of the policy field and has highlighted that, even with the formal inclusion of an NPPC in major legislation, it is possible that none of the NPPC's recommendations will be accepted by the federal government. However, recent empirical evidence has suggested that the NPPCs effectively influence the legislative agenda and ultimately change policy parameters (POGREBINSCHI; SAMUELS, 2014).

Avritzer (2016) has recently noted the limits of institutionalized participation in democratic Brazil. It would be too much confined to social policies and with virtually no influence on critical policies concerning issues like infrastructure and the economy. On a critical note, Lavalle (2011a) has called for a "post-participatory" research agenda, shedding new light on issues such as the connections between participation and representation, the role of political elites and the effectiveness of such institutions. Investigations on participation after the "self-congratulatory period" (AVRITZER, 2008) have sought a realist assessment of the effects of PIs and a

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[29] Those are the official figures of the Brazilian government (available at: http://www.secretariadegoverno.gov.br/participacao-social/conferencias. Access in 19/12/2017). The first Health Care National Conference was carried out by the Vargas's government in 1941. Between 1988 and 2010 there were 99 NPPCs discussing 40 public policies such as environmental policy, LGBTQ's, sports policy, rural development among others. The first NPPCs on Indigenous Health happened in 1993, followed by new editions in 2003 and 2006. Indigenous issues were also part of the discussions held by the NPPCs on Racial Equality in 2005 and 2009. The Special Secretary for Human Rights also summoned a NPPC on Indigenous peoples in 2006. Finally, there was the NPPC on Indigenous Policy, which is the object of study in this dissertation, in 2015. An analytical account of such experiences is present in the third chapter.

broader comprehension of the PIs embedded in a political context populated by a myriad of social actors.

Public audiences and conferences designed to consult key stakeholders in a certain policy domains or political issue have been a long-established part of the *modus operandi* of the Canadian governments at federal, provincial and local levels. In certain ways, we could say that Canada hold participatory institutions *avant la lettre*. Participatory Budgeting also has been implemented in Canada, since the first experience in Gelph, Ontario, in 1999. From then on, it has been adopted by the borough of Plateau Mont-Royal in Montréal, the Toronto Housing Community Corporation, in the City of Hamilton (Ontario), and in the cities of Peterborough, Toronto and Kitchener, to name just a few, showing mixed results (PIN, 2016).

Though, the most influential Canadian participatory experiment is, undoubtedly, the British Columbia Citizen's Assembly on Electoral Reform (CA). The CA was a bold participatory experiment hold in 2004 in the Canadian Province of British Columbia by its government, and it was designed to bring citizens together to debate and propose an alternative model to the current single member plurality voting system. A body of near-randomly 158 selected citizens plus two Indigenous individuals of the Nisga'a Nation of the province met for eleven months and submitted a report recommending the adoption of a form of proportional representation, the single transferable vote. Even though the recommendation failed to meet the approval threshold at the referendum in 2005, and despite its flaws regarding underrepresentation of visible minorities and First Nations, the CA process was largely considered successful in including lay people in debates and decisions regarding a highly technical and politically contentious issue such as the electoral system (WARREN; PEARSE, 2008; JAMES, 2008).

There are substantial theoretical and empirical differences between Brazil and Canada regarding the processes designed to include Indigenous peoples in formal discussions of Native land claims policy reviews. The concrete importance of this variable in each case will be discussed in depth in chapters 3 and 5.

Sub variable 2: Constitutional design

The sub variable constitutional design related to Indigenous issues is also divided into three categories. It means that constitutional designs can be highly, fairly or weakly protective of Indigenous rights, in the sense of providing a greater number of fundamental rights to his segment of the population. To understand the details of such categories, let us now turn to the concrete cases analyzed in this dissertation.

Brazil and Canada underwent major constitutional reforms during the 1980s. From 1987 to 1988, the Brazilian Constituent Assembly formulated Brazil's first constitution after the end of the military rule that took power in 1964. Canada repatriated its constitution from Great Britain in 1982. Both documents were successful in including provisions related to Indigenous cultural, political and territorial rights, which may have impacted the cases studied in this thesis.

Constitution-making processes have been largely explored in political science, and its many aspects and theories will not be discussed here. What is important for this thesis is highlighting the relevance of constitutions as frameworks that govern a country's political processes and discussing the extent to which constitutional features can help in understanding the variations in the processes addressed in this study.

Modern constitutionalism has informed the drafting of constitutions in many European countries and in the USA. This political process has aimed to separate powers and to limit the government in order to establish a meta-normativity where the rule of law is above human interests and cultural particularities and to protect a set of fundamental rights. Typically, constitutions are the roadmaps of power and establish the elementary rules of authority assertion, representation procedures and the legitimacy of decisions (BANTING; SIMEON, 1985). In sum, modern constitutions have been designed to act as guardians of a community's political life (VILE, 1998; BLOKKER, 2011).

The underlying assumption in modern constitutionalism has been that the political community and the state and its institutions overlap to form a homogeneous nation-state structured around core legal and political establishments. Modern constitutionalism has presupposed the understanding of popular sovereignty as the expression of a homogeneous people who share a common civic or ethnocultural background (BLOKKER, 2011).

However, the ideal Westphalian model is not universal and hardly fits the practical realities of modern states. Many countries in Europe are home to various

ethnic groups that live under the same political rule, and these countries have had to learn how to handle this diversity in their political institutions. Lijphart (1991) has argued that, especially after the Second World War, there was mounting pressure to adopt proportional representation in many European countries' parliaments, following the emergence of new political actors (mainly organized labor parties) and the incorporation of numerous voters after the adoption of universal suffrage. The increasing number of claims related to regional autonomy and self-government along linguistic and ethnic lines has further fragmented the classical idea of sovereignty. In other words, the growing pluralism within complex contemporary societies has increased the difficulties of upholding the idea of a nation as a homogeneous political body and, therefore, has set the stage to dramatically change constitutions with the goal of better reflecting their political communities (BLOKKER, 2011).

Constitutions and the roles assigned to related institutions, normative underpinnings and amendment processes vary considerably across countries. Whereas the Anglo-American model is concise and establishes the governmental framework and thus leaves many of the political interactions to be governed by customs and informal self-regulation, Latin American constitutions are lengthy, detailed codes of laws, regulations, provisions and even collective aspirations (BANTING; SIMEON, 1985). The Canadian and Brazilian constitutions exemplify these models. To understand the differences between these countries, this thesis now briefly turns to the constitutional processes in both countries, with a particular focus on the role that Indigenous rights play in each constitution.

Constitutional design in Brazil and Canada

Lijphart (1991) has argued that a country's colonial history and democratization process largely determine the choice of the political system expressed in the country's constitution. In this sense, Brazil and Canada could not be more different. Whereas Brazil has a turbulent past of political instability and authoritarian rule with democratic interludes, Canada represents one of the most

stable, long-term democracies in the Western world[30]. While the Brazilian constitution-making process that culminated in 1988 has been marked by the long transition to democracy after 20 years of military rule and the aspirations of the new political sphere likely to emerge from it, the constitutional process in Canada was not caused by any major political rupture; as Cairns (1985, p.96) has affirmed, "*the alternative to constitutional change was not chaos.*"

However, this lack of disorder in Canada does not mean that the process was not politically costly and dramatic. The passing of the British North America Act (BNAC) in 1867 led to a peculiar arrangement where Canada, as an independent country, had its constitution domiciliated in another country and had to ask the British Parliament for permission to amend the constitution's provisions. It was not until the 1960s that the idea of patriation gained momentum. Cairns (1985) has argued that two major factors contributed to reinforcing the notion that the constitutional structure that had sustained the Canadian confederation up to that point was no longer sufficient for the country's new political configurations, namely: 1. The explosion of nationalism in the province of Québec in the 1960s, and 2. The imbalance of economic power towards western provinces, which was not followed by a greater share of power in Parliament.

During the 1960s, the western provinces of Saskatchewan, British Columbia and Alberta became centers of economic prosperity and growth after the increase in extractive activities, especially oil production. However, the political debates in Ottawa were dominated by the provinces of Ontario and Québec, much to the dissatisfaction of the local elites. To add insult to the injury, the emergence of the National Energy Program[31] in 1980 as a national priority of the Liberal government raised concerns among western regional governments regarding the transference of money to other provinces without adequate compensation in the political arena. Cairns (1985) has argued that this shift in the wealth posed a fundamental challenge

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[30] Canada scores high on virtually all indexes measuring the stability of its political institutions, legitimacy of its governments and adherence to democracy. The democracy index of *The Economist* magazine of 2015 measures the extent of the electoral process and the societal pluralism, functioning of government, political participation, political culture and civil liberties ranks Canada in 10th position, whereas Brazil ranks 51th. (data available at: http://www.yabiladi.com/img/content/EIU-Democracy-Index-2015.pdf. Access in 19/12/2017)

[31] The National Energy Program was a highly interventionist policy designed by the federal government in Ottawa in October 1980 to protect Canada from escalating global oil prices, increasing federal control over oil and natural gas, securing extra supply of those resources and imposing taxes on them. The provinces of Alberta, Saskatchewan and British Columbia deeply resented this policy because it prevented them cashing in on their natural resources and therefore fueling the opposition to Ottawa's unilateralism advanced by the *Québécois* government (RUSSELL, 2017).

to the stable equilibrium among Canada's political actors. The pressure to reform the number of representatives in the House of Commons and the Senate was a key factor in the discussions to change the constitution.

The complex phenomenon of the rising of the Québécois nationalism is a topic that has attracted numerous investigations, books, seminaries and movies; it is beyond the scope of this investigation to examine this nationalism's nuances. For this thesis, it is sufficient to draw on the account made by Cairns (1985), who has argued that the formation of the *Parti Québécois* (PQ) in 1968 and its election to the provincial government in 1976 were powerful catalysts that moved the constitutional debate to the top of the national agenda. Under the charismatic leadership of René Lévesque, the PQ was elected on the platform of holding a provincial referendum on the province's independence from Canada in order to have political independence and economic right to "sovereign association", which was deemed unacceptable by many provincial prime ministers. Ultimately defeated in the referendum, the Québécois government refused to sign the 1982 Constitution Act and its application to *Québec* remains a controversial issue to date.

In a sharp contrast to Canada, Brazil has had eight constitutions since its independence in 1821[32]. After the Proclamation of the Republic in 1891, no fewer than four constitutions were promulgated before the occurrence of the military coup that overthrew President João Goulart's government under the *Partido Trabalhista do Brasil* (Brazilian Labor Party) on 1st April 1964. The provisions of the 1946 Constitution were either severely constrained or suspended during the authoritarian rule by means of *Atos Institucionais* (Institutional Acts, known in the Brazilian historiography by the acronym "AI" followed by a number). The "AIs" were decrees of executive power that closed the National Congress, suppressed political and individual rights, prosecuted and extinguished political mandates, and put parties in illegality; furthermore, these provisions established a bipartisan system of government and "tolerated opposition" parties and exiled politicians. These decree-laws were incorporated into the military government's 1967 Constitution and in the document's amendment in 1969, which has had such far-reaching consequences that historians consider it a distinct constitutional text.

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[32] The 1824 Constitution enacted by Dom Pedro I to the Brazilian empire; the 1891 Constitution that was in place during the "Old Republic" period (1891 to 1933); the two constitutions promulgated during the Vargas dictatorship in 1934 and 1937; the constitution implemented in 1946 after the deposition of Vargas; the 1967 and 1969 military dictatorship constitutions initiated in 1964; and, finally, the 1988 Constitution.

After 11 years of a "slow, gradual and sure" transition to democracy, a new constitution was designed and promulgated. Brazil's 1988 Constitution was dubbed by Ulysses Guimarães, President of the National Congress, as the "Citizen Constitution," a term commonly used to refer to the Brazilian *Magna Carta*. This constitution emphasizes the importance of its many provisions aimed at establishing a socially just country that recognizes its cultural diversity, economic inequalities and democratic aspirations.

Despite its many advances in constitutionalizing progressive stances in public policy domains such as health care, social assistance, urban and environment and in guaranteeing fundamental rights to citizens, the constitution-making process was severely constrained by the military. Rosenn (2010, p.452) argues that, after this complex process brought together several Brazilian pressure groups, "*the end product is a mélange of progressive, conservative, liberal, radical, and moderate provisions, all rather uncomfortably ensconced side by side in a complex, detailed document.*"

In both Brazil and Canada, there have been remarkable efforts made by Indigenous groups to entrench Indigenous rights in the new constitutions. In Canada, Native groups have successfully pressured the government to include Section 35 ("Rights of the Aboriginal peoples from Canada"), which recognizes the existence of Aboriginal communities that are entitled to special rights derived from their ancestral existence in Canada. In Brazil, an unprecedented bundle of Indigenous rights has been acknowledged throughout the Constitution; Chapter VIII ("On Indians") is entirely dedicated to this group. In the Table 3 below we can see both constitutional provisions in parallel.

Table 3: Constitutional provisions related to Indigenous rights in Brazilian and Canadian constitutions

Canadian constitution- section 35	Brazilian constitution – Chapter VIII, articles 231/232
Recognition of existing aboriginal and treaty rights 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.	Article 231. 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

Definition of "aboriginal peoples of Canada"

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

Land claims agreements

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are guaranteed equally to both sexes

(4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Commitment to participation in constitutional conference

35.1 The government of Canada and the provincial governments are committed to the principle that, before any amendment is made to Class 24 of section 91 of the "Constitution Act, 1867", to section 25 of this Act or to this Part, (a) a constitutional conference that includes in its agenda an item relating to the proposed amendment, composed of the Prime Minister of Canada and the first ministers of the provinces, will be convened by the Prime Minister of Canada; and (b) the Prime Minister of Canada will invite representatives of the aboriginal peoples of Canada to participate in the discussions on that item

ensure respect for all of their property.

Paragraph 1. Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.

Paragraph 2. The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.

Paragraph 3. Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law.

Paragraph 4. The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.

Paragraph 5. The removal of Indian groups from their lands is forbidden, except ad referendum of the National Congress, in case of a catastrophe or an epidemic which represents a risk to their population, or in the interest of the sovereignty of the country, after decision by the National Congress, it being guaranteed that, under any circumstances, the return shall be immediate as soon as the risk ceases.

Paragraph 6. Acts with a view to occupation, domain and possession of the lands referred to in this article or to

	the exploitation of the natural riches of the soil, rivers and lakes existing therein, are null and void, producing no legal effects, except in case of relevant public interest of the Union, as provided by a supplementary law and such nullity and voidness shall not create a right to indemnity or to sue the Union, except in what concerns improvements derived from occupation in good faith, in the manner prescribed by law. Paragraph 7. The provisions of article 174, paragraphs 3 and 4, shall not apply to Indian lands. Article 232. The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

Sources: BRASIL, 2010; CANADA, 1982.

Interesting variations in the levels of constitutional protection of Indigenous rights can be observed in Brazil and Canada. The recently launched *LandMark: Global Platform of Indigenous and Community Lands* (WILY et al., 2015) has provided an indicator composed of ten variables, whose values are scored from 1 (the lowest degree of protection) to 4 (the highest degree of protection). These indicators are 1. Legal status, 2. Quality of protection, 3. Formalization of land, 4. Legal personality, 5. Legal authority, 6. Rights in perpetuity, 7. Consent in an inclusive manner, 8. Rights to trees, 9. Rights to water, and 10. Rights in protected areas. For this indicator, Brazil and Canada have respectively scored 36 and 22 points out of a maximum 40 points. From this perspective, it can be concluded that the countries represent the top and the middle of a scale for the evaluation of constitutional protection[33]. The average score of legal security of Indigenous lands in the world can be viewed in the Figure 3 below.

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[33] Regarding the countries in Latin America, Ortega (2004), in a study published by the World Bank, has divided the legal framework regarding Indigenous peoples into three categories: 1. The superior legal framework, gathering countries that have settled Indigenous rights in their constitutions, signed the 169 ILO Convention and gone through high-level commitments to carry out policies in accordance with this framework, including Bolivia, Brazil, Colombia, Costa Rica, Parana, Paraguay and Peru; 2. The legal framework in progress, including

Figure 3: legal security score of Indigenous lands in the world. Source:www.landmark.org.

What we can conclude after a closer examination of both constitutions is that, at least in formal terms, the Brazilian constitution is more protective of the Indigenous rights than its Canadian counterpart. Whereas the first one is highly protective of Indigenous rights, the second one is just fairly protective. Given the fact that the latter is "concise" regarding the rights Indigenous peoples are entitled to, it derives that every "contract" – or, for that matters, every treaty- signed between the Crown and First Nations must be as detailed as possible, spelling out all the points negotiated by the parties involved. It is not the case in Brazil, where every land demarcation brings about a clear set of rights Indigenous groups enjoy[34].

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countries that have not made major progresses regarding the concrete recognition of Indigenous rights to land, including Argentina, Guatemala, Honduras, Mexico, Nicaragua and Venezuela and, 3. The deficient legal framework, a group of countries that have made little effort to acknowledge Indigenous claims, including El Salvador, Guyana, Suriname and Uruguay.

[34] The land claims policies of both countries will be described and discussed in detail in chapters 2 and 4.

1.2. Factor 2: Federalism

Stepan (1999), drawing on Robert Dahl's work, has defined federalism as a political system in which distinct levels of government hold exclusive, constitutionalized competencies of certain issues. A state is only able to be characterized as federalist if it contains subnational territorial units that are able to design policies and enact laws and if there are both national political unity and a legislative body composed of representatives elected by the entire population. Ideally, citizens in federal states should have two distinct and complementary political identities.

Canada and Brazil are, by this definition, federal states, meaning that the central governments share powers with other political and administrative levels on a territorial basis. In other words, at least theoretically, the provinces or states of these countries play a major role in many governance aspects, including taxation, the court system and defining legislative competencies. Unfortunately, the literature on the importance of subnational entities in designing public policies concerning territorial claims of Native groups is largely incipient, with the remarkable exceptions of Scholtz (2006) and Alcantara (2013)[35].

Scholtz (2006, p.30) has affirmed that "*federalism is one important and unavoidable institutional variable in a cross-national study of land claims negotiation policies.*" In her groundbreaking book, she has compared a moderate number of countries with shared judicial, political and cultural backgrounds and has searched for explanations concerning the emergence of distinct policies addressing Natives' territorial claims.

Scholz correctly points out the barriers that provinces or states might pose to federal governments regarding such policies. While debating the emergence or the changing of the already existing policies, it is sensible to consider the role of provinces and states during the frame of the national debate on the issue. The acquiescence or opposition to those policies by subnational entities might be a key component to understanding the acceptance or the refusal to adopt a certain policy

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[35] The recent book by Alcantara and Nelles (2016) has shed light on the largely unexplored field of the relations between Canadian municipal governments and self-governing Indigenous communities. However, as the processes analyzed here do not depend on the municipal dynamics in either country, the findings are not discussed.

design. To better understand how these processes might concretely occur, this thesis now turns to the specificities of each case.

Federalism in Brazil and Canada

Brazil and Canada have distinct political histories that have led to the generation of distinct types of federalism. Following the multiple typologies of federal systems around the world that have been presented by Colino (2010), these countries have never been placed in the same category. In his own typology, for instance, Brazil belongs to the group of what he calls "balance federalism", where previously existing political entities try to find the balance between local and central powers. Canada, for its turn, belongs to the "segmented federalism", a group that gathers together countries with two distinct political and culturally distinct communities with a confederal experience of cooperation among them. To better understand those labels, however, it is important to look closer to the political history of both countries.

Brazil has neither faced serious threats regarding the integrity of its territory nor deep ethnic cleavages; by the end of the 19th century, the country's unity was unquestioned (SOUZA, 2005). That has not been Canada's case, where the autonomist movement in the province of Québec continues to play a role in regional and national politics, which means that multinationalism has shaped the way Canada's system has evolved (SCHERTZER, 2008). Besides, whereas the Brazilian states have been strongly dependent on the federal government and have had little space to create legislation, the Canadian provinces have enjoyed a more independent and prominent status in the Canadian federation.

Arretche (2010) has discussed the particularities of Brazilian federalism. Following this author, critics of the system have argued that its adoption is an artificial imposition, given the fact that the Brazilian political body has not been sharply divided along ethnic, linguistic or religious lines, which are reasons that could justify its adoption. Moreover, its formula is among the most decentralized in the world, conferring an unprecedented elevated level of autonomy to municipalities. It would ultimately lead to the development of predatory intergovernmental practices and the

absence of joint coordination, severely undermining the efficiency of the local levels of governance in delivering of public policies. In sum, federalist institutions would undermine the effectivity of the Brazilian state.

However, Arrecthe (2010) has argued that these critics have not considered the role of the regional inequalities and the importance of the interplay between national and state governments to the function of the Brazilian Union in opting for the federalist formula. Brazil has been historically divided between rich and poor jurisdictions, and the equilibrium of the parliamentary representation among them was a key component of the design of the Brazilian institutions. Moreover, the centralization of political authority at the federal level is compatible with decentralization in the delivery of public policies.

The centralization of Brazil's political authority began during the early years of the republic, which was partly due to the perception of the political elites that the local governments of peripheral states were disorganized and because of the widespread notion that these states were corrupt and largely relied on clientelism. These ideas were deeply rooted in the mindsets of the political elites within the richer and more powerful states and ultimately were at the base of the recurring federal interventions in regional governments during the authoritarian periods between 1930 and 1945 and after 1964. In other words, the Brazilian state responded in a centralized manner to the challenges of further asserting authority over the immense countryside, economically integrating the regions and including the workers in the political processes (ARRETCHE, 2010).

Nevertheless, despite the vast concentration of power in the federal executive branch, Brazilian states have had substantial leverage concerning the power to block decisions in the Senate. Each of the 27 Brazilian states[36] elects three senators, regardless of the size of the state's population. Therefore, the Brazilian Senate is among the most restrictive upper chambers in the world, comparable only to the U.S. Senate (STEPAN, 1999). Given the fact that the Brazilian Senate has been dominated by politicians who are among the largest land owners in the country, it is unsurprising that recent legislative proposals pushed by this chamber have threatened Indigenous land rights[37] (CASTILHO, 2013).

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[36] The Federal District and 26 states.
[37] The Constitutional Amendment Proposal (PEC) nº215/2000 has been considered by Indigenous activists and scholars as one of the legislations with the greatest potential to damage Indigenous land rights. It aims to transfer

The important point to be made here is that, regardless the fact that the Brazilian federation has been historically centralized and after the 1988 Constitution a "*powerful center became even more so*" (ARRETCHE, 2009, p. 412, translated by the author), states do have a prominent role in the parliament and are able to block initiatives that representatives consider harmful to their interests. In other words, it is impossible to understand the role of the Brazilian states in shaping the Indigenous policy without careful considering the representation of landowners and mining companies within both chambers of the country.

Canada, on the other hand, was constituted progressively over the centuries, with the last province, Newfoundland, joining in 1949. This piecemeal nation-building process has been at the center of the country's self-portrayal as a pluralistic political community. As has been aptly put by Gagnon and Iacovino (2007, p.336), "*Canada has always been a 'work in progress,' lacking a founding myth shared by all citizens, since the citizenry itself has never perceived itself as a monolithic national group.*"

The core of what is today known as Canada has been based on the political agreements of the anglophone and the francophone provinces throughout the centuries. The existence of the Province of Québec as a "societal culture" (KYMLICKA, 1995) within a country that has had a dominant political community has posed challenges concerning the groups' coexistence. In this sense, at the institutional level, federalism has been at the heart of Canada's political compromise, carrying out the promise of a national government, which has entailed some degree of asymmetry through the acknowledgment of each province's specific demands (GAGNON, 2010).

However, this has not been the case. Following Gagnon and Iacovino (2007), there has been a centralization bias towards the Ottawa federal government, which has been a point of tension between the capital and Québec. Indeed, Québec seems to resist the complete centralization of Canada's political life, as is expected in federalist countries with one majoritarian linguistic group (ERK; KONING, 2010). Concurring with this view, Gagnon and Iacovino (2007, p.355) have affirmed that "*Québec's contribution to Canadian federalism is a constitutional question in the broad sense of the term and adds to the enrichment of political life in the country.*"

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the demarcation competencies from the executive branch to the National Congress, which, in practice, would block or indefinitely delay land demarcation (SOARES, 2016).

Canadian federalism can be described as marked by strong interprovincial politics and weak intraprovincial representation within federal structures (AMES, 2015). Essentially, Canadian provinces enjoy a high level of discretionary powers to enforce their laws in the regional perspective but are often overridden by federal regulations.

Finally, it is important to note that both countries have "unitary islands" within the "federative sea" (SCHOLTZ, 2006), such as the so-called "Legal Amazon" in Brazil[38] and above the 60th parallel north in Canada. For the purposes of our investigation, "unitary islands" refer to segments of the national territories that have less power to enforce its regulations concerning Indigenous land claims. To be clear, in the Brazilian side, there are nine states in this region with their elected bodies and executive governments, whereas in Canada there are three territories, also with their political representation. In other words, we are not saying that those areas are "no man's land" or that the local governments do not offer some resistance to the recognition of Native land claims in their territories; however, we suggest, in accordance to Scholtz's view, that this resistance is weak in these specific regions in both Brazil and Canada.

We conclude pointing out that the variation regarding the type of federalism existing in both countries is followed by a "sub-variable" regarding the role, the extend and the effective representation of landowners and mining companies within the national parliaments. Such distinction can be useful to explain the outcome of interest in this investigation and will be further analyzed in each concrete case in later chapters.

Sub-variable 3: Representation of landowners in parliament

A crucial element of the discussion of Indigenous rights in general and land claims in particular is the economic dimension. As demonstrated in this thesis introduction, Indigenous peoples all around the world claim to be the owners of a

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[38] Briefly, up to 98% of Brazilian Indigenous lands are in this huge area, in contrast to the scarcity of these lands in states where certain economic activities are more likely to be affected by the delimitation of Native territories. Similar rationale applies to the Canadian case, where most of the Comprehensive Land Claim Agreements signed concern tracts of land in the Northern part of the country (MORRISON, 1992; SAKU, 2002).

great deal of the world's territory and vast portions of land in countries such as Brazil and Canada. Furthermore, Native groups claim rights to exclusive use – or prohibition of use – of the natural resources that may exist in such lands. It is not unusual that Native groups in both countries chose to adopt sustainable and low-impact economic activities rather than large-scale ones, considering the record of human rights violations and the disruptions of community life that occur when governments permit the exploitation of minerals or cattle grazing in Indigenous lands.[39]

Landowners and mining companies' interests are in tension, if not direct opposition, with Indigenous views regarding use of land resources. It is assumed that representatives in line with such interests may act in favor of policy changes that benefit landowners/governments or block any changes that will negatively impact their interests. In this sense, such interests may be politically strong and act as powerful veto players; alternatively, these interests may be weak and unable to block attempted policy changes in Parliament.

While representatives aligned with powerful economic groups may be present in the parliaments, the situation is not the same for Indigenous groups. In fact, as Robins (2015) has illustrated, Indigenous political representation is a controversial issue even in liberal-democratic countries such as New Zealand, Australia, Sweden, and Norway, with distinct political arrangements producing mixed results. The results are not less disappointing in both analyzed countries. Canada has had 43 representatives with Indigenous backgrounds in its 42 legislatures since 1867. Brazil had only one individual from an Indigenous group elected to the lower chamber of its Parliament in 1982[40]. In other words, Indigenous representation in parliaments is historically weak and was weak at the time the analyzed events occurred.

This pattern stands in contrast to the representation of the interests of landowners and mining companies in the parliaments in both countries. Historically, Brazilian politics have been dominated by political actors who are part of the agrarian elite that has ruled the country since the Portuguese colonial period (BARCELOS;

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[39] Several examples are available of human rights violation caused by the exploitation of natural resources within indigenous lands. In 1989, the Brazilian government allowed the exploitation of gold mines within the Yanomami territory; this decision led to the deaths of hundreds of peoples due to infectious diseases and intoxication (RAMOS, 2000). More recently, McNeish (2015) illustrated the consequences of the Bolivian government's plans to build a road through Isoboro Sécure National Park and Indigenous Territory.

[40] Mario Juruna was a member of the Xavante Indigenous group elected by the *Partido Democrático Trabalhista*. He became nationally famous during the years of the dictatorship because he visited government authorities with a recorder and used the records to hold these authorities accountable.

BERRIEL, 2009). Costa (2012) analyzed the land ownership of 374 members of the "ruralist" caucus – officially named *Frente Parlamentar da Agropecuária*[41] (FPA) – in Brazilian Parliament between 1995 and 2010 and concluded that this heterogeneous group has been successful in purchasing its agenda, renegotiating debts, and maintaining a high level of investment in agribusiness. Moreover, ruralists have spread their influence through the control of broadcasts, urban industries, and land and become one of the most powerful interest groups within Brazilian Parliament.

The Figure 4 below shows the evolution of the number of representatives that self-identified as members of the ruralist caucus in the House of Representatives between 1995 and 2018.
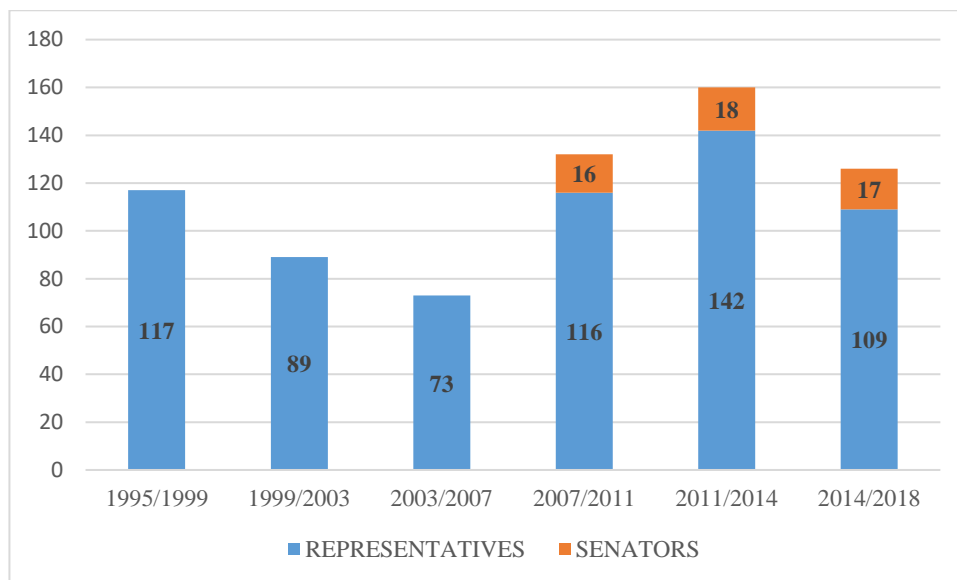
Figure 4: Representatives affiliated with the ruralist caucus in Brazilian Parliament between 1995 and 2018 Source: DIAP, 1994, 1998, 2002, 2006, 2010, 2014. Elaborated by the author.

While Parliament does not have any formal role in designing the NPPCIP in Brazil, the representatives of the ruralist caucus can influence indigenous policy in multiple ways, such as publicly criticizing any governmental initiative aimed at confirming Indigenous rights, appointing ruralist members to high and middle-level positions in ministries and secretaries related to Indigenous policy, proposing legislation that changes constitutional parameters, or simply blocking any legislative

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[41] The FPA's agenda contains debates and legislative proposals related to environmental legislation, the labour conditions of rural workers, insurance, credit expansion, and debt renegotiation, among other issues.

proposal informed by the Conference. As Figure 4 illustrates, during her first and second terms, president Dilma Rousseff's had to address an impressive number of congressional representatives with strong views regarding Indigenous rights.

No comparable caucus exists in the Canadian case, but this arrangement does not mean that congressional representatives do not have personal interests and do not represent agribusiness and mining companies' interests (HUDON, 2005). However, in the analyzed case, it should be stressed that due the way Canadian Parliament works, the eventual influence that certain industries may have over individual representatives is counterbalanced by representatives' diminished capacity to initiate the policy process.

Legislature's main task in "European-style" parliamentary modern democracies such as New Zealand, Canada and Australia is not legislating, but "making and breaking" governments. Legislative and executive are intertwined in a strategically rich and complex relationship, where the former is constitutionally responsible to the latter. Party discipline in Parliament is crucial to government survival and therefore "*there is a strong tendency in parliamentary government systems for the executive to have a vicelike grip on the legislative agenda*" (LAVER, 2008, p.125).

Unlike in the "pure" Westminster system, in the House of Commons, the Canadian government lower house, representatives are not allowed to initiate legislation that brings about budgetary demands. Only the members of the Cabinet can take this action. In other words, individual agendas are submitted to ministry agendas and political proposals. Ministerial agendas should be in consonance, for their turn, with the prime minister and Ministry of Finance's political priorities; these roles are ironically denominated the "majority of two" that commands the Canadian government (MONTIGNY; PELLETIER, 2005).

Finally, the Canadian Senate is much less powerful than its Brazilian counterpart. Historically, Canadian "founding fathers" repealed the American model of senate and opted for the one inspired on the British House of Lords, with the goal to provide a "second sober thought" on decisions taken in the lower house. In reality, though, the prime minister appoints its 105 members on a partisan basis[42] and they

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[42] James Gladstone was the first Amerindian elected to the Canadian Senate in 1958 and Willy Adams was the first Inuit to have a seat in the Senate in 1977. No member of any of the traditional peoples in Brazil was ever elected to the Brazilian Senate.

primarily play a role of reviewing chamber while having little effect on crucial aspects of any bill debated in the House of Commons. Moreover, the Senate can not initiate legislation that requires budgeting measures. In sum, it cannot be considered in any way a veto player in Canadian political system (MONTIGNY; PELLETIER, 2005).

From the previous discussion we can conclude that whereas the bicameral design of the Brazilian parliament and its rules of representation seems to enhance the economic interests of political actors, in the Canadian case, while corporate interests related to mining and agribusiness may exist and influence legislators, this influence is weak and counterbalanced by the political dynamics of Canadian Parliament. The structure of this body concentrates the power of initiating legislation with a few members of the ruling party or coalition.

Sub-variable 4: The pattern of relationship between Indigenous peoples and sub-national governments

Another important indicator of the extent to which Provincial/State governments shape Indigenous public policy and Indigenous land claims policy reviews is the pattern of the relationship between sub-national governments and Indigenous peoples, which we propose to measure through the degree of judicialization of Indigenous issues in both countries.

The degree of judicialization of Indigenous issues is defined as the intensity of disputes between state or provincial governments and Indigenous groups themselves or the top-agency implementing the Indigenous public policy at the federal level. This intensity can describe a pattern of action that can be either conflictive – when local levels of government actively litigate Indigenous groups and their allies – or cooperative – when judicial disputes lead to important reflection upon policy parameters or promote jurisprudence that may benefit Indigenous groups.

Given that Indigenous policies are a federal matter in both countries, the decision was made to seek data on decisions about Indigenous issues in the jurisprudence of the Brazilian and Canadian Supreme Courts. Before the data is discussed, however, it is important to clarify some aspects of the highest courts in both contexts.

Canadian law has its roots in the English common law system and therefore has a role in not only defining and interpreting the written constitution but also creating precedents regarding a certain issue under discussion. In other words, tribunals play an active role in creating laws valid for governments and political actors (LECLAIR, 2013). This fact is crucial to understand that even cases in which First Nations have lost the dispute may have a major impact on Indigenous issues. Both the sheer number of lawsuits against Indigenous peoples in the Supreme Court of Canada (SCC) and the general repercussions of a specific decision for Indigenous policy must be taken into account.

One example of the abovementioned pattern is the famous *Calder v Attorney General of British Columbia* decision; this case crucial to understanding modern Canadian Indigenous policy. Frank Calder was a leader of the Nisga'a Nation who brought this case to the provincial courts in 1969. He sought a declaratory assertion that his group held an "Aboriginal" or "Indian" title over their traditional lands (ASCH, 2013). He claimed that the First Nation had the right to this title because it people were already living on the land when the first settlers arrived, and these people's ancestral rights have never been lawfully extinguished. The lower courts in British Columbia judged that the previous sovereignty of Indigenous peoples living under Canadian and provincial legislation had been extinguished, and the claim was refused.

The Supreme Court of Canada declared its decision in 1973, taking up the issue of whether the Nisga'a had the right to an Indian title over traditional lands. Six judges agreed that the First Nation was entitled to such right. Furthermore, in the absence of specific legislation extinguishing this right, Indian titles over traditional lands remain in place. Even though the final decision was against the Nisga'a and upheld the provincial court's decision, the rationale behind the argument for recognizing Indigenous groups' pre-existing right to land became highly influential and ultimately determined the establishment of the Land Claims Policy in the same year.

As demonstrated, the originary right to land was enshrined in the Canadian Constitution in 1982. It was only in 1990, after the *R. v. Sparrow* decision, that section 35 of the Constitution gained legal substance. Edward Sparrow was a Musquean fisher caught using a net 35 meters wider than it was licensed. He was arrested and lost his case in the provincial court. The Supreme Court overthrew the

decision, ruling that Sparrow was exercising his ancestral right to fish in his traditional territory. Because no legislation explicitly extinguished his ancestral right, he was found innocent of the charges.

Two important points must be retained from the discussion of the non-exhaustive list of cases mentioned above. First, both cases were brought to court at a provincial level, and the judicial interpretations were largely conservative. On the other hand, the SCC ruling was more liberal and broadened the scope of Indigenous constitutional rights. It is true that Canadian legislation has preeminence over First Nations sovereignty. However, the SCC's approach to the issue of Indigenous rights seemed to be less conflictive than the Provincial one and favor a broader interpretation of the pre-existing rights of First Nations.

The Brazilian Federal Supreme Court (STF) only established the institute of general repercussion in 2007; as a result, the best indicator to capture the dynamics of the judicialization of Indigenous policy is the sheer number of lawsuits filed in court. In the Brazilian case, the number of judicial actions filed against the Federal government, the FUNAI and any specific Indigenous people in the STF was considered to be indicative of the conflict between states and Indigenous peoples in the judicial sphere. The Court website was reviewed and searched for lawsuits related to Indigenous issues.[43] It was found that the *Ações Cíveis Originárias*[44] (ACO) is the privileged means used by individuals, companies, and state governments to dispute any aspect of Indigenous rights and policy. Figure 5 below illustrates the number of ACOs in the Supreme Court before and after the implementation of the 1988 Constitution. Between 1966 and 1988 46 of this kind of lawsuit were initiated, and this number rose to 70 in the democratic period.

[43] The data presented is part of a larger database of conflicts between states, Native groups, and both parties' allies. The database is presently being constructed in collaboration with Mateus Morais Araújo and Carina Fonseca, to whom I express my gratitude.
[44] Civil lawsuits aimed at arbitrating disputes between states and territories and the Federal government. The term *originário* (original) means that a lawsuit is decided entirely within the Supreme Court.
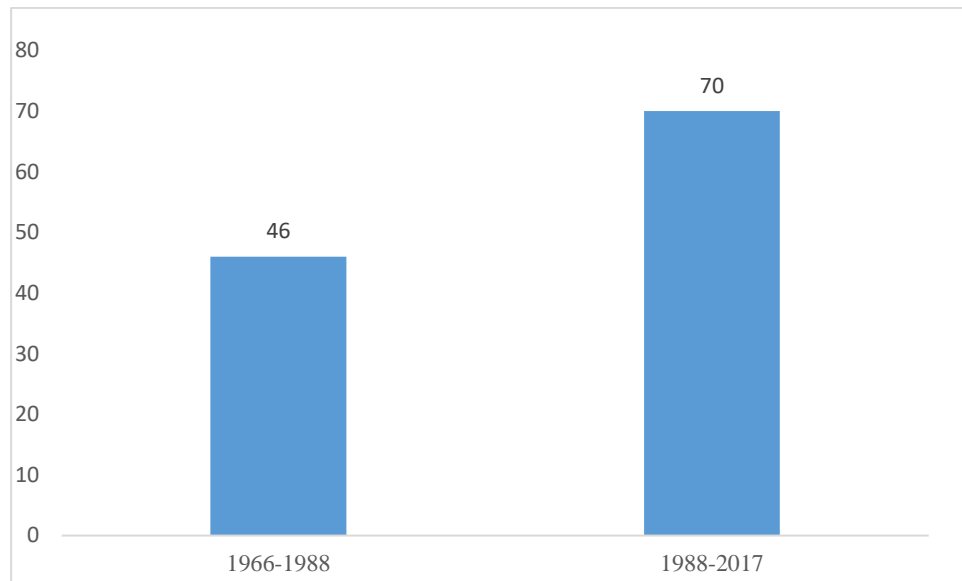
Figure 5: Number of ACOs between 1966 and 2017 in the Brazilian Supreme Court Source: (http://portal.stf.jus.br/). Elaborated by the author.

However, it is important to consider that the increasing number of ACOs in the democratic period is not steady over time. As Figure 6 below illustrates, only 21 ACOs were filed in the Supreme Court between 1989 and 2000. This number rose to 37 between 2001 and 2010 and fell dramatically to 12 between 2011 and 2017. It is beyond the scope of this dissertation to explain why this pattern occurred. Nonetheless, it can be affirmed that despite the higher number of ACOs in the post-1988 period, a peak of litigation occurred during the first decade of the twenty-first century followed by a decline after 2011. In other words, the level of conflict between state-level actors and Native issues in democratic Brazil has grown over the last 30 years, with distinct intensities occurring at certain times.

Figure 6: Number of ACOs per decade after 1988 in the Brazilian Supreme Court Source: (http://portal.stf.jus.br/). Elaborated by the author.

Finally, it is important to consider the states that have been most active in pursuing litigation against Indigenous issues. This information may indicate which states are more prone to electing representatives with strong anti-Indigenous views. Figure 7 illustrates the number of ACOs by state between 1966 and 2017.

Figure 7: Number of ACOs by state in Brazil between 1966 and 2017 Source: (http://portal.stf.jus.br/). Elaborated by the author.

During the period considered, the states that were most engaged in litigation were Mato Grosso with 47 ACOs, followed by Roraima with 27, Mato Grosso do Sul with 14, and Para with six. The federal district had five, Rio Grande do Sul and Santa Catarina in the south had three ACOs each, and Rondônia had two lawsuits. Maranhão, Bahia, Goiás, Minas Gerais, São Paulo e Amazonas each had just one ACO.[45] It means that 13 states (plus the federal district) out of 27 pushed legal complaints against any aspect of Brazilian Indigenous policy and sometimes Indigenous groups themselves. Moreover, it should be noted that only four states – Mato Grosso, Mato Grosso do Sul, Roraima and Pará – combines initiated 94 ACOs, approximately 79% of the total. Unsurprisingly, these states are among the champions of deforestation, mining concessions, extensive cattle grazing, and territorial conflicts (CASTILHO, 2013).

We can conclude, from the data presented that in both countries, that the pattern of relationship between the sub-federal entities and Indigenous peoples is conflictive when considered from the judicial point of view. In all cases here presented, there was typically a conflict at the local level that was ruled against Indigenous peoples in the Provincial/State level and the decision was eventually overturned at the federal level.

1.3. Factor 3: Government agenda

At first glance, Brazil and Canada have distinct political systems; Brazil's system is presidential while Canada's is parliamentarian. However, these differences should not be taken at face value. Scholars have described the Brazilian presidential system as having been largely based on the constitution of majorities in Parliament, which has been termed "coalition presidentialism" (ABRANCHES, 1988). The Canadian parliamentary system has been commonly described as executive-centered, which highlights differences in Canada compared to other Westminster systems in which representatives have more power in initiating legislation and are less dependent on the prime minister and the Cabinet. In other words, the powers of the Brazilian president are constrained by the necessity of building governing

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[45] It was not possible to determine the state of origin of three ACOs; as a result, n = 113 for map figure n°7.

coalitions in Congress. The Canadian parliamentary system also focuses on forming a small group of decision-makers that share little of their powers with low profile representatives.

Neither of these governments are pure types of Westminster or presidential systems (FIGUEIREDO, 2004). To be sure, the Brazilian president has at his or her disposal important devices to circumvent Parliament, such as the enactment of provisional measure (*Medida Provisória*)[46]. However, as demonstrated in the topic dedicated to discussing the constitutional design in both countries, the Brazilian Constitution is a hybrid of the presidential and parliamentary forms of government (CHEIBUB; ELKINS, 2009). On the other hand, the consensus of the last few decades that parliaments have played a marginal role in policymaking process has been substituted by the understanding that "*legislatures are institutions of far greater significance for policy outcomes than scholars have generally appreciated*" (MARTIN; VANBERG, 2011 p. 5). This idea means that in both cases, it is more important to understand the substantive agenda of the majority (or, for that matter, the government agenda) rather than discuss minor differences in the formal functions of the two systems (LIMONGI; FIGUEIREDO, 2009).

In other words, it is not only the agenda-setting powers that each governing system may have in formal terms what attracts the curiosity of the researcher, but also the variation of the *content* of such agenda pursued by the national governments at the time of the policy proposals made by the Native groups participating in both policy review processes considered in this dissertation.

First, it is important to emphasize from the outset that the federal governments of Brazil and Canada have had historical roles concerning Native issues. Chapters three and five explain the origins of this fact in both cases. The present section examines the relative importance of Indigenous issues in government agendas by measuring two indicators: 1) the federal budget allocated to the top federal agency concerned with Native public policies and 2) the development strategy executed by national governments and the roles these governments assign to Indigenous groups. The concrete descriptions of these indicators in each case are considered in the following section.

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[46] Medidas Provisórias (MPs) are legislative measures taken by the Brazilian president for a certain period and which have an immediate effect. After its enactment, Congress must vote the continuation or dismissal of an MP within a tight timeframe. The indiscriminate use of these measures, often circumventing political conflicts in Parliament, have led some analysts describe them a "imperial power" attributed to the president.

Sub-variable 5: political centrality

Politically central issues lie at the heart of governments and can range from policy proposals to budget allocation decisions and set the agenda disputed by politicians and policy-makers. Those issues tend to attract government attention and its agents carry out efforts to make this agenda pass in Parliament. Once debated and approved, policy proposals require proper funding to be implemented.

Underfunded agencies and policies are often understaffed and have a difficult time accomplishing even basic functions. In this sense, one could hardly argue against the conclusion that, in general terms, the more money a certain policy or agency has, the more importance it has to the government of the day.

In terms of the size of the budget assigned to a ministry or public policy, a given issue can be central – when the total amount of money increases over time and its importance relative to the whole federal budget also increases – or marginal – when either the specific budget decreases or increases over time but decreases in relation to the whole budget – to a government's political agenda. In the Brazilian case, it is important to consider that federal concern for Indigenous peoples has been historically marginal, and the budget assigned to the top federal agency to design and implement the Indigenous policy in Brazil – the FUNAI – is equally low.

Figure 8 below presents the FUNAI's authorized budget between 2013 and 2018. FUNAI's budget increased 11% on average per year during the period considered, which could be seen as a sign of the counter-balance of a historical trend of underfunding.
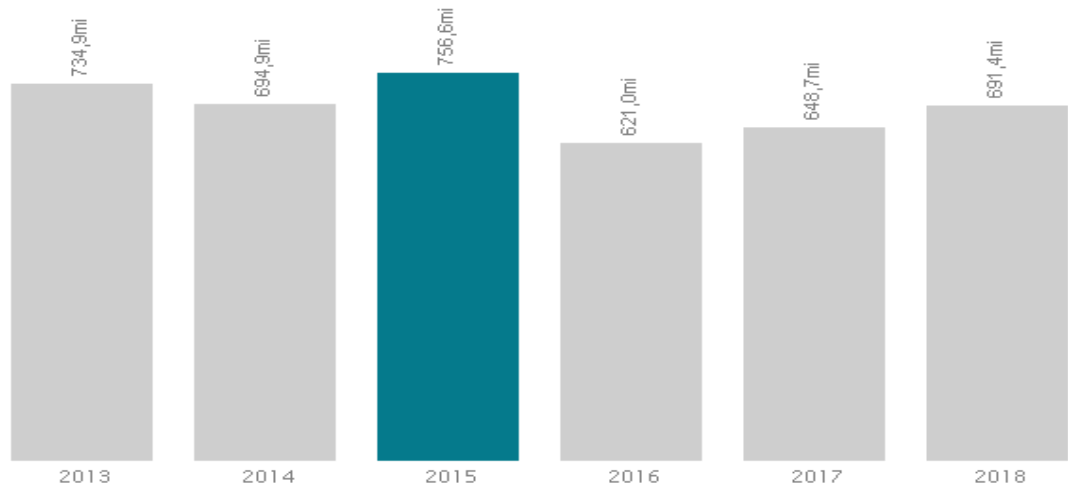
Figure 8: The FUNAI's authorized budget between 2013 and 2018 Source: SIGA

Brasil (https://www12.senado.leg.br/orcamento/sigabrasil).

*adjusted for inflation

However, the authorized budget is not the best indicator of the actual money spent on agency activities. When the money effectively spent over the course of the FUNAI's mandate was tracked, a decreasing pattern of investment was clearly identifiable.

The situation is strikingly different in Canada. Mark Milke (2013) compiled the available data related to federal spending on Indigenous policy through the Aboriginal Affairs and Northern Development Ministry in Canada between 1946 and 2012 and found that spending rose from $79 million to $7.9 billion, a 99-fold increase. Figure 9 illustrates the evolution of this spending in 2013 adjusted-inflation Canadian dollars.

Notes: Department spending on northern affairs was excluded; only the department's spending on Aboriginal matters is included here. Data unavailable for 1967/68 and 1968/69. Spending is inflation-adjusted to 2013 dollars.
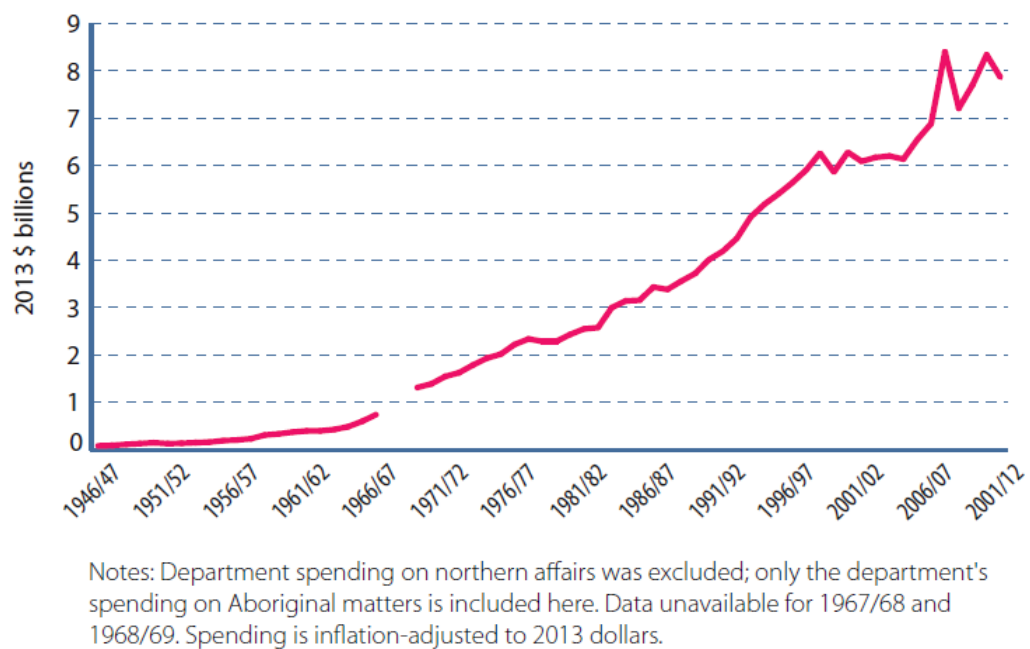
Figure 9: Growth of federal spending on Indigenous policy in Canada between 1946 and 2012 Source: MILKE, 2013.

Milke (2013) also found that in addition to increasing significantly over time, federal spending on Indigenous policy grew at a much higher rate than the average federal spending on other programs during the period. Average spending for other programs increased only 9-fold. The comparison between both spending rates can be better observed in Figure 10 below.

Notes: Aboriginal Affairs data excludes all spending attributable to northern affairs, internal services, and non-Aboriginal spending; data unavailable for 1967/68 and 1968/69
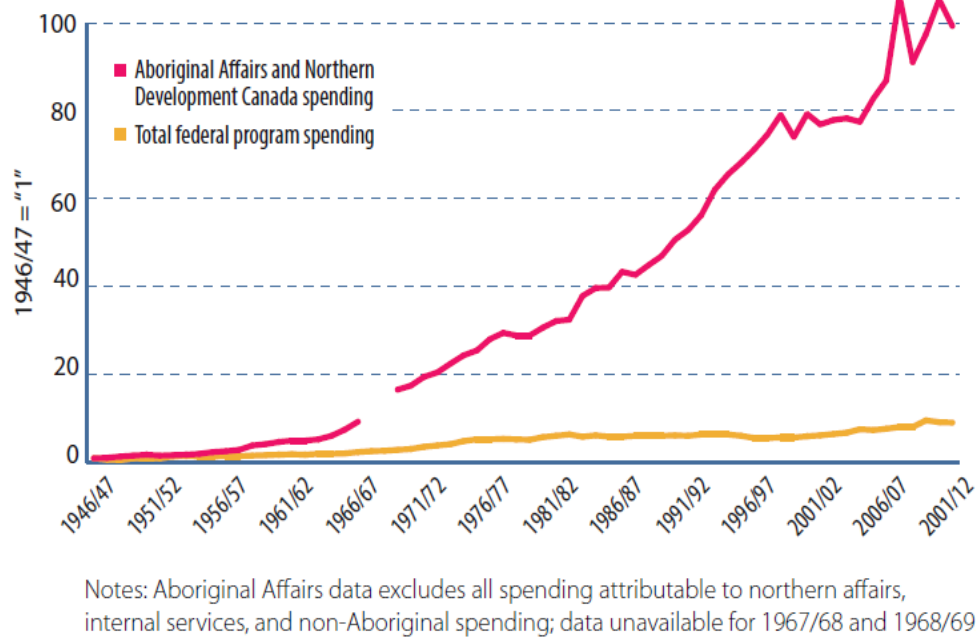
Figure 10: Growth in federal spending on Indigenous policy compared to total federal program spending in Canada between 1946 and 2012 Source: MILKE, 2013.

It is important to highlight that Indigenous policies are marginal in Brazil and Canada, and the differences in policy funding can only be described in relative terms. Policies designed to support Indigenous peoples are not a priority for either nation-states when compared to issues such as healthcare, education, and housing, all of which are usually at the center of any government agenda. The only conclusion that can be drawn from the presented data is that if increased spending on a certain policy is taken as a sign of the importance of these policies to a government, it can be affirmed that Indigenous policy is more central to the federal government in Canada than Brazil.

Sub-variable 6: Economic strategy

Every political party or governmental coalition comes to power with clear guidelines for economic policy or, more broadly, a political project for strategic development. Economic choices and strategic priorities lie at the heart of the

governmental function and have repercussions for virtually every area of society. The current dissertation understands that such strategies can be inclusive by trying to involve all relevant political and economic actors and respecting protocols to consult Indigenous peoples. These strategies can also be exclusionary, keeping Native groups away from the economic decisions or even dismissing their claims to dialogue over economic issues. In terms of the main actor driving development, a distinction can b made between a (neo)developmentalist economy – in which the state plays a prominent role in pushing economic activity – and a (neo)liberal order – in which private actors are either the main drivers or the most prominent beneficiaries of national economic activity.

The role of economic expansion in the extermination of Indigenous peoples in Brazil is a well-known theme. As Oliveira (2016, p. 17, translated by the author) has recently affirmed,

> the subalternization of the, in the past, free and autonomous autochtone population, was a violent and arbitrary process that responded to dominant economic interests such as the land grabbing and the recruitment of workers, articulated with the consolidation of a ruling elite and the governmental structure.[47]

Dilma Rousseff came to power in 2011 and is known as the "mother of the PAC" (the Portuguese acronym for *Programa de Aceleração do Crescimento*), a governmental plan for massive investment in heavy infrastructure such as hydro dams, urban housing, steel factories, lines of energy transmission, harbor expansions, airport renovations and expansions, subways, and roads in the wake of the country's most recent "economic boom" and the immense popularity of her predecessor. Considered a hardline technocrat and not particularly fit for political talks, Rousseff began her first term with the greatest number of acts of protest carried out by Brazilian Indigenous peoples between 2009 and 2015;[48] she further developed the economic matrix of former president Luiz Inácio Lula da Silva's (CIMI, 2011).

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[47] From the original in Portuguese: "*A transformação da população autóctone, antes livre e autônoma, em subalterna, processo indissociavelmente violento e arbitrário, respondeu aos interesses econômicos dominantes, como a apropriação da terra e a obtenção de mão de obra, articulada com a consolidação da classe dirigente e de uma estrutura de governo.*"

[48] This data is presented later in this chapter.

After years of neoliberal order and fiscal austerity under President Cardoso, the Workers Party came into power in 2003 with the challenge of maintaining fiscal responsibility, a pillar of liberal rhetoric, while simultaneously investing in infrastructure and social policies. As Sallum Jr. and Goulart (2016, p. 130, translated by the author) explain, the challenge was to build a government "*politically democratic and moderately liberal in the economic level.*" Observers of Indigenous peoples and advocacy groups quickly characterized Rousseff's economic matrix as "neo" developmentalist, a renewed version of the economic developmentalism applied during military rule (CIMI, 2011).

Following Morais and Saad-Filho (2011), four theses underpins the neo-developmentalist strategy: 1) no strong market can exist without a strong state; 2) no growth can occur without putting in place the adequate macroeconomic policies; 3) the national project should harmonize economic growth and social equity; and 4) it is impossible to reduce poverty without continued and sustained high rates of economic growth. Even though Lula da Silva and Rousseff's governments were not fully coherent with all neo-developmentalist propositions, the presidents achieved impressive economic performance during their terms and managed to reduce poverty and increase spending on infrastructure (BRESSER-PEREIRA, 2013)

In the Canadian case, it is important remember that all Canadian prime ministers elected after World War II – Mackenzie King, John Diefenbaker, Lester Pearson, and Pierre Trudeau – were full-fledged Keynesians who considered the state to be the main driver of the economic growth. As a result, they ran governments with increasing deficits as percentage of GDP and high levels of federal spending, a trend abruptly reversed by the liberal government of Jean Chretien in 1993 (HENDERSON, 2010). The "big government agenda" established by Trudeau over his almost uninterrupted 14 years[49] serving as prime minister shaped Canadian society in search of social justice and economic fairness (CAMERON, 2011).

After Trudeau's resignation in 1984, conservative leader Brian Mulroney was elected with a platform focused on a free-trade agreement with the United States, cutting federal spending, privatization, control of the budget deficit and boosting the

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[49] Pierre Elliott Trudeau was prime minister of Canada from April 20, 1968 to June 30, 1984, except for nine months between June 4, 1979 and March 3, 1980, when Joe Clark of the Progressive Conservative Party was prime minister (HENDERSON, 2010). Trudeau's first campaign was run under the motto "a just society," indicating his ambition to expand the social economy and "*rescue an unjust society through better social policy*" (CAMERON, 2011, p.1).

private sector. As Cameron (2011, p. 3) puts it, "*the Progressive Conservative Party professed a sort of business liberalism that was inimical to social liberalism.*" Eventually, Mulroney was unable to accomplish the majority of his fiscal austerity agenda and performed poorly in almost every economic indicator (UNIFOR, 2015). However, it is important to consider that in the era of Margaret Thatcher and Ronald Reagan, Mulroney was more prone to maintaining the overall viability of the Canadian welfare state by making "cuts in the margin" of the budget and not trying to push a hardline neoliberal agenda similar to that of his British and North American counterparts[50] (PATERSON, 1996).

It can be affirmed that while the Mulroney government was committed to "*economic renewal in which economic growth and expansion were clearly favored over the traditional goals of equitable redistribution of wealth and income*" (PATERSON, 1996, p. 19), the Workers Party governments relied strongly on the capacity of the state to boost economy and, at the same time, carry out distributive policies designed to reduce poverty and increase the consumption. The key drivers of economic growth are distinct in both cases, as are the rhetoric and goals of economic activity. However, both paths are strongly tied to market-driven demands and exploitation of natural resources, often harming the environment and communities that may stand in the way of projects and "development." For the purposes of the current investigation, it is considered that both strategies exclude Indigenous peoples from the design of sustainable economic activities and are likely to predispose governments and economic actors against Indigenous rights.

1.4. Factor 4: Native collective agency

The final factor proposed by this thesis that may help to explain the variation in the outcomes of the processes studied is the progressive organizational capacity of Native groups in Brazil and Canada in terms of expansion of the number of actions of protest and associations. Both factors combined are called "Native collective agency." In both countries, Native groups have been experiencing significant growth

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[50] Mulroney is simultaneously characterized as an agent of the "corporate agenda" and a "red Tory," a fiscally conservative politician with liberal views regarding individual rights such as gay marriage and abortion (MALLOY, 2008).

as social movements since the 1960s and 1970s, increasing each group's number of associations and spreading the group's activities nationally. This thesis argues that the democratic effects of associational life (WARREN, 2000) can also be observed in the case of Native groups that have been able to effectively influence the processes of designing policies related to land claims.

Sub-variable 7: Acts of protest

Acts of protest – understood here as the set of actions with varied degrees of contentiousness carried out by a social movement against a defined target and clear political goals (TARROW, 2009) - either increased or decreased in intensity over the period considered for each case; therefore, this variable can be considered as dichotomous.

Indigenous peoples in both countries have been able to present themselves as "credible threats" (SCHOLTZ, 2006) to the political system, carrying out protests and actively pursuing their interests in the public sphere. As Oxhorn (2014, p. 82) has affirmed, the state and society have been engaged in an ongoing "*process in which civil society plays a decisive role in determining the extent and nature of democratic inclusion*"; though this process has not always been smooth and peaceful. The participation of Indigenous groups in political processes that affect them was not merely due to a concession by federal governments but fundamentally by the results of long-term mobilization that qualified the organizations as equal partners in the policymaking process. As Chase (2002, p. 2) has affirmed, "*the last two decades […] have been also a time of remarkable activism by groups that have used a global stage to organize their demands for autonomous control over territory*" as well as public policies.

In their discussion of Native mobilization in Latin America, Warren and Jackson (2002, p. 9) have claimed that it "*would be a mistake to freeze groups in formulaic sorts of essentialism or activism.*" Soares (2016) has demonstrated that in Brazil, the Indigenous movement has carried out various actions, including road blockages, the occupation of public agencies' headquarters, the occupation of private lands, and the intense mobilization of national and international media.

First, it is important to understand that modern ethnic mobilization in Brazil began during the 1970s with the first Indigenous assemblies organized by several Indigenous groups with the aid of the *Conselho Indigenista Missionário*, the pastoral body of the Catholic church dedicated to working with Native groups[51] (RAMOS, 2002). Since then, the growing mobilization has suffered some setbacks but has generally evolved into its contemporary structure lead by the powerful *Articulação dos Povos Indígenas do Brasil* (APIB)[52]. The *Articulação dos Povos Indígenas do Brasil* functions as a "peak organization" that gathers together several Indigenous regional organizations all over the country. The majority of Brazilian Indigenous groups and the government acknowledge it as an organization that represents the interests of such groups nationally (BRAATHEN; INGLEZ DE SOUZA, 2015).

The organization's structure is not centralized, and it cannot be assumed that the APIB organizes all actions of protest carried out by Indigenous groups in Brazil. However, it is fair to consider that this group has an important impact on the ground. For this reason, the actions presented on the organization's websites can be considered as a fairly accurate description of the ethnic mobilization activities in the country. After visiting the two organizations' websites,[53] it was possible to collect data regarding the repertory of action of the Brazilian Indigenous Movement organized under the APIB. The categories of action found are as follows:

1. *Walks/marches/demonstrations*: all activities involving the displacement of protestors in roads, streets, and avenues displaying charts, chanting, performing hymns, and engaging in similar actions;

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[51] Oliveira (2016) notes that such assemblies began in 1974 in Mato Grosso and counts 15 events that occurred form 1974 to 1979. More than 42 Indigenous assemblies were held between 1980 and 1984. Such events worked as political forums for emergent Indigenous leadership to articulate political views and make claims to Brazilian authorities.

[52] Founded in 2009, the APIB brings together the following regional organizations: Articulação dos Povos Indígenas da Região Sul (ARPINSUL); Articulação dos Povos Indígenas do Pantanal e Região (ARPIPAN); Coordenação das Organizações Indígenas da Amazônia Brasileira (COIAB); Articulação dos Povos Indígenas da Região Sudeste (ARPINSUDESTE); Aty Guassu (Grande Assembleia Guarani); and Articulação dos Povos Indígenas do Nordeste, Minas Gerais e Espírito Santo (APOINME). This group is the contemporary face of the Indigenous movement that was previously organized under the label of *União das Nações Indígenas* in the 1980s and early 1990s. Furthermore, the APIB's main activity is the annual gathering *Acampamento Terra Livre* (Free Land Camp) that brings together hundreds of Indigenous leaders in Brasília to discuss Indigenous issues, make claims to authorities, and demonstrate (BRAATHEN; INGLEZ DE SOUZA, 2015).

[53] The two websites of the APIB were visited; these sites are called "Indigenous National Mobilization" and cover the period of political mobilization between 2009 and July 2013 (the website is no longer available) and between August 2013 and August 2017 (https://mobilizacaonacionalindigena.wordpress.com/ Access in: 26/12/17). Both websites can be considered information hubs featuring a substantial number of Indigenous actions across the country. The APIB institutional website is http://apib.info/ (accessed on: 26/12/17).

2. *Occupation of public property/public spaces*: all pacifistic or violent occupations of federal, state, or municipal government buildings as well as open air spaces such as squares;

3. *Occupation of private property*: pacifistic or violent occupation of farms or private buildings;

4. *Digital/media activism*: Twitter activism, social media calls for protests, video circulation, posting of open letters, and manifestos and participation in media briefings;

5. *Blockades*: blocking the free flow of individuals and vehicles on federal, state, and municipal roads;

6. *Symbolic acts*: camps, chants, displays of political placards, participating in public audiences, attending international events, publicly denouncing the Brazilian government to national and international courts, and meeting with public authorities;

Figure 11 illustrates that the Brazilian Indigenous Movement carried out 286 actions between 2009 and 2016. An increase in activism began in 2010 that reached its peak in 2011 and fell dramatically after 2012. Forty-four actions took place in 2009, 43 took place in 2010, and 82 took place in 2011 the highest number of the period. Thirty-four actions took place in 2012, 35 took place in 2013, 2014 included 19 actions, 2015 included 26, and as of March only 3 actions of protest had taken place in 2016.
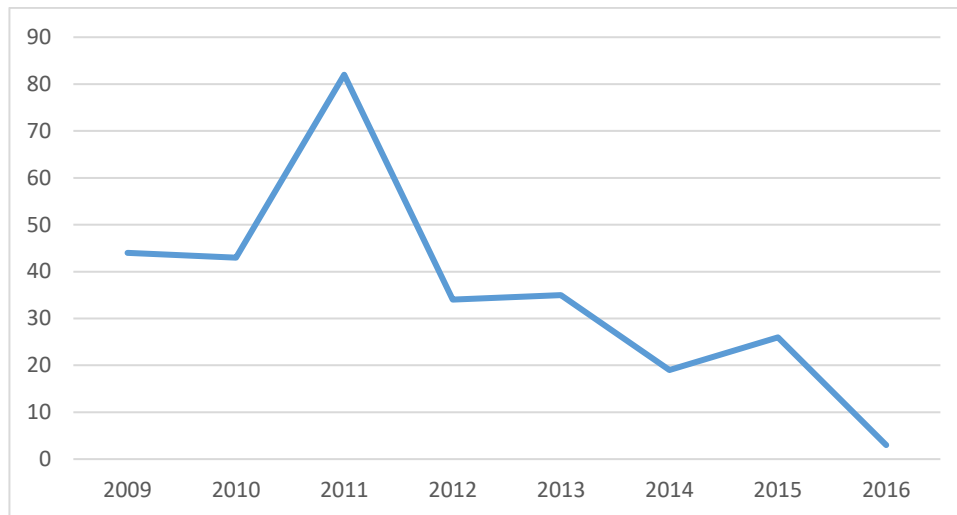
Figure 11: Number of protests by the Brazilian Indigenous Movement between 2009 and 2016 Source: http://blogapib.blogspot.com.br/ and https://mobilizacaonacionalindigena.wordpress.com/. Elaborated by the author.

While goals of this dissertation do not include explaining why this dramatic shift took place after 2011, it is important to reiterate that this was the year when then President Dilma Rousseff was sworn into office for her first term. Even though her government pushed a vigorous anti-Indigenous political agenda – which arguably could spark a greater number of protests – a declining capacity in the APIB to carry out protests in sheer numbers nationwide can be observed.

It is also important to understand the actions of protest carried out by the Indigenous Movement in Brazil in terms of geographic scope. In a country with continental dimensions and with an Indigenous population scattered across the territory, it is understandable that most actions happened in the largest Amazon states with the largest Indigenous populations (*Pará* and *Amazonas* states). In the state of Mato Grosso do Sul, a conflagrated situation of violent attacks against the Native population in the region is also a major source of many protests. Additionally, most Indigenous acts of protest in Brazil between 2009 and 2016 happened in Brasília, the country's capital. Moreover, beyond the Federal District, a few occurred actions in 20 Brazilian states.
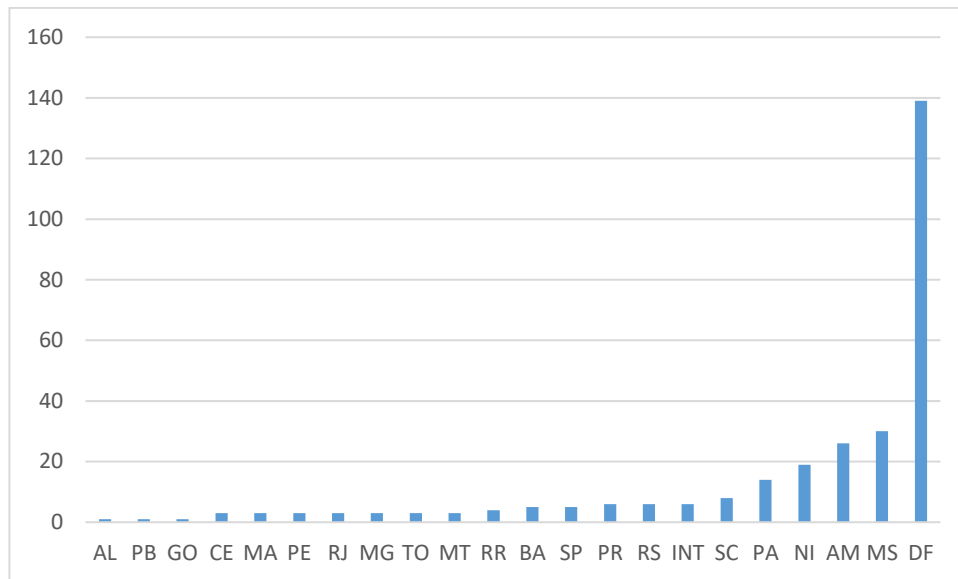
Figure 12: Distribution of acts of Brazilian Indigenous Movement by state Source: http://blogapib.blogspot.com.br/ and https://mobilizacaonacionalindigena.wordpress.com/. Elaborated by the author.

Finally, the data revealed that most actions carried out by the Brazilian Indigenous Movement during the period considered were related to media and digital activism and symbolic acts. This finding means that even though contentious acts attract more media attention, they are only a tiny fraction of the Movement's actions. The daily work of the Indigenous organizations is based on information sharing and network building through the Internet. Lastly, various symbolic acts are also an important part of the Indigenous movement repertory of action. Figure 13 presents the numbers related to each type of action between 2009 and 2016.
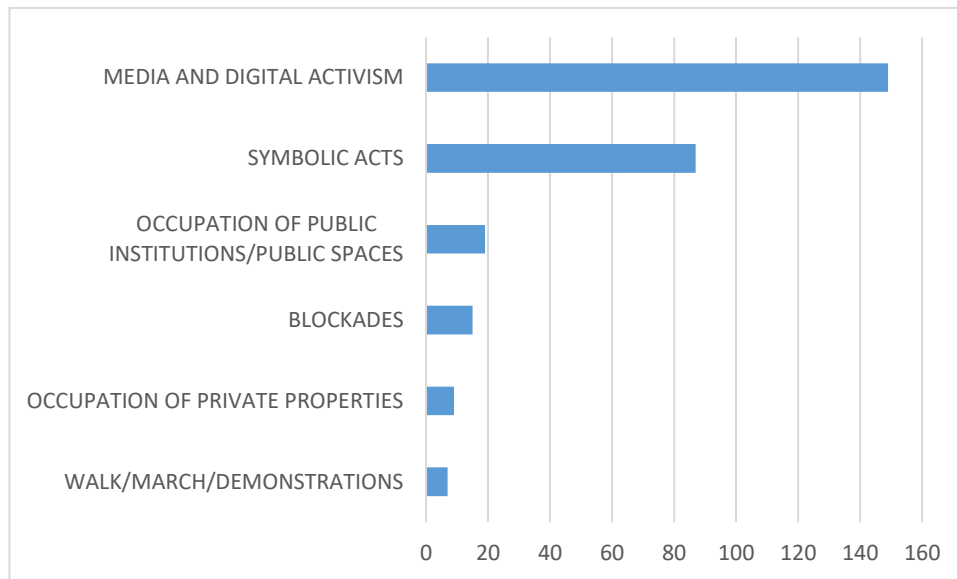
Figure 13: Frequency of actions of the Brazilian Indigenous Movement by category between 2009 and 2016 Source: http://blogapib.blogspot.com.br/ and https://mobilizacaonacionalindigena.wordpress.com/. Elaborated by the author.

The Canadian history of ethnic mobilization has some similarities with and distinctions from the Brazilian case. Most recently remembered with the spark of the "Idle no More!" movement in 2012 (COATES, 2015), Indigenous mobilization in Canada can be traced back to the 1920s, when the Iroquois Confederacy appealed to the League of Nations against the Canadian government. This is the first record of an Indigenous group making claims to an international organization (RAMOS, 2002). After World War II, Indigenous service members began to actively question their treatment as "second-class citizens" by mainstream Canadian society and began to organize. However, it was only after 1969 that the Indigenous movement regained momentum after the Trudeau government's disastrous attempt to repeal the Indian Act without consulting First Nations[54] (RAMOS, 2008).

Howard Ramos (2008) was able to collect data about contentious actions[55] of Canadian Indigenous organizations from 1950 and 2000; Ramos coded 948 actions and divided them into several categories. Overall, 166 (18%) actions were carried out by non-affiliated Indigenous peoples (with no formal link to an organization). Traditionalist or warrior Indigenous groups acting "regardless of political environment"

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[54] The details of these events are discussed in chapters 4 and 5.
[55] Ramos (2008, p.802) broadly defines "contentious actions" as "any act outside the dominant political process with a clear target, actor, place, action and goal". However, unlike the dataset in the Brazilian case, Ramos included the use of "legal actions" in his sample. This term refers to the use of courts to pursue Indigenous political agendas.

to preserve lands and traditions, often through violent actions, carried out 46 actions (5%). Specific Indigenous bands, groups, or reserves were responsible for 283 actions (30%), followed by Pan Nativel organizations that carried out 352 actions (37%); these groups are the most important actor for Indigenous mobilization in the period considered. Finally, coalitions between Native and non-Native groups organized only 50 actions (5%), almost the same number of actions carried out by non-Native groups alone (51 actions or 5%). The Figure 14 displays the number of actions per year between 1951 and 2000.
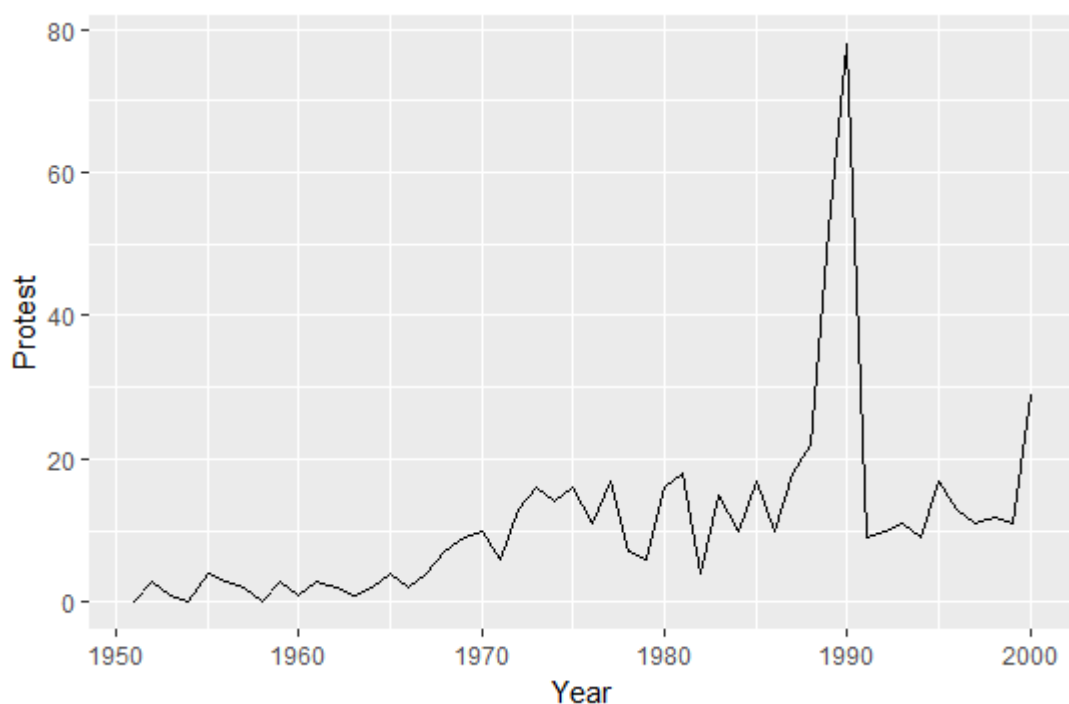
Figure 14: Acts of protest by Indigenous groups in Canada between 1951 and 2000 Source: RAMOS, 2008.

Figure 14 illustrates three critical moments for Canadian Indigenous mobilization in the period. The first moment is the years following the Canadian government's previously mentioned attempt to repeal the Indian Act after 1969. During the 1980s, the patriation of the Canadian Constitution and the following Aboriginal Constitutional Conferences[56] maintained the movement's energy. Finally,

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[56] With the goal of clarifying some of the terms regarding Aboriginal rights enshrined in the new constitution, Native leaders and Prime-Ministers agreed to hold a series of constitutional conferences on Aboriginal constitutional issues in 1983, 1984, 1985 and 1987, concluded with disappointing results for both parties involved in the process (MILLER, 2000)

the failed process of ratification of the Charlottetown Accord in 1992[57] set the stage for the peak of Native organization of acts of protest during the period considered.

It is also worth comparing the numbers and patterns of collective action presented in this section. Regarding the differences in periods, Brazil and Canada are similar in terms of magnitude of actions of protest by Indigenous groups. Considering that 286 actions were found for a period of only seven years, it is possible to estimate that the number of acts would be far greater if comparable data were available for the same period of the Canadian case.[58] Additionally, it is important to consider that both cases present a general growing tendency of increasing the number of actions with a clear moment of intense activity.

So far, the current dissertation has stressed the importance of participation, with particular attention paid to the argumentative aspect emphasized by deliberative democrats, as not only a political activity connected to policy deliveries but also as a conversation with political consequences that can occur in many institutional and social settings. This argument suggests that Indigenous groups will be better able to use PIs to pursue their goals if the groups are collectively well organized. In other words, political organization in associative terms is of immense importance for the model in this thesis. The complex interaction between Native groups and PIs is mediated by the political nature of these organizations. Moreover, scholars have recently begun to discuss political participation in PIs as part of a broader repertory of actions of a number of political actors (AVRITZER, 2017; ABERS et al., 2014).

Sub variable 8: Associative density

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[57] The Charlottetown Accord was a political compromise made by Provincial Prime-Ministers and Native leaders in 1992 with the goal of deeply changing constitutional provisions, which failed a referendum at the same year (PELLETIER; TREMBLAY, 2005).

[58] One possible reason for the differences in numbers could be related to the media used to code the activities of interest. Ramos (2008) used the digital version of the newspaper *The Globe and Mail*, while the current study used the APIB's websites. We tend to think that the use of Indigenous websites provides more reliable data regarding the repertory of actions used by Indigenous movements because big media outlets are not always interested in minor events or are not able to cover the whole country's territory. This claim, however, lacks empirical confirmation.

Finally, as well as the number of actions of protest, the number of Indigenous associations either increased or decreased over time. It means that our final sub variable is also dichotomic.

Putnam's (2000, p.103) classic study about the cultural conditions for good institutional governance in Italy has highlighted the importance of associations for the efficacy and stability of democratic governance due to democratic governance's "internal effects" on individuals and "external effects" on society. While the former concerns the already-mentioned civic learning process, the latter stresses the incorporation and articulation of different interests in a cooperative process to achieve societal goals; the same applies to Native groups. Moreover, as Sabl (2002, p.9) has argued, "*organizing is particularly useful to, and needed by, those furthest removed from the well-functioning institutions of middle-class civil society.*" Thus, Indigenous groups have not only been figuratively removed from political institutions but have also been geographically distant.

Furthermore, the kind of archetypal image of Native groups as primitive and passive that might come to mind when discussing Native associations must be avoided. Almond and Verba (1963, p.16-17), for instance, have used the example of "*African tribal societies and autonomous local communities*" to illustrate what they call the "parochial culture," where members "*expect nothing from the political system*" and the typical political roles of the communities have been dismissed as "*diffuse political-economic-religious roles.*" Consequently, the individuals in such circumstances have been "input objects" of the political system rather than active citizens. However, it is arguable that this point of view has been poorly informed by anthropological evidence and ignorant of the contemporary political articulation of Native groups.

The nature and purpose of Native associations

It is important to discuss the character of this type of political association. Leaving behind the fears of factionalism, it can be contended that these organizations have been prone to cooperatively working with institutional actors for achieving their stated goals, without excluding contentious actions that may have been carried out in some contexts. Following Warren (2000), it can be argued that

associations may have "democratic effects," whether on individuals, the public sphere, political institutions or, as has been argued so far, the concrete policy processes.

Regardless of the variation of Indigenous groups' internal organization, their forms of electing representation and how they pursue political goals, Indigenous peoples organized as political groups can be considered a secondary association. They are, as Cohen and Rogers (1995, p.7) have explained, among "*the wide range of nonfamilial organizations intermediate between individuals or firms and the institutions of the state and the formal electoral system*," which play a fundamental role in any modern polity. Indigenous groups are either formal or informal associations formed by Native leaders to facilitate negotiations with governmental agents related to a variety of issues affecting Native communities.

From a theoretical point of view, Native associations can be described as collective voluntary organizations, though familial affiliations might play a role in the involvement of certain members, which aim to affect public policies that concern Indigenous peoples. Besides, as Sabl (2002), has suggested, these groups are organizations that empower grassroots movements; furthermore, these groups are fundamentally rooted in their communities and are "*face-to-face societies*", meaning decision-making processes are direct and intimate. Well-organized groups can reinforce trust and reciprocity among the members, foster group cohesion around leadership that is perceived as legitimate and influence issues concerning Indigenous communities. In contrast, poorly organized groups will have more difficulties with negotiating their claims and mobilizing collective resources when direct action is needed (ALCANTARA, 2013).

The nature of Indigenous organizations is relevant to comprehend their role in Native land claims policy reviews, and the common goals that unify ethnic groups around a political agenda should be analyzed to better understand their agency capacity. Warren (2000) has argued that an association's purpose makes a difference to the type of action it may or may not encourage. Scholtz (2006, p.27), in a more explicit statement, has affirmed that "*in the politics of minority rights, the most important resource for minorities to mobilize in the struggle for policy change is their own collective energies*." As has been argued so far, it is likely that the main goal of all Indigenous organizations in the Americas is the state recognizing a land as traditionally occupied, and the chance of influencing the policies designed to

materialize such acknowledgment is a strong incentive to Native groups. Essentially, Indigenous associations are pursuing the achievement of a collective goal, which may foster collective action.

Finally, the researcher agrees with Warren's (2000, p.28) point that Native groups associate and pursue their goals within the framework of "*liberal-democratic constitutional states and within the context of an economy that, for better or worse, will remain market-driven and capitalist for the foreseeable future.*" Again, it must be stressed that the associational capacity deployed by these groups must be contextualized regarding the asymmetric power relations between these groups and the nation-states, where the former seeks to maximize their chances to influence political processes.

Let us now turn briefly to the concrete cases we are dealing with in this research. Finding reliable data regarding native associations is not an easy task, particularly in Brazil, where there are several different official records, often with different parameters and rarely in digital form. Moreover, sometimes the association exists and operates but it is not formally recognized by the Brazilian state. There are often mistakes, incongruencies and lack of basic information. In sum, the data presented here cannot be considered the complete record of Indigenous associations in the country[59]. However, we are confident that our data can be considered a fairly accurate portrait of the general tendency of increasing the number of such associations in the last four decades. The *Instituto de Pesquisas Econômicas Aplicadas* (IPEA), an important Brazilian think tank part of the Ministry of the Planning, Budget and Management, launched recently the Map of the Civil Society Organizations, a digital platform integrating federal records related to civic organizations[60]. After the consulting the database, we found out 351 Indigenous Associations in Brazil[61]. The figure 15 below shows the evolution of the number of associations founded per year in Brazil between 1977 and 2014[62].

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[59] It is worth noting that our figures do not differ significantly from those presented by Oliveira (2016), to whom there were only 9 Indigenous organizations in Brazil between 1982 and 1989. Our database, however, expands and systematize Oliveira's unsystematic approach of the issue.

[60] Available at: https://mapaosc.ipea.gov.br/ (Access in 22/12/2017).

[61] This number includes major advocacy organizations such as the *Conselho Indigenista Missionário* and *Centro de Trabalho Indigenista*, because we understood that those institutions are "hybrids", being appropriated by the Indigenous groups themselves.

[62] We were not able to find information about the year of foundation of 22 associations. Therefore, figure 15 N= 329.
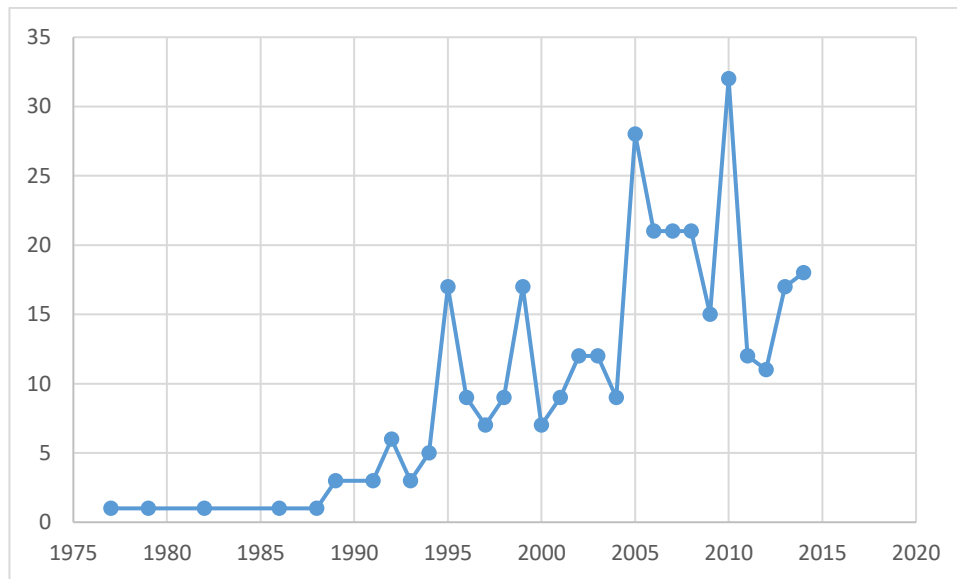
Figure 15: Number of Indigenous association in Brazil between 1977 and 2014.

Source: https://mapaosc.ipea.gov.br/. Elaborated by the author.

We can observe in the graph that whereas the Indigenous associative life in Brazil had a relatively low intensity between 1977 and 1994, this landscape started to change after 1995. Since then, even with some ups and downs, it is observed a tendency of a growing number of associations founded per year. After the 2000's this tendency consolidated, showing two peaks of numbers of associations founded during the period – in 2005 and in 2010. Again, it is not among the goals of this dissertation to search for the causes of such tendency. However, it is worth remembering that the period between 2005 and 2010 is the one where Brazil experienced its more recently economic "boom", with an average GDP of 4 %[63].

For the Canadian case, we were able to consult the data compiled by Professor Howard Ramos (2008) for the period between 1950 and 2000[64]. Coding data from the *Canada Gazette*, *Canada Corporations Bulletin* and *Canada Corporations Directorate*, Ramos found 510 First Nations organizations divided into: 258 (53%) of them were service providers; 125 (25%) were clubs or associations, mostly with cultural goals; 112 (22%) were political organizations with political mandates and; 5 (1%) did not fit in any of such categories. We can observe the national trend only for the political organizations in the figure 16 below:

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[63] Following World Bank Data available at: https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2010&locations=BR&start=2005&view=chart (Access in: 26/12/17)
[64] Professor Howard Ramos kindly sent us his database upon request. We express our gratitude for his collegial attitude of sharing his work with us.
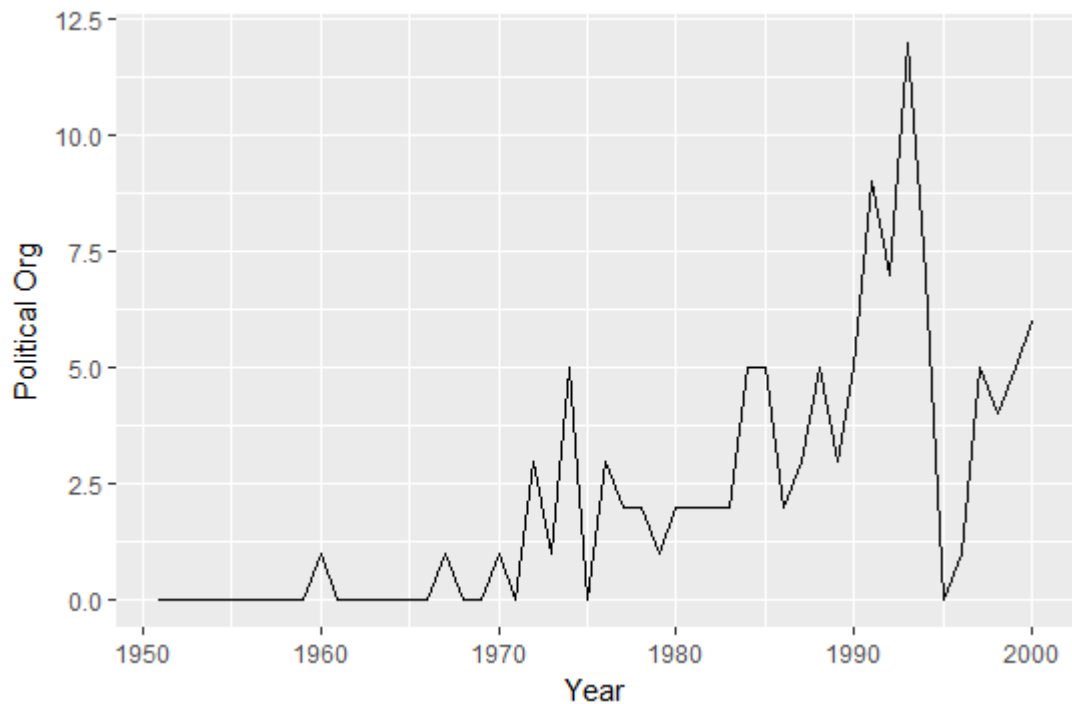
Figure 16: Number of First Nations political associations in Canada between 1951 and 2000. Source: RAMOS, 2008.

The graph shows that before 1970's, the associative life of Indigenous groups was as low as it was in Brazil in the same period. However, the 1970's in Canada experienced a peak of appearance of such kinds of organizations. Even with some ups and downs after 1975, the general trend was upwards, reaching its maximum in the early years of the 1990's. There was a sharp decreasing after that, but it regained momentum after 1995 and the tendency seems to have consolidated.

Comparing the figures involved in the debate about the Native associational density in both countries, we can conclude that Canada and Brazil show similar tendencies. Both present the same pattern of continuous growing of the number of Indigenous associations during the period considered. Moreover, both show a similar convergence between the year where Indigenous groups carried out the greatest number of actions of protest and the increasing number of Native Associations.

1.5. Chapter's Conclusion

This chapter aimed to discuss the specificities of each variable that may affect the variation of the results explained in this thesis. A comprehensive table summarizing the main characteristics of the variations in Brazil and Canada can be found below (Table 4).

Table 4: summary of the description of the independent variables

Variables/countries	Brazil	Canada
Institutional design	SV 1: Hybrid (Simultaneously bottom-up and top-down) SV 2: highly protective	SV 1: Top-down SV 2: fairly protective
Federalism	SV 3: strong SV 4: conflictive pattern	SV 3: weak SV 4: conflictive pattern
Government agenda	SV 5: marginal SV 6: neodevelopmentalism	SV 5: central SV 6: business liberalism
Native collective agency	SV 7: declining capacity of mobilization SV 8: increasing number of associations	SV 7: increasing mobilization capacity SV 8: increasing number of associations

While Brazil's participatory institution can be considered one of the most important bottom-up participatory experiments in the country and perhaps in the world, its provisions will not necessarily be taken into account by the federal government. At the same time, the existence of top-down processes involving Indigenous groups, as the Canadian case shows, does not imply reduced quality or effectiveness. The actual impacts of such institutional design variations on the prospects for policy change in both countries will be addressed in chapters 3 and 5.

Furthermore, it has been shown that, while Brazil and Canada have distinct constitution-making processes, both have included the acknowledgment of Indigenous rights among the provisions. The timing of a constitution's enactment and scope of its provisions may have played an important role in the processes analyzed in this thesis, due to the constitution's capacity to structure the political interaction between social actors and public agents and to provide momentum to Indigenous groups to push their agenda forward.

The Brazilian and Canadian federations have assigned distinct roles to their provincial and state governments. In both countries, Indigenous issues have historically been managed by the central government. Nonetheless, subnational entities might either resistance or support policy changes related to Native claims, and the entities' roles in each concrete case must be further clarified. We described Brazil as a country where Indigenous groups and their initiatives find strong and organized opposition in the Parliament, whereas the Canadian parliamentary system favors the party discipline around the prime minister's and his/her cabinet agenda. Moreover, we have shown that the judicialization of the Indigenous politics and policy seems to follow a conflictive pattern in both Canada and Brazil.

In both countries, despite their differences regarding their systems of government, there has been an increasing capacity on the part of the central governments to set parliaments' political agendas and dominate the political lives of both polities. Notwithstanding, it remains unclear how the governments' political agendas during the processes analyzed in this thesis have contributed to the success or failure of policy changes. For the moment, we have seen that the regarding the budgetary centrality of the Indigenous issue in both countries, whereas the Brazilian case shows a chronically underfunded agency, the federal spending on Indigenous policy in Canada has risen steadily since 1946.

Finally, Indigenous groups in Brazil and Canada have been experiencing a comeback to the national stage since the 1960s, with important repercussions in their political achievements since then. However, the specificity of Indigenous collective agency in both countries must be investigated to connect its features to the outcomes presented in each context. As Turner (2002, p.245) says, "*empowerment, not the inertial continuity of 'tradition'; engagement, not separation; and hybridity, not cultural purity, are the values informing the vitality and assertiveness of renascent Indigenous peoples and cultures all over the world*".

Ingram and Schneider (1997, p.66) have concluded that "*policy design has significant consequences for democracy*". Therefore, policy design should be seriously analyzed in all of its constitutive dimensions, including the design's stated goals and problems to be solved, the targeted populations, the agents involved in the delivery of the policy, the tools used to change behaviors as a result of the policy, the rules that provide the parameters of action to the actors involved in the policy, the explanations and reasons used to justify the design and the explicit or implicit

assumptions that connect the design's elements. Essentially, when citizens have more control over the formulation, design, implementation and evaluation of public policies, the more democratic and legitimate the public good delivered by those policies will be (INGRAM, 1993; FISCHER, 2003; 2009; FISCHER; GOTTWEISS, 2012).

The next chapters 2 and 4 will describe in detail the history of Indigenous policies in Brazil and Canada, stressing their distinct historical pathways, their early formulations and their design at the time the processes analyzed in this thesis occurred. In doing so, policy changes over time will be shown. The two different policy designs on Indigenous issues related to the recognition of traditionally occupied lands will be discussed at length, exploring each design's major features.

2. CHAPTER 2: CHRISTIANIZING, TAMING, PROTECTING THE INDIAN: A HISTORICAL OVERVIEW OF THE BRAZILIAN INDIGENOUS POLICY

> *There is no single indigenous history in Brazil, but a multiplicity of stories, woven with experiences in diverse temporalities, in different ecosystems and colonization, resulting in organizational forms, cultural traditions and political horizons that are also very different. The strategies for reproduction and continuity of the ruling elite, always based on war and the civilizing mission, never dispensed from each other, a collective that can be object of domination and exploitation, but whose names and forms change throughout history according to the interests and concerns of the ruling elite, in a true epiphany of otherness* (OLIVEIRA, 2016, p. 39)[65].

2.1. Introduction

In the opening chapter of this dissertation, we presented the framework of investigation. The aims of the current and the fourth chapter are to provide a broad overview of the public policies towards Indigenous groups undertaken by the federal government in Brazil and Canada, with a focus on the ones related to native land rights. We provide a historical account of them, from early colonial times to the modern era. We demonstrate the evolution of legal and political cornerstones across time, stressing the importance of knowing them to understand some of the actual features of the policies here under scrutiny. Following, we describe all the stages and characteristics of land claims processes.

For Skocpol and Amenta (1986, p.136), "*democratic politics matter*" to the distributive outcomes of public policies in capitalist societies, in the sense that they can be "*profoundly affected by governments*", or, for that matters, by any channel

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[65] From the original in Portuguese: *Não há uma só história indígena no Brasil, mas uma multiplicidade de histórias, tecidas com experiências em temporalidades diversas, em ecossistemas e modos de colonização diferentes, resultando em formas organizativas, tradições culturais e horizontes políticos também muito distintos. As estratégias para a reprodução e a continuidade da elite dirigente, sempre assentadas sobre a guerra e a missão civilizatória, nunca prescindiram um do outro, um coletivo que pode ser objeto de domínio e exploração, mas cujos nomes e formas mudam ao longo da história de acordo com os interesses e preocupações da elite dirigente, numa verdadeira epifania da alteridade.*

through which people can have some influence on state affairs. The variation of policy design will be shown in detail, highlighting the "politically risky character" (SCHOLTZ, 2006) of the Canadian Indigenous policy and the "paternalistic" style (RAMOS, 1998; OLIVEIRA, 1998) of the Brazilian one. The goal here is to identify all the features of those policies that are more or less pervasive to the claims of native groups, showing its flaws and strengths that enable Indigenous participation in its design.

Now that we have defined our goals for the following chapters, we turn to the historical panorama of the constitution of the relationship between nation-states and Indigenous groups in Brazil.

The Brazilian government launched,in 2012, the Territorial and Environmental Management of Indigenous Lands National Policy (PNGATI, its acronym in Portuguese). It is a presidential decree[66] to ensure the sustainable management of traditionally occupied lands through planning tools – such as ethno-mapping and ethno-zoning- and governance institutions, notably the PNGATI Management Committee, the FUNAI's Regional Committees and the National Commission on Indigenous Policy (henceforth NCOMIP), later renamed after National Council on Indigenous Policy (henceforth NCOUNIP). What is particularly striking, in the text of the agreement, is the constant emphasis on the importance of native participation in all aspects and processes of the policy, in sharp contrast with the 100 years long history of the republican Indigenous policy in Brazil.

It is not the goal of this topic to make a full and detailed account of the historical relationship between the Brazilian state and Indigenous groups but to concentrate on the main historical facts, legislations and political actors that may have played a major role in the shaping of the Indigenous policy in Brazil. In other words, getting back to the past is valuable insofar it helps to understand the present.

The colonial era of the Indigenous policy in Brazil

There are evidences of human occupation in the Amazon basin since 9000 years B.C (FAUSTO, 2000). The first contact between Indigenous groups and the

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[66] Decree nº 7.747/2012.

newcomers from distant lands were at Bahia's coast, and it was a mix of curiosity, mystery, and fascination from both sides. Since the beginning, Pêro Vaz de Caminha, the author of the famous letter[67] communicating the "discovery" of a new land to the Portuguese king, had no doubt that there were "real" men and women[68]. However, humans of a very particular kind, as the cosmographer of the second expedition to Brazil, Americo Vespúcio, stated: there were people without law, faith and kings, who do not obey to anyone and everyone is his own master. Those people without "f" (of faith), "k" (of king) and "l" (of law) in their vocabulary should learn how to live under the rule of law, justice of God, and the Portuguese king (CUNHA, 2009).

Starting with the colonial era in Brazil (1500 – 1821), the Indigenous policy and legislation were, to quote Perrone-Moisés (1992, p.115), "*contradictory, shifting and a hypocrite.*" Although strong words, they seem to accurately portray the relationship between settlers and native groups for three centuries. The Portuguese Crown faced difficulties to harmonize political projects that were fundamentally different: the conversion of the souls of Indigenous peoples aimed by the first Christian missionaries to arrive in the newly "discovered" world, the order of Jesuits[69], and the use of Indigenous labor to cultivate the land and protect the territory against foreign invasions. Pressured by both sides, the Crown successively moved back and forth enacting laws to forbid and allow the enslavement of natives in some specific cases, as well as the right to wage war against "untamed tribes."

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[67] The Letter of Pêro Vaz de Caminha to the King Manoel of Portugal was included in 2005 in the UNESCO's "memory of the world". A summary of the letter in English can be found in http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/mow/nomination_forms/letter_from_pero_vaz_de_caminha.pdf (access in 16/12/2017)

[68] There was some controversy at the time if the inhabitants of the newly discovered territories of the Americas were indeed humans, angels or devils, a controversy later solved by the papal encyclical *Sublimis Deus* promulgated in 1537 by Paul III. The text forbade the enslavement of Indigenous peoples and unequivocally affirmed that Indians were human beings with souls that could and should be Christianised. Their "human status" was again questioned in the late nineteenth century, with the rise of racist theories about the cognitive capacity of slaves, Indigenous peoples and all marginalized populations (CUNHA, 2012; GOULD, 2014; LOBO, 2008). Curiously enough, apparently also the Indigenous peoples had doubts if the colonizers were "real humans" when they first met, as the Viveiros de Castro mentions the experiments some Indigenous groups made with the dead bodies of colonizers to confirm their humanity (the video can be accessed in: https://www.youtube.com/watch?v=E7lOjgpql9Y)

[69] Founded by Iñigo López de Loyola in 1534, the *Societas Iesu* (Society of Jesus) is a Catholic missionary order that was born in the wake of the Counter-Reformation in the sixteenth century in Europe. Stefan Zweig, in his famous book *Brasilien: ein Land der Zukunft*, argued that the Jesuits were the first to arrive in Brazil with a vision of its future as a nation and not just for pillage and exploitation of its natural resources. The reason for that, says Zweig, is because they had "their mission in the future", the goal to Christianise all Native population after generations of missionary work (ZWEIG, 2006). This point is reinforced by Pompa (2002), to whom the Jesuit evangelization could be translated, in anthropological terms, in a global project of the civil and religious reconquest of the humanity.

The key cleavage to understand the incipient policy towards Indigenous groups during the "infancy" of Brazil is one that separates the "free Indians" (índios livres), friends of the Portuguese empire and "useful subjects" (*vassalos úteis*) of the king, from the "wild Indian" (*índio bravo*), untamed, dangerous and faithless. To the Indigenous peoples in the first category, the royal order was to convince them- mainly through the persuasive rhetoric of the missionaries- that was in their self-interest to move from their lands to settle in reserves near to the settler villages, where they would be protected by the colonizers as well as serve as a "buffer zone" against external invasions by European countries or, still, against enemy tribes. To the second one, there was nothing but the simple extermination or enslavement through "fair wars". This cleavage is significant because it established the general guideline to the relationship between settlers and Indigenous groups throughout the centuries.

It is interesting to follow the relationship between Indigenous groups, their traditional lands and the newly established reserves at the end of the seventeenth century and beginning of the eighteenth. At the reserves, says Perrone-Moisés, there was an understanding that Indigenous peoples should be "*masters of the reserve lands as they are in the mountains*", which was an expression that first appeared in a legislative document in 1596 and, later on, in 1609 and 1611 legislative documents. Finally, there was a legal provision for the demarcation of lands and the guarantee of possession of these reserve lands which was inducted in 1596, and further reinforced in 1604 and 1691.

A law enacted in 1611 determined that new Indigenous reserves must be settled in a reasonable distance from the settler villages to assure the mutual non-harming. The Royal Act (*Alvará Régio*) of 1680 was the first legislation to acknowledge the existence of Indigenous rights over lands clearly. The Missions Statute (*Estatuto das Missões*) of 1686 concedes that Indigenous groups that do not want to move to the reserves should stay in their territories, without being displaced. In another royal legislation found in 1707, there is a statement which permits a reserve to be set in a place "*with enough land to Indians to cultivate their crops and a river plenty of fish*" (PERRONE-MOISÉS, 1992, p.119).

The establishment of reserves was, as states Perrone-Moisés (1992, p.120), the "*realization of the colonial project*". It was there where the Christian conversion took place, the territory of the colony was progressively occupied, and the Indians

were used simultaneously to safeguard small settler villages and to serve as a labor force, who were essential to the economic sustainability of the colonial enterprise. Its administration comprised of Jesuits and Indigenous leaders, who were recognized as "captains" of the reserves. It was after 1755 that the Crown determined that native groups were unable to govern themselves, and responded by appointing directors to coordinate reserves.

A turning point in the Indigenous legislation of the colony was the "*Diretório Pombalino*" (Pombal's Law, in a free translation) of 1750. The "*Diretório dos Índios*"(Indian Law) was in effect between 1757 and 1798 and its main goal was the progressive secularization of the administration of Indigenous reserves, carried out by powerful Jesuits. The Marquis of Pombal, the strongman of the Portuguese kingdom at the end of the eighteenth century banned the Jesuits from the Portuguese territory as well as its colonies and strived for the integration of Indigenous peoples to the colonial society without "mediators". The "nationalization" of the natives would succeed through the progressive substitution of the "tribal Indian" by the "generic native"[70]. Indigenous peoples would be continuously domesticated by the forced labor, the use of the Portuguese language instead of the local languages, the support of intermarriages between colonizers and colonized, the abolition of formal distinctions between white men and Indians and the transformation of the reserves into colonial villages (MOREIRA NETO, 1988).

All conditions of Pombal's Law were revoked by a royal decree in 1798, propelled both by the fall of the Marquis of Pombal in 1777 and by the internal pressures of settlers, who considered the law as a major factor of disorganization of the local economy which was effectively boosted by Indigenous labor. From then on, the legislation was progressively more anti-Indigenous, and specifically conducted to the virtual extinguishment of the Indigenous patrimony through the permission to explore mineral resources inside the reserves and allowing any white man to settle on them. Moreover, all the collective goods of the Reserves were sold and the money obtained was collected by the Provincial Treasury (MOREIRA NETO, 1988).

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[70] The "tribal Indian" means here the concrete individual with his cultural background, language, customs and ultimately a savage that should be turned into a colonial subject that, even bearing physical marks of his/her ethnic origin, would no longer be part of a tribe.

Indigenous policy in the age of the Brazilian empire

The nineteenth century is essential to understanding the contemporary Indigenous issue in Brazil. In sum, as affirmed by Cunha (1992), it was during this century that the "Indigenous question" has changed from a matter of capturing Indigenous people to use as enslaved workers to a question of land expropriation. Cunha (2009, p.158) affirms that the Indigenous legislation of the beginning of the empire was a "very poor" one and largely *ad hoc*. She suggests that these characteristics reflect the "narrowing" of the numbers of social actors involved in the Indigenous debate, from the complex interplay between Indigenous groups, religious missionaries, the inhabitants of the colony and the Portuguese empire to the "fastidious soliloquy" of the newly constituted Brazilian state.

The most important political actor of the early decades of the nineteenth century was, doubtless, José Bonifácio de Andrada e Silva, Brazilian strongman of the independence. It was his understanding of the incipient "Indigenous policy" of the empire – that the Indigenous people should be attracted and integrated into the mainstream society through "mild and persuasive means" – which prevailed over the concurrent ideas of exterminating the Indigenous groups or distributing them among the white men of the country. It was his "*Notes on the Civilization of Barbaric Indians of the Brazilian Empire*"[71] that was discussed during the debates of the first Constituent Assembly of the Independent Brazil in 1823. However, none of his considerations were incorporated into the first Brazilian Constitution of 1824, which does not mention the existence of Indigenous peoples in the new empire at all.

Nonetheless, the Missions Statute (*Regulamento das Missões*) was enacted in 1845. It was the only Indigenous law of broad scope of the Brazilian Empire, and was a rearticulation of Andrada's proposals (CUNHA, 1992; 2009). The Missions Statute was akin to a detailed administrative piece of legislation than a political document, as it extends the policy of setting up reserves as temporary places until the complete assimilation of the Indigenous groups to settler society. Still, between the first years of Independence and 1845, the absence of a coherent Indigenous policy from the central government made room for provincial chambers to legislate against Indigenous peoples. For instance, three Indigenous reserves at the province of

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[71] A free translation of "*Apontamentos para a civilização dos índios Bárbaros do Império do Brazil*".

Ceara were extinguished between 1835 and 1839; the governor of the province of Goias undertook an expedition to fight the Canoeiros people; again at Ceara, the Pombal's Law, long extinguished and explicitly denied by the crown, was restored in 1843. As one can see, when left to the provinces, the Indigenous issue would be treated as a matter of simply extermination of Indigenous groups.

Besides the "legislative vacuum" during the XIX century, Mattos (2013, p.159) argues that "*the imperial administration was organized under a highly bureaucratic scheme that had the goal to control the conflicts and the Indigenous territories and contributed to settle the Indigenous peoples, releasing its lands and promoting its 'incorporation'* ". At the same time, the main construct of this era was, without any doubt, the legal institute of the "*indigenato*", which clearly states that Indigenous lands cannot be considered vacant and that Indigenous peoples should have effective control of them. The title of ownership over the Indigenous land is "original", which means ownership is derived from the status and recognition of being Indians, and contrary to all other forms of land titling, do not need any previous legitimacy by the state (CUNHA, 1992).

Cunha (1992) presents several cases where this principle was respected. In one case, in 1819, the Portuguese Crown took a step back and canceled the concession of a land parcel within the reserve land of the "Coroados" people, assuring that those lands were inalienable and could be not considered vacant. In 1827, the municipal council of Vila de Barcelona in the State of Minas Gerais, ruled that the Indigenous people affected by resettlement should be consulted because it "*seems to be unfair to determinate where the homeowner should stay.*" It is a "singular case", indeed: whereas the legitimacy of the prior occupancy of the Indigenous groups is acknowledged by the colonial and the imperial administration, they will suffer from the dispossession of their traditional lands by the same agents. In 1808, King John VI determined that the lands of Indigenous peoples conquered through "fair wars" would be considered vacant and, therefore, would be used to resettle farmers, militia and poor men who would "instruct" Indigenous peoples on the Christian faith, mechanical skills, and agriculture.

The long-lasting politics of deportation and concentration of Indigenous peoples into small-sized reserves continued throughout the nineteenth century and experienced a turning point after the enactment of the 1850 Land Law (*Lei de Terras*), which clearly stated that the settlements of "wild hordes" to their civilization

was necessary. The lands of the Indigenous peoples "dispersed and merged with the mass of civilized people" should be simply taken back to the amount of territory of the empire. It was the beginning of an aggressive politics of pillage of Indigenous lands, as Cunha (1992, p.23, translated by the author) summarize in the passage below:

> The process of despoliation turns out to be transparent when observed diachronically: it starts concentrating on reserves the so-called "wild hordes", releasing vast areas, upon which their title was uncontested, and exchanging them for the limited reserve lands; at the same time, it is encouraged the settlement of strangers in their neighborhoods; inalienable lands are conceded to reserves, but parts of the land were leased to foreigners; there is deportation of whole reserves and concentration of distinct groups together; after this, reserves are extinguished under the pretext that Indians are "merged with the mass of population"; the legal provision that determines that Indigenous peoples are the owners of the land of the extinguished reserves is ignored; moreover, only parcels of it are conceded to them; the rest of the area is incorporated into the empire and then to the provinces, which in turn transfer them to the "municípios" that can sell them to small farmers or use them to start new centers of population. Each step is a little fraud, and the final product, the outcome of those little steps, is the total expropriation.

The massive dispossession of Indigenous lands was a hallmark of the nineteenth century. Near the end of the nineteenth century, the empire was too busy with the abolition of slavery, the war against Paraguay and the growing Republican movement to pay enough attention to the harms inflicted to Indigenous groups the last decades of the 1800's. This effectively became a situation that did not change fundamentally during the first years of the new republican regime.

The Republican turning point

The proclamation of the Republic in 1891 brought the question of the construction of the Brazilian state in a modern and Republican fashion, leaving behind the erratic policy pattern of the monarchy substituted by the professional bureaucracy of the modern nation-states. It also brought the question: what should be done with the recently freed slaves and many still uncontacted Indigenous tribes on the countryside?

To answer this question, the Indigenous policy of the republican period began with the establishment of the *Serviço de Proteção aos Índios e Localização de Trabalhadores Nacionais* (Indigenous Protection and Recruitment of National Workers Service, henceforth SPI) in 1914. The agency had the mandate to intervene in all conflicts involving Indigenous groups, eventually removing them from their territories and carrying out policies focused on the assimilation of those groups to the broader "national communion". A few years later, in 1916, the new Civil Code came into effect, resulting in the inclusion of "Indians", along with minors and mentally ill persons as "relatively incapable" to exercise their rights as full citizens (RODRIGUES, 2002).

The 1891 Constitution – the first of the Republican Brazil- had no mention of Indigenous rights at all, let alone territorial rights. This explains why the recently established SPI had no powers to demarcate Indigenous lands, something that the federal government would do only after discussions with local and state governments (ARAÚJO, 2004)

The main character of this period was the Marshal Candido Mariano da Silva Rondon, the founder, and director of this agency. He became nationally famous after commanding successful expeditions to install electricity cables connecting the states of Mato Grosso and Goias, linking the Brazilian west to its central region. Rondon believed that the contact with Indigenous groups should occur through harmless means, just like Bonifácio de Andrada proposed decades before, with the explicit goal to progressively prepare them to live in mainstream Brazilian society. The "laic catechesis" and the doctrine of the "fraternal protection" were the guidelines of the SPI until its extinction in 1967 (LIMA, 2013).

In 1961, the successful Roncador-Xingu expedition carried out by the famous Brazilian "sertanistas[72]" Villas Bôas brothers, gave birth to a new paradigm of

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[72] Individuals in charge of contact with Indigenous peoples in Brazil were traditionally known as "*sertanistas*" because they were able to navigate through the Brazilian countryside – the *sertão*. Among the most prominent

Indigenous lands which were seen as territorial spaces needed for the sociocultural reproduction of the Indigenous peoples, where they could maintain and cultivate their traditional ways of life. Thus, the founding of the Xingu National Park (later renamed after Xingu Indigenous Park) distanced itself from the prevailing paradigm of the time where the Indigenous "condition" was seen as a forceful transition until the complete assimilation into the mainstream society (ARAÚJO, 2004).

The 1960's: the extinguishment of SPI and the rise of FUNAI

The SPI played a vital role in the establishment of a permanent policy that addressed contact with Native groups in all regions of the country. However, the controversial record of actions of the SPI is also well known: there were accusations of corruption, genocide, rapes, negligence over illegal mining and logging, to name just a few. Underfunded, the agency could not deliver an adequate service to its target group and was severely criticized by the media, leading to the establishment of a Parliamentary Commission of Inquiry to investigate these accusations. The agency headquarters suffered a fire in 1967 and lost almost all its files. After this event, it was replaced by the *Fundação Nacional do Índio* (Indigenous National Foundation, henceforth FUNAI) in 1968, under the military government[73].

In 1973, the Indian Statute was enacted (Law nº 6001/73) and this Statute addressed all aspects of Indigenous life within the Brazilian territory. Its explicit goal was to "preserve their culture and integrate them to the national communion", assuming, again, that the Indigenous condition was transitory and that their complete assimilation was the desired outcome of their continuous interaction with the state. The Statute affirms that it is the state, through the FUNAI, which has the tutelary power over Indigenous communities, and individuals and communities would be

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sertanistas, beyond the already mentioned Rondon and the Villas Bôas brothers, are Sydney Possuelo, Apoena Meireles, Chico Meirelles, José Meirelles, Fiorello Parise, among others. There are few accounts of their routines and expeditions by the *sertanistas* themselves, but an interesting attempt to tell their stories can be found in Milanez (2015). This denomination was recently replaced by the term "Indigenist specialist" after an administrative reform at the FUNAI.

[73] The so-called Figueiredo Report, an extensive account of several denounces and crimes carried out by SPI agents with more than 7.000 pages, was meant to be lost with the fire in 1967. Surprisingly, it was "rediscoverth" during the researches undertaken by the Truth National Commission, which dedicated an significant part of its final report to officially recognize the role of the Brazilian State on the atrocities perpetrated against Indigenous peoples during the authoritarian governments of Getúlio Vargas in the late 1930's and between 1964 and 1985 (BRASIL, 2014).

allowed, through a decree, to be considered formally "emancipated" once they felt ready to "leave" the Indigenous condition (ARAÚJO, 2004).

The authoritarian regime that began in 1964 and lasted until 1985 operated through the "doctrine of national security", where "state reasons" were above any individual rights claim, let alone minority groups claims. Indigenous peoples and activists were considered "internal enemies", a threat to the integrity of the national territory and the very idea of nationality (BRASIL, 2014). In this sense, as Rodrigues (2002, p. 491) correctly states, "*Indigenous people's demands, instead of making their way to the government's agenda through pluralist channels of participation, were 'filtered' by the techno-bureaucracy*" of the Brazilian state. Essentially, the FUNAI and the Interior Ministry had the means and the power to address Indigenous claims during the time of military rule in Brazil.

There was a significant history of human rights violations of the native Brazilian groups during the military rule. Chapter five of the Brazilian Truth National Commission Report is dedicated to documenting the atrocities perpetrated by the actions or the omissions of the Brazilian state against its native groups. It is, to date, the most comprehensive account of the role that Brazilian Indigenous policy played between 1946 and 1988 and denounces the way that it was conceived to integrate, control and "pacify" the Indigenous populations within the Brazilian territory[74].

There is an extensive list of violations reported by this commission. For instance, the omission of the state during the early years of the "march to the west", when the expansion of the agricultural frontier to the inner land was carried out with the complicity of private corporations and state governments; the forced removal of native groups to set some areas free for building roads, dams and small airports; the omissions related to sanitary precautions during the expeditions of contact, causing thousands of deaths by viruses and other diseases; abandon of groups to starve; illegal incarceration; illegal licensing of mining and logging, among others. All of them, however, derive from the primordial violation of the right to the land of the Indigenous groups. As the report states, "*this kind of violation is an axis that brings about other violations*" (BRASIL, 2014, p. 223).

The Indian Statute, enacted in 1974, sets out an extensive list of articles that were supposed to govern and provide guidelines to the design of public policies

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[74] The recently published book by Rubens Valente (2017), "*Os fuzis e as flechas: história de sangue e resistência indígena na ditadura*", is also a valuable source of information about the period.

related to all aspects of Indigenous life in Brazil. There is no mention about the possibilities of participation of the native groups in the process of land claim recognition, except for a vague mention of the "Indigenous interest", which served as a sufficient motivation to proceed the re-examination of the size of a given Indigenous land.

The transition to democracy gained momentum after the indirect election of José Sarney, the first civilian to hold the presidential office since 1964. In 1987, a Constitutional Assembly was mandated to draft a new constitution for Brazil after the dictatorial interlude. Progressively better organized since the mid 1970's, Indigenous peoples took a very active role during the constitutional process, often performing rituals, traditional dancing and chanting, besides attending meetings of the committees dressing traditional accessories. Demonstrations held by the Union of Indigenous Nations (*União das Nações Indígenas*) and often led by the Kayapó people and thirty-five other Indigenous groups made themselves present at many moments of the process, which served as a highly effective tool to pressure the constituents to take into account the Indigenous rights in the new constitution (RAMOS, 1990; RODRIGUES, 2002; BICALHO, 2011).

Democracy's comeback: Indigenous policy after 1988's Constitution

The enactment of a new constitution in 1988 brought a refreshing wave of democratic rights to the country after 20 years of discretionary power of the military government. The constitution advanced a broad set of rights related to social policies, the right to the city and rights of the third generation. The constitutional making process itself was strongly participatory, mobilizing many social actors in all policy fields. The constitution was marked by a participatory orientation, prescribing the importance of popular participation in politics through institutional mechanisms such as councils, public hearings, and plebiscites (AVRITZER, 2013).

A broad set of Indigenous rights was secured through the 1988 Brazilian Federal Constitution. Provisions on mining, environment, education, culture and healthcare rights are present in many of its articles and especially its eightieth

chapter ("on Indians") of the eightieth title ("on the social order") is dedicated entirely to their rights. One of the main innovations regarding Indigenous peoples of the 1988 Brazilian Federal Constitution, was the overcoming of the tutelary regime, at least from a legal point of view (LIMA, 2015). The Constitution no longer determined that the FUNAI represents Indigenous peoples legally. In consonance with the new Civil Code (Law nº 10.406) passed in 2001, Indigenous peoples are now recognized as full-fledged citizens that can represent themselves before courts and judicial trials, being advised by the Public Ministry.

The rhetoric of participation affected Indigenous policy. During the short presidency of Fernando Collor de Mello, the purview of health care and education of Indigenous peoples were transferred to the ministries with the adequate expertise to provide a better service to Indigenous peoples. Later, the experiences of participatory institutions of those policies would be relevant to the continuous learning of the bureaucratic machine of the state by the Indigenous peoples. The historical participatory orientation of the health policy is a well-known fact, as the realization of the 1º Indigenous Peoples Health National Conference in 1986 can certainly assure. Fernando Henrique Cardoso emphasized the importance of participation in programs such as the Pilot Program for the Protection of the Brazil's Tropical Forests – Group of 7 (*Programa Piloto de Proteção das Florestas Tropicais do Brasil- Grupo dos 7*, or simply PPG7). It was in this context that the so-called "participatory demarcations" arose, with the goal to make Indigenous participation less "figurative" (LIMA, 2015).

However, Lima (2015, p.444, translated by the author) affirms, during the years of the Cardoso administration,

> [….] the sense of participation was, little by little, changing. From a sense, eminently political and marked by the search for autonomy while dialoguing with governmental agencies, the *Indigenous participation* [in italics on the original] had been converting itself in presence with a more professional profile, bureaucratic and at times figurative, just one more engine on the staging of the democratic life.

This diagnostic had not changed fundamentally during the years of the Lula da Silva and Dilma Rousseff administrations. There were some important successes, such as the establishment of a National Commission for Indigenous Policy in 2006, that later came to be the National Council for Indigenous Policy. Moreover, the

National Conference on Indigenous School Education in 2009, and two conferences on Indigenous health policy (in 2006 and 2013) (AVRITZER, 2012; CUNHA, 2012).

However, this unprecedented bundle of rights dedicated to Brazilian Indigenous peoples does not guarantee its effectivity when it comes to being implemented and protected by the Brazilian state. In fact, during the period of the writing of this thesis, Indigenous peoples in Brazil remain among the poorest and marginalized groups, struggling to avoid the passing of deleterious legislation to their rights and managing to purchase their agenda in a context of institutional, cultural, social and political challenges[75]. Moreover, the land demarcation of Indigenous peoples has experienced a gradual slowdown since the first term of President Lula da Silva in 2003.

To conclude, an overview of the main legislation on Indigenous Peoples in Brazil from the period of conquest to the first decades of the twentieth-first century can be found in the Table 5 below:

Table 5: Brazilian Legislation on Indigenous Groups 1680 -1988

LEGISLATION	CONTENT
Royal Act (Alvará Régio) 1680	First acknowledged Indigenous peoples as legitimate occupants of their lands, the so-called *indigenato*
Missions Statute (Regimento das Missões) 1686	The concentration of Indigenous groups in reserves under Catholic orders administration
Indigenous Law (Diretório dos Índios) 1757	A series of legal provisions about schooling, official language of instruction, marriages, among others, with the aim to integrate the native to the colonial labor force and border defense
Royal Act (Carta Régia) 1808	Declared "vacant lands" the ones conquered as result of "fair wars" (*guerra justa*) against Indigenous groups
Land Act (Lei de Terras)	First regulated the land ownership in Brazil, reaffirming the *indigenato*, but making easier to declare Indigenous

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[75] As this chapter has been written in 2017, the Canadian newspaper The Globe and The Mail released a piece on the epidemy of suicide among the Guarani-Kaiowá people in Brazil(http://www.theglobeandmail.com/news/world/os-esquecidos-por-dentro-da-crise-de-suicidios-indigenas-no-brasil/article34321173/). At the institutional level, the Ministry of Justice, Osmar Serraglio, a well-known defender of agribusiness interests, declared that "land does not feed the belly of anyone", and for this reason the land demarcation process would be revised (http://www1.folha.uol.com.br/poder/2017/03/1865209-ministro-da-justica-critica-indios-e-diz-que-terra-nao-enche-barriga.shtml). Moreover, the FUNAI suffered a cut of 347 public servants, mainly in charge of analysing the impacts of huge infrastructural projects at the Amazon basin (http://www1.folha.uol.com.br/poder/2017/03/1870071-cortes-na-funai-atingem-setor-que-analisa-grandes-obras-na-amazonia.shtml).

1850	Lands vacant
Article 64 of the 1891 Federal Constitution	Transfer vacant lands to control of the states
Constitutional Amendment nº1 1969	Declared the Indigenous Lands Union's patrimony
Federal Law nº 6001 (Estatuto do Índio) 1973	The main legislation of the authoritarian regime disciplines all aspects of Indigenous life within the Brazilian borders
Article 231 of the 1988 Federal Constitution	Constitutional provision on Indigenous rights in contemporary Brazil

2.2. Brazil's demarcation of traditionally occupied lands policy

Indigenous lands (Terras Indígenas or "Tis", following its acronym in Portuguese) are portions of the national territory owned by the Union and inhabited by one or more indigenous groups. They use them for the development of their activities and cultural, material, symbolic and religious reproduction according to their uses, customs, and traditions.

In accordance with the Indian Statute, the TIs are classified in the following ways: 1) Traditionally Occupied Indigenous Lands; 2) Indigenous Reserves; 3) Domain Lands; 4) Restricted Areas. The *Conselho Indigenista Missionário* (2012) has monitored the process of regularization of Indigenous land tenure in Brazil since 1990, accounting for a total of 1045 of these territories (whether they are in a regular situation, in the process of regularization or simply claimed by Indigenous peoples, without any action being taken as the date of the report).

With regard to the absolute number and the average number of homologation of these territories in the post-dictatorial presidential mandates, the data available are: José Sarney homologated 67 Indigenous lands, with an average of 13 per mandate year; Fernando Collor de Melo 112, with an average of 56; Itamar Franco 18, with an average of 9; Fernando Henrique Cardoso 145, with an average of 18; Luiz Inácio Lula da Silva homologated 79 lands, with an average of 10; Dilma Rousseff, finally, approved in 2011-2012 a total of 10 lands, with an average of 05

per year. According to the mentioned report, 644 lands are awaiting the beginning or the end of the land regularization process.

The Figures 17 and 18 below shows respectively the number of demarcations per year between 1983 and 2013 and the size of the areas demarcated during the period following FUNAI's official data[76]. It is beyond the scope of this dissertation to explain the reasons that may explain the two big "cycles of demarcation" in Brazil in 1992 and 1998 and the decreasing number and size of recognized lands over the period. However, some conclusions may be worth drawing from the Figures.

First, the overall progression of the demarcations over time can be fairly described as being constantly low over time, a pattern broken by few moments where the government is more active. The outlier is the Collor government, when he demarcated not the greatest number of Tis ever, but also the largest ones. Except for this aberrant period, the Brazilian Indigenous Land Claims Policy has been effective, although inefficient.
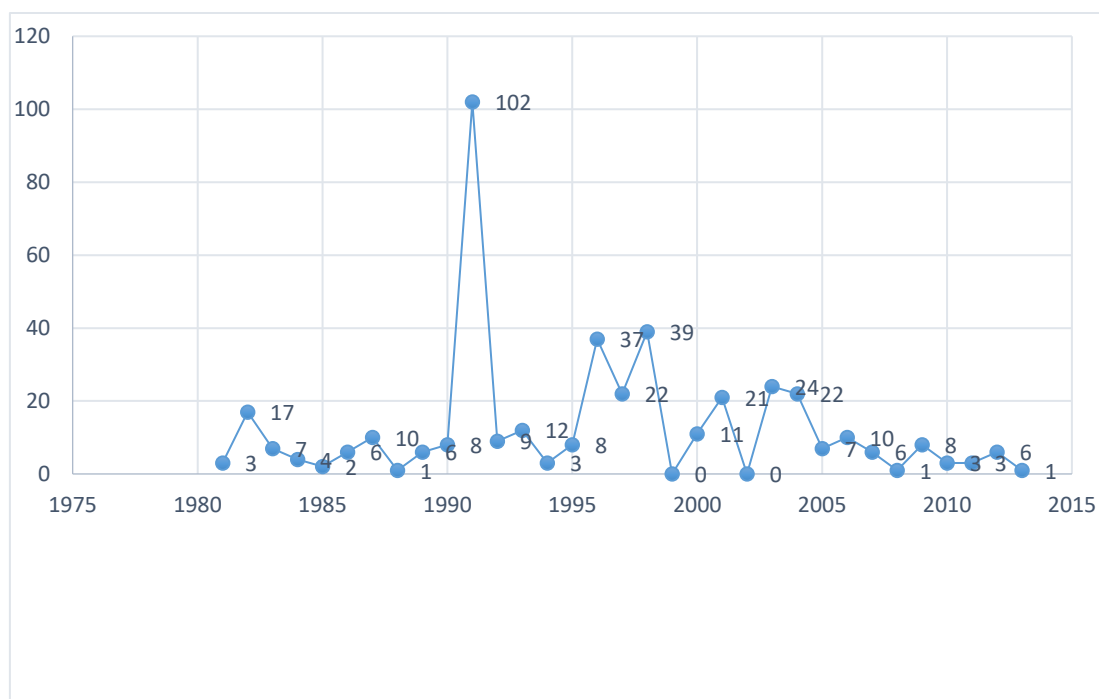
Figure 17: Number of Indigenous Lands Demarcations in Brazil per year between 1981-2013. Source : FUNAI, elaborated by the author.

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[76] This data was requested and obtained through the *Lei de Acesso à Informação* (Information Access Act, in a free translation).
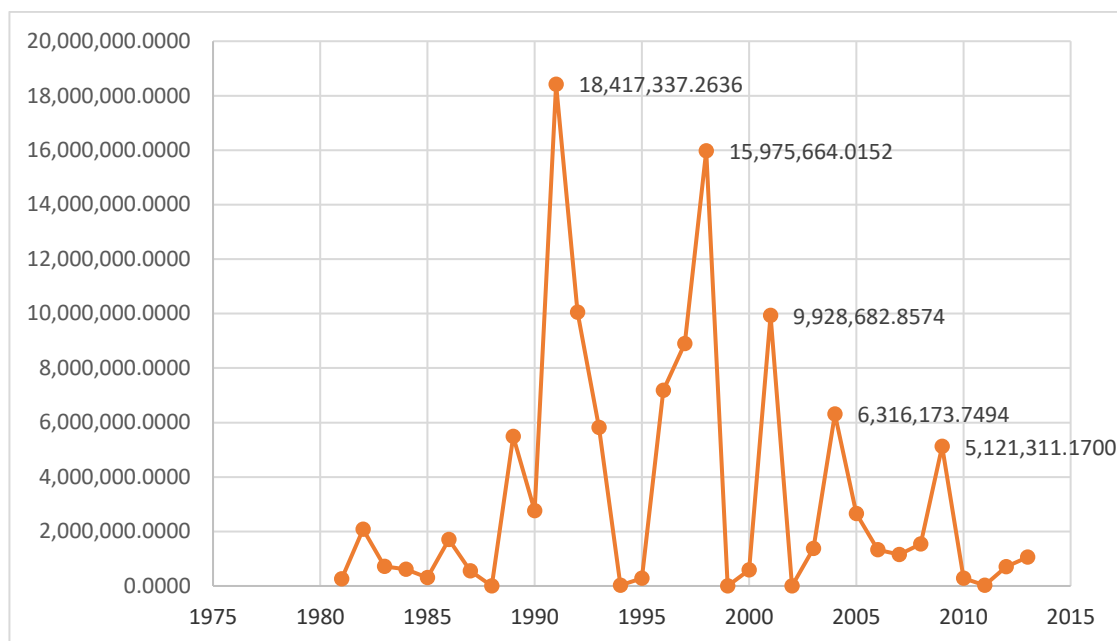
Figure 18: Size of demarcated Indigenous Lands in Brazil between 1981-2013. Source: FUNAI, elaborated by the author

Second, one of the reasons that may explain the low level of demarcations before 1991 is the relative dispersion of the legislation regarding the land claims process. Remember that the Federal Law 6001/1973 affirmed the existence of the Indigenous Lands in many categories and ruled that Indigenous groups were entitled to their traditional lands after the due process carried out by the FUNAI. This provision was only regulated by the Decree 76.999/1976. Subsequent legislation – notably the Decrees 88.118/1983 and 94.945/1987 were enacted to restrain the demarcation process, adding more stages to it and including more institutional actors with veto powers in the chain of events needed to conclude the demarcations.

The Decree 22/1991 brought clarity to the demarcation process, compiled the previous legislation, further described some legal dispositive and eliminated the existence of the "Grupão", considered an heritage of the military rule. Unsurprisingly, the number of demarcations after this enactment has risen enormously.

This general legal framework has slightly changed since 1991. A new decree, nº1775, was enacted in 1996 and has amalgamated all the rules in previous decrees into one single decree. An administrative act of the Ministry of Justice in 1996 has set out a clear guideline for the report elaboration by the workgroup. Without any revolutionary policy innovation or institutional device, both legislations kept all the

main provisions of the Decree 22/1991. The Table 6 and 7 below show respectively the legislation regarding land demarcations before and after 1991.

Table 6: Brazilian Land claims recognition process legislation before 1991

Decree 76.999 1976	Rules the administrative process of land claims recognition
Decree 88.118 1983	Introduces a Working group composed of several ministries and agencies in the administrative process of land claims recognition
Decree 94.945 1987	Rules the administrative process of land claims recognition including the possibility of re-examination of native lands, the recognition of lands on international borders and the inclusion of the National Security Council on the Workgroup

Source: Elaborated by the author

Table 7: Contemporary Brazilian land claims recognition process legislation after 1991

Decree 22 1991	Rules the administrative process of land claims recognition stating, for the first time, the requirement of Indigenous participation in all its stages
Decree 1775/ 1996	Rules the process of land claims recognition
Administrative Act of the Ministry of Justice nº 14 1996	Rules the formulation of the final report of the land claims recognition process

Source: Elaborated by the author

In the next session, we will understand how the legislation and its successive modifications over time have framed the stages of the Administrative Land Claim Process in Brazil over the last four decades.

Stages of the Administrative Land Claims Process in Brazil

The stages of the administrative native land claim demarcation in Brazil has not changed very much over the last four decades. It is composed basically of four steps[77], described below:

a) The working group formation: this provision, first introduced by decree nº 76.999/1976 and ratified by the following decrees, states that the FUNAI's president may start up the process by establishing a workgroup composed of "experts", comprising of an anthropologist and an engineer surveyor, but later, after the Decree 94.945/1987, opened to allow other officials to participate, mainly officials of state agencies related to land issues, if the FUNAI considered it necessary. According to this legislation, an official representing the General-Secretary of the National Security Council would be part of the working group if the land to be demarcated is situated near international borders, a provision inexistent on the 1991 legislation. After the latter, the group could invite other members of the scientific community to contribute to the report. This group is in charge of ensuring the antiquity of the Indigenous occupation in a particular area, collecting evidence from archaeological and anthropological research;

b) The field work and report writing: once in the field, the working group proceeds to gather as much information as possible about the Indigenous group. Description of the burial grounds, religious ceremonies, the number of men, women, elders and children, information about the economic activities and political structures, among others. In sum, the report must contain substantial information about the Indigenous group claimant. This report is the "technical" base upon which decision-makers will eventually rely on to make judgments and to push the process forward. The centrality of the "expert report" is a constant in Indigenous legislation since 1976 and is still in effect today;

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[77] The legal process actually consists of seven stages, as Baines (2014) notes, but we have opted to present them in a more concise fashion.

c) Report submission: the report made by the working group was supposed to be submitted only to the FUNAI's president in the decree nº 76.999/1976.After his approval, it would go directly for presidential approval. This lack of "intermediates" was "solved" by the provision introduced by the Decree 88.118/1983, when the report should be submitted to a workgroup composed of officials of the Ministry of Interior, Extraordinary Ministry for Land Regularization and the FUNAI itself. Only after approval by this group, the president could further analyze the process[78]. This control by a strong bureaucracy was further entrenched by the Decree 94.945/1987. This working group was composed of two representatives of the Ministry of Interior, one of which would be the group coordinator; and one representative of the Ministries of Agrarian Reform and Development, General-Secretary of the National Security Council, FUNAI, National Institute of Colonization and Agrarian Reform and state-level agencies related to the issue. Other members of government agencies could be invited to participate in a specific process. After the 1991's legislation, the aforementioned councils are no longer in effect, and the submission of the report is made first to the FUNAI's president, who then presents it to the Ministry of Justice.

d) Approval of the demarcation and homologation by presidential decree: the 1976's decree was clear in stating that, after the approval of the report by the FUNAI's president, the republic's president would confirm this fact through a homologation decree. Following this, there would be the registering of the land at the Union's Secretary of the Patrimony. This provision has not been changed by the decree of 1983. Notwithstanding, the 1987's decree has introduced the possibility of redrafting the expert report and thus starting off the process from the very beginning. The 1991's legislation kept this possibility but presented the possibility the re-examining the area to be demarcated to assure

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[78] The establishment of this Work Group, also known as "Grupão" (big group), was considered a disaster regarding the effectivity of the demarcation of Indigenous lands during the period of its existence. Oliveira Filho and Almeida (1984) are incisive on their judgement that it should be simply extinguished.

that it is enough for the social and economic reproduction of the Indigenous groups. The point is that the final stage of the land claims demarcation policy is the ratification of the entire process by the president and requires the appropriate administrative measures to register it.

The land claims recognition policy in Brazil has developed over the last thirty years without major shifts of course. Even though one could easily see the progressive complexification of the claims in a bureaucratic environment as more and more hostile, the general guidelines of this policy were somehow constant over time.

Not surprisingly, the policy has accumulated a substantial number of critics derived from the general perception that, although being able to accomplish some important goals, it is far from being satisfactory, for Indigenous groups, activists, national citizens and even for government agents.

Conclusion: The general trend of the Indigenous policy in Brazil

Although systematically disrespected, the legal provision of Indigenous rights over traditional lands appears in the Brazilian juridical landscape at least since 1609. The right of inalienable possession of lands is constitutionally protected since 1934 and repeatedly reinforced in all following constitutions (CUNHA, 2009).

We agree with Perrone-Moisés's (1992) perspective that it is important to overcome an interpretation of the colonial era as a period purely driven by colonizers, without considering the role played by Indigenous groups. The history of the strategies of resistance and adaptation to a new and hostile environment is yet to be told, considering that different Indigenous groups had different forms of interaction, and, consequently, reacted differently to the challenges they faced across the centuries. In other words, it is important to consider the active role of native groups during the process of colonization, without losing sight that, at the end of the day, the balance of power was undoubtedly pending towards the settler society or the colonizer.

One could straightforwardly say that there is a consensus among scholars that the tutelary power is at the core of the Indigenous policy in Brazil, meaning that despite the constitutional progress of the last thirty years, Indigenous peoples in

Brazil are still considered, in practice, wards of the state. In this sense, as Ramos (2012a, p.31, translated by the author) says,

> […] the Indigenous question, as a powerful spotlight, exposes the imperfections of the Brazilian ethos intimacy without the generosity of any makeup. If it is there any softness in the tutelary way the State treats citizens in general, it disappears when the subjects are Indigenous. The Indians are the prototype of the tutelary object by the State and by the nation.

The implications for this are that the debate about political autonomy and self-governance is blocked at the level of the Brazilian public sphere. The very fact that Indigenous groups in Brazil have opted to call themselves "peoples" – the major Brazilian Indigenous organizations is the *Articulação dos Povos Indígenas do Brasil* (Brazilian Indigenous Peoples Articulation) - instead of "nations" is telling about the complexities around the Indigenous issue in this country. Fears of separatism or the eventual "manipulation" of Indigenous groups by foreign powers to facilitate taking over the Amazonian forest are common sense during the twentieth century and beginning of the twenty-first (RAMOS, 1993; MARCHINI, 2011).

As we will see, the tutelary form of dealing with Indigenous groups is not a prerogative of the Brazilian state but, rather, seems to be a historical constant across distinct cultural and political contexts.

3. CHAPTER 3: LENGTHY, SLOW AND INEFFECTIVE: THE CASE OF THE BRAZILIAN NATIONAL PUBLIC POLICY CONFERENCE ON INDIGENOUS POLICY

> *The Federal Executive Branch must demarcate and immediately approve all Indigenous Lands, regardless of location and in what procedural stage it is, including those that are tabled at the Ministry of Justice, fulfilling, urgently, budgetary allocation in the Pluriannual Plan (PPA), human resources and meeting legal deadlines, all stages of the regularization process, from identification to the respective homologation decrees, promoting simultaneous disintrusion and providing clarification to the indigenous peoples on all phases of the process* (National Public Policy Conference on Indigenous Policy Final Report- Proposals Prioritized- Axis nº1 - proposal nº 3).[79]

3.1. Introduction

This chapter's goal is to investigate the NPPCIP in depth, using the variables proposed in the first chapter of this dissertation. Firstly, we provide a complete background of the participatory practices in place in Brazil during the years of the *Partido dos Trabalhadores* (Worker's Party, henceforth PT) at the presidency, with a focus to the ones related to various Indigenous policies. Secondly, we describe and discuss in detail the process of the NPPCIP itself. Finally, we discuss the potential of each variable to explain why the NPPCIP was not able to change any parameter of the Brazilian Indigenous policy, using mainly the insights and testimonies provided by our six interviewees.

3.2. From hope to despair: the Brazilian political context in the years before the NPPCIP

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[79] From the original in Portuguese: "*O Poder Executivo Federal deve demarcar e homologar imediatamente todas as Terras Indígenas, independentemente de localidade e em que estágio processual esteja, inclusive as que estão paradas no Ministério da Justiça, cumprindo, com celeridade e urgência, dotação orçamentária no Plano Plurianual (PPA), recursos humanos e observância dos prazos legais, todas as etapas do processo de regularização, desde os estudos de identificação até os respectivos decretos de homologação, promovendo desintrusão simultânea e prestando esclarecimentos aos povos indígenas sobre todas as fases do processo* (NPPCIP Final Report– Proposals Prioritized– Axis nº1 – proposal nº 3).

On January first, 2003, Luiz Inácio Lula da Silva took the presidential office in a peaceful transition from his predecessor, Fernando Henrique Cardoso. For the first time in Brazilian history, a man who was born in the country's Northeast and migrated to São Paulo to work as a blue collar worker at a heavy industry was elected to the highest office in Brazil. The leader of the powerful ABC's Metallurgic Workers Union and late founder of the *Partido dos Trabalhadores* came into power after the years of the neoliberal rule put in place by the sociologist and professor Cardoso since 1994. The eminent "prince of sociologists"[80] left the office after eight years of economic austerity, which balanced the country's fiscal policy and provided low inflation rates, at expenses of investments in infrastructure and elevated levels of unemployment and poverty.

Lula da Silva took office amid an atmosphere of hope. As an individual coming from a poor migrating family himself, he would be sympathetic to the harsh conditions of life in the country's poorest regions. One of the crucial points of his platform was the alleviation of the extreme poverty of significant parts of the population. In his own words, everyone should have the right to "have breakfast, lunch and dinner" everyday[81]. After his election, Lula da Silva conducted the first years of his first term keeping the conservative economic pillars of his predecessor, disproving fears that he would take radical measures. Boosted by the rise of the prices of commodities and after the forced renewed approach with social movements after the rocky political scandal known as "mensalão"[82], Lula da Silva was able to govern improving the general well-being of the low and middle classes without implementing any structural change to the Brazilian unequal society. Despite this "weak reformism" (SINGER, 2012), Lula da Silva had 80% of approval by the end of his second term as president and was able to elect his successor, Dilma Vana Rousseff.

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[80] "Prince of the sociologists" or simply "the prince" is the ironic nickname by which Cardoso is often cited in Brazilian newspapers, referring to his professorship at the *Universidade de São Paulo*, a renowned public university in Brazil.

[81] As stated in his presidential inauguration discourse, which can be read at https://www1.folha.uol.com.br/folha/brasil/ult96u44275.shtml (accessed on 06/07/2018).

[82]"Mensalão" is the nickname of the corruption scandal involving the alleged buying of congressional support by PT politicians in 2005. Each congressional representative would have been paid with monthly installments to vote under the guidance of the government's agenda at the time. For an interesting analysis of this scandal as the result of the tension between the institutional incentives to PT to maximize vote and the party's history, see Hunter (2007).

Rousseff's election was no less symbolic than the one of her predecessors. The first woman to hold the presidential office in Brazilian history, the young Rousseff took arms against the military rule in Brazil and was one of the leaders of the left-wing group VAR-PALMARES. She was arrested and spent three years under torture in military prisons between 1970 and 1972. After that, she became a public official and held several distinct positions in state-level governments before joining Lula da Silva's federal government in 2002. After 2005, she became the coordinator and supervisor of significant governmental policies such as *Luz Para Todos*, *Programa Minha Casa, Minha Vida* and the large pack of infrastructural investments called *Programa de Aceleração do Crescimento* (Growth Acceleration Program, mostly known by its acronym in Portuguese, "PAC")[83]. Largely considered by political actors as a "political outsider" and somebody with a "technical profile" rather than a "standard" politician, Rousseff was able to keep the general improvement of well-being of the population, despite the end of the commodities' "boom" and a much more prominent intervention in the economy. After the corruption scandal at the state-owned giant oil company Petrobras and successive mass protests in the streets calling for her removal from office, Rousseff was impeached by the Brazilian Congress in 2016, putting an end to fourteen years of PT's rule of the federal government in Brazil[84].

The contrasts between "creator" and "creature" became clear as soon as Rousseff's government took off in 2011. Whereas Lula da Silva was considered "lenient" with corruption in his government, Rousseff was "cleaning house"; while the

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[83] The *Luz Para Todos* program was implemented in 2003 with the goal of providing universal access to electric energy to Brazilian population, with special focus to the historically neglected countryside (BRINA, 2016); the *Minha casa, Minha vida* program, on the other hand, was a housing program implemented in 2009 with the goal of stimulating the job market after the 2008 global crisis through the incentives for buying houses by poor and middle class families (DUTRA; SOARES, 2016).

[84] The legality of Dilma Rousseff's impeachment is a contentious issue to date and the terms of this controversy is beyond the scope of this research. The highly polarized political atmosphere in Brazil at the time of this research casts suspicions of "political bias" to every researcher who tries to discuss the pros and cons of the leftist governments between 2003 and 2016. Frankly, the author of this research agrees with many prominent political analysts (see, among others, SINGER, 2018; SANTOS, 2017) who understands the impeachment trial against Dilma Rousseff as illegal and a "parliamentary coup". This proposition, however, should not give the researcher a "*laissez-passer*" to the analysis of PT governments, overlooking their problems and overestimating their accomplishments. Being aware of the impossibility of political neutrality of the research does not mean turning it into a piece of political advertising. Therefore, in this research we tried to make an assessment as clear and fair as possible of the PT's era of the federal government. We strongly encourage the reader to search for primary sources and books assessing the period. Beyond the works already referred, for an overtly positive assessment of Lula da Silva's first term, see Mercadante (2006); for a nuanced discussion of the entire period of the PT in power, see Singer (2012; 2018); for a conservative analysis of the Rousseff period, see Bolle (2016); for the analysis of the evangelical vote on the impeachment trial, see Prandi and Carneiro (2018).

former was the "universal mediator"[85] of the political disputes, the latter was the "manager" of the daily life of the government. The continuities were also evident, especially in the economic agenda. However, even there Rousseff's imprints were clear: whereas the state-led developmentalist formula was designed in Lula da Silva's second term, it was during the Rousseff years that this agenda became hegemonic, overriding traditional populations.

Furthermore, in sharp contrast to Lula da Silva's approach, the progressive distancing of Rousseff's government from the Indigenous social movement was followed by an aggressive approximation to representatives of agribusiness and prominent members of the ruralist caucus. Katia Abreu, one of its most outspoken members, became Minister of Agriculture in 2015 and was a tireless critic of the Indigenous peoples and their right to traditional lands[86]. When the impeachment trial against Rousseff started in 2015, the NPPCIP was seen as a decisive event to show political support and a timid but positive step towards reconciliation, unfortunately, a bit too late.

As bad as the record of the leftist governments towards Indigenous peoples, Indigenous policy, and land demarcation may be, as we have seen in the previous chapter, it does not mean that some critical policies were implemented in the period. To mention just the most prominent, the Indigenous Environmental and Territorial Management Project started in 2003 (*GATI- Projeto Gestão Ambiental e Territorial Indígena*) became the Indigenous Environmental and Territorial Management Policy (*PNGATI*) in 2012 after a broad process of consultations with Indigenous peoples around the country; the Ministry of Culture established the Indigenous Cultures Award (Prêmio Culturas Indígenas) and the Indigenous Pontos de Cultura in 2006 and 2009, respectively; the Ministry of Health established the Special Secretary for Indigenous Healthcare (*Secretaria Especial de Saúde Indígena*) in 2010.

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[85] I borrow this expression from Vladimir Safatle's piece "*Os impasses do lulismo*" (available at: https://www.cartacapital.com.br/politica/os-impasses-do-lulismo. Accessed on: 06/07/2018)

[86] In 2011, Abreu defended that "*Indigenous peoples have lands, what they need is social policies*" (available at: https://www1.folha.uol.com.br/fsp/mercado/me1106201127.htm. Accessed on: 06/07/2018); in her first interview after she became Minister of Agriculture, she infamously affirmed that "*there are no large rural properties in Brazil anymore*" and that the ruralist caucus only started to worry about Indigenous lands "*because Indigenous peoples left the jungle and came to productive lands*" (available at: https://www1.folha.uol.com.br/poder/2015/01/1570557-nao-existe-mais-latifundio-no-brasil-diz-nova-ministra-da-agricultura.shtml. Access in: 06/07/2018), a declaration that immediately sparked protest by Indigenous movement (available at: https://www1.folha.uol.com.br/poder/2015/01/1570935-katia-abreu-assume-ministerio-sob-criticas-de-indios-e-sem-terra.shtml. Access in: 06/07/2018).

In other words, Indigenous policy in Brazil is a political battlefield where advances and setbacks are part of the daily life of Indigenous peoples and policymakers, and no simplistic assessment is allowed. It is imperative to take a step back and highlight the importance of participatory politics to PT governments in democratic Brazil, with specific focus to Indigenous participation, to understand the emergence of this Conference in this complex context.

3.3. Participatory institutions and Indigenous peoples during the Workers' Party era in the federal government (2003-2016)

The Workers' Party history and governance practices are tied to the very idea of participatory politics and institutions in democratic Brazil. From the pathbreaking Participatory Budget in Porto Alegre and the first experiences with public policy councils at the local level back in the 1980's to the plurality of participatory experiences involving millions of citizens at the federal level between 2003 and 2016, the democratization of politics "*through the constitution of non-state public spheres[87]*" was at the core of the "PT's way of governing" (GENRO et al, 1997, p.8).

The numbers can easily confirm the strong participatory agenda of Lula's first (especially after the Mensalão scandal) and second terms. Nothing less than 74 National Public Policy Conferences and 16 National Policy Councils were organized between 2003 and 2010. Other participatory mechanisms, less studied by the national and international literature such as the Participatory Pluriannual Planning and the set up of Negotiation Tables, were also among the broad range of "society-state interfaces" designed and carried out by Lula da Silva's government (PIRES; VAZ, 2012; PIRES, 2013).

If we look for Indigenous institutional participation – meaning participation fundamentally into National Public Policies Councils and Conferences- during the Workers' Party governments, we conclude that Indigenous peoples were able to participate in a few of them. Firstly, Indigenous peoples had a seat at the Traditional People and Communities National Council[88], the national institution was designed to

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[87] From the original in Portuguese, "*Por Meio da Constituição de Esferas Públicas Não-estatais.*"
[88] http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decreto/d8750.htm (accessed on 17/01/18)

bring together at least one representative of each Brazilian Traditional People; they also had seats at the Womens Rights National Council[89]; at the Food and Nutritional Security National Council[90]; at the influential Health Policy National Council[91]; and, surprisingly, Indigenous peoples had seats at the Genetic Patrimony Management Council[92], meaning that their representatives were somehow involved in discussions about the research, use, and transmission of technology based on traditional knowledge about plants and animals living within Indigenous lands. However, the most significant participatory institution related to the Indigenous policy during the years of PT at the federal government was the establishment of the National Commission on Indigenous Policy in 2006, later renamed as National Council on Indigenous Policy in 2015[93].

Moreover, Indigenous peoples also had the opportunity to discuss Indigenous policy in a few National Conferences as well. Indigenous issues were part of the discussions of the four Human Rights National Conferences (in 2003, 2004, 2006 and 2008); the specificities of Indigenous educational policy were debated at the Indigenous Schooling Policy National Conference held in 2009; the two Racial Equality National Conferences (in 2005 and 2009) were also forums for discussion and to make proposals for a broad range of topics related to Indigenous peoples daily lives; the Ministry of Health summoned a specific National Conference to discuss Indigenous healthcare system, the Indigenous Healthcare National Conference in 2006; last but not least, the Indigenous Peoples National Conference, also held in 2006, was a unique experience of a National Conference dedicated entirely to the Brazilian Indigenous peoples in the country's history[94].

This historical account of participatory practices carried out by Lula da Silva, and Rousseff governments are valuable to show that the emergence of the NPPCIP

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[89] http://www.spm.gov.br/assuntos/conselho/composicao (accessed on 17/01/18)
[90] http://www4.planalto.gov.br/consea (accessed on 17/01/18).
[91] http://conselho.saude.gov.br/ (accessed on 17/01/18)
[92] http://www.mma.gov.br/patrimonio-genetico/conselho-de-gestao-do-patrimonio-genetico(accessed on 17/01/18)
[93] http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8593.htm (accessed on 17/01/18)
[94] It is beyond the scope of this dissertation to analyse in depth how effective Indigenous participation was in each one of these National Conferences and Councils. As we have pointed out several times in this dissertation, the lack of interest of Brazilian political scientists on Indigenous issues reflects on the virtual absence of studies about those participatory institutions. Therefore, the topic is still open to debate. The few exceptions can be found in the work of Pogrebinschi (2012), who have discussed the effectiveness of National Conferences dedicated to ethnic minorities; the work of Londero (2015), who discussed the Indigenous Peoples Council in the state of Rio Grande do Sul and; Palheta's book (2015) about the Indigenous participation in the design of the Indigenous Healthcare Policy System in Manaus, Brazil.

was part of a broader range of participatory experiences put in place by them between 2003 and 2016. Even though the participatory agenda was much weaker at Rousseff's government than at the two tenures of her predecessor, it does not mean that it was inexistent at all. We now turn to the specificities of this Conference, describing its features and outcomes.

3.4. First National Public Policy Conference on Indigenous Policy

The First NPPCIP was summoned by a presidential decree enacted on 24[th]July 2014[95]; NPPCIP's goals were: 1. To evaluate the Indigenous policy guidelines of the Brazilian state; 2. To acknowledge and reinforce the rights guaranteed to Indigenous peoples in the Constitution and; 3. To make proposals for consolidation and construction of the Indigenous national policy. Importantly, the decree established that the coordination of the Conferential process would be carried out by the Ministry of Justice and the top Brazilian agency to deal with Indigenous issues, the FUNAI.

The NPPCIP internal regulation describing its overall functioning and structure was approved by the Ministry of Justice Administrative Measure (*Portaria*) nº 916 on 8th July 2015[96]. The Administrative Measure set up include, but not limited to, many provisions: 1. The topic "*The Relationship of the Brazilian State with the Indigenous Peoples in Brazil under the 1988's Constitutional Paradigm*" as the broad theme of the Conference; 2. The thematic axis of the Conference, which were: a. Territoriality and the territorial rights of Indigenous peoples; b. Self-Determination, social participation and the right to consult; c. Sustainable development of lands and Indigenous peoples; d. Indigenous peoples individual and collective rights; e. cultural diversity and ethnic plurality in Brazil; f. The right to memory and truth.

Moreover, the Administrative measure put in place three instances of organization: 1. A National Commission; 2. 26 Regional Commissions and; 3. An Executive Commission. The first one was composed of 26 members (13 government officials, 11 Indigenous representatives and two members of Non-governmental

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[95]http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2014/Dsn/Dsn13951.htm (accessed on 15/01/18)
[96]http://www.funai.gov.br/arquivos/conteudo/seprol/2015/Sede/regimento.interno.cnpi.pdf (accessed on 15/01/17)

organizations) and was coordinated by the FUNAI's president. The last commission was composed of 20 members, half of them were officials from the Ministry of Justice, and the others were members of FUNAI. Lastly, the regional commissions would follow the same design of the national commission.

The first activity related to the NPPCIP was the *Seminário Nacional de Formação* (National Education Seminar), held in Brasília, with the goal of providing a common background to all members of regional and local commissions involved and ensure that all participants would be on the same page. In sum, this preparatory meeting was designed to reduce informational asymmetry among Indigenous peoples, public officials and other agents involved in the NPPCIP process.

In the sequence, the 142 NPPCIP local stages were carried out as small meetings held in Indigenous communities, without the presence of public officials and following Indigenous customs and traditional forms of organization. Those meetings selected the representatives who had participated in the 26 Regional Conferences held mostly but not exclusively, in the capital or middle-sized cities of the states[97]. In those moments, Indigenous peoples debated with local stakeholders and public officials, presented proposals and elected representatives to the national stage of the NPPCIP.

The national stage of the NPPCIP was held in Brasília with 1500 Indigenous participants coming from all regions and states of the country. Besides, public officials, members of the local, regional and national commissions, scholars, NGO representatives, observers and invited scholars. The proportion of representatives was 67% to Indigenous peoples, 30% to government agents and 3% to NGO members. Together, they elaborated a total of 868 proposals for six thematic groups, while simultaneously filtered them to obtain 216 proposals considered by Indigenous peoples as requiring "urgent" consideration by the federal government.

Table 9 summarizes the main features of the NPPCIP described above.

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[97]The resolutions n°2 and n°3 issued by the FUNAI on 4th September 2015 and 10th September 2015 stated the number of delegates elected in the regional conferences and their official schedule respectively. Regional conferences tookplace in Rio Branco (AC); Macapá (AP); Porto Velho (RO); Lago do Caracaranã (RR); Imperatriz (MA);São Gabriel da Cachoeira/Lábria/Tabatinga/Atalaia do Norte/Manaus (AM); Belém/Santarém/Altamira (PA); Maceió (AL);Salvador(BA); Fortaleza (CE); João Pessoa (PB); Recife (PE); Florianópolis (SC); São Paulo (SP); Governador Valadares (MG);Palmas (TO); Canarana/Cuiabá (MT); Campo Grande/ Dourados (MS).

Table 9: An overview of the National Public Policy Conference on Indigenous Policy

Local Conferences	142
Regional Conferences	26
Total of proposals (National stage)	868
Urgent proposals	216
Thematic axis	6
Indigenous participants (national stage)	1500

3.5. NPPCIP under the magnifying glass: Its methodological guidelines and main proposals

It would not be a stretch to affirm that, if applied, the proposals made by the NPPCIP participants would cause a revolution on the relationship between the Brazilian state, Indigenous peoples and Brazilian politics writ large. From the proposal of directing 0,5% of the GDP to fund Indigenous policy to the one asking for the revoking of the Amnesty Law to allow the prosecution of military men involved in Indigenous genocide, there is a range of claims which is worth closer investigation. Without analyzing the feasibility of such claims or even trying to be exhaustive, we now turn to core demands made by NPPCIP participants gathered in each of the Conference's axis.

The NPPCIP final report contained proposals which are generally broad, and only a few of them were detailed, making them harder to quantify, measure and evaluate. Moreover, proposals frequently repeated themselves in all topics under debate and often overlapped. Finally, proposals were aimed at the three branches of government, with a particular focus to the executive branch and to the FUNAI itself, mostly, however, beyond the coordinative capacity of the agency.

Needless to say, the "defensive" language of the proposals stands out. Most of them ask for "guaranteeing" rights, "enforcing" legislation already in place, "keeping" initiatives deemed successful and "respecting" constitutional provisions. It means that there is a set of rights and policy guidelines that Indigenous peoples feel

are under threat and, therefore, should be protected against the external influence of political actors.

Axis nº 1: Territoriality and the territorial rights of Indigenous peoples

The axis nº 1 is the one gathering most proposals strictly related to Indigenous land claims, land rights and land claims recognition policy and, therefore, constitutes a primary object of interest in the current research. We contend that the proposals revolve around three core issues: 1. Indigenous land claims policy; 2. Monitoring and ensuring public safety within and around Indigenous lands and; 3. Strategic occupation of the land.

In the first place, some proposals demanded the government to immediately demarcate all Indigenous lands in the country regardless of the stage of the process. There was particular attention to the situation of the voluntarily isolated Indigenous groups, which usually need immense tracts of demarcated land; other proposals claimed that the government failure to fulfill its constitutional duty to recognize Indigenous lands should incur monetary compensation to Indigenous peoples. Keywords in this context were expeditiousness and urgency regarding the demarcation of lands.

Regarding the Indigenous land claims policy itself, three proposals were worth mentioning: 1. The establishment of 0,5% of the country's GDP to fund Indigenous policy, buy lands and pay compensations in cash to displaced settlers living in good faith within Indigenous lands[98]; 2. To ensure the participation of Indigenous associations in the policy process[99] and; 3. The participation of the Brazilian federal police in all stages of the demarcation process to protect its agents from violent threats[100]. The general claim was, however, that the current policy should be carried out as quickly as possible without any political interference.

Secondly, proposals aimed to address the chronic problem of invasion of Indigenous lands by illegal miners, loggers, and individuals who try to seize parts of the Indigenous territory. Several propositions are related to deeds which would be

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[98] NPPCIP Final Report– Proposals Prioritized– Axis nº1 – proposal nº 6
[99] NPPCIP Final Report– Proposals Prioritized– Axis nº 1– proposal nº 4
[100] NPPCIP Final Report– Proposals Prioritized– Axis nº 1– proposal nº 8

able to avoid the threats against the integrity of Indigenous lands, such as the establishment of posts of observation along the limits of the territory[101]. There was also a proposal to confer FUNAI's agents the policing capacity[102]. It is clear from the text of the proposals that violence is part of the daily life of Indigenous peoples across the country and the NPPCIP should address the issue and propose solutions.

Finally, the strategic occupation of the Indigenous lands referred to proposals aimed at the access and effective control of often large portions of Indigenous territories. Proposals such as the prioritizing of regulatory processes regarding small runways within Indigenous lands addressed a critical aspect of Indigenous people's daily life because, in numerous remote communities, their only connection with the surroundings is by flight[103]. Moreover, it consisted of proposals petitioning basic public policies to be implemented within Indigenous territories providing, for instance, better access to schools and healthcare facilities. In sum, those demands related to Indigenous peoples desire to exercise their authority over the territories in in which they live effectively.

Axis nº 2: Self-Determination, social participation and the right to consult

The second axis discussed Indigenous participation and, along with the previous one, constituted the core of proposals related to the subject of the current dissertation.

Firstly, Indigenous participation in Brazilian political institutions and participatory institutions was among the most cited. Regarding the first one, there was a proposal to ensure Indigenous participation in the parliament by means of reservation of seats to Indigenous individuals[104]. On the other hand, proposals asked for the institution of participatory councils on Indigenous policy in all three levels of governments[105]. Finally, Indigenous peoples asked for participation in the drawing up

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[101] NPPCIP Final Report– Proposals Prioritized– Axis nº 1– proposal nº 14
[102] NPPCIP Final Report– Proposals Prioritized– Axis nº 1– proposal nº 24
[103] NPPCIP Final Report– Proposals Prioritized– Axis nº 1– proposal nº 21
[104] NPPCIP Final Report– Proposals Prioritized– Axis nº 2 – proposal nº 44;45
[105] NPPCIP Final Report– Proposals Prioritized– Axis nº 2– proposal nº 33

and implementing of policies of mitigation of the mining and massive infrastructural projects impact over the Indigenous lands environment[106].

Related to the issue of Indigenous participation in the Congress and Councils were the proposals pointing to the necessity of funding initiatives to help Indigenous peoples to be better able to participate meaningfully in such instances. In this sense, Indigenous peoples asked for proper funding for supporting Indigenous associations and political education. Keywords here were "supporting", "funding", and "strengthening" Indigenous participation.

It did stand out as a thought-provoking proposal the one asking for the formal governmental acknowledgment of the "self-demarcation" processes, meaning the processes through which Indigenous groups themselves carry out the stages of the demarcation policy[107]. The rationale for the claim is that if the government is not able to fulfill its constitutional duty to demarcate Indigenous lands, it should allow Indigenous peoples to do it.

Finally, there was a proposal regarding the right to free and informed consultation with Indigenous peoples. It asked for its full and immediate implementation and for the revision of all legislation affecting Indigenous peoples enacted without the proper consultation.

Axis nº 3: Sustainable development of lands and Indigenous peoples

Economic strategies to explore Indigenous lands in benefit of Indigenous communities and protective measures against harmful economic endeavors were among the chief concerns expressed by the NPPCIP participants.

NPPCIP participants demanded full and effective Indigenous participation in economic, social and environmental agendas of the regions where their Indigenous lands are located. There were proposals regarding the opening of lines of credit for financing community activities such as sustainable tourism, craftwork exporting, and fishing, among others[108]. It means that Indigenous peoples are aware of the

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[106]NPPCIP Final Report– Proposals Prioritized– Axis nº 2– proposals nº 27;60
[107]NPPCIP Final Report– Proposals Prioritized– Axis nº 2– proposal nº 37
[108]NPPCIP Final Report– Proposals Prioritized– Axis nº 3– proposal nº 72;77;80

importance of diversifying economic activities to improve well-being within Indigenous communities.

One of the proposals explicitly asked for simplification of the access to the financial resources of the *Fundo Amazônico* to fund those activities[109]. Participants also asked for the drafting and implementing of policies to facilitate access to water and small-scale farming.

Finally, a specific proposal asked for the regulation of the *agentes agroflorestais indígenas* (Indigenous Agri Forrestal Agents)[110]. In other words, Indigenous groups petitioned for the formal consideration of an activity that they already perform in the daily life of Indigenous communities – the protection of the woodlands within Indigenous lands.

Axis nº 4: Indigenous peoples individual and collective rights

The vocabulary of human rights was entirely incorporated by the proposals made by the participants at the NPPCIP. There were at least three main points of concern: 1. the access to official documents; 2. Legislation and public policies and; 3. Public awareness regarding Indigenous peoples, lands, and rights.

Furthermore, the access of official documents of the Brazilian government is probably not an issue to Brazilians living in urban centers. The scenario is entirely different when we talk about remote Indigenous communities at the heart of the country's territory. One proposal, for instance, specifically asks for an exception to Indigenous peoples regarding the electoral enrollment law[111]. To be entitled to have a "voters ID" (*título de eleitor[112]*), a male citizen above eighteen years old must be certified as having served in the military. The document that certifies the military service can be hard to obtain by an Indigenous individual and therefore his/her right to vote may be hindered. The same happens with other official documents, and one

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[109]NPPCIP Final Report– Proposals Prioritized– Axis nº 3– proposal nº 74

[110]NPPCIP Final Report– Proposals Prioritized– Axis nº 3– proposal nº 96

[111]NPPCIP Final Report– Proposals Prioritized– Axis nº4 – proposal nº 107

[112] The voting right is mandatory in Brazil and every adult citizen above eighteen years old must have a "voters Id" to be able to access the voting site and to cast the ballot.

proposal claimed for the use of documents provided by the FUNAI as subsidiary documents with official validity in the country[113].

In addition, in this axis, Indigenous peoples weighed in about legislation, administrative measures, and public policies. One proposal addressed the *Novo Estatuto do Índio* (New Indian Statute), which its passing in Congress has been stalled for years[114]; they also asked for specific legislation to deal with the specificities of Indigenous economic activities, cultural particularities of children and teenagers.

Regarding administrative measures, proposals asked for the institution of a human rights watchdog as part of the FUNAI[115]. The Foundation itself was mentioned several times as in need of restructuring and consolidation of the career of its public servants. One of the proposals went further to claim for the replacement of the FUNAI by a Ministry of Indigenous Affairs[116].

Moreover, a broad range of public policies was demanded through the NPPCIP. Most proposals addressed the importance of effectively implementing legislation and policy guidelines that were already in place, such as schooling, sanitation, healthcare, social assistance, among others. In sum, NPPCIP participants understood that the Conference was the moment where they could ask for the effective concretization of the bundle of rights assured to the Brazilian citizenship.

Finally, there were proposals regarding the importance of raising public awareness of the citizenry about the existence of Indigenous peoples in Brazil and their constitutional rights. The premise here was that Indigenous peoples are mostly unknown to much of the Brazilian urban population and therefore are subject to racism. The publication and circulation of booklets discussing such issues wereamong the proposals made by NPPCIP participants to address the issue[117].

Axis nº 5: Cultural diversity and ethnic plurality in Brazil

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[113]NPPCIP Final Report– Proposals Prioritized– Axis nº 4– proposal nº 112
[114]NPPCIP Final Report– Proposals Prioritized– Axis nº 4– proposal nº 108
[115]NPPCIP Final Report– Proposals Prioritized– Axis nº 4– proposal nº 115
[116]NPPCIP Final Report– Proposals Prioritized– Axis nº 4– proposal nº 130
[117]NPPCIP Final Report– Proposals Prioritized– Axis nº 4– proposal nº 163;164

Proposals regarding cultural policies aimed at Indigenous peoples were also among the concerns of the NPPCIP participants. Among the chief concerns were strategies to fight prejudice against Indigenous peoples and the funding of cultural initiatives designed to keep Indigenous traditions alive in the contemporary Brazilian society.

Several proposals demanded public campaigns to raise public awareness to improve people's understanding of cultural practices and epistemologies of Indigenous groups. It was also proposed the institution of Houses of Indigenous Culture in every country of the federation, with the goal to be a point of reference regarding Indigenous peoples to non-indigenous society[118].

Media strategies were also proposed at the NPPCIP. One of the proposals asked for the proper funding of initiatives designed to training Indigenous film-makers[119]. Moreover, specific media outlets and shows could be designed and implemented to contemplate Indigenous media products produced by the communities themselves.

Axis nº 6: The right to memory and truth

Finally, NPPCIP prioritized ten proposals related to issues regarding the human rights violations suffered by Indigenous peoples during the military dictatorship of 1964.

Surely, NPPCIP participants linked the human rights violation at the time to the larger picture of the violence suffered by Indigenous peoples daily in contemporary and past Brazil. Not surprisingly, one of the proposals asked for the institution of a national observatory of violence against Indigenous peoples, with the explicit goal of monitoring the ongoing violations of Indigenous rights[120].

Regarding the 1964-1985 military government, NPPCIP participants called for an Indigenous Truth and Memory National Commission to further investigate the violations of human rights perpetrated against them by military or paramilitary

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[118]NPPCIP Final Report– Proposals Prioritized– Axis nº 5– proposal nº 202
[119]NPPCIP Final Report– Proposals Prioritized– Axis nº 5– proposal nº 190
[120]NPPCIP Final Report– Proposals Prioritized– Axis nº 6– proposal nº 208

operatives[121]. They also asked for the revoking of the Amnesty Law to allow Brazilian justice to prosecute and convict the perpetrators of the Indigenous genocide during the military period[122]. Lastly, there was a proposal demanding the renaming of streets named after military men from the colonial and contemporary era who were involved in slaughters of Indigenous peoples[123].

Finally, it is worth noting that one of the proposals urged the immediate demarcation of Indigenous lands as a form of repairing the harms inflicted on Indigenous peoples by the military government, certainly an unusual way of framing the discussion regarding Indigenous lands in contemporary Brazil[124].

3.6. Exploring the variables of interest

After discussing the details of the NPPCIP and presenting its main proposals, we now turn to explore the variables of interest laid out in the first chapter of this dissertation. We were able to interview six high-ranked Brazilian government officials at the Ministry of Justice and FUNAI. Four of them were directly involved in the process, whereas two were only indirectly engaged. Still, given their long career involved with Indigenous policy in the country, they were able to provide a broader perspective of our object of interest.

As previously mentioned, all interviewees asked for total anonymity, which included not only no mentioning of their names under any circumstances, but also omitting sensitive information that could reveal their identity[125]. For this reason, some quotations were modified when we thought it would be needed to avoid identification, keeping other proper names when we thought otherwise.

Institutional design: NPPCIP lengthy, slow and ineffective process and the gap between the legal framework and the daily life of the Indigenous policy

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[121]NPPCIP Final Report– Proposals Prioritized– Axis nº 6– proposal nº 206

[122]NPPCIP Final Report– Proposals Prioritized– Axis nº 6– proposal nº 209

[123]NPPCIP Final Report– Proposals Prioritized– Axis nº 6– proposal nº 212

[124]NPPCIP Final Report– Proposals Prioritized– Axis nº 6– proposal nº 216

[125] The interviewees were designated by the letter "E" (which stands for "*entrevistado*") followed by a cardinal number from one to six.

Our interviewees provided a colorful assessment of the NPPCIP, placing it in the context of other participatory institutions carried out during the Lula da Silva and Dilma Rousseff's governments. Importantly, the sharp contrast between both governments was constant through all interviews and, in some sense, structured the whole narrative brought by our informants in every variable explored.

In the first place, there was a spread perception that Lula da Silva's government and the sitting president were more open to dialogue with Indigenous peoples than Dilma Rousseff, establishing participatory channels through which Indigenous groups could voice their concerns and proposals into the government. E1: firstly, analyzed the very resurgence of Indigenous groups in Brazilian Northeast as caused by the overall feeling of protection brought to government by Lula da Silva: "*As reported by the natives: my ancestors lived on a land, it was taken, it was ruined, they were killed, and some descendants left. So as not to be killed - very common in the Northeast - they hid that they were Indigenous. Under Lula's government, they decided to take it back, because they felt protected.*[126]". E3, for instance, went further and understood that "*Lula's government played a fundamental role in intensifying the processes of creating councils, and also of strengthening these participatory bodies, I think a lot of things went very well during Lula's government in relation to this theme*[127]". E5 concluded that "*Lula's government was strongly characterized by the proximity between Indigenous peoples and the executive branch* [128]."

This political proximity between Lula da Silva's government and Indigenous peoples was materialized through a plethora of participatory processes and institutions. Our interviewees remembered some of them. E4, for instance, affirmed that the consultation process carried out to design the PNGATI was "*an exemplary process of social participation*[129]", taking three years of discussions and debates with Indigenous groups across the country. Given the fact that this process started during

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[126] From the original in Portuguese: "*o que os indígenas colocam: os meus antepassados viveram em cima de uma terra, ela foi tomada, ela foi esbulhada, eles foram mortos, e sobrou algum descendente. Para não serem mortos- no Nordeste é muito comum- eles esconderam que eram índios. Com o governo Lula, eles resolveram se assumir de volta, porque se sentiram protegidos*".

[127] From the original in Portuguese :"*o governo Lula teve um papel fundamental na intensificação dos processos de criação de conselhos, e de também de fortalecimento, dessas instâncias participativas, eu acho que muita coisa andou muito bem durante o governo Lula em relação a esse tema.*"

[128] From the original in Portuguese: "*o governo Lula, ele se caracterizou muito por essa aproximação dos indígenas com o executivo*".

[129] From the original in Portuguese: "*um processo exemplar de participação social*".

the second term of Lula da Silva and concluded during Rousseff's first term, though, our informant was able to note the political differences between the two governments. In his/her words:

> An inter-ministerial working group, formed by civil society, indigenous organizations and government bodies, was setup to prepare the first seminars, the first discussions, to be accumulated before going to the consultations, were consulted in all regions . Then, there was a one year process of this group for systematization, then validation, always dialoguing with the CNPI, until the process format arrived. This process took three more years, until a draft decree was reached. Then, was agreed on by the government and the movement rose to the instances. This is one of the instances where participation, in fact ... and there we are already in Dilma's government again. And it takes time to issue a decree, we have to make a set of clashes within the government to negotiate the text that is presented, it is not the result of this participatory process, which is what was approved by the decree.[130]

He/she also mentioned the participatory planning put in place by the FUNAI's regional agencies with the goal of involving local stakeholders and Indigenous communities into the policy design at a local level. It was an example of how the FUNAI under Lula da Silva was trying to enforce a sort of "participatory ethos" into the institution. Finally, E5 also mentioned the consultation process regarding the draft of the New Indian Statute as an example of a process where Indigenous groups were able to make their voices heard by the central government. E1 recalled the process in the same terms as E5: "*There were ten seminars across the country, the commission brought together indigenous communities, discussing what kind of advice we wanted and what kind of status. The Substitute Statute. The commission*

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[130] From the original in Portuguese: "*Foi criado um grupo de trabalho inter-ministerial, formado pela sociedade civil, pelas organizações indígenas e órgãos do governo, que começou a preparar os primeiros seminários, as primeiras discussões, a acumular antes de ir para as consultas, foram consultas em todas as regiões. Então teve o processo de um ano desse grupo para sistematização, depois validação juntos, sempre dialogando com o CNPI, até chegar o formato do processo. Esse processo foram três anos para mais, até chegar a uma minuta do decreto que fosse pactuada pelo governo e pelo movimento e subir para as instâncias. Isso é uma das instâncias em que a participação, de fato...e aí já estamos no governo Dilma novamente. E aí demora para sair um decreto, a gente tem que fazer um conjunto de embates para dentro do governo para conseguir negociar o texto que é apresentado, não é, fruto desseprocesso participativo, que é o que foi aprovado pelo decreto.*"

had direct contact, discussed and held large seminars. In each one we would get 200, 400 leaders and spend a week discussing it. Then, they created a bill that would be a way to replace the statute that is there and how they wanted the council[131]*"*.

The key participatory institution to understand Lula da Silva's politics towards Indigenous groups is, however, the NCOMIP created in 2006. E1 explained the process:

> It started as a commission. Back in 2007, when they thought about starting the council, the natives themselves decided that they did not want an advisory council, they wanted a deliberative council. To be deliberative, it has to be approved at the congress. Do not pass. An indigenous council would take a lot of time to go through Congress, as it has been there since 2008 and to this day. So the indigenous representation itself, at the time, was not the APIB, the articulation of the indigenous peoples of Brazil, decided, together, that they wanted to be deliberative by congress. So as not to waste time, not to lose space, then there should be a national commission that already began to discuss and when to proceed in Congress.[132]

In this informant's point of view, "*there was a good dialogue between the government and the comission"*[133]. E4, in turn, talked about that institution, affirmed that "*The NCOMIP worked well for fair amount of time, specially during Lula's government, it functioned well, it was empowered within the government*"[134]. He/she went on saying that this participatory channel "*was indeed an instance of deal making, articulation of public policies and later, during Dilma's government, it was*

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[131] From the original in Portuguese: "*foram dez seminários em todo o país, a comissão, pelo país inteiro, reunindo as comunidades indígenas, discutindo que tipo de conselho nós queríamos, que tipo de estatuto. O Estatuto substitutivo. A comissão teve esse contato direto, discutiu, fizemos grandes seminários. Em cada um a gente pegava 200, 400 lideranças e passava uma semana discutindo sobre isso. E aí então se criou um projeto de lei que seria uma forma de substituir o estatuto que está lá e como eles queriam o conselho".*

[132] From the original in Portuguese: "*Começou como uma comissão. Lá em 2007, quando se pensou em começar o conselho, os próprios indígenas decidiram que eles não queriam um conselho consultivo, eles queriam um conselho deliberativo. Para ser deliberativo, tem que ser aprovado no congresso. Não passa. Um conselho indígena levaria muito tempo para ficar tramitando no congresso, como de fato está lá desde 2008 e até hoje. Então a própria representação indígena, na época não era a APIB, a articulação dos povos indígenas do Brasil, decidiram, em conjunto, que eles queriam então ser deliberativos pelo congresso. Para não perder tempo, não perder espaço, então que se criasse uma comissão nacional que já começasse a discutir junto e quando tramitasse no congresso.*"

[133] From the original in Portuguese: "*havia um diálogo bom entre governo e comissão".*

[134] From the original in Portuguese: "*a CNPI funcionou durante um bom período, principalmente no governo Lula, ela funcionou bem, era empoderada para dentro do governo*".

completely emptied[135]". Before that, though, the NCOMIP was the most important institutional forum to connect Indigenous peoples and policy makers within the Brazilian state. As E5 puts it,

> With the creation of the commission, an instance of participation was created that never really existed in that dimension. So you have a joint commission with indigenous people who were chosen in all regions of the country, there was a whole process of internal election of these representatives, and also with the representatives of government, all the organs that had policies directed specifically for the indigenous peoples. So, it was a moment when they really began to take ownership of this forum and to have the opportunity to be face to face with the public agents who execute, who propose the policies.[136]

It is important to note, however, that not all our informants agreed with this assessment. Consider the critical stance on participatory institutions made by E2. In his/her words,

> The council was approved to ratify government policies. Who ever confronted Lula? The [INDIGENOUS LEADER]. He said, 'Lula, you can't build Belo Monte,' Lula said, 'That's not up to me,' and the [INDIGENOUS LEADER] said, 'I want to talk to your boss, because 'I'm a boss! Who's your boss? I control my village, who is in charge of you? 'He was confronted at the Indigenous Policy Council! For it was created to approve government policies, like so many councils, these councils of the PT, which was to pretend that you were opening [the government to popular participation].[137]

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[135] From the original in Portuguese: "*de fato, era uma instância de pactuação, de articulação de políticas públicas, e depois, ao longo do governo Dilma, ela foi completamente esvaziada*".

[136] From the original in Portuguese: "*Com a criação da comissão, foi criada assim uma instância de participação que nunca houve, realmente, naquela dimensão. Então você tem ali uma comissão paritária com indígenas que foram escolhidos em todas as regiões do país, houve todo um processo de escolha interna desses representantes, e também com os representantes de governo, todos os órgãos que tinham políticas voltadas especificamente para os povos indígenas. Então, assim, foi um momento em que realmente eles começaram a se apropriar desse espaço e a ter a oportunidade de estar frente a frente com os agentes públicos que executam, que propõem as políticas*".

[137] From the original in Portuguese: "*o conselho foi aprovado para aprovar as políticas do governo. Quem é que confrontou o Lula uma vez? O [INDIGENOUS LEADER]. Ele falou, 'Lula, não dá pra sair Belo Monte'', aí o*

Despite the criticisms, it was the NCOMIP that articulated and promoted the National Conference on Indigenous Peoples in 2006, the first National Conference entirely dedicated and organized by Indigenous peoples in Brazilian history. As E2 recalls, "*This was a claim of the natives many always wanted to do. And the idea was precisely to discuss formation of this new Brazil that has become with the arrival of Lula*[138]". He/she goes on affirming that the process was "wonderful" with more than a thousand participants. E3 concurs with this positive perception, saying that "*2006 was a conference that the Indigenous kind of pulled together themselves and organized it together with FUNAI, they usually reaffirm this, that 2006 was a movement so much of them had gotten that floor to hold a conference*[139] ". He/she concluded, however, that the conference "*did not have political weight. You would be there constituting a participatory space where the majority was Indigenous, in a dialogue among themselves, with little weight of participation and representation of the government*[140]". In sum, this conference played more of a symbolical role of asserting Indigenous participation within the Brazilian government rather than effectively changing policy parameters.

Nine years after the National Conference on Indigenous Peoples the political landscape changed drastically, and Indigenous leaders with a seat at the NCOMIP table started to mobilize for a new conference. As E3 recalls, "*within the commission, of the NCOMIP, then was a commission, there was a super strong demand to call the conference, it was gaining shape, it was growing at the same time and extent as those antiindigenous offensives were becoming stronger*[141]". Those "anti-indigenous offensives" were carried out not only by the ruralist caucus but also by the Rousseff

government itself, casting doubts about the real goals of the policy towards Indigenous peoples[142].

E3 went on and affirmed that "*they [Indigenous peoples] wanted to discuss it at an instance where they could really decide definitively what would be the Indigenous policy of the government. They wanted the government to say it there, face-to-face. To their understanding, the proper space to do this pact would be the conference*[143]".

E5 recalls this process, emphasizing the protagonism of Indigenous peoples during the whole process of organizing the NPPCIP. In his/her words,

> They were very involved in the whole process, because from the outset it was at the 24th meeting of the commission that it was announced that the decree had already been published, and at the meeting it was really decided that there would be a conference. From there they chose the representatives who would be part of the organizing committee and at all times it was made possible for them to come to Brasilia, to remain here for as long as it took to participate in the process of organizing the conference. Thus, FUNAI, throughout this process, and even the Ministry of Justice, let this protagonism be more indigenous because from the beginning the biggest claim of them was a conference of them, thought by them [...]. So basically, it was ... the natives on the organizing committee saying how they wanted the conference, what they wanted from the conference to the methodology, they all got the word, what they wanted it to be.[144]

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[142] Our interviewees mentioned specifically Gleisi Hoffmann, then head of the Ministry of Interior, as particularly devoted to questioning FUNAI's technical competence to demarcate Indigenous land and therefore reinforcing the political undermining of the agency.

[143] From the original in Portuguese: "*eles* [Indigenous peoples] *queriam discutir isso numa instância em que eles pudessem, realmente, sacramentar o que seria a política indigenista do governo. Eles queriam que o governo dissesse isso ali, olho no olho. Isso para eles, no entender deles, o espaço propício para essa pactuação seria a conferência*".

[144] From the original in Portuguese: "*eles foram muito protagonistas em todo o processo, por quê desde o início então, foi na 24° reunião da comissão que foi comunicado que já havia sido publicado o decreto, e na reunião ficou realmente decidido que haveria uma conferência. Dali eles tiraram os representantes que iriam integrar a comissão organizadora e em todo momento foi viabilizado para eles virem para Brasília, permanecer aqui o período que fosse necessário para participar do processo de organização da conferência.[...], a comissão, na verdade assim, a FUNAI, em todo esse processo, e até o Ministério da Justiça, deixou que esse protagonismo fosse mais indígena por quê desde o início a reivindicação maior deles é que fosse uma conferência deles, pensada por eles [...]. Então basicamente era [...] os indígenas na comissão organizadora dizendo como eles*

Contrast this positive perception with the nuanced one proposed by E3. He/she initially appears to agree with E5's assessment of the process, saying that "*commissions were setup, so that we could discuss what the conference would be like, think about a format, then the government would give in, 'ah, so let's put some people on the indigenous policy committee to help think about a conference model*[145]". Subsequently though, E3 denounces that the government acted actively to undermine the process, either by commissioning officials that were not able to take decisions, or by trying to restrict the budget for the Conference. In his/ her own words, "*the government was there with these people who represented ministries and such, to prevent the conference from being held or to allow it to happen as a front, but that it did not have an effective result*[146]".

When the NPPCIP finally took place in early 2016, Dilma Rousseff attended the meeting, still following E3 testimony, "*in a moment of fragility where there was an orientation for the president to re-dialogue with the movements, since this was never really a mark of Dilma's government, the relationship with social movements*[147]". E5 reinforces this perception, arguing that "*the first indigenous policy conference - I believe, my opinion - is that it has already become more like - so much so that it was already at the end, when there was the impeachment controversy - then, it was even an attempt to have support, a gesture of support, to seek support*[148]".

The NPPCIP is better understood as part of a set of participatory processes put in place especially by Lula da Silva's government after 2006 that were severely undermined during Rousseff's government. Despite the Indigenous protagonism in the design of the conference, it was not able to fully circumvent the political game played by Rousseff's officials. At the end, the NPPCIP served more as an instrument

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queriam que fosse a conferência, porquê desde a logomarca da conferência até a metodologia, tudo eles tinham a palavra, como que eles queriam que fosse".

[145] From the original in Portuguese: "*se montaram comissões, para poder discutir como é que seria a conferência, pensar um formato, então o governo cedeu nisso, 'ah, então vamos colocar aí algumas pessoas que participam da comissão de política indigenista para ajudar a pensar o modelo de conferência*'".

[146] From the original in Portuguese: "*o governo estava ali com essas pessoas que representavam ministérios e tal, para impedir a realização da conferência ou para permitir que ela acontecesse de fachada, mas que ela não tivesse um resultado efetivo*".

[147] From the original in Portuguese: *num momento de fragilidade onde havia uma orientação para que a presidenta voltasse a dialogar com os movimentos, por que isso nunca foi realmente uma marca do governo Dilma, essa relação com os movimentos sociais*".

[148] From the original in Portuguese: "*a primeira conferência de política indigenista – eu acredito, a minha opinião- é que ela já veio mais como – tanto é que já foi no final, quando estava toda aquela questão do impeachment – então foi até mesmo uma tentativa de ter apoio, um gesto de apoio, de buscar um apoio*"

to show political support for the president in a very politically sensitive moment rather than an effective institutional device to input Indigenous voices into the government. Not even the fact that Rousseff signed a decree during the conference transforming the National Comission on Indigenous Policy into a National Council could count as a political gesture towards Indigenous groups. As E3 remembers,

> In the end the government announces the creation of the national council of indigenous politics, then, with the speech of the president announced, hence when they were to take notice of the terms of the decree - when she speaks the decree is not yet published - the next day it was published , the conference was still going on - when they get out they take notice of the text and say 'wait, but this council here is not the one we discussed, the council we set out', and here comes very belligerent speeches, they felt deceived, many people from the indigenous movement said this to me, 'Look, we felt betrayed, she came here, she made a speech, and today what is in the decree is something that does not suit us, we do not have any power in this council, it is a fassade'[149].

In sum, after years of disregarding Indigenous peoples by not establishing direct channels of communication with Indigenous leaders and promoting a destructive economic policy threatening Indigenous traditional lands, Rousseff signed legislation that was not debated by the Indigenous representatives at the National Council on Indigenous Policy. E1 explained it: "*we negotiated with the Indigenous not to take the risk to have them waiting much more for the congress to decide if the council would be set up or not, for her to sign a decree. And the council by decree [inaudible] the Ministry of Interior did not allow to be deliberative, only advisory[150]*".

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[149] From the original in Portuguese: "*no final o governo anuncia então a criação do conselho nacional de política indigenista, então com a fala da presidenta anunciado, daí quando eles foram tomar conhecimento dos termos do decreto – quando ela fala o decreto ainda não está publicado – no dia seguinte ele sai publicado, a conferência ainda estava acontecendo – quando sai eles tomam conhecimento do texto e dizem 'poxa, mas esse conselho aqui não é o conselho que a gente discutiu, o conselho que a gente pautou', e aí vem falas muito aguerridas, eles se sentiram enganados, assim, muitas pessoas do movimento indígena falaram isso para mim, 'olha, a gente se sentiu traído, ela veio aqui, fez uma fala, e hoje o que está no decreto é uma coisa que não atende a gente, a gente não tem poder nenhum nesse conselho, é uma coisa de fachada'*".

[150] From the original in Portuguese: *a gente negociou com os indígenas que para não arriscarmos de eles ficarem muito mais tempo e esperar o congresso decidir o conselho sai ou não sai, que ela assinasse um decreto. E o conselho por decreto [inaudível] a casa civil não permitiu que ela assinasse da forma deliberativa, só consultiva*".

Again, the Ministry of Interior seemed to play an essential role in undermining political negotiations related to Indigenous peoples.

In sum, we cannot affirm that the NPPCIP was a total political disaster only because it had at least one positive outcome: the whole process of the local and regional stages of the conference served as a moment where Indigenous leaders were able to discuss with their own communities' issues that they discuss at the federal level. Quoting E5,

> The conference was seen as a victory, an opportunity in which they could also take the commission's proposals to the villages. It's one thing for you to have some representatives who periodically came to Brasilia and who also had no recourse to do a job at the base. They resented much of this, that they came here, but they were not able to carry out a regional work, to bring information about what they were dealing with ... At the same time, they had a forum to participate here in Brasília, there was no recourse for them to do basic work, to take these issues and to give feedback to these communities. So, even though they considered the CNPI a very big achievement, here, when they came, it had a very large dimension, they could not project it there. So, the conferences, the national conference, preceded by local and regional stages was a very great opportunity for them, to also bring that discussion there, to show, to approach the villages, and even to legitimize themselves as representatives. Then it was considered a very great achievement, there were many local stages, then from there, from the villages, to the regions, the regional and national stages.[151]

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[151] From the original in Portuguese: "*a conferência foi tida como uma vitória, uma oportunidade em que eles puderam também levar o trabalho da comissão para as aldeias. Por quê uma coisa era você ter alguns representantes que periodicamente vinham para Brasília e que também não tinham recurso para realizar um trabalho na base. Eles se ressentiam muito disso, de que eles vinham para cá, mas eles não tinham condições de realizar um trabalho regional, de levar a informação sobre o que eles estavam tratando...Ao mesmo tempo em que eles tinham esse espaço para participar aqui em Brasília, não existia recurso para eles fazerem um trabalho de base, de levar essas questões e dar uma devolutiva para essas comunidades. Então, apesar de que eles consideravam a CNPI uma conquista muito grande, aqui, quando eles vinham, tinha uma dimensão muito grande, eles não conseguiam fazer isso se refletir lá. Então as conferências, a conferência nacional, precedida de etapas locais e regionais foi uma oportunidade para eles muito grande para eles, de também levar essa discussão para lá, mostrar, aproximar as aldeias, e até mesmo se legitimarem como representantes. Então foi considerado uma conquista muito grande, foram muitas etapas locais, então desde lá, das aldeias, até as regiões, as etapas regionais e a nacional*".

Concluding, the investigation of the NPPCIP institutional design did reflect the complexities of analyzing a participatory institution immersed in a contentious political environment. Whereas the participatory institutions were part of the "PT's way of governing," we could observe two very distinct approaches towards participation by the governments of the same party. Moreover, the fact that Indigenous peoples were involved in the NPPCIP design did not guarantee its effectiveness and political empowerment. In other words, looking for reasons for the success or failure of participatory initiatives focusing only on institutional design can be frustrating, and the analyst should always consider the broader context where a particular participatory experience plays out.

Our interviewees rarely mentioned the constitutional framework related to Indigenous rights as a critical variable to understand indigenous land claims policy functioning. When they did it, it was only to highlight that, despite its advances; it does not affect the daily life of the policy. Constitutional articles pointing to the overcoming of the traditional way of seeing Indigenous peoples as relatively incapable of living in mainstream society do not live up to the practical experiences of the policy agents.

Consider the broad historical analysis of the relationship between the Brazilian state and Indigenous peoples and the role played by the 1988's Constitution made by informant E3:

> What is the historical relationship between the state and indigenous peoples? There was an SPI, which was a military body that served to pacify and acculturate indigenous people, then created a FUNAI that inherits all this ideological liability, the servers, the body of work itself, a whole conception of the state with the indigenous peoples when you create the FUNAI that comes from this history of military relation. So, what is it that changes, where does this relationship begin to change? It is within the framework of the Constitution of 1988, which reads as follows: 'The indigenous are autonomous, FUNAI is the central organ within the indigenous policy, but FUNAI does not mandate, does not have tutelage, there is self-determination, you have a state policy more, say, more incisive and protective, that ends up being attached to the protection of isolated Indians and recent contact, that where you have an action, so to say, more fiscalized, but

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in other things you have an institutional political paradigm that tells you that 'the state must foster and contribute to the indigenous being able to exercise that autonomy, that self-determination'. So, in legal terms, you have it. This has been slowly applied and transformed into concrete actions since 1988, but it is still not a reality, you have fields of relation within FUNAI itself, sometimes in regional coordinations, which comes with a history of having an older body of workers, still has an extremely tutelary vision regarding the communities with whom they deal and work daily, so this change that the 1988 constitution brings, it still, in my opinion, is not yet implemented[152].

E4, in turn, touches this gap between the constitutional framework and the concrete Indigenous policy guidelines during his/her tenure as a high-level official. At the time, he/she proposed the FUNAI's institutional reform to adequate its provisions to the constitutional ones. Its goal was the "*updating FUNAI in relation to the norms of the 1988 constitution, [...] where you had a greater autonomy of indigenous peoples, wouldn't cause any feeling of rancidness toward FUNAI guardianship, speaking for the Indigenous[153]*". The reform, however, was met with skeptcism because "*talk about the end of the tutelage provokes fear of falling into an empty hole and that means the absence of the state[154]*".

E4 provided a unique insight into how this cognitive dissonance between the Constitutional "spirit" of considering Indigenous peoples political protagonists and the

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[152] From the original in Portuguese: "*Como que é a relação do histórico da relação do estado com os povos indígenas? Você tinha um SPI, que era um órgão militar, que servia para pacificar e aculturar indígenas, depois cria uma FUNAI que herda todo esse passivo ideológico, os servidores, o próprio corpo de trabalho, toda uma concepção do estado com os povos indígenas quando você cria a FUNAI que vem desse histórico de relação militar. E aí, o que é que muda, onde é que essa relação começa a mudar? É com o marco da Constituição de 1988, que diz o seguinte: 'os indígenas são autônomos, a FUNAI é o órgão central dentro da política indigenista, mas a FUNAI não manda, não tutela, existe autodeterminação, existe capacidade de auto representação', você tem uma política de estado mais, digamos assim, mais incisiva e protetiva, que acaba ficando adstrita a proteção dos índios isolados e de recente contato, que onde você tem uma ação, digamos assim, mais fiscalizatória, mas nas outras coisas você passa a ter um paradigma político institucional que te diz o seguinte 'o estado deve fomentar e contribuir para que o indígena possa exercer essa autonomia, essa autodeterminação'. Então, no plano jurídico, você tem isso. Isso vem sendo lentamente aplicado e transformado em ações concretas desde 1988, mas ainda não é uma realidade, você tem campos de relação dentro da própria FUNAI, às vezes nas coordenações regionais, que vêm com um histórico de ter um corpo de servidores mais antigo, ainda tem uma visão extremamente tutelar em relação às comunidades com quem lidam e trabalham diariamente, então essa mudança que a constituição 1988 traz, ela ainda, a meu ver, ainda não está implementada*".
[153] From the original in Portuguese: "*atualização da FUNAI com relação aos normativos da constituição de 1988, [...] onde você tinha uma maior autonomia dos povos indígenas, então não dava para ter ainda aquele ranço de uma FUNAI tutelar, falando pelos índios*".
[154] From the original in Portuguese: "*você falar em fim da tutela gera um medo de cair num vazio e isso signifique então a ausência do estado.*"

"tutelary mentality" that persists among politicians and high-level officials. Our informant was discussing the content of a decree to be signed by President Dilma Rousseff with the Attorney-General at the time. He/she remembers that "*The* [Attorney-General] *In a meeting with us, talking to us like this, 'look, you could not include the word autonomy, you had to erase it from the text' [...]* "autonomy cannot exist because the Federal Supreme Court itself in [the case] Raposa Serra do Sol *said that indigenous lands are not spaces of political autonomy*[155]".

Finally, E3 weighed in that this "tutelary mentality" affected even the participatory institutions created to improve Indigenous participation in the Brazilian government. Consider his/her testimony of dialogues with government officials about the possibility of having an Indigenous individual as president of the NCIP.

> 'Ah, how can we have a council where the president could be an Indigenous person?', because in other policies you have a rotation, a year or two, you have a president who is from the government bench and in the other year from the bench of civil society. And then they would say: 'But how are we going to have a president of a council that is indigenous?' I say, 'and what is the difference, then, from a national health council, where you can have someone from civil society representing, or from a human rights council?' So, there was no buildup, people have a vision still very much paternalistic, although you have a constitution that really guarantees indigenous autonomy and self-determination today, the values of our society in the construction of these relations with the indigenous peoples are still extremely tutelary.[156]

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[155] From the original in Portuguese:" *o* [Attorney-General], *em uma reunião com a gente, falando assim com a gente, 'olhe, não podia ter a palavra autonomia, pode arrancar do texto'*[...] "*autonomia não pode existir porque o próprio Supremo Tribunal Federal no caso Raposa Serra do Sol disse que terras indígenas não são espaços de autonomia política.*"

[156] From the original in Portuguese: "*ah, como que a gente vai ter um conselho onde um presidente pode ser um indígena?', por que nas outras políticas você tem uma rotatividade, de um ano ou dois, você tem um presidente que é da bancada do governo e no outro ano é da bancada da sociedade civil. E aí eles diziam: 'mas como que a gente vai ter um presidente de um conselho que é indígena?'. Digo: 'e qual é a diferença, então, de um conselho nacional de saúde, onde você pode ter alguém da sociedade civil representando, ou de um conselho de direitos humanos?' Então, não tinha acúmulo, as pessoas têm uma visão ainda muito paternalista, embora você tenha hoje uma constituição que garanta realmente uma autonomia e autodeterminação indígena, os valores da nossa sociedade na construção dessas relações com os povos indígenas são ainda extremamente tutelares*".

In sum, the conclusion we drew from the interviewee's considerations is that despite the constitutional provisions clearly stating that Indigenous peoples ought to be considered autonomous political actors with the right to have a say in decisions that may affect them, it does not reflect the reality. Even participatory institutions such as the NCIP and the NPPCIP, supposedly based on the idea of Indigenous political autonomy and protagonism may have been "contaminated" with the "tutelary mentality" that remains alive among politicians and public officials.

Federalism: the "Illegitimate, immoral and illegal" influence of the ruralist caucus in the Indigenous policy and the conflictive role of the states

The influence of the ruralist caucus into the Indigenous policy design and formulation was, by far, the most cited single factor to explain why the NPPCIP failed to change Indigenous land claims policy features. E3 dramatically summarized this influence as "illegitimate, immoral e illegal".

Notably, it is common sense among political observers and our interviewees to consider that this influence exists and plays a vital role in shaping the Brazilian Indigenous policy. In E4's words "*It is political pressure and you have to mediate them in all governments, some gave up less, others more*[157]". E5 concurred with this opinion, affirming that "*in general, it was not easy with the legislative branch before. For you to pass something which had to do with the interests of Indigenous peoples, it would always have some difficulty* [158]". What is new, though, is the evidence we were able to collect on how this influence works and the possible explanations of how it may have blocked NPPCIP inputs into the government.

Firstly, consider E3's astonishing testimony on the influence of the ruralist caucus on his/her job as a high-level official in charge of far-reaching aspects of the Brazilian Indigenous policy during the Dilma Rousseff's presidency.

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[157] From the original in Portuguese: *"É pressão política e você tem que fazer essas mediações, isso em todos os governos, uns cediam menos, outros cediam mais".*
[158] From the original in Portuguese: *"nunca foi fácil antes com o legislativo de forma geral. Para você aprovar alguma coisa, assim, que tivesse a ver com os interesses dos povos indígenas, sempre havia uma dificuldade".*

[this influence] was given in the most vile and brazen way imaginable. So it was like that, for example, they did not want us to go forward - I'll give you a concrete example that came to mind now - an [INDIGENOUS GROUP] there in [BRAZILIAN STATE]. It was an area that was already identified, homologated, and FUNAI was in the moment of making the recognition, the part that you do after the closing of the process, that FUNAI goes to understand how many non-indigenous occupants there are in that area, to see who would be able to receive compensation and who won't be, occupations in good faith, everything else ... The team went to the field normally, the idea that the demarcations would be paralysed started to spread, there was no clear orientation about it, but when the team goes to camp, the next day, I get a call from [HIGH LEVEL OFFICIAL] saying 'look, they asked to stop'. 'What do you mean, [HIGH LEVEL OFFICIAL] who asked?' 'So-and-so, senator of the republic, asked to stop.' Hence I say 'I will not stop, why am I going to stop, the activity is within the law, the people spent money to send the worker there, you have a team hired to do the work, so you do not have to stop, I'll stop under what argument? That's illegitimate, that's immoral, that's illegal.' Well, and there, down the arm, we were trying to resist, and they were making us stop, workers were threatened, they started to be afraid to go to work, we had to take the field team.

RESEARCHER: And this you1re telling me from Dilma's government or ...

E3: Dilma's Government.

A: So, the problem expressed itself at this level of interference?

E3: at this level of interference. And I was saying - look, look, [HIGH LEVEL OFFICIAL], put your hand on the phone and tell you to stop a legal duty you have to do, then I started to think things had already worsened. [...] Not only there. This is an example, but even so, look at the nonsense, the person runs his hand on the phone, calls [HIGH LEVEL OFFICIAL], the [HIGH LEVEL OFFICIAL] picks up and says 'look, you guys have to stop because we are being pressured'. So, where is it, what kind of government is this, where [HIGH LEVEL

OFFICIAL] gives you an order to stop a job for which a senator has asked[159].

When asked if he/she experienced political and economic pressures on Indigenous policy agents and agencies, E1 emphatically responded "*muito! muito!*". Our informant provided vivid examples to support this affirmation. Firstly, he/she recalled a case where a powerful Brazilian businessman wanted to purchase Indigenous lands already in the first steps of the demarcation process. His strategy, the official affirmed, was trying to bribe Indigenous leaders.

> What did he do? He paid two Indigenous people, because there are also Indigenous people who are corrupted. They are human beings, they are not saints. Like everyone. Then he bought and paid two Indigenous people who were a part of the [INDIGENOUS GROUP] and offered a million to each family to tell them that they didn't want the piece of land they were claiming anymore. He would give the same amount of land elsewhere, and another million per family. The Indigenous people yearn to live. They would be rich. One million,

[159] From the original in Portuguese: "[*this influence] se dava assim, da maneira mais vil e descarada que se pode pensar. Então era assim, por exemplo, eles não queriam que a gente avançasse – vou te dar um exemplo concreto que me veio agora na cabeça – uma área [INDIGENOUS GROUP], lá em [BRAZILIAN STATE]. Era uma área que estava já identificada, homologada, e a FUNAI estava no momento de fazer o reconhecimento, a parte que você faz depois do fechamento do processo, que a FUNAI vai para entender quantos ocupantes não-indígenas tem naquela área, para ver que que vai estar passível de receber indenização e quem não vai estar, ocupações de boa-fé, tudo mais...A equipe foi pra campo normalmente, já estava começando essa onda de que iria se paralisar demarcações, não tinha tido essa orientação muito clara, mas quando a equipe vai para campo, no dia seguinte, eu recebo um telefonema do [HIGH LEVEL OFFICIAL] dizendo 'olha, pediram para parar'. 'Como assim, [HIGH LEVEL OFFICIAL], quem pediram?'. 'Fulano de Tal, senador da república, pediu pra parar'. Daí eu digo 'não vou parar, por que é que eu vou parar, a atividade está dentro da lei, a gente gastou dinheiro para mandar servidor para lá, tem uma equipe contratada para fazer o trabalho, então não tem por que parar, vou parar sob que argumento? Isso é ilegítimo, isso é imoral, isso é ilegal'. Bom, e aí, quedas de braço, a gente ia tentando resistir e eles iam nos fazendo parar, servidores foram ameaçados, começaram a ficar com medo de ir trabalhar, tivemos que tirar a equipe de campo.*
> *RESEARCHER: e isso você está me dizendo a partir do governo Dilma ou...*
> *E3: Governo Dilma. Eu estava já na [HIGH LEVEL POSITION] na época.*
> *R: então a coisa se expressava assim, nesse nível de interferência?*
> *E3: nesse nível de interferência. E eu dizia – olhe, veja bem, um [HIGH LEVEL OFFICIAL], passa a mão no telefone e te manda você parar um dever legal que você tem que fazer, aí eu comecei a achar que as coisas já tinham degringolado. [...] Não foi só lá. Isso é um exemplo, mas assim, olha para você ver o despropósito, a pessoa passa a mão no telefone, liga para um [HIGH LEVEL OFFICIAL], o [HIGH LEVEL OFFICIAL] pega e fala 'olha, vocês vão ter que parar por quê estamos sendo pressionados'. Então, onde é que está, que governo é esse, onde um [HIGH LEVEL OFFICIAL] te dá uma ordem para você parar um trabalho por quê um senador pediu*".

thirty million - there were thirty families. They said, we do not want it, we want our land.[160]

Our informant also told us about an attempt, made by politicians, to bribe him/her while serving in a high-level position at the Ministry of Justice. To quote his/her own words:

> So often I welcome senators, governors. For you to see how far the pressure goes. I entered [YEAR]. In [YEAR] I received a visit from four people, four men. A mayor, a governor, a state deputy, and one who claimed to be the owner of [INDIGENOUS LAND], three million and a few acres. They came into my room, I worked alone- it was me, right - and they went into the living room, sat down by the coffee table, and then, right, ask what the guys wanted. It had been three, four days since the case had arrived in my office. The whole case on the table. It was closed. "No, it is because I am from such and such locality, I am mayor, I own this land, and we know that we got the land in order for the minister to make a declaratory decree. We learned that [SIR / MANDAM [...] and talk a lot with the minister. So, we wanted to know [SIR / MADAM] how much [SIR / MADAM] wants to advise the minister not to sign.
>
> And I [laughs], at the time I did not understand, I said 'how's that, I do not understand'. 'No, we know that [SIR / MADAM] who can convince the minister, so we want to know how much [SIR / MADAM] wants to say, " I won't sign." I remember that I turned red, of shame, of shame of myself. And he said like this, "Everyone has their price, [SIR / MADAM] must have his / her'.[161]

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[160] From the original in Portuguese: "*O que ele fez? Pagou dois indígenas, por que também tem índios que se corrompem. São seres humanos, não são santos. Como todo mundo. Aí ele comprou dois índios, pagou dois índios que foram lá na aldeia dos [INDIGENOUS GROUP] e ofereceu um milhão para cada família para que eles dissessem que aquele pedaço de terra que eles estavam reivindicando, eles não queriam mais. Ele daria a mesma quantidade de terra em outro lugar, e mais um milhão por família. Os índios têm a forma que eles gostam de viver. Eles ficariam ricos. Um milhão, trinta milhões – eram trinta famílias. Elesdisseram, nãoqueremos, queremos a nossa terra*".

[161] From the original in Portuguese: "*Então muitas vezes eu recebia senadores, governadores. Para você ver até onde vai a pressão. Eu entrei em [YEAR]. Em [YEAR] eu recebi uma visita de quatro pessoas, quatro homens. Um prefeito, um governador, um deputado estadual e um que se dizia proprietário da [INDIGENOUS LAND], três milhões e poucos hectares. Eles entraram na minha sala, eu trabalhava sozinho/sozinha – era euquipe, né – e eles entraram na sala, sentaram na mesinha, e aí, né, saber o que os caras queriam. Fazia três, quatro dias que o processo tinha chegado na minha sala. O processo todo em cima da mesa. Assim, fechado. 'Não, é porquê eu sou de tal e tal localidade, eu sou prefeito, eu sou dono dessa terra, e a gente sabe que essa terra veio para o*

He/she concluded his/her testimony saying that, "*the pressure from officials is very strong. Deputies, senators, they are on a weekly basis [...] to put pressure on the minister. And that was what made Dilma not sign, because they pressured the minister, pressure José Eduardo Cardozo, he couldn't avoid it[...]*"[162]. E5, in turn, emphasizes the perception of the growing power of the ruralist caucus, affirming that "*these caucuses always had, they always had a lot of strength, but ... when the government changed, this congressional change later in Dilma's time, they became even stronger*"[163]. In his/her judgment, "*I think it [the ruralist caucus] is stronger today, yes, because the government depends on these supports and feeds it to survive. I think, in fact, the executive is totally hostage to the legislature*"[164].

Despite this peremptory proposition, our interviewees made clear that the relationship between the ruralist caucus and the Brazilian government was markedly distinct during the governments of Lula da Silva and Rousseff. The former was portraited as the "ideal mediator," the architect of political consensus through bargaining and concessions – also a political actor apt to the political dispute when needed. The latter was the "autist leader" who was unable to dialogue either with the ruralist caucus or with Indigenous peoples, becoming isolated and politically vulnerable at the end of her presidency.

Firstly, Lula da Silva "*always had a way to calm things down*[165]" (E3). When dialoguing with Indigenous peoples, "*President Lula, although he could not do everything the Indigenous people wanted, he also did not do everything they wanted,*

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ministro fazer uma portaria declaratória. A gente ficou sabendo que [SIR/MANDAM[....] e conversa muito com o ministro. Então a gente queria saber do/da [SIR/MADAM] quanto é que o/a [SIR/MADAM] quer para desaconselhar o ministro a assinar.

E eu [risos], na hora eu não entendi, eu falei 'como assim, eu não estou entendendo'. "Não, a gente sabe que o/a [SIR/MADAM] que consegue convencer o ministro então a gente quer saber quanto é que o/a [SIR/MADAM] quer para dizer "não assino". Eu lembro que eu fiquei vermelho/vermelha, de vergonha, de vergonha de mim mesmo/mesma. E ele disse assim, 'todo mundo tem seu preço, o/a[SIR/MADAM] deve ter o seu'.

[162] From the original in Portuguese: "*a pressão de fora é muito grande. Deputados, senadores, eles estão semanalmente [...] pressionar o ministro. E foi isso que não fez a Dilma assinar, por que eles pressionaram o ministro, pressionaram muito, muito, muito o José Eduardo Cardozo, ele não teve como*[...]".

[163] From the original in Portuguese: "*essas bancadas sempre houve, sempre tiveram muita força, mas [...], quando houve a mudança do governo, essa mudança do congresso depois na época da Dilma, ele se tornou ainda mais forte*".

[164] From the original in Portuguese: "*eu acho que ela* [the ruralist caucus] *está mais forte hoje sim, por que o governo depende desses apoios e alimenta isso para sobreviver. Eu acho que, na verdade, o executivo é totalmente refém do legislativo*".

[165] From the original in Portuguese: "*sempre dava um jeito de tranquilizar as coisas*".

he mediated. There was a limit. And at the same time, he tried to go further in some issues"[166] (E5). The same view is espoused by E4, who affirmed that Lula da Silva

> knew that [Indigenous land claims] were conflicting, but he mediated. A mediation in the sense of moving forward. He would start by saying, 'I will have to sign, I'll sign' and then he'd hold on the pressure. That does not mean that he was not also making concessions to the ruralist caucus in terms of confirming a minister, let's say, the [Minister of Agriculture] Rodrigues, but he did the confrontation.[167]

Dilma Rousseff, in contrast, is portrayed as someone unwilling to hear Indigenous groups and unable to mediate political disputes. E4, for instance, considered that what happened during the years of her presidency was a "*fake mediation, which did not progress, which did not please any of the two sides*[168]". Two interviewees emphasized that Dilma Rousseff has never met with the FUNAI's presidents during her tenure. The informant goes on and provides testimony of this claim.

> President Dilma never received the president of FUNAI. Lula spoke directly to Márcio Meira, she was always received. There was once - you may ask [HIGH LEVEL OFFICIAL], [he / she] was [HIGH LEVEL POSITION] at the time - [he / she] went to an agenda with [INDIGENOUS GROUP] there in [BRAZILIAN STATE] and we had prepared the agenda about the indigenous reserve that was to be made, a stage for us to make our advances and start a dialogue, and [Dilma Rousseff] would be there, boarded the plane, she was very reserved, she didn't even say hi to[HIGH LEVEL OFFICIAL]. There was no meeting that she could, she had no access to the ministers, so it was like this, an autism.[169]

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[166] From the original in Portuguese: *o presidente Lula, apesar de não poder fazer tudo o que os índios queriam, ele também não fazia tudo o que eles* [ruralist caucus members] *queriam, ele mediava. Tinha um limite. E ao mesmo tempo, tentava avançar em algumas questões".*

[167] From the original in Portuguese: "*Sabia que [Indigenous land claims] eram conflituosas, mas ele mediava. Uma mediação no sentido de avançar. Ele chegava assim, 'vai ter que assinar, eu vou assinar' depois segurava a pressão. Isso não significa também que ele não estava fazendo concessões para a bancada ruralista, em termos de colocar um ministro, sei lá, o [Minister of Agriculture] Rodrigues, lá, mas ele fazia o enfrentamento*".

[168] From the original in Portuguese: "*falsa mediação, que não avançava, não agradava nenhum dos lados".*

[169] From the original in Portuguese: "*A presidente Dilma nunca recebeu o presidente da FUNAI. O Lula falava diretamente com o Márcio Meira, recebia a todo momento. Teve uma vez que – você pode perguntar para*

Moreover, she was unable to dialogue with the Congress and carry out the necessary mediations between the ruralist caucus and the government's political agenda. As E4 affirmed, "*she clearly had this problem of lack of dialogue with the Congress*"[170] and, at the same time, "*she did not dialogue with us or with the anyone, right, so the reflection was not positive, it was the image of a government that did not dialogue*"[171]. In sum, this "autism" was interpreted by E4 as a protection against political interference from both political sides that ended up being fatal to her presidency. In his/her own words, "*so it was an autism that had dissatisfaction of the ruralist caucus as a consequence. She did not attend to these interests, as she did not attend to the left as well. She did not answer either the left or the right* [...]*"[172].

Concluding, our informants were able to show how the political influence of the ruralist caucus made its way into the Indigenous policy. At the same time, they advanced the idea that political pressure has always existed – even though they considered that the power of the ruralist caucus indeed grew over the years - and what indeed differed between the presidency of Lula da Silva and Dilma Rousseff was the ability to mediate claims made by Indigenous groups and members of the ruralist caucus. A powerful political actor must mediate a political force such as the ruralist caucus if the Indigenous policy wants to have any chance to succeed.

The role played by the states in the process of NPPCIP is mentioned directly only by one of our informants. The majority opted for providing assessments about the relationship between the states and the FUNAI more broadly.

Undoubtedly, state-level agents played a role during the previous local and regional conferences. E5, for instance, considered that the reality of the relationship between state and local-level governments and Indigenous peoples reflected on the participatory process. Where this relationship is tense, NPPCIP organizers had

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[HIGH LEVEL OFFICIAL], que [he/she] era [HIGH LEVEL POSITION] na época – [he/she] foi para uma agenda com os [INDIGENOUS GROUP] lá no [BRAZILIAN STATE], e a gente tinha preparado toda uma agenda para a questão da reserva indígena que ia ser feita, uma patota para a gente tentar avançar nas coisas e era o momento de conseguir o diálogo, e ela [Dilma Rousseff] ia junto, entrou lá no avião, se fechou, não falou nem um oi para [HIGH LEVEL OFFICIAL]. Não tinha uma reunião que ela pudesse, não tinha acesso aos ministérios. Então era assim, um autismo".

[170] From the original in Portuguese: *ela tinha esse problema de falta de diálogo com o congresso que era algo claro*

[171] From the original in Portuguese: *"ela não dialogava nem com a gente nem com fora, não é, então o reflexo não era positivo, era a imagem de um governo que não dialogava".*

[172] From the original in Portuguese: *"Então foi um autismo que teve como consequência a insatisfação da própria bancada ruralista. Não atendia a esses interesses, como não atendia nem a esquerda também. Não atendia nem esquerda nem direita [...]".*

difficulties; on the other hand, the process was carried out without any significant disruption at the municipalities and states where Indigenous peoples had allies.

In a broader sense, however, our informants agreed that the relationship between the Brazilian state-level governments and Indigenous peoples and policy makers is, in short, "*conflictive. With few rare exceptions, always conflictive, always trying to make us take more caution in relation to that act* [Indigenous land demarcation]"[173] (E4). There is certainly variation among the states. Whereas there are the cases of Acre, Paraná, and Santa Catarina, which were mentioned as states where Indigenous policies have advanced the most in the last years, there are places where "*The FUNAI employee, he cannot leave in a car with FUNAI identification, because he will suffer reprisals, [...] in Dourados, Ponta Porã, it's considered as an even half-clandestine activity [..] you being from FUNAI, you being indigenous*"[174] (E5).This informant recalls an experience when he/she was part of a team in charge of consultation with Indigenous peoples regarding a legislative proposal: "*When we were there in Dourados, [...] we had to stay with the police in front of the hotel, because the ruralists, the farmers, in fact, they wanted to get by force in the event*"[175].

E3 locates the roots of this process of mounting tensions between the state governments and the federal administration in the way Dilma Rousseff opened "flanks" and started to admit political claims to block or postpone Indigenous land demarcations in some states. In E3's own words:

> She [Dilma Rousseff] welcomed these demands, because she welcomed the demands of those people who did not want demarcation. Then the governor, the town councillor there complained that his community had to leave because FUNAI whatever, from there on to the mayor, who went to the governor, who debated in congress, and entered the government with this as a legitimate agenda, of the people do not want the demarcations,

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[173] From the original in Portuguese: *"conflitiva. Tirando raríssimas exceções, sempre conflitiva, sempre para tentar fazer com que a gente tenha que tomar mais precauções em relação aquele ato* [Indigenous land demarcation]".

[174] From the original in Portuguese: "*o servidor da FUNAI, ele não pode sair com um carro com identificação da FUNAI, porqueele vai sofrer represálias, [...] em Dourados, Ponta Porã, esses lugares assim é até uma atividade meio clandestina [..] você ser da FUNAI, você ser indígena*".

[175] From the original in Portuguese: "*quando a gente estava lá em Dourados, [...], a gente tinha que ficar com a polícia na frente do hotel, porque os ruralistas, os agricultores, na verdade, eles queriam entrar na marra para participar do evento*"

began to turn the tables, this later became public, it isn't secret to anyone.

Then there were natural resistances, and we went there and talked to the states, talked to the governor, that was gradually being circumvented. When Dilma opens these flanks, all states begin to realize that it is as follows: 'Oops, so we just go there and say we will not have a demarcation here,' and this has become a recurring practice. Then, we started having problems with almost every state. Practically, in Dilma's government you did not have a state that you could get to work without having an institutional political order mounted, engineered in order to prevent that work.[176]

E4, in turn, explains that "*there is still the imaginary that the executive branch is unattached to oligarchic interests*"[177]. No wonder, then, that Indigenous peoples feel "*more protected with all the decisions being taken at the federal level*"[178] (E5) and when a high level FUNAI official proposed to start debating whether the Indigenous policy should be understate-level governmental responsibility, he was "*greatly rejected*", because "*most people disagree with this, especially since the indigenous policy it put at the mercy of the reality of each place*"[179].

In sum, our informants pointed out the conflictive relationship between federal and state-level governments during the Dilma Rousseff's presidency. They were not able to provide deeper insights of the state-level agent's participation in the NPPCIP process, opting instead to explain in broader terms how this contentious interaction plays out in the daily life of the Indigenous policy.

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[176] From the original in Portuguese: "*ela [Dilma Rousseff] acolhia essas demandas, por que ela acolhia essas demandas dessas pessoas que não queriam demarcação. Então o governador, o vereadorzinho lá reclamava que a comunidade dele tinha que sair por que a FUNAI não sei o quê, daí ia pro prefeito, que ia para o governador, que batia no congresso, e entreva no governo isso como uma pauta legítima, das pessoas não quererem as demarcações, começou a virar uma agenda mesmo, isso depois se tornou público, não é segredo pra ninguém.*

Aí, você tinha essas resistências naturais e a gente ia lá, e fazia uma conversa com os estados, ia conversar com o governador, isso sempre aos poucos ia sendo contornado. Quando Dilma abre esses flancos, todos os estados começam a perceber que é o seguinte: 'opa, então é só a gente ir ali falar que a gente não vai ter demarcação aqui', e isso começou a virar uma prática recorrente. Daí, a gente começou a ter problemas com quase todos os estados. Praticamente, no governo Dilma você não tinha um estado que você conseguia chegar para trabalhar sem ter uma ordem político institucional montada, engendrada para poder impedir aquele trabalho".

[177] From the original in Portuguese: "*o executivo ainda acaba tendo esse imaginário de que é uma coisa mais descolada dos interesses oligárquicos*".

[178] From the original in Portuguese: "*mais protegidos com a decisão toda estando no nível federal*".

[179] From the original in Portuguese: "*bem rechaçado*"; "*a maioria das pessoas discorda disso, até por que você colocar a política indigenista muito a mercê da realidade de cada local*".

Even though we cannot establish any strong correlation between the conflictive nature between state-level governments and Indigenous peoples as a critical factor to explain the failure of the NPPCIP, we cannot ignore it either. The political landscape of the local and regional governments matters to participatory politics and Indigenous politics as well. Despite the lack of more profound information about the role played by state-level bureaucrats during the NPPCIP local and regional preparatory conferences, the generally hostile atmosphere towards Indigenous peoples may have had an impact on how the participatory process was carried out.

Government agenda: The Indigenous policy lack of political centrality and the hegemonic developmentalism of Rousseff's government "like a tractor running over anything ahead."

The centrality of the developmentalist economic policy of Dilma Rousseff's government as an explaining factor of the failure of the NPPCIP and the general feeling of "dismantling" of the Brazilian Indigenous policy was mentioned several times by our interviewees.

Again, there was a distinction between Lula da Silva's and Rousseff's governments. The former is portrayed as having a developmentalist agenda in tandem with policy initiatives to benefit Indigenous peoples. The latter, following the assessment of E3, "*like a tractor running over anything ahead*"[180]. The same expression was used by E2 to define how he/she assessed the neodevelopmentalist agenda under Rousseff.

E4, in turn, summarizes his/her point of view as a public official who have worked under Lula da Silva and Rousseff's administrations:

> So, I think that economic policy in Lula's government, in a way had very clear centrality, as Dilma's government itself, developmentalism was somehow also given. On the other hand, it was not central. It was central, but it was not hegemonic, right? You had a set of other

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[180] From the original in Portuguese: "*era um trator passando por cima de qualquer coisa*".

policies advancing and mediation was done between these policies, in a way, how can we say, not of equality, because we know that equality does not have it, but social policies, indigenous policies had more influence on the direction this would take. So in Dilma's government this did not happen, everything seemed like, so let's give an example, Belo Monte, 'ah, Belo Monte has to happen, but there's got to be homologation of that, restructuring has to happen', it's not a bargain, this means strengthening the institution in order to face it. Giving only one emblematic example of Belo Monte. So the government gave conditions, 'so let's homologate these lands', the whole region, you're going to say, 'Ah Lula created Belo Monte, created that monster, all that bullshit', but at the same time I pass through the Xingu region, stopping at the RESEX [Extrativist Reserves], if you speak ill of Lula there you die. You go to [INDIGENOUS GROUP] here, he who homologated the lands, he who created the RESEX, then, at the same time there is a contradiction of Lula who created Belo Monte, there is one with these policies. So this contradiction was a contradiction of politics itself, but there was this contradiction. And in Dilma's government, there was none. In Dilma's government, a hydropower will be created in Tapajós and will be done, conditions won't be created, there won't be any staff, the development policy was hegemonic.[181]

E3's testimony goes in the same direction. Firstly, he/she emphatically affirmed the centrality of the neodevelopmentalist agenda under Rousseff's

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[181] From the original in Portuguese: "*Então assim, eu acho que a política econômica no governo Lula, de certa forma ela tinha uma centralidade muito clara, como o próprio governo Dilma, o desenvolvimentismo estava de alguma forma também dado. Mas, por outro lado, não era central. Era central, mas não era hegemônico, certo? Você tinha um conjunto de outras políticas avançando e que era feito uma mediação entre essas políticas, de forma, como podemos dizer, não de igualdade, por que a gente sabe que igualdade não tem, mas as políticas sociais, as políticas indigenistas tinham um peso maior na definição desses rumos. Então, no governo Dilma isso não acontecia, tudo parecia que, então vamos dar um exemplo, Belo Monte, 'ah, tem que acontecer Belo Monte, mas tem que acontecer homologação disso, tem que acontecer a reestruturação', não é barganha, se trata de fortalecer o órgão para enfrentar isso. Dando só um exemplo emblemático de Belo Monte. Então o governo dava condições, 'então vamos homologar essas terras', a região toda ali, você vai falar, 'ah Lula criou Belo Monte, criou aquele monstro, toda aquela treta', mas ao mesmo tempo eu passo ali em toda aquela região do Xingu, paro nas RESEX [Extrativist Reserves], se você falar mal do Lula ali você morre. Você vai para os [INDIGENOUS GROUP] aqui, ele que homologou as terras, ele que criou as RESEX lá, então tem uma contradição ao mesmo tempo do Lula que criou Belo Monte e ao mesmo tempo que teve essas políticas. Então essa contradição era uma contradição mesma da política, mas ela existia essa contradição. E no governo Dilma não. No governo Dilma, vai criar uma hidrelétrica no Tapajós e vai fazer, não vai criar condições, não vai ter uma pauta, em termos de uma pauta positiva, era hegemônica a política do desenvolvimento*".

government, claiming it as "*hegemonic! hegemonic! You could not ask anyone for help*"[182]. To illustrate his/her point, he/she mentioned that when discussing with high level officials about his/her policy concerns, they often overrid his/her arguments. In his/her own words:

> E3: The [HIGH LEVEL OFFICIALS] ... when I said, 'Look, I've got an issue here that's as follows, you're going to build the dam, but you cannot get the army to talk to the community because there are people of recent contact there, we need to have a meeting. 'No, that's not how it works, you do not understand, it's going to come in', and it came in. And it went over everything.
>
> RESEARCHER: and wasn't that the case in Lula's government?
>
> E3: That was not the case in Lula's government. No way.
>
> A: There was an institutional dialogue ...
>
> E3: There was an institutional dialogue. There was a group ... I think the reading of [E4] is very accurate, there was a group that advocated for a more developmental action, but the arena of contention was created. So you had the field for you to go there to dispute a position. There was confrontation, there was mediation between conflicts of rights, politics, even interests, there was mediation, and there was always a concern for life, which did not exist in Dilma's government. Dilma's government was a tractor passing over anything that was in front of a hydroelectric plant, a highway, a project of this kind of progress and development.[183]

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[182] From the original in Portuguese: "*Hegemônico! Hegemônico! Você não tinha para quem pedir ajuda*".

[183] From the original in Portuguese: "*E3: os [HIGH LEVEL OFFICIALS]...quando eu dizia: 'olha, eu estou com uma questão aqui que é a seguinte, vocês vão lá fazer a barragem, mas não dá para chegar lá o exército para conversar com a comunidade tal por quê tem gente de recente contato ali, a gente precisa fazer uma reunião. 'Não, não é assim que funciona, você não entende, vai entrar', e entrava. E passava por cima de tudo.*
RESEARCHER: e não era o caso no governo Lula?
E3: não era o caso no governo Lula. De jeito nenhum.
R: tinha um diálogo institucional...
E3: tinha um diálogo institucional. Você tinha um grupo....acho que essa leitura do [E4] é muito precisa, você tinha um grupo que defendia essa ação mais desenvolvimentista, mas a arena de disputa ela estava criada. Então você tinha o campo para você ir lá para disputar uma posição. Tinha esse enfrentamento, existia uma mediação entre os conflitos de direitos, de políticas, até de interesses, existia uma mediação, e você sempre tinha uma preocupação com a vida, o que não existia no governo Dilma. O governo Dilma era um trator passando por cima de qualquer coisa que estivesse na frente de uma hidrelétrica, de uma rodovia, de um projeto desses aí qualquer de progresso e desenvolvimento".

Following the testimonies of our informants, we can conclude that: 1. the developmentalism was a central part of the economic agenda of Lula da Silva's government that became hegemonic during Dilma Rousseff's era and; 2. this hegemony was not only undisputed but actively promoted by the government and the president herself. Not surprisingly, E2 claimed that "*Dilma was way more antiindigenous [than Lula da Silva], she personally does not like Indigenous*"[184].

The hegemony of the economic agenda under Dilma Rousseff's tenure coexisted with the maintenance of the budget assigned to the FUNAIs activities and policies. The agency was not severely underfunded at the time, and our informants acknowledged that. As E3 affirmed, "*A public policy, whatever it is, when it is supported, when it has incentives, it "goes" […] but only when you have resources, and you only have resources if a public policy is priority*"[185]. He/she goes on by saying that the transition from Lula da Silva to Rousseff's government did not affect the budget of the Foundation, recalling that "*when Dilma's government took over [...], it was also a pluriannual plan, in which FUNAI was doing good, we had obtained sufficient resources, so we had managed to do a lot of demarcation*"[186]. E4 agreed with this perception, adding that "*there are obviously some budget cuts, not so discrepant, but there are some declines, and from the political point of view*"[187].

In other words, the real issue at the time of the NPPCIP was not budgetary cuts but more fundamentally the lack of political centrality of the Indigenous policy. E5's testimony seems to corroborate such perception, as he/she assessed the functioning of the NCIP in those terms:

> [...] in Dilma's government, despite the resources being kept for the commission to function, everything continues to function normally, there has never been such a major rapprochement with President

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[184] From the original in Portuguese: "*a Dilma era muito mais antiindígena [than Lula da Silva], a Dilma pessoalmente não gosta de índio.*"

[185] From the original in Portuguese: "*Uma política pública, qualquer que seja ela, quando ela tem apoio, quando ela tem incentivo, ela 'vai'[...] mas quando você tem recurso, e você só tem recursos e uma política pública é prioridade*".

[186] From the original in Portuguese: "*quando a gente muda para o governo Dilma [...], foi um ano também de plano plurianual, em que a FUNAI estava legal, a gente tinha conseguido um recurso bacana, então a gente tinha conseguido fazer bastante coisa de demarcação*".

[187] From the original in Portuguese: "*Tem obviamente algumas quedas orçamentárias, inclusive, não tão discrepantes, mas existem algumas quedas, e do ponto de vista político*".

Dilma. She never attended any meetings, she even got invited, but she never opened a channel of direct dialogue with them.[188]

In sum, the informants have drawn a picture where, despite the maintenance of the FUNAI's budget during the Rousseff years, the Indigenous policy's lack of political centrality clashed with the hegemonic power of the neodevolpmentalist agenda. In such political landscape, there was "*by the side of the government a position of not promoting any political advance that could have symbolized a governmental engagement in favor of the Brazilian Indigenous peoples*"[189] (E3), and any attempt to promote Indigenous political participation was deemed to fail.

Natives collective agency: fragmentation of the political representation and the sabotage of Indigenous mobilization

Finally, our informants weighed in on the role of Indigenous associations and protests about the NPPCIP. There is an overall feeling that both Indigenous associative life and protesting activities grew considerably in the last decades. As E5 puts it, "*nowadays, the Indigenous peoples themselves, the Indigenous movement is increasingly organized, they build up their partnerships*"[190]. E6 corroborated this observation, affirming that "*The Free Land Camp - ATL, in more than a decade of accomplishment, is proof of the articulation and organization of the indigenous peoples of the five regions of the Brazilian territory, and having political representation*"[191]. Still, as E3 summarized, "*the great policies always come from their resistance*"[192]. It means that Indigenous peoples had increased their collective agency capacity and therefore their ability to make claims to the Brazilian state.

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[188] From the original in Portuguese: *"[...] no governo Dilma, apesar de ter sido mantidos os recursos para a comissão funcionar, tudo continua funcionando normalmente, nunca houve essa aproximação maior com a presidente Dilma. Ela nunca participou de nenhuma reunião, ela chegou a ser convidada, mas ela nunca abriu um canal de diálogo direto com eles"*.

[189] From the original in Portuguese: *"por parte do governo, uma posição de não promover nenhum avanço político que simbolizasse um envolvimento do governo pró-povos indígenas do Brasil"*.

[190] From the original in Portuguese: *"os próprios indígenas hoje em dia, o movimento indígena, está cada vez mais organizado, eles constroem suas parcerias"*.

[191] From the original in Portuguese: *"O Acampamento Terra Livre – ATL, em mais de uma década de realização, é prova da articulação e organização dos povos indígenas das cinco regiões do território brasileiro, e tendo representatividade política"*.

[192] From the original in Portuguese: *"as grandes políticas partem sempre da resistência deles."*

Despite this general feeling, a closer look at the issue reveals perspectives and contradictions not directly observed at a first sight. E4 provided a general stance on the topic, affirming that participation and the vitality of the civil society are closely related. In his/her own words,

> We have always been clear that the state, in order to function as a coordinator, must have a strengthened civil society. First, thinking that indigenous peoples are a civil society too, aren't they? It also has its organizations, say, its non-governmental associations, forms of institutional representation beyond its participation *stricto sensu*, it's possible for Indigenous people to be a civil society.[193]

Again, Lula da Silva's Government was considered a turning point on how Indigenous peoples were able to gather and organize themselves. E3 considers that "*Lula's government proposes that the very possibility of them being here at the meeting in Brasilia, meeting and being able to have this discussion, contemplate and plan organized actions*"[194]. After the NPPCIP was summoned by a presidential decree, "*they [Indigenous groups] chose the representatives that would be part of the organizing committee and at all times it was possible for them to come to Brasilia, to remain here as long as necessary to participate in the process of organizing the conference*"[195] (E5). In other words, governmental support was acknowledged by our informants as an important feature helping to improve Indigenous organization in the last decade in Brazil.

E3, in turn, brings another factor into the organizational landscape of Indigenous politics. He/she considers that non-Indigenous organizations allied to Indigenous peoples played a vital role in the growing organizational capacity.

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[193] From the original in Portuguese: "*a gente sempre teve clareza de que o estado, para funcionar de fato como coordenador, precisa ter uma sociedade civil fortalecida. Primeiro, pensando que os povos indígenas são sociedade civil também, não é? Também tem suas organizações, digamos, suas associações não governamentais, formas de representação institucional para além da sua participação stricto sensu, não dá para os povos indígenas não ser uma forma de sociedade civil*"

[194] From the original in Portuguese: "*o governo Lula traz isso, a própria possibilidade de eles estarem aqui em Brasília reunidos, se encontrando e podendo fazer esse diálogo, discutir e planejar ações organizadas*".

[195] From the original in Portuguese: "*eles [Indigenous groups] tiraram os representantes que iriam integrar a comissão organizadora e em todo momento foi viabilizado para eles virem para Brasília, permanecer aqui o período que fosse necessário para participar do processo de organização da conferência*".

I think civil society, indigenous organizations, too, in this complexity of nothing is never clear, but they played an important role, especially those who knew how to work with the indigenous people, with and not for or per. Those who really knew how to establish these partnerships, I think they have gained respect from these communities, from the indigenous movement itself and that's it, they are partners in everything. So that's the case, in this type of movement, you're contributing, you still have little recourse for a large movement. So there's an important contribution, I think, to organizations. Organizations also had an important role in securing resources that came from sources other than the source of the Brazilian state, and that made all the difference, if you have money you can develop concrete actions whereas if you have nothing, no resources, it's more difficult, so I think they do have a key role to play. In my view, this is it, the organizations that develop jobs that are reasonable are those that listen, understand the question, the dynamics, understand the demands and seek to add up. An institution that seeks to overlap or speak by or create solutions that are [made by] "white" [men] for me, no longer works. So of course there are all sorts of organizations, but the larger ones are closest, they all do a job that I think is very important.[196]

Other informants sharply diverged about the role played by non-Indigenous organizations in the organizational capacity of the Indigenous groups and the

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[196] From the original in Portuguese: "*eu acho que a sociedade civil, as organizações indigenistas, elas também, nessa complexidade de nada ser nunca também preto no branco, mas tiveram um papel importante, e sobretudo as que souberam compreender a necessidade de trabalhar junto aos indígenas, com e não para ou por. Aquelas que souberam realmente estabelecer essas parcerias, eu acho que ganharam respeito dessas comunidades, do próprio movimento indígena e é isso, são parceiras em tudo. Então é isso né, por quê nesse tipo de movimento, estão contribuindo, você ainda tem pouco recurso para uma movimentação de grandes proporções. Então tem uma contribuição importante, eu acho, das organizações. As organizações também tiveram um papel importante de captar recursos que vinham por fontes diversas da fonte do estado brasileiro, e isso fez toda a diferença, se você tem dinheiro você consegue desenvolver ações concretas, onde você não tem nada, nenhum recurso, as coisas ficam mais difíceis, então eu acho que elas tem sim, um papel fundamental. A meu ver, é isso, as organizações que desenvolvem um trabalho que é bacana são aquelas escutam, compreendem a questão, a dinâmica, compreendem as demandas e procuram se somar. Uma instituição que procura se sobrepor ou falar por ou criar soluções que são "brancas", para mim, já não serve. Então lógico que você tem de tudo também, mas as grandes organizações que estão mais próximas, todas elas fazem um trabalho que eu acho bem importante*".

Indigenous policy at large. E2 argued that the interference of non-Indigenous NGOs dates back to Fernando Henrique Cardoso's government and Lula da Silva, "*to push the neodevelopmentalism further he puts those vocal organizations inside the FUNAI*"[197],which was dominated since then by the "*the bureaucratic indigenism of the NGOs and anthropologists from São Paulo*"[198]. Not surprisingly, the presidency of Márcio Meira at the FUNAI was known pejoratively as "*NGO's administration*"[199] (E4).

E5, in turn, affirmed that non-Indigenous NGOs had an enormous amount of power at the FUNAI during Lula da Silva's administrations. They would have tried to "impose" their political view points on the Indigenous policy and occasioned a severe backlash by political opponents and by the federal bureaucracy itself. He/she stated

> The movement itself, the NGOs themselves, when they became empowered in Lula's administration, I think that the force they tried to impose on indigenous rights also caused a much greater reaction, didn't it, then you had [NON-INDIGENOUS NGO] acting very strongly, even within FUNAI. Nowadays a lot of workers hate Lula's government because here in FUNAI, people who came to have great power also somehow belittled the FUNAI workers, the work that had been done, since they were the ones who knew how to do business. They came from outside, they were NGOs. Government? 'Ah, the government does it all wrong! Yes!' [...]. So I think since this moment happened, I think they had a lot of power and they exercised that power, it also caused a much bigger reaction from the other party. I'm not saying they should not have done it, I just think every cause has a reaction.[200]

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[197] From the original in Portuguese: "*para apertar o neodesenvolvimentismo, ele coloca essas organizações que fazem barulho dentro da FUNAI*".
[198] From the original in Portuguese: "*indigenismo burocrata de Ongs e antropólogos de São Paulo*".
[199] From the original in Portuguese: " *a gestão das ONGs*".
[200] From the original in Portuguese: "*o próprio movimento, as próprias ongs, quando ficaram empoderados no governo Lula, eu acho que a força que eles tentaram usar para impor os direitos indígenas também ocasionou uma reação muito maior, não é, então você tinha o [NON-INDIGENOUS NGO] agindo muito forte, inclusive dentro FUNAI. Hoje em dia muito servidor odeia o governo Lula por que você viu aqui dentro da FUNAI, pessoas que passaram a ter um poder muito grande que também de certa forma menos prezaram o servidor da FUNAI, o trabalho que tinha sido feito, por que esses é que sabiam como fazer o negócio. Eles chegaram de fora, eles eram Ong. Governo? 'ah, governo faz tudo errado! agora sim!' [...]. Então eu acho que como houve esse momento em que eu acho, eles tiveram muito poder e exerceram esse poder, isso também ocasionou uma reação muito maior da outra parte. Não estou dizendo que não devesse ter feito, só acho que toda causa tem uma reação.*"

E2 goes even further to argue that the growing influence of the NGOs means the "privatization" of the Indigenism, understood as the historical activity of state-agents motivated solely by a protective ideology towards Indigenous peoples (i.e.,the State must protect Indigenous peoples). In his/her words, "*Neoliberalism exploded the social movement in Brazil in the 1990's, but did not explode indigenism. It privatized the indigenism, get it?*"[201].   He/she goes on claiming that those organizations helped to demobilize Indigenous groups during the Rousseff years: "*The people of the Indigenous policy know the internal fights well, know the communities well, how they are, so they know how to demobilize them [...]. So, there was an active participation of Dilma's government in the demobilization*"[202].

If the role played by non-Indigenous NGOs in the Indigenous policy is a matter of conflictive assessments, this is not the case when the informants discussed the complexities of Indigenous politics played by Indigenous groups themselves. Faced with the internal politics of Indigenous organizations and leadership, E2 asked himself/herself: "*Indigenous movement or Indigenous in movement?*"[203].   In other words, are we discussing a monolithic and cohesive social movement or about individuals who had their political agendas?

Our informant explained his/her view point:

> These large indigenous organizations: APIB, COIAB, APOINME and local organizations, have several contradictions. The APIB makes the national confrontation. The APIB faces the ruralists, the hydroelectric plants, at this macro level, but it has the contradictions that indigenous people have within it that supports the concession of the plant in Marabá, which wants to receive money from VALE [Rio Doce, Brazilian Mining Company] already inside the [INDIGENOUS GROUP], that is not involved in the APIB and does not have much voice in the movement, but that fights a lot against it, and there are other mechanisms, they are trying to look for other breaches to fight, that they do not feel much space within the movement. This happens in other countries, in Peru as well. The issue of isolated Indians is

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[201] From the original in Portuguese: "*o neoliberalismo explodiu o movimento social no Brasil nos anos 90, mas não explodiu o indigenismo. Ele privatizou o indigenismo, entendeu?*".

[202] From the original in Portuguese: "*essa galera da política indigenista conhece bem as brigas internas, conhece bem as comunidades, como elas são, então sabe como desmobilizar[...]. Então teve uma participação ativa do governo Dilma na desmobilização*".

[203] From the original in Portuguese: "*movimento indígena ou indígenas em movimento?*".

very interesting too, because it has a national voice, generally isolated indigenous people would appear seldomly within the national discourse of the indigenous movement, but have conflicts and alliances locally, in the sense that the neighbors of the isolated ones will also protect or kill, if they feel threatened there.[204]

E5's testimony pointed in the same direction, as he/she said "*there is an impressive diversity among Indigenous peoples. A great amount of divergent views. In fact, there is no unified movement, there are movements that sometimes have common interests, depending upon the place, they are not the same* "[205]. E1's take on the issue was also worthy because he/she pointed out that the political crisis that ultimately ended up with Dilma Rousseff's impeachment helped to further fragment Indigenous collective organization. In his/her own words,

[...] the present indigenous movement is not united. It is not unified. [inaudible]. They are not all united. If you were here last year, you'll remember. They were standing near the memorial. [inaudible] the movement cracked up, and cracked up terribly, because the people of the northeast wanted to go to the demonstration that was pro-Dilma, in favor of Dilma. The northern movement did not want to. "She's already lost, she's leaving," "we're going to be upset with the new government. We do not know what the new government is going to be like, so we will not be upset with the new government. " [...] And they cracked up at that time, the northeast group, who is always the

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[204] From the original in Portuguese: "*Essas grandes organizações indígenas: APIB, COIAB, APOINME e as organizações locais, existem várias contradições. A APIB faz o enfrentamento nacional. A APIB enfrenta os ruralistas, as hidrelétricas, nesse plano mais macro, mas ela tem as contradições, que tem indígenas dentro dela que apoia a concessão da usina em Marabá, que quer receber dinheiro da VALE [do Rio Doce, Brazilian mining company], aí já dentro dos [INDIGENOUS GROUP], que não tá muito dentro da APIB e não tem muita voz no movimento, mas que luta muito contra isso, e há outros mecanismos, eles ficam tentando procurar outras brechas de lutar, que eles não sentem muito espaço dentro do movimento. Isso acontece em outros países, no Peru também. A questão de índios isolados é muito interessante nisso também, por que tem uma voz nacional, geralmente indígenas isolados apareceriam pouco dentro do discurso nacional do movimento indígena, mas localmente tem conflitos e alianças, no sentido de que os vizinhos dos isolados vão proteger ou matar também, se sentirem acuados ali*".

[205] From the original in Portuguese: "*tem uma diversidade muito grande indígena. Muita divergência. Na verdade, não existe um movimento unificado, existem os movimentos que às vezes tem um interesse comum, ou dependendo do local, não é comum*".

biggest delegation coming to the ATL, was. And the others stood there, criticizing, understood? There was an outburst.[206]

This fragmentation reflects directly on the daily life of the Indigenous policy and the ability of the Indigenous groups in participating in it. Consider E4's take on the topic. He/she proposed the institutional dialogue between Indigenous organizations and FUNAI's Regional Headquarters during his/her tenure. The reality, however, turned out to be challenging. In his/her words,

> [...] you would end a dialogue with a village, turn your back, 'no, I did not participate.' So how do you make an interlocution, how do you guarantee this interlocution, if we always have a crisis of representation, in terms of the indigenous organizations themselves, in terms of the representations of caciques themselves. An indigenous land has ten villages, one cacique goes there, or another does not go, 'ah, but this indigenous organization represents another', so we had to deal with our expectation that certain representations guarantee stability, but we know it's not [...].[207]

Concluding, our informants believed that the general organizational capacity of Indigenous groups grew considerably over the years, especially during Lula da Silva's two terms. The web of alliances with non-Indigenous organizations, however, carried the conflictive assessments about the role played by NGO's in the Indigenous policy. They were considered partners of Indigenous groups, a disproportionate political force within FUNAI which faced resistances and a sabotage group of

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[206] From the original in Portuguese: *"[...] o movimento indígena que está aqui não é unido. Não é unificado. [inaudível]. Não são todos unidos. Se você estava aqui ano passado, você vai lembrar. Eles estavam ali perto do memorial. [inaudível] o movimento rachou, e rachou feio, por que o pessoal do nordeste queria ir na manifestação que tinha pró-Dilma, a favor da Dilma. O movimento do norte não queria. "Já perdeu, já vai sair", "nós vamos nos indispor com o novo governo. A gente não sabe como vai ser o novo governo, então não vamos nos indispor com o novo governo". [...] E racharam naquela época, o pessoal do nordeste, que sempre é a maior delegação que vem para o ATL, foi. E os outros ficaram lá, criticando, entendeu? Houve o racha"*.

[207] From the original in Portuguese: *"[...] você terminava um diálogo com uma aldeia, virava as costas, 'não, eu não participei'. Então como fazer uma interlocução, como garantir essa interlocução, se a gente sempre tem uma crise de representatividade, em termos das próprias organizações indígenas, em termos das próprias representações de caciques. Uma terra indígena tem dez aldeias, daí um cacique vai lá, ou outro não vai, 'ah, mas essa organização indígena representa outra', então a gente tinha que lidar com o conjunto de uma expectativa nossa de que determinadas representações garantem estabilidade, mas a gente sabe que não é [....]"*.

organizations which had "privatized" the policy goal of protecting Indigenous peoples and helped demobilize them.

Moreover, the Indigenous movement cannot be considered monolithic, preferably a group of organizations often with distinct political agendas operating in different federal levels of government. Its leadership is not cohesive, and local politics plays a vital role when it comes to an understanding of the relationship between the federal government and Indigenous groups.

3.7. Conclusions: the reasons behind the failure of the first NPPCIP

Our informants severely assessed the outcomes of the NPPCIP, as we have shown in this chapter. E2, for instance, considers that the political process of dismantling the Indigenous policy was completed just before the NPPCIP: "*The FUNAI is over. It is when they carry out the Conference. It was more to try to legitimize itself*"[208]. The NPPCIP had "*that pseudo-appearance of a conference, that conference wasn't legitimate*"[209]. E3 recalls that "*the conference ends without any substantial compromise assumed by the government*"[210] In sum, E3 summarized the process as: "*A long, time-consuming process that, when effective, it is not imbued with a commitment by the government to give segment to this channel of indigenous participation*"[211].

We believe our informants were able to provide first-hand testimonies of their participation in the NPPCIP and their explanations for its failure. Regardless of the conflicting assessments of some aspects of each variable discussed, the story narrated by our informants kept cohesion and helps to understand the reasons behind the inability of the NPPCIP to change the parameters of the Brazilian land claims recognition policy.

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[208] From the original in Portuguese: "*a FUNAI acaba. É quando faz a conferência. Faz mais para tentar se legitimar*".

[209] From the original in Portuguese: "*aquela pseudo aparência de uma conferência, essa conferência não tem a legitimidade*".

[210] From the original in Portuguese: "*a conferência acaba sem muito compromisso concreto assumido por parte do governo*".

[211] From the original in Portuguese: "*um processo longo, demorado e que, quando se efetiva, ele não vêm imbuído de um compromisso do governo de dar segmento à esse canal de participação indígena*".

Firstly, the conjunction between the hegemonic centrality of the neodevelopmentalist project during the years of the Rousseff presidency and the president's incapacity of mediating the political force of the ruralist caucus proved to be an obstacle to Indigenous inputs provided by the NPPCIP virtually impossible to overcome. Moreover, it is worth considering the conflictive role of the states in regarding Indigenous issues, which undoubtedly improves the political costs of promoting more Indigenous participation in Indigenous policy in general and in Indigenous land claims policies in particular.

Importantly, even though the sheer number of Indigenous associations grew over the last decades and such organizations were connected with non-Indigenous ones, this dense web of alliances did not reflect on the political mobilization of Indigenous groups between 2009 and 2016. It means that they were not considered credible political threats and could not inflict political damage to the government.

Last, but not least, the very NPPCIP had no political power to enforce its proposals and took place in a very politically sensitive moment for President Dilma Rousseff. The participatory institution designed to improve Indigenous participation – a practice that had no political centrality in her government at all - ended up as an embarrassing event where Indigenous peoples were supposed to show political support to the same person whose policies were in direct conflict with their interests.

Our analysis has shown that the mere existence of an advanced and progressive constitutional framework declaring Indigenous rights to land and political participation is not enough to guarantee their actual enforcement in the daily life of the public policy. There is a gap between the normative aspirations and the real world of politics which is filled with power relations among political forces.

In sum, the failure of the NPPCIP as we have shown in this chapter and the difficulties of Indigenous peoples and its allies faced to effectively change parameters of public policies that affect them show that the balance of power is impeding towards the adversaries of the Indigenous peoples in Brazil. There is no sign that the status quo will change any time soon.

4. CHAPTER 4: ALLIANCES, BETRAYALS, AND RECONCILIATION: A HISTORICAL OVERVIEW OF THE CANADIAN INDIGENOUS POLICY AND LEGISLATION

> *The Indian Act is written like they are doing us a favor, but that's what it means. The Minister decides how we should keep our land, roads, fences and houses. We are not allowed to do anything on reserve land without getting his clearance. Then they wonder why Indian don't take more initiative.* (METATAWABIN, 2015, p. 266)

4.1. Introduction

The election of Justin Trudeau as the Canadian Prime-Minister in 2015 brought the promise of a renewal of the severely undermined relationship between the Federal government and First Nations since the large demonstrations hold in several cities by the so called "Idle no More!" movement in 2013. Recently, although facing some resistance, Indigenous peoples in Canada grew in political importance and collective capacity of articulating an appealing and provocative discourse aimed to shed light and provoke a national conversation about their low standards of living and their claims for land and self-government. A telling example of this trend is the now widespread practice in academic congresses and meetings to start off a presentation acknowledging that the event is taking place in a "non-ceded Indigenous territory", remembering the audience the inconvenient truth that Indigenous land dispossession was the ultimate reason white settlement could have ever succeeded there. Unnecessary to say that such acknowledgement, though merely symbolic, can not be envisioned in the Brazilian future.

The recent emphasis on the importance of the cultural and social heritage of Indigenous peoples to the mainstream Canadian society is, however, a recent trend. Indigenous policy in Canada is a historically political construction whose roots dates to the first years of the contact between the European empires and First Nations. It is impossible to understand the rise of the modern Comprehensive Land Claims Policy without knowing key historical events and legislation regarding the relationship between Indigenous peoples and settler societies that effectively and definitely set

foot on *Kanata* – the Indigenous name for the northern part of the American continent – by the beginning of the 16th century. The goal of this chapter is then, just as the second one did to the Brazilian Indigenous policy, to provide a detailed, though not exhaustive narrative of the evolution of the Indigenous policy in Canada from its colonial roots to its modern design.

Firstly, we discuss the lengthy historical period that stretches from the initial contacts between colonizers and First Nations in the first decades of the sixteenth century to the institution of the Confederacy in 1867, when Indigenous peoples where valuable trade partners and strategic military allies; secondly, we discuss the policy goals and instruments designed to total assimilation of Indigenous peoples in the Post-Confederacy period; already in the second half of the twentieth century, we show the dramatic political changes in the Canadian society that culminated with the establishment of a new treaty-making policy. Finally, we present the features and assumptions behind modern-days Comprehensive Land Claims Agreement Policy, setting the stage for the analysis in the following chapter.

Early colonial contacts and pre-confederation period of cooperation and relative mutual respect

Human groups likely came from Asia through the Bering Strait to occupy the Northern part of the American continent 13.000 years B.C (FRIEDERES, 2016). Since then, highly diversified and well-adapted societies developed and spread over the vast territory of what is now known as Canada and the United States of America. Over three hundred groups speaking a multitude of languages, with distinct cultural features and carrying out customs and rituals that largely differed from each other were considered one unique people "resembling the Orientals" – Indians – as they were described by the Italian explorer Giovanni da Verrazzano when he first encountered Native groups in the Carolinas in 1524. Ten years later, Jacques Cartier's men would have a similar encounter in 24th July at the mouth of the harbour at Gaspé, the first sustained contact of this kind between First Nations groups and French colonizers (MILLER, 2000).

Importantly, Indigenous groups of North America at the time of the European arrival showed remarkably complex political organizations. Matrilineal and matrilocal

semi-sedentary societies gave birth to communities with up to 1.500 individuals connected to each other through intermarriages and military alliances. The Wendat Confederation and the League of the Iroquois, both comprising representatives of numerous First Nations, for instance, bear witness to the level of political organization newcomers met at the time of the first attempts to settle permanently in the "New World" (MILLER, 2000).

Miller (20000) argues that European powers had settled four goals driving their relationship to North American Natives: fish, furs, exploration and evangelization. Since the first contacts made by the inhabitants of the New World, though, it was evident for European colonizers from France and Great Britain that the settlement on the vast lands would be impossible without their assistance. As put by this author (p.34), "*the French who came for fish, fur, faith, or more knowledge of the geography and topography of this strange new land soon discovered that they needed the people they met there*".

Firstly, commercial relationships between the "*gens du fer*" ("iron people", as the Wendat people called French men after their goods made out of iron) and Natïve groups is key to understand the attitudes developed towards each other over the sixteenth and seventeenth centuries. Primarily, French and Basque sailors fished on the shores of Newfoundland and landed only to dry the fish on the sand, with no goal to settle permanently. However, more economically lucrative and long-lasting relationships were developed and culminated with the so-called "fur trade economy." It stands for the network of commercial partnerships between European powers and First Nations established in the early years of the colonization where distinct Indigenous groups competed to provide pelts and furs for traders who would export them to France and Britain, setting a pattern of mutual benefit between the parties involved that lasted for most of the seventeen century and even later (MILLER, 2000).

If the trading partnerships were obviously beneficial for Indigenous peoples, it is less obvious why they would accept the "black robes" to join their communities, as they would call priests and missionaries who came to North America to spread the Christian message and save the souls of the "barbarians". Miller (2000) contends that, after beginning a commercial relationship with another First Nation, Indigenous peoples traditionally kept family relatives from each other as captives as means of securing payments and enforcing the obligation among the partners to meet every

year to keep trading. In this sense, missionaries were regarded by Indigenous mostly just as bizarre individuals that should be kept "hostages to trade" and only tolerated.

Missionary presence in the New World grew steadily over time. The Recollets, a branch of the Franciscans, were among the first to reach to Algonkians and Iroquoians in late 1620. From then onward they were replaced largely by the Jesuits; Sulpicians moved into the Montreal area in 1657; the Ursulines and Hospitallers, both organizations of religious women, were also sharing the burden of the evangelization in uncharted territories where Protestants missionaries were not allowed in. Some of those congregations thought that Indigenous peoples did not have *ni foi, ni roi, ni loi* (no faith, no king and no law), whereas others acknowledged Indigenous belief and political systems, though considered them informed by the devil. In any case, they were souls ready to be Christianized and to be converted into loyal supporters of the Roman Catholic Church (MILLER, 2000).

Finally, the relationship between Indigenous peoples and settlers also became necessary for mutual defense against external invaders. For instance, the military alliances between the Iroquois and the French against the British invasion and later, in partnership with the latter, to counterattack American troops in 1812 (COOK, 2013).

Those early contacts soon led to the negotiation of peace, trade and defense treaties, without any clause regarding territorial rights (LECLAIR, 2013). The Mi'kmaq First Nation alliance with the French, to take just one example, lasted for many decades. After they left the region in 1750, this Indigenous group has signed peace and friendship treaties with the British Empire, demonstrating that they knew how to manage and survive in a politically changing landscape. The fact is, as Poelze and Coates (2015, p.5) states, that native groups in Canada seems to have developed a "*complex web of alliances*" with both European colonizers, arrangements saw by all parties as "nation-to-nation" relationships.

The 1763 Royal Proclamation[212] demonstrates the spirit of collaboration between the British Crown and the native groups as it affirms the necessity of signing treaties with Indigenous peoples before occupying their lands. "*The proclamation established*", say Poelze and Coates (2015, p.5), "*in law and practice, the centrality*

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[212] The Peace of Paris and the Royal Proclamation put an end to the seven years of struggle between the British and the French empire in North America with the latter handing over to the former all its possessions in the northern part of the continent, save for a portion of the Newfoundland shore. In practical terms, it meant the end of the presence of the French empire in Canada (MILLER, 2000).

of this commitment to working with First Nations." As quoted in Asch (2014, p.74), the proclamation states:

> We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where, We have thought proper to allow Settlement: but that, if at any Time any of the Said Indians should be inclined to dispose of the Said Lands, the same shall be Purchased only for Us, in our Name, *at some public Meeting or Assembly of the Said Indians* [emphasis added], to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie.

Initially, friendly relationships were cultivated between colonizers and First Nations during the "pre-Confederation" period. However, as soon as the military conflicts in the continent concluded, the British Crown readdressed this approach and outlined that First Nations were obstacles to land development, and were effectively child-like human beings that were not fit to partake in a modern economy[213] . The era of "extraordinary harmony" between settlers and Natives came to an end (COOK, 2013).

The transition from respectful allies to wards of the state occurred quickly. First, smallpox, tuberculosis, and other diseases heavily depopulated and destroyed some Indigenous groups. Severely undermined and politically weak, Indigenous peoples became more and more marginalized. By the mid-nineteenth century, the general understanding of the political leaders of the newly created Dominion of Canada was that the Indians would progressively integrate to mainstream society, leaving behind their traditional way of life of hunting, trapping, gathering and fishing.

Notwithstanding the importance of the early contact between natives and settlers to shape the relationship between both parties, in order to better understand

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[213] To see Indigenous peoples as "children" and "orphans" was a well-known strategy of colonial powers and national governments in both countries to subjugate such populations. The reasoning behind this strategy was exposed by Michel Foucault in his *Maladie mentale et psychologie* (1954), where he shows that considering mental-ill persons as "child-like persons" means that they were not accountable for their acts and, therefore, must be controlled by a medical staff. Ramos (1998) made a similar point, showing, for the Brazilian case, how it is embedded in national laws and in the very way mainstream Brazilian society sees Indigenous peoples. Baldi (2017), for his turn, shows how the conservative constitutional interpretation of Indigenous rights by the Brazilian Supreme Court helps to reinforce this conception.

the contemporary Indigenous politics in Canada, it is important to take a look at three pieces of legislation: the 1867 Confederation Act, the 1876 Indian Act and the 1982 Constitution Act.

Indigenous policy after Confederation: towards total assimilation

> *Father, time wore on and you have become a great people, whilst we have melted away like snow beneath an April sun; our strength is wasted, our countless warriors dead, our forest laid low, you have hunted us from every place as with a wand, you have swept away our pleasant land, and like some giant foe you tell us 'willing or unwilling , you must now go from amid these rocks and wastes, I want them now! I want them to make rich my white children, whilst you may shrink away to holes and caves like starving dogs to die.'* (1849 Shinguakonce/Little Pine chief letter to the Governor of Canada quoted in MILLER, 2000, p.124)

In 1867, the British North America Act, also called Confederation Act – which created the Dominion of Canada -, went into effect and the new Canadian Government assumed responsibility for First Nations. The urgency for expansion of the new nation during the "post-Confederation" period led both British and Canadian authorities to implement "*a new strategy for Aboriginal peoples, developed with little input from the affected communities*" (POELZER; COATES, 2015, p.8). In other- less euphemistic-words, Indigenous peoples became the target of the policy of the "bible and the plough" designed to force the conversion of Natives into Euro-Canadian citizens and finish, once and for all, the "Indian question" in the newly created country (MILLER, 2000).

Ten years before the Confederation, the Act for the Gradual Civilization of the Indian Tribes in the Canadas was passed by the Canadian legislature with the goal of providing citizenship to individuals willing to drop their status as Indigenous. After meeting a series of conditions established by a special board, the "former Indian" would be entitled to freehold twenty hectares from reserve lands, breaking the communal tenure system into small individual plots. In 1869, the Gradual

Enfranchisement Act doubled down the Gradual Civilization Act's provisions and further tightened control of Indigenous populations. Among its measures were the "blood quantum" test to qualify for Indigenous status, the provision clarifying that any Indigenous woman who had married with a non-Indigenous man would lose her status , and the empowerment of Indigenous Affairs officials to remove any "uncooperative" Indigenous leader within Indigenous communities. In sum, by 1857 and 1869 Acts, Canada established a strong hand in dealing with Indigenous peoples, pushing for their integration and the total dismantling of their social, political and cultural organization (MILLER, 2000).

In 1876, the Indian Act summarized all previous legislations and codified the relationship between the Canadian state and the First Nations living within its borders, giving them "ward-like status" and establishing a series of conditions and criteria for the full exercise of citizenship. The main distinction set up by this document was between "status" and "non-status" Indians. The first were entitled to full rights as Indians, while the latter, as well as the Métis and the Inuit, had no Aboriginal rights. There were reforms made to this legislation over the course of the twentieth century, but this legal diploma is still in charge and remain the main legal document that addresses Indigenous peoples in Canada "*du berceau au tombeau[214]*" (LECLAIR, 2013, p.249). The goal of the authorities was to further intensify the policy of assimilation of Indigenous peoples to convert them as soon as possible to the European way of life. As soon as it became clear that Indigenous groups have survived to the devastation of the first centuries of the colonization, the Canadian state could no longer expect their total elimination. Instead, efforts were made to "educate", to train and to Christianise them[215].

Interestingly, by 1870's, Canada's southern powerful neighbour was waging war against a coalition of Indigenous nations under the leadership of Sioux Lakota legendary warriors Sitting Bull and Crazy Horse, spending as much as 20 million dollars per year, the total budget of Ottawa for a whole year. Unable and unwilling to take such expensive and extreme course of action, the Canadian government

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[214] Literally, from the cradle to the grave.
[215] The most known of these assimilationist policies is the establishment of Residential Schools, a policy that have lasted from 1876 to 1996, when the last one was closed by the Canadian government. They were basically schools whose attendance was compulsory for Indigenous People's children. Several abuses were perpetrated, among them sexual abuse, compulsory work and the prohibition of speaking native languages. The national scandal of the survivors of this abusive policy led to the establishment of the Indian Residential Schools Truth and Reconciliation Commission nine days before of the official asking for excuses and forgiveness by the Stephen Harper's Conservative Government in 2008 (YORK, 1989; FRIEDERES, 2016).

resume the treaty-negotiation policy of the British empire (MILLER, 2000). There were hundreds of treaties signed, and among them the important eleven "numbered" treaties. These eleven treaties were signed between 1871 and 1923 and addressed cultivable areas for the settlers which now currently addresses the largest area of the Canadian territory (LECLAIR, 2013).

The Robinson-Superior treaty and Robinson-Huron treaty were concluded in 1850 to clear Aboriginal title for the development of minerals in the northern Ontario. In1871 the first two of the eleven numbered treaties were signed in southern of what is Manitoba today; Treaties 3 to 7 covered the lands to the construction of the Canadian pacific railway, other transportation routes and settlement of the prairies; Treaty 8 covered the Athabasca district and provided an overland route to gold-fields in the Yukon territory; Treaty 9 opened up transportation routes through northern Ontario; Treaty 10 cleared title in the provinces of Saskatchewan and Alberta; Treaty 11 as signed in the Mackenzie district, immediately after the discovery of oil at Fort Norman in 1920 (which raises questions about its validity in the contentious issue of the Mackenzie Valley Pipeline still today). In the numbered treaties, Indigenous groups surrendered all title to lands covered by treaties and, in turn, federal government granted tracts of land to the Indians for reserves. In British Columbia, James Douglas, chief factor of the Hudson's Bay Company and second governor of Vancouver Island signed 14 agreements with native groups between 1850-1854, what became know as "Douglas treaties" (CANADA, 1985).

The Canadian government decided to stop negotiating land treaties with Indigenous groups after 1921, leaving them with two options instead: either demanding judiciary arbitration or pressuring the central government to recognize Aboriginal titles (SCHOLTZ, 2006). Between 1927 and 1951, after an amendment to the Indian Act, it was illegal for Indigenous organizations to raise money to file their land claims, and a new provision made it virtually impossible for such organizations to push their claims forward (LECLAIR, 2013). Eventually, land claims were addressed on an *ad hoc* basis, without any specific policy guidance (SCHOLTZ, 2006).

Trudeau's Indian White Paper and the Indigenous rights at the 1982's Constitution

In the wake of the civil rights movement during the 1960's, there was an increasing public awareness that Indigenous peoples were still living under poor conditions while the wealth of the country was raising. The *Hawthorn Report*, delivered in 1966, was the product of an extensive research carried out by social scientists that demonstrated the extreme social conditions under which First Nations were living under at the time. The creation of the *Department of Indian Affairs and Northern Development* (DIAND, today renamed after *Aboriginal and Northern Affairs Canada*), with its minister at the Cabinet's table, in the same year, sent a clear message that Indigenous issues would no longer be ignored (SCHOLTZ, 2006).

Indeed, the Liberal Government of Pierre Trudeau tried to push forward a major revision of the Indian Act, calling for the extinction of the Indian status and rights. Jean Chrétien, DIAND's Minister between 1968 and 1974 (and later Canada's Prime Minister between 1993 and 2003) introduced the White Paper[216] on Indigenous policy to Cabinet's approval in 1969 with the stated goal to "*end Canada's apartheid policy on Indians, to eliminate the special relationship of the Indians with the federal government, to repeal the Indian Act and gradually work towards deletion of the constitutional references on Indians*" (SCHOLTZ, 2006, p.57). The powerful reaction of the Indigenous groups to the legislation, however, forced the government to publicly abandon the policy by the mid-1970', when adpoted the Comprehensive Land Claims Agreement policy discussed later in detail in this chapter.

Finally, Canada was one of the first countries in the world to clearly state in its Constitutional text, the existence of Indigenous rights. The last Section 35 (I) of the 1982 Constitution Act recognizes the existence of treaty rights and AIndigenous rights without however, specifying what these rights could possibly mean. Once such rights were present in the Constitution's text, the Canadian Government developed a few policies in tandem with the existing legislative framework (USHER, 2003; USHER;TOUGH;GALOIS, 1992).

In 1996, the *Royal Commission on Aboriginal Peoples* issued a 4,000-page report addressing the central issues related to the First Nations quality of life, historical grievances and, in a broader sense, the relationship between them and the

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[216] White Paper designates a policy probe open to debate in contrast to a fully worked out policy, aimed to stimulating public discussion and signaling the pathway government is seriously considering following (RUSSELL, 2017).

Canadian state. Among its 440 recommendations, several addressed the issue of land titling, self-governance, welfare and financial compensation and social investments. Other provisions included: aiming to replace, under entirely new institutional and legal foundations, the historical tension between Indigenous peoples and governments. The governments response to the report came in 1997 with *Gathering Strength: Canada's Aboriginal Action Plan*, with the goal to set a new policy framework based on four cornerstones: renewing the partnership; strengthening Native governance; developing a new fiscal relationship and; supporting strong communities, people and economics (HURLEY; WHERRETT, 2000).

The evolution of the Canadian legislation on Indigenous affairs shows a long history of reconciliation towards a more respectful treatment of Native groups as found in the 1763 Royal Proclamation, to a renewed consideration of Native rights under the 1982 Constitution Act. The 1867 Constitution Act and the 1876 Indian Act became the cornerstones of the development of a racist and assimilationist approach towards Indigenous Populations in Canada for more than a century to this date. A summary of the main Indigenous legislation and its content can be viewed in the Table 10 below.

Table 10: Canadian Legislation on Native Groups 1763-1982

LEGISLATION	CONTENT
Royal Proclamation 1763	Acknowledges the existence of the Aboriginal title over land and the necessity of treaty-making
Act for the Gradual Civilization of Indian Tribes in the Canadas 1857	Provides citizenship to Indigenous individuals willing to drop their status
Constitution Act –Section 91(24) 1867	The Canadian government assumes responsibility for Aboriginal groups of the new Dominion of Canada
Gradual Enfranchisement Act 1869	Provides the "blood quantum" test; stripes Indigenous status of Indigenous women married with non-Native individuals; allows government officials to interfere in Indigenous groups' political organization
Indian Act 1876	Codify all aspects of the First Nationsl life in Canada
Constitution Act	Explicitly acknowledges the existence of Native groups in

Section 35 (1 e 2) 1982	Canada and their right to land titling

3.1 Canada's Comprehensive Land Claims Agreements Process[217]

Coates (1992, p.3) states that "*all provinces and territories in Canada now find themselves addressing native demands of greater or lesser complexity.*" It means that every year, both provincial and federal governments expend considerable amounts of money and resources trying to deal with the myriad of land claims made by the First Nations of the country. As Belanger and Lackenbauer (2014) show in their study on the direct actions of protest taken by Indigenous peoples in Canada over the twentieth century, there is a lot of anger, frustration and a widespread sense of unfair treatment regarding their relationship with Canada, which fueled significant massive social movements like the recent Idle No More movement (PALMATER, 2015; COATES, 2015). However, as Coates (1992, p.3) affirms, "*the highly-publicized contests, of course, tell only part of the story. For every stand-off, road blockade, and other such public conflict, there are literally dozens of low-profile demands, negotiations, and controversies across the country.*" Land claims negotiations are certainly part of them.

It is common sense among Canadian scholars on Indigenous policy that the famous *Calder vs. Attorney-General of British Columbia* in 1973 is the judicial precedent to recognize Aboriginal title in Canada. It was a pathbreaking case brought to trial by the Nisga'a people leader Frank Calder in 1969, seeking a declaratory judgment that the Nisga'a held the Aboriginal title to the land, an essentially usufructuary and inalienable interest that was never extinguished. At the end of the trial, the Nisga'a lost the dispute, and the dissenting judgment of Justice Emmet Hall– that the sovereignty of the Crown and the rights derived from the fact of the prior occupancy of the land by Native groups must be reconciled- was convincing enough

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[217] Christopher Alcantara (2013) provides the most detailed account of the CLCA in Canada and this section relies substantially on it, providing some additional information when needed.

to encourage the Canadian government to adopt the policy of modern treaties, or Comprehensive Land Claims Agreement Policy in 1973[218] (ASCH, 2014).

The first real test of the new policy was in the *James Bay and Northern Quebec Agreement* (JBNQA) in 1975, which serves as the precedent to the modern-day Comprehensive Land Claims Agreements (ASCH, 2014). There was a pressing necessity of the Robert Bourassa liberal government to develop a massive infrastructural project – a huge Hydroelectric Power plant- at the James Bay, in Quebec's north, the traditional land of the Cree and Inuit people[219]. Those peoples could obtain a series of protections regarding their traditional activities such as hunting and fishing – not to mention monetary compensation- in exchange for the agreement of the extinguishment of rights based on the pre-existence of their societies. Concluding, following Asch (2014, p.21) "*as can be seen, the position taken by the government of Canada in the 1970s generated a precedent that largely remains in place today.*"

The stated goals of the CLCA policy are: 1. Provide certainty over the property, use and of the land and resources management; 2. Clarify duties and rights of all parties involved; 3. Establish the rights that non-Natives have living within indigenous territory; 4. Determine to which extent First Nations and other government levels are to legislate over territorial and resource-based disputes; 5. To set out clear rules and provisions of self-governance, its powers and the scope of jurisdiction and how these powers will work in partnership with other levels of government; 6. Establish the total amount of a cash compensation to be paid to the Indigenous groups as well as a payment schedule; 7. Support and strengthen Nativel ways of living related to territory, spiritual beliefs, economy and political organization.

Besides First Nations, there are usually many governmental partners involved in some stage of the negotiations. The AANDC Comprehensive Claims Branch (CCB) represents the Canadian government in all negotiations with native groups in

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[218] The process is told with greater detail on the Michel Asch quoted book, *On being here to stay: treaties and Aboriginal rights in Canada*.

[219] It is curious to contrast the construction of the Hydro Dam at James Bay and the infamous Belo Monte Dam in Brazil almost forty years later. Both were considered strategic infrastructural projects to provide a new source of energy by nationalist and developmental governments; both were constructed on lands considered remote and depopulated; both had to deal with the fact that Indigenous peoples lived there and strived to have their claims heard. On the other hand, as Professor Stephen Grant Baines (personal communication) rightfully notes, there is a crucial difference between them: whereas the Hydro Dam at James Bay effectively produces energy and is a strategic power source for the Province of Québec, the Belo Monte Dam is a "white elephant". However, a full comparative research is yet to be made.

all territories and provinces except British Columbia, where it is carried out by the Federal Treaty Negotiation Office. When the negotiations start to "take off", other governmental agencies may take part in the discussions, among others: Parks Canada Agency; Environment Canada; Fisheries and Oceans Canada, Natural Resources Canada; Canadian Heritage.

The Core Federal Team consists of a Chief Federal Negotiator, a legal council, and analysts. The Provincial/territorial governments have the right to participate in the discussions.

> In short, the negotiations process is one in which Indigenous peoples confirm that they are reconciling their political rights with the Crown's sovereignty. Or to put it another way, in return for recognition of a limited set of rights, Indigenous peoples affirm that Canada has sovereignty and jurisdiction, and thus that settlers are legitimately here to stay. That is the consequence of choosing the path that the 1995 policy describes as 'clearly preferable as the most practical and effective way to implement the inherent right to self-govern (ASCH, 2014, p.28).

Scholtz (2006, p.34, highlighted in the original), for her turn, summarizing her point of view of the process, states:

> By engaging in land claims negotiations, governments: 1) validate indigenous peoples as bearing collective property rights (the recognition dimension); 2) accept shared political responsibility for future policy outcomes (the delegation dimension). Negotiation is, therefore, a highly *political* method of resolving an underlying land grievance.

As Picard (2013, p.13, translated by the author), Chief of the Quebec and Labrador First Nations Assembly notes, one should not confound land claims negotiations with a more usual negotiation, such as union negotiations on workers'

contracts, since they have as a goal "*to recognize rights existing since long time and that have never been abandoned, erased or alienated*"[220].

The next topic deals with the practicalities of the land claims negotiation policy in Canada, discussing its main stages and topics.

Stages of the Comprehensive Land Claims Process in Canada

The Comprehensive Land Claim Agreement policy follows four stages which includes an additional stage of implementation. The features of each stage are described below:

a) Submission of claim: the process starts with the preparation of a "statement of claim", a formal declaration by the First Nation to the competent authorities (provincial, federal or territorial governments), which brings supportive material such as maps and anthropological reports that identify the group and the broader scope of the claimed geographical area of their traditional territory. The Ministry of Aboriginal Affairs, with the advising of the Ministry of Justice, may accept or refuse the claim. Once it is accepted, the "assessment process" period begins, and arguments as well as claims made by the group should be confirmed trough archeological and anthropological evidence, which is a timely process.

b) Framework Agreement (FA): after the formal acceptance of the claim, the parties involved start the first round of negotiations to agree on the topics that will be discussed in greater detail later. The FA works as an agenda for the negotiations, specifying the issues that will be covered, how they will be debated and a work plan for reaching out an Agreement-in-Principle;

c) Agreement-in-Principle (AIP): The "deal-making stage" is the period when the negotiating parties should reach substantial agreements over the issues

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[220] From the original in French, "[…] *à faire reconnaître des droits existant depuis fort longtemps et qui n'ont jamais été abandonnés, éteints ou aliénes*"

debated, and these agreements compose the Final Agreement. The latter, for its turn, should state clearly all the terms negotiated by the state and the First Nation. Finally, all involved should develop a AIP and Final Agreement ratifying plans;

d) Final Agreement and Ratification: In the final negotiations, the Canadian government is advised by consultants and working groups in order to guarantee that the concerns of all parties involved were fairly addressed and are protected by the Final Agreement. All groups have the opportunity to share information with their constituencies in public forums with the presence of local stakeholders;

e) Implementation: state and First Nations' negotiators design mechanisms to deliver and evaluate all Final Agreement provisions. This stage is very time-consuming due to the complex tasks to be accomplished, which include the drafting of legal documents and land titling.

During the steps 3 and 4 of the CLCA negotiation some relevant aspects are discussed, among them:

a) Financial aspects, preparedness and negotiation costs: The Federal government has a fund available to help First Nations groups that aim to present their claims in accordance with federal legislation. Varying with the complexity of each particular case, this financial contribution can reach a maximum amount of 3.5 million Canadian dollars. First Nations' negotiators – to a maximum of five persons- may receive salaries and benefits during the negotiations, which is deducted from the final cash compensation at the end of the agreement. If a native group desires to hire another consultant or team member, they must do it at their own expense. There are some negotiation preparedness initiatives, prior to the first stage of the CLCA, which were designed to fund the training of Indigenous groups for negotiations, and these costs are part of the negotiation costs to be calculated at the end of the process;

b) Overlaps: there are many and significant cases of overlapping of claimed territories among native groups and territories that are in two adjacent provinces or territories, especially in British Columbia. The idea is that the dispute over overlapping territories should be resolved among the groups before starting CLCA negotiations;

c) Interim Measures and Complementary Agreements: Agreements bilaterally signed with specific goals and actions can be made during the negotiation process. They are usually "time-limited" to incentive the participants proceed with Final Agreement negotiations. Administrative acts can be signed as well, but these acts lack the constitutional protection of the Final Agreement.

d) Third party consultations and compensations: Consultation of local stakeholders may be affected by provisions in the agreement. The Canadian government seeks a public understanding of the agreements and actively make efforts to share information about these agreements. The future cash compensation in case of harm inflicted to a third party can be addressed through the establishment of a bilateral committee.

e) Legislative Consultation: local legislations can be very different from federal legislation and, therefore, it is important to consult local authorities to discuss future legal conflicts and mechanisms to overcome these conflicts. It should be stressed that there is a significant importance of constructing cooperative channels with local governments in order to avoid any issues related to the implementation of the agreement dispositions.

f) Indian Act Transition: Once the Final Agreement is signed, some conditions of the Indian Act may not be applicable to the native group in question and, for this reason, it is important to make a soft transition between the two legal frameworks.

As one can see, the policy design relies strongly on the capacity of the parties involved to talk, express their concerns, grievances, doubts, fears, arguments and reasons to bargain. Despite the shortcomings and many obstacles that may hinder the completion of a CLCA[221], it is evident, as Scholtz (2006, p.14) states, that *land claims negotiations accord indigenous peoples and indigenous authority structures an explicit recognition of their role as strategic political actors involved in a dialogue with the government.*"

Conclusion: the general trend of Canada's Indigenous policy

Pressed by the urgencies of colonization of such a vast territory, colonial powers had to settle peace and military treaties with the natives of North America, acknowledging in the process some Aboriginal title over the lands they occupied. This "nation-to-nation approach", later became a relationship where Indigenous groups were meant to be completely assimilated into mainstream society, as the infamous Residential School System bore witness.

The historic treaties settled throughout the centuries between the British Crown and later the Canadian state and the Indigenous groups released vast amounts of land to agriculture and economic activities in provinces such as Ontario and Québec and served as a significant part of the Canadian contemporary territorial base. At the same time, First Nations were progressively confined in small areas, which contributed to spreading of diseases and mitigating their political organization and traditional economic activities. As Poelzer and Coates (2015, p.7) state, "*one of the strongest assumptions governing Aboriginal affairs in Canada (and the United States and Australia) was that Indigenous people would disappear*". By the end of the nineteenth and the beginning of the twentieth century, state agents were just waiting for the complete integration of Native groups to the western lifestyle.

After the massive mobilization of Indigenous groups in the sixties of the twentieth century, Canada set out a policy to address native land claims, which was the Comprehensive Land Claims Agreement policy, among other policies addressing

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[221] It is worth noting, in this regard, the unique approach of Cristopher Alcantara's (2013) book on the factors that influence the reaching of an CLCA and factors that speed up the process.

self-governing issues. Thus, since 1972, native groups have been able to push forward their territorial agenda, though still being among the poorest communities in the country.

In sum, the Canadian Indigenous policy can be described just as assimilationist, racist and dubious as the Brazilian Indigenous policy. However, regardless some significant differences between the countries related to the historical approach to Indigenous issues, the similarities between them are more salient. Highlighting these similarities, we intend to make a clear point that the challenges Indigenous peoples face in both countries could be conceptualized through a more comprehensive approach, leading to insights which may be useful when it comes to delineating practical solutions to them.

5. CHAPTER 5: TOWARDS A NEW 'SOCIAL CONTRACT': THE CASE OF THE NATIVE PARTICIPATION IN THE MODERN TREATY-MAKING POLICY FORMULATION IN CANADA

Canadians over the past decade are accepting the reality that within this modern democratic society, technologically advanced and materially powerful, there are and have existed for many centuries before the first white settler arrived on the Atlantic coasts some four hundred years ago, a society of peoples known as aboriginal peoples. These aboriginal peoples occupy today as did their ancestors for countless generations the forests, plains, artic ice, mountains, seacoasts and vast territories within as well as outside the national boundaries of what is today Canada. Canadians today have also accepted the reality that although in the past aboriginal peoples occupation of the land had been diminished through misrepresentation and design, and in spite of every devised attempt since the dawn of our Canadian history to deny the aboriginal peoples the fundamental elements necessary to their survival – land and resources to sustain themselves and the productivity derived therefrom, aboriginal governing structures, spirituality, social and cultural values, teaching and language, they remain. Despite the centuries of misconceptions, prejudice, bitter disputes, deep grievances, and hostile social environment confronting aboriginal peoples, they have managed to survive and continue to survive as an identifiable society of peoples on land which continues to be their only home on this entire planet.[222]

5.1. Introduction

This chapter deals with the case of the review process of the Comprehensive Land Claims Agreements policy carried out by a Task Force in 1985 and which delivered the report titled "*Living Treaties, lasting agreements: report of the task force to review comprehensive claims policy*" (CANADA, 1985). The TF was appointed on 4th of July 1985 and had the mandate to consult with all interested parties and propose major revisions to the federal government policy in place since the last policy review in 1981[223].

The TF report was submitted by its chairman, Coolican Murray, to the Minister of Indian Affairs and Northern Development, Honorable David Crombie, in December

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[222]Native Council of Nova Scotia summary of submission -16/09/85.
[223]Department of Indigenous Affairs and Northern Development, Communiqué 1-8523. – 04/07/85

1985. After six months of work, the TF presented important numbers: there were 90 meetings (50 of which were held with Native groups) and 73 submissions (52 of which were from Indigenous groups and 21 from non-native groups), involving Federal agencies, Provincial governments, Federal negotiators, private companies, civil society organizations, scholars, lawyers, private citizens, and especially a considerable number of Aboriginal groups- Métis, Inuit and First Nations - across the country.

However, neither those records nor the significant impact the report had on the land claims policy was sufficient to attract scholarly interest to the process. Touted by Chief Gary Potts of the Teme-Augama Anishnabai First Nation as "*the first time since 1763 that government has made an effort to hear from the first nations of Canada in a Treaty making policy formulation*" (CANADA, 1985, p.2), we decided to go deeper into the TF work and provide a detailed account of this process involving Native groups in Canada. We intend to provide a full picture of the policy review process and the contributions of the parties involved, with particular focus to the contribution made by First Nations.

This chapter has the following objectives: firstly, to provide a full and detailed account of the process of policy formulation started with the White Paper in 1969 and that ended up with the process aforementioned. The current CLCA policy should be understood as the culmination of a process that began after the backlash faced by the Canadian government subsequent to the failed attempt to repeal the Indian Act in the late 1960's. Zooming in on this period, just briefly cited in the last chapter, it will provide for a more accurate account of the changes to the policy during the period considered.

Secondly, we go beyond the official report and analyze the actual process of Indigenous participation in light of the data available. We look for the arguments advanced in formal submissions or meetings with the TF, highlighting the Indigenous proposals related to aspects of the policy such as the scope of negotiations, policy goals and objectives and overlapping issues, among others. The arguments and proposals of the other participants are also considered, providing a rich and complete picture of the process. The primary data used here are the documents collected at the Canadian institutions already considered in the introduction of this dissertation.

Finally, we analyze the case in light of the variables advanced in the first chapter of this dissertation, discussing their potentials and shortcomings to the

explanation of the role of Indigenous participation in the process of reviewing and designing a policy that directly affects them. To base our arguments, we draw not only on the primary data but also on a series of documents and secondary data.

5.2. The winds of change: from the 1969 Statement of the government of Canada on Indian Policy to the 1973 new policy on Indigenous land claims.

In the wake of the major social movements that agitated the world during the late 1960's and the election of the Liberal Government of Pierre Elliott Trudeau in 1968, the Canadian policy towards First Nations suffered a major shift in its course. In 1968 and 1969 the Trudeau administration decided to carry out a significant revision of the legislation and policy concerning Indigenous peoples in Canada.

The political content of the 1968's discussion handbook titled "*Choosing a path: a discussion handbook for the Indian people*" (CANADA, 1968) is in consonance with the later "*Statement of the government of Canada on Indian Policy*", presented to the House of Commons by the Minister of Indian Affairs and Northern Development, Jean Chrétien, in 1969 (CANADA, 1969). The rationale behind the two documents is the following: the historical approach to Indigenous peoples in Canada has led to "apartheid" between settler society and those groups, practically two radically distinct societies living in two different countries. While Canada inhabited by the citizens of European ascent is prosperous and socially just, the other is miserable and sad. Moreover, the Indian Act is an excrescence of the colonial era, and racially-based laws cannot be accepted in a modern Western-liberal democracy. However, the "*special treatment*" dispensed to Indigenous groups was nothing more than "*legal discrimination.*" Thus, from this basic premise follows the core proposals of the *Statement*: repeal the Indian Act and "*wind up that part of the Department of Indian Affairs and Northern Development which deals with Indian Affairs.*" Therefore, the stated goal of the proposal was to allow "*full, free and non-discriminatory participation of the Indian people in Canadian society*" (CANADA, 1969, p.5)

According to the liberal worldview professed by the 1969 *Statement*, it proposes that the traditional lands in Canada should be under full control of First

Nations, which would have "*free choice of use, of retention or of disposition*" (CANADA, 1969, p.12). In this sense, Native groups could use the land for mortgages and leasing and should accept land value tax in the future.

Finally, in 1973, the new policy on Indigenous Land Claims was presented by the Trudeau government through the *Statement on claims of Indian and Inuit people* made by the Honorable Jean Chretien to the Parliament. Such action exposes, from the outset, that the policy announced includes "Inuit or Eskimo people" and is intended to settle longstanding grievances with Native groups that had not signed historic treaties with the Crown, notably in Northern Québec, Northwest Territories, British Columbia and Yukon. It was by Chretien's understanding that the new policy was "*intended and designed to remove the sense of grievance and injustice which impedes the relationships of the Indian and Inuit peoples with the governments concerned and with their fellow Canadians*" (CANADA, 1973, p.30).

The Statement affirms that "*it is basic to the position of the Government that these claims must be settled and that the most promising avenue to settlement is through negotiation*" (CANADA, 1973, p.4) and that the Canadian government is ready to engage in negotiations with First Nations organizations. Importantly, the new policy stressed the importance of the participation of the Provinces in processes of land claims settlements. In *verbis*, "*settlements with Indian and Inuit groups in those provinces can only be satisfactorily reached if the provinces concerned participate along with the Government of Canada in the negotiation and settlement*" (CANADA, 1973, p.5).

Considerably, those were the bedrocks of the new Canadian policy on Indigenous land claims: the centrality of the negotiation as the procedure to reach agreements with Indigenous groups, with the participation of the Provincial governments. Furthermore, it represented a rupture with the previous policy of the Canadian government during the first half of the twentieth century and returned to the previous pattern of negotiation, characteristic of the historic treaties, howbeit, in a completely different political landscape.

In All Fairness: the first revision of the 1973's Land Claims Policy.

Although relevant, a policy statement is not enough to build up a policy. Nonetheless, it develops its tools and concepts progressively in practical contexts of real relationship with the targeted population. Native Land Claims began to have the increasing attention of the government from 1973 onwards, as a review on Annual Reports of the Department of Indian Affairs and Northern Development reveals. In addition, the Office of Native Claims (ONC) was established in 1974 to deal specifically with the claims under the new policy. In 1975 the Cree and Inuit of James Bay settled the first modern treaty; the Council of Yukon Indians signed an agreement-in-principle in 1978; the Inuit from the center and eastern Arctic entered in negotiations with the Canadian government, as well as the Nisga'a in British Columbia and the Métis of Mackenzie Valley.

Nevertheless, if some major claims were filed over the 1970's, the pace of negotiations was slow, frustrating the expectations of First Nations. Succeeding eight years of its adoption, the general evaluation was that "*there has been moderate success but much remains to be done*" (CANADA, 1981, p.3). In essence, the Honorable John C. Munro, Minister of the AANDC, proposed a first revision of the 1973 *Statement* presented in a booklet titled "*In All Fairness.*"

Substantially, in this first major policy review, some guidelines are set out. Firstly, it affirms that all negotiations should lead to a scenario where no future claims would be made against the Canadian state or, in other words, the negotiations must be final. Secondly, the negotiations would be designed to deal with "non-political matters" arising from the discussions regarding fishing and hunting rights, monetary compensation, among other topics. The scope of the reviewed policy was clear: "*the thrust of this policy is to exchange undefined aboriginal land rights for concrete rights and benefits*" (CANADA, 1981, p. 19).

There is a resolute defense of the negotiation as the best procedure to conclude agreements with native groups. In contrast to the procedures adopted by the United States and Australia to settle significant native claims in those countries, Munro affirms that negotiations are preferable to court disputes and arbitration because it "*allows them to participate in the formulation of the terms of their own settlement*" (CANADA, 1981, p.21). Moreover, native groups would be able to express their concerns and grievances. Finally, it permits more elasticity in dealing with Native concerns.

In October 1983, the Special Committee in Indigenous Self-government of the House of Commons presented its final report (known as "the Penner Report", named after its chairman, Keith Penner), proposing that the Canadian government could reset its relation to Indigenous peoples through the recognition of their political autonomy (CANADA, 1983). As a result, in March 1984, the Canadian government responded to this report acknowledging the pertinence of the Committee's recommendations, pondering that, while some proposals could be implemented only via constitutional amendment, others could be developed under the current legislation (CANADA, 1984).

Despite these promising developments, native sentiment that negotiations were stalled and not providing the promised boosting of Indigenous daily life continued. As the Stó:lo Nation puts it, the feeling was that they were "*at the mercy of the government*"[224] or, as more eloquently stated by the Haisla Nation, "*The government can recognize; refuse to recognize; stall; set the terms of negotiations; change them; in short, do more or less what it wants, because in legal terms there is nothing compelling them to do anything. Strictly speaking, they are talking to us out of the 'goodness of their hearts[225].*" Just four years ensuing the "In All Fairness" policy review, another process was put in place to address its flaws.

A Task Force to Review Comprehensive Claims Policy: the second round

> *The recommendations of the Task Force and the Cabinet response to them will take on fundamental importance for all Aboriginal peoples in Canada. It would be unconscionable, unacceptable and in direct violation of all public commitments by the current government for the MSNI to be once again 'forgotten' by this crucial bedrock of federal Aboriginal policy.*[226]

Responsively, the final report of the Task Force begins with an explanation of the reasons why negotiation is the best way to deal with native land claims, further developing the point made by the 1981 policy review. Purposely, negotiation has been a keyword to understand the Canadian native claims policy since the beginning

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[224] Stó:lo Nation summary of submission - 15/10/85
[225] Haisla Nation summary of submission – 24/09/85
[226] Native Council of Canada summary of submission – 27/10/85

of colonization, as we have seen in the previous chapter. In the report's account, there was no reason to dispute the facts: negotiations were more likely to accommodate interests and were preferable to judicial litigation because the latter has an adversarial approach in nature that results in winners and losers. What is more, opting for the "*ticket into the lottery of litigation*" can be time-consuming, expensive and with unpredictable outcomes. "*A loss for an aboriginal group*"– says the report - "*would indeed be a Pyrrhic victory for government. The federal government still would have to settle with Aboriginal people but, after victory in courts; it would be as conquerors dealing with the vanquished*" (CANADA, 1985, p.4).

Importantly, negotiations could be comprehensive, whereas judicial decisions could not. It means that a judicial decision over one aspect of the claim – for instance, if the Indigenous group claimant can hunt game in a certain area- it does not say anything about the possibility of fishing. Under negotiation, both aspects could be discussed as a matter of economic and cultural aspects vital to the life of a community, regulated by federal or provincial legislation in accordance with native customs and rituals. The spirit of negotiation is to seek common ground between state and Indigenous peoples, each party looking to advance their interests and arguments in a transparent and fair process.

Besides, the general evaluation of all parties involved in the process has not changed after the last policy review in 1981: the negotiations were not developing as expeditious as desired and there were growing scepticism and frustration among native groups.

Consequently, the report suggestions could be summarized as follows: 1. The policy should be flexible to respond to regional differences; 2. Promote economic development within a framework of self-sufficiency and self-governing structures; 3. Blanket extinguishment of Aboriginal rights no-longer being a pre-condition for settlement; 4. Enable First Nations to share in financial rewards of development on their traditional territories; 5. Encourage provincial and territorial governments to participate in negotiations, but keep negotiations within federal jurisdiction; 6. The process should be open to all Indigenous groups that continue to use and to occupy traditional lands and whose Aboriginal title to such lands has not been dealt with by land-cession treaty or by explicit legislation; 6. New policy based upon a relationship of sharing of power and resources.

Table 11:Indigenous land claims policy features 1973, 1981 and 1985

Policy features	1973	1981 – In All Fairness	1985 – Living Treaties: lasting agreements
Method	Negotiation	Negotiation	Negotiation
Scope	Land rights	Exchange diffuse Aboriginal rights for a set of rights and benefits	Land and self-governing rights
Targeted group	First Nations and Inuit	First Nations, Inuit	First Nations, Inuit,and Métis
Provincial role	Important	Important	Important
Land Selection	-		
Wildlife	-	Participation through Boards of Management	
Subsurface rights		Include subsurface rights in some instances	
Overlapping		No claim will be negotiated before the clearance of the title	Indigenous groups should resolve disputes among themselves before making claims
Monetary compensation		Includes	Includes
Self-government		Brings the idea of "native controlled mechanisms" and the inclusion of "self-government in a local basis"	

5.3. Zooming in the Task Force activities: participants inputs, arguments, and proposals

The TF report is accurate, throughout and reflects the central visions of the participants, showing it in a concise and readable list of suggestions to the Ministry and the House of Commons. Be that as it may, one misses the particularities of the actors' inputs if we are not able to look closer to their proposals and the arguments advanced. Behind the consensual aspect of the final report, there was a plurality of visions and positions, often contrasting, that can provide a more vibrant picture of the policy review process.

On July 16, the TF sent a letter to claimant groups asking for contributions. On the 23th and 24th of July 1985[227], TF's chairman, Murray Coolican, sent a letter to Federal ministers and Provincial and Territorial governments reaffirming the official 4th of July *communiqué*, briefly outlining the TF mandate and asking for submissions.

Policy goals and objectives through participants lenses

Participants were asked by the TF to express what they thought would be the primary goals and objectives of the new policy emerging from the review process. Necessarily, this is worth examining because it sets out the actor's perception about the basic guideline underlying the new policy and gives the analyst the opportunity to understand the values attributed to the policy by the parties involved.

Correspondingly, First Nations expressed a variety of conceptions of what the new comprehensive land claims policy should be. Some submissions suggested that the policy should help to "*develop peoples' dignity and consciousness*[228]," highlighting the importance of the land claims negotiation process to the life of individuals and communities. After all, the new policy would enhance the "*means to ensure their continued existence*[229]," showing the crucial role First Nations ascribe to a policy designed to assert their traditional control over a territory.

Likewise, some First Nations also acknowledge the possibility of building a new relationship with Canada and Provincial and Territorial governments through the means of a new policy. The Mackenzie Delta Regional Council, for instance, saw the negotiation policy as "*one method in which two cultures can begin to have a new relationship, instead of one dominant culture over-powering the rights of the others*"[230], a similar point made by the Great Council of the Crees of Québec[231] and the Nuu-Chah-Nulth Tribal Council[232]. Though, the concern over the fair and equitable treatment of the negotiations in a genuinely respectful nation-to-nation

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[227] Task Force, Letters sent to all claimants, 23-24/07/85.
[228] Gitksan Wet'suwet'em Intergovernamental Relations Office summary of submission – 12/11/85
[229] Squamish Indian Band summary of submission - 02/10/1985
[230] Mackenzie Delta Regional Council summary of submission - 13/11/1985
[231] Grand Council of the Crees (of Québec) summary of submission - 30/10/1985
[232] Nuu-chah-nulth Tribal Council summary of submission - 15/10/1985

dialogue is probably the central normative claim made by several First Nations during the policy review process.

Finally, addressing the issue of the regional variability and the diversity within Indigenous peoples themselves; the policy should seek the "*political resolution of rights questions*" with native groups in a Taylor-made fashion. Unforgettably, the concerns over the importance of that the new policy should *reflect regional variation*[233] and "*the need to be flexible to assist the reality that is regional diversity*[234]" were also expressed by the participants.

Indifferently, Federal agencies have not provided any input related to the policy goals, usually restraining themselves to the issues directly under their responsibility. For Provincial and Territorial governments, however, land claims negotiations stakes are high. They had different responses to the TF call for proposals. While some governments made it clear that they would have interest in participating in the process and would have public officials available to discuss the matter, the British Columbia Attorney General expressed some serious concerns over the very premise that there would exist any Aboriginal title within provincial boundaries at all[235].

Moreover, they showed remarkable differences of perspectives regarding what they thought the new policy goals should be. The Yukon Progressive Conservative Party made manifest through a formal submission and during a meeting on the adoption of a strict concept of the policy goal, which should be aimed at the "*exchange Aboriginal rights for specifically defined rights and benefits*." The Northwest Territorial Government, in contrast, conceived the new policy to "*make a lasting social contract that history has decreed must exist between the aboriginal people and the newcomers of this country*" and affirmed that "*it is absolutely incumbent upon bureaucracies involved to understand and to accept that sharing is an integral part of the land claims policy. Until they do, I believe that land claims process is going to have difficulties, and, indeed may not work*". The image of a new

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[233] Association of United Tahltans of Northwestern BC summary of submission − 26/09/95

[234] Stó:lo Nation summary of submission − 15/10/85

[235] The Province of British Columbia warned in a letter of 13/08/1985 that the provincial government would not make any formal submission to the TF but instructed officials to meet its members informally. In a letter of 18/03/1986 to the Honourable David Crombie, the Attorney-General of the Province, Brian R.D. Smith says that "*your letter acknowledged on behalf of the Government of Canada that claims of Aboriginal Title likely exist in this province. The government of British Columbia, in keeping with all previous governments of this province, takes the opposite view. The question therefore will be up to the courts to decide*".

"social contract" used by the government representatives was repeatedly used by native groups to emphasize, in a nutshell, their perception of what the new land claims policy likely to emerge from the process ought to be[236].

Ultimately, one individual from the Northwest Territory did not share the liberal statement of the Provincial government and suggested that the new policy "*must promote settlements which do not create or promote a caste system but allow all northerners to participate as full partners in the future[237].*"This interesting contrast between visions of a Territorial government and its constituency leads us to think that perhaps the policy review process was not successful in including lay citizens' inputs. However, more data would be necessary to deal more profoundly with this tension.

Visions on economy and development

Native economy opportunities and development resources were at the heart of the main concerns of all parties related to the policy review process. First Nations, State Agents and private economic actors had arguably different perspectives about matters such as cash compensation payments, negotiation activities funding, research and training loans and grants, among others. The critical issue, however, was to decide whether the policy would provide for "land transactions freeze" and, more generally, for a moratorium of all development of resources – mainly mining activities and lumber extraction, but also commercial activities in general- in claimed lands during the negotiations.

Undoubtedly, the issue is contentious because Native groups actively resisted the idea that they were exchanging land for money or any other form of economic compensation. As clearly stated by the Nuu-Chah-Nulth Tribal Council, "*the value of the land and sea which non-native people occupy immorally is such that governments could never have enough to purchase them. Aboriginal title is not for sale and cannot be extinguished*"[238]. However, it does not mean that native groups would not seek monetary compensation as, for instance, the Musqueam Nation states, "*for this past use of our collective property we require compensation; for continuing use, we require on-going benefits; for future use, we must come to an*

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[236] Refer to a new "social contract" the submissions of Champagne-Aishihik Indian Band;

[237]Jack Van Camp summary of submission – 28/10/85

[238]Nuu-chah-nulth Tribal Council summary of submission - 15/10/1985

agreement[239]" i.e. that land claims negotiations should be regarded as more than just real estate transactions and be conceived as a holistic approach to overcome the harms caused to native self-sufficiency by traditional lands' exploitation by third parties.

Native groups claimed that corporations and governments explored native lands resources as negotiations continued, and by the time they resumed, they had been left only with the environmental consequences, without generating any economic benefit to local communities. At the same time, they were aware of the local and regional economic impacts of an utterly halting of any economic activity during negotiations that can last decades. As the Kaska Dena submission states, economic activities are an "*opportunity and threat to their lifestyle*"[240]. This led to a kind of "dual approach" to the issue in the submissions and the minutes of the meetings here analyzed. Whereas acknowledging the importance of private companies to generate jobs and revenues, many groups would like to keep the full moratorium as a possibility in case the damages to the land are significant.

Furthermore, this position contrasts with the ones advanced by corporations that submitted briefs to the TF. As expected, all of them were opposed to any prohibition of resource development on traditional lands during the land claims negotiations. Their arguments as "developers" and "job creators" is that the economic harms of a full halt on land claims areas would largely surpass the eventual damages inflicted to the local environment. Instead, they advocate a "partnership approach," where native groups and companies would work together to advance their mutual interests and build an economic environment profitable to all parties involved.

Fundamentally, the "partnership approach" is also advocated by regional governments. For instance, the Territorial Government of Northwest Territories affirms that "*an Aboriginal interest in resources is likely to foster a new and co-operative spirit between government, industry and Aboriginal groups*[241]". It signals a predisposition of this level of government to engage with Indigenous groups as partners in economic development.

The importance of the economic debate for the real life of Indigenous groups should not be underestimated. Uncertainty about the land title can destabilize the

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[239]Musqueam Nation summary of document- 30/09/1985
[240] Kaska Dena Council summary of submission – 02/10/1985
[241]Government of the Northwest Territories summary of submission – 24/09/1985

Indigenous economy and cause severe harm. Land claim policies outcomes have an essential dimension of the economic improvement of a native group – be it allowing them to run enterprises or just keeping their traditional economic activities preserved.

Broadening the scope of negotiations

The scope of negotiations was also at the core of the submissions made by all parties involved. In the spirit of the core vision of the land claims policies as a political process far beyond a mere land-for-cash transaction, Native groups reiterate the point that negotiations should be "comprehensive". It means that they should deal with a vast range of issues such as Indigenous rights, cultural rights, economic provisions, hunting and fishing rights, surface and subsurface rights, cash compensations and, especially, self-government agreements.

This last point was crucial to Native groups. Some of them expressed how rooted the notion is of being owners of their destiny, as the First Nations of South Island Tribal Council stated that "*it is the theosophy of our people that it* [self-determination] *is a right given by the Creator*"[242]. Moreover, such groups conceived that there was no reason to assert Aboriginal control over traditional lands without specifying what the extension of their powers would be to effectively manage them according to their traditions, customs, and beliefs. As the New Brunswick Association of Metis and non-status Indians affirms, "*Aboriginal land rights and self-government are not separate entities that can be addressed piecemeal by separate federal policies*"[243]. A similar point was made by the Allied Tsimpsiam Tribe, which states that "*a lasting settlement of comprehensive claims will not be achieved until Indian self-government becomes part of the negotiations*"[244]. This was an almost unchallenged understanding shared by Native groups participating in the policy review.

Similarly, other participants were more cautious in providing their stances on the subject. The Provincial government of Alberta officials, for instance, affirmed that the province was "*interested in the concept of self-government and are against native*

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[242]First Nations of South Island Tribal Council summary of submission - date not identified

[243]New Brunswick Association of Metis and Non-status Indian summary of submission – 19/09/85

[244] Allied Tsimpiam Tribe summary of submission– 22/10/1985

sovereignty"[245]. This careful word choice highlights how sensitive the matter can be. Unfortunately, there is no more supplementary data to help us make sense of its full meaning and implications. However, it is fair to think that this opposition between self-government and sovereignty imply that the Province would be supportive to an arrangement that could devolve some responsibilities to native groups' traditional structures of governance, but not to any arrangement that would allow them to have any veto power against Provincial and Federal governments.

With or without them: provincial/territorial relations to Indigenous claims

Provincial government concerns related to economic activities and Indigenous self-government are the core factors affecting their relationship to Native groups. Their claims can extend to a large portion of Provincial territory, including waterbeds, rivers, and areas with rich mineral deposits. On the other hand, the Indigenous affairs have been historically a federal responsibility, given the attested concept of "nation-to-nation" treaty-making approach. Respectively, this conception is constantly recapitulated by First Nations such as the Tsimshian Nation affirmation that "*negotiations must be between the nations- the Crown and the Tsimshian Nation*[246]".

In this sense, some Native groups envisioned the new comprehensive policy as a bipartite dialogue between native groups and the Federal government, without any provincial meddling. It is, indeed, the understanding of the Kootenai Indian Area Council that "*negotiation process should involve only the Federal government and the relevant tribal council or band*"[247]. Curiously, the same position is defended by the Arctic Petroleum Operators Association and the Petro-Canada Resources, which, to the contrary, claimed that industries should have no active role in negotiations[248].

However, it is fair to affirm that most native groups stated that the Provincial/territorial governments should be engaged in the negotiation process. What varies is the intensity of this engagement, ranging from the status as equal partners to mere observers of the negotiation process. Though, in all cases the

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[245]Provincial Government of Alberta summary of submission – 10/09/1985
[246]Council of the Tsimshian Nation summary of submission – 03/11/85
[247] Kootenai Indian Area Council summary of submission – 05/11/85
[248] Artic Petroleum Operators Association; Petro-Canada Resources summary of submission – 04/10/85

Federal government should have the final word when settling the claim, or, as put by the Association of United Tahltans of Northwestern BC, "*the federal government should initiate negotiations, with or without the BC government*"[249]. A similar point is made by the Carrier-Sekani Tribal Council, which understands that "*provinces should be included in negotiations to the extent that federal government so decides,*" and concludes reaffirming that "*responsibility for Indians and lands reserved for Indians lies with the federal government*"[250].

Among Indigenous themselves: how to resolve overlapping claims

The issue of overlapping claims was a common concern of all native groups participating in the policy review. Different native groups can claim the same areas that cut across provincial and international boundaries. To illustrate how contentious the matter can be, consider the statement of the Taku River Tlingits[251]:

> The Tlingits were never asked, and have never consented to the border that was drawn through our people to separate Canada from the United States nor did they never approve of the boundary line drawn the 60th parallel to separate our people as between the Yukon and British Columbia. It is a violation of our Aboriginal title to assume that Indian First Nations can be divided up at the whim on non-Indian governments who did not first seek and obtain the consent of Indian First Nations.

The general understanding of Native groups, governments, and other parties was that the matter should be addressed and resolved by the groups themselves, through traditional rules of settling disputes, before bringing the claim to the negotiation table. The Carrier-Sekani Tribal Council, for instance, understands that "*issues relating to overlap must be settled by the First Nations involved as they best know their respective territorial areas. Such practices can be settled by traditional*

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[249] Association of United Tahltans of Northwestern BC summary of submission – 26/09/85
[250] Carrier-Sekani Tribal Council summary of submission- 05/11/1985
[251] Taku River Tlingits summary of submission – 12/11/85

practices in the potlach[252]". Lawfully, the Federal government could be consulted to arbitrate any dispute that was not settled. Among the notable exceptions of this spread view were the submissions of the Provincial Government of Alberta, the Great Council of the Crees of Québec and the Dene/Métis Secretariat[253].

Categorically, parties also disagreed when defining the decision to make when the claim overlaps with third-parties interests. As the submission of the Nl'Akapxm Nation Tribal Council affirmed, "*government of Canada must immediately eliminate the politics of rejecting any claims that affect third-party interests. It is the responsibility of Canada to deal with these interests to extent they are affected by a settlement*"[254].

The end of the extinguishment policy

The extinguishment clause present in the Federal government proposals to settle land claims negotiations was vehemently opposed by virtually all submissions presented to the TF. Consequently, the emphasis of the federal policy on that aspect raised concerns even among state agents. As an example, consider the judgment made by Dennis O'Connor, Chief Federal Negotiator of the Yukon land claim and reported in a meeting on 7th October 1985[255]:

> According to Mr. O'Connor, there was a lack of policy other than extinguishing Aboriginal rights. During the negotiation, there were a number of questions which he thought about and sought guidance and directions on these matters. The only direction he got was to settle the claim and when he would make inquiries on certain issues

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[252] Carrier-Sekani Tribal Council summary of submission − 05/11/85; *Potlach* refers to an ancient time-consuming and elaborated feasting ritual with multiple social purposes, for instance, rite of passage marking the coming of age and taking name of a young individual, reinforcing or challenging a person's status etc. They were fundamentally a moment where Indigenous groups came together to celebrate amid a vast distribution of food, gifts, material wealth and leisure. As Miller (2000, p.11) explains, "*in Indian society, this prestige was established and maintained not by piling up and hoarding wealth, but by distributing it among their followers.*[...] *Sharing and redistribution of material goods were not just admired but required; acquisitiveness and selfishness were abhorred and shunned*".

[253] Provincial Government of Alberta summary of submission – 10/09/1985; the Great Council of the Crees of Québec summary of submission – 30/10/1985; Dene/Métis Secretariat summary of submission - 11/10/1985 .

[254] Nl'Akapxm Nation Tribal Council summary of submission – 22/10/85

[255] Minutes of meeting with Dennis O'Connor – 07/10/1985

the response that normally came was "what do you think" or "do you think you can sell it?

This emphasis proved to be a serious obstacle in the negotiations, given the fact that the very term "extinguishment" reminded the physical extermination suffered by First Nations under centuries of colonial and national policies of assimilation. As the former advisor of the Council of the Yukon Indians and legal scholar Paul Emond contended, "*the government does not understand the symbolism that extinguishment carries with it […] that this term is considered by the native people to be another term for termination*"[256].

This vision is expressed multiple times in native groups' submissions. Consider the statement of the Native Council of Nova Scotia about the subject: "*no society would ever willingly extinguish for all future time an essential element necessary to the continued survival of that society – land and resources to sustain itself*"[257]. The Champagne-Aishihik Indian Band, for its turn, stated that "*it is our belief that we are placed on earth to maintain a sacred relationship with the land. We would forfeit that sacred trust if we were to enter into an agreement that would extinguish our title to this land*"[258]. There were just some examples of the many ways native groups opposed to the extinguishment clause in their submissions to the TF. Indeed, there is no doubt that native groups understood extinguishment as a synonym of extermination instead of as the administrative requirement of certainty and finality of the land claims settlement.

Additionally, the positions of the Provincial governments differ from the one held by native groups. The Government of Alberta, for example, "*holds the position that treaty rights define Aboriginal rights and that there is no need for clarification by undergoing comprehensive claims processes*" and concludes questioning: after the treaty settlement, "*what do native peoples give in exchange, if not extinguishment*?". Mr. Willard Phelps, in turn, leader of the Progressive Conservative Party in Yukon at the time, preferred the use of the term "final" to express the idea that once the settlement was achieved, Native groups could no longer raise any legal issue against

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[256] Minutes of meeting with Paul Emond – 07/10/85
[257] Native Council of Nova Scotia summary of submission – 27/10/85
[258] Champagne-Aishihik Indian Band summary of submission – 26/10/85

the government regarding the land[259]. Still, this conservative view of the extinguishment clause was not shared by the neighbor Territorial government of the Northwest Territories. In its words,

> Judges often call the constitution a living tree, one that bears all the marks of its age but is yet able to generate new growth. This is how land claims agreements must be unless they are to be fossils in a generation or two. The GNWT urges the federal government to adopt a new policy which acknowledges that the solution to aboriginal and non-aboriginal relations lies in creating an ongoing and vibrant relationship, not in a once and for all real estate deal.

5.1. Exploring the variables used in this study

We were able to dive deep into the context of the policy process and the inputs provided by distinct participants. Now, let us turn to the variables proposed in the literature review, aiming to explore their explanatory power. In this section, we rely strongly on – but not solely - on the six interviews we were able to conduct with members of the TF[260].

Given the fact that the TF conducted and concluded its activities in 1985, the participants had a hard time recalling facts and processes that happened 33 years ago. Without regard, they were able to provide some privileged insights instrumental to our discussion.

Institutional design: the flexible and inclusive PI design and the impact of the constitutional framework

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[259] Notes on meeting with Mr.Willard Phelps – 27/09/85; Yukon Progressive Conservative Party summary of submission – 30/10/85

[260]The interviewees were designated by the letter "I" (which stands for "*interviewe*e" followed by a cardinal number from one to six

The first important question to spell out regarding the discussion of institutional design is related to the constitution of the Task Force itself. Why did the government opt to set up an independent commission of experts of the civil society and other fields of government and not a group of public servants within the ranks of the AANDC?

Undeniably, it was clear from the answer of some interviewees that the recently elected conservative government did not trust the capacity of the AANDC to carry out the policy review process. The evidence of this assertion can be found in the following statement of interviewee I1: "*The new government did not have much confidence in the ability of the Departmental officials to undertake the development of a new approach.*" This claim is reinforced by the perception of I2 that the "*process should be outside normal ministry officials.*"

Unfortunately, the interviewees did not further develop the reasons behind the distrustful approach towards public servants. What is clear, however, is the fact that the TF was conceived to be a channel of participation composed by people that could bypass the ministry bureaucracy as well as "*help to arrive at a new policy which the First Nations might support and thus lead to some early agreements*(I1)." Thus, the first point to highlight regarding the subvariable focused on the participatory institutional design is the fact that the TF was not "policy as usual," but an exceptional "institutional device" specially created to deal with the Indigenous land claim policy review.

The design of the TF was set out by a *petit-comité* formed by the Minister of Aboriginal Affairs, his chief of staff and the TF Chairman, who were responsible for outlining its mandate, schedule, budget and hiring staff. Once the core scope of the process was clear, other government officials, native leaders and the members of the TF itself spent some time in detailing its activities.

All interviewees were unanimous in pointing out the crucial importance of the quality of the human resources assembled in the TF to carry out a process in a context of a tight framework and budget constraints. As the I1 affirms,

> Each member of the group was a leader in their field, and each brought a different perspective to the task. For example, Chief Joe Mathias brought his own experience as a Squamish person and an aboriginal leader for his community and in British Columbia. Guy

Dancosse had no experience on the Aboriginal file, but was a seasoned lawyer with deep negotiating experience. (…) The diversity of backgrounds of the members, their personal integrity and their ability to work together and treat each other with respect was critical. The perspective brought to the Task Force by Chief Joe Mathias and his impact on our discussions was also crucial. We had excellent staff support.

Not only the technical skills of the TF were remembered, but also the inclusion of First Nations individuals in the process of designing and implementing the TF was highlighted explicitly by I5 in her interview. In her words, "*we benefited tremendously, in my view, from the involvement of two First Nations individuals, one as a member of the Task Force and the other as a research lawyer*."

Thus, the second point to be underlined regarding the design of the TF is its inclusive feature. As we have seen before, all key stakeholders were consulted and were able to provide the policy review process with their arguments and viewpoints. More importantly, the inclusion of members of the groups in the design of a participatory process that will be immediately affected by its results is an important key to evaluate any participatory institution.

The interviewees knew Indigenous policy in general and the TF to review the land claim policy were not a political priority of the conservative government of Prime-Minister Brian Mulroney. Some of the TF members perceived the inexistence of any political pressure or strong push for reform as a relative advantage. As I2 states, "*these issues were not a high priority for new conservative government, but that also meant we had wide freedom to design a process for reform*." Operating under the radar, the participants of the TF "*were left to carry out our mandate as we saw fit, without political interference* (I5)".

Despite the nearly consensual perception of the interviewees that the TF process was carried out freely, the alleged absence of political pressure or interference in the TF process should be regarded with some scepticism. Firstly, it is important to remember that Indigenous groups participating in the process also had interests and had distinct political power and influence over the process. Especially the Inuit were regarded as relevant political actors with claims considered priorities by the Mulroney government. I1, for instance, affirms that "*Mr. Crombie sought nominations from the major Aboriginal groups involved in comprehensive claim*

negotiations […] I believe I was nominated by the Inuit." Not surprisingly, I4 and I5 also had past job experiences in Inuit organizations.

I6 also raised concerns related to political interferences in the work of the TF. In his vision, the leading governmental interference in the process was the nomination of the Chairman. In his own words, "*the appointment of a card-carrying member of the governing party as the Chair of the Task Force had some effect on the range of change that could be contemplated regarding policy revisions.*" Unfortunately, this assessment is mostly subjective and therefore hard to measure. Notwithstanding, the point underscored by the interviewee is valuable because it is an important reminder that even a politically modest policy process is not wholly free from the political control of the ruling party.

Finally, the "*low profile*" (I4) of the policy review certainly contributed to the informality and flexibility of the PI design pointed out by some interviewees as prominent features of the process under investigation. Several informants asserted the informal role of other governmental agencies and provincial governments in the TF activities. Despite facing "*many logistical challenges in organizing meetings with over 100 Aboriginal groups located all across Canada* (I4)", the overall evaluation of the interviewees is that the versatility of the members of the TF transformed a feature that could have been a liability in an asset. In I1's own words, "*the informality of our process made it easier for us to probe new ideas and engage in a discussion which fully explored ideas and concepts among ourselves, but also with other participants.*"

Summarizing the main points raised by the interviewees related to the design of the TF, we can point out what they regarded as its key features: 1. It was a participatory channel conceived to operate outside the regular governmental bureaucracy; 2. It was inclusive not only because it engaged several Native groups in the country in the consultation but also in its designing and implementation process; 3. It was relatively isolated from political pressures and; 4. It had a flexible and informal design. By looking at the rear-view mirror after 30 years, the members of the TF were able to provide thoughtful insights into the institutional characteristics that may have played a role in the policy change observed in the Canadian case.

The same analytical clarity was present when the interviewees were asked to assess the impact of the repatriation of the Canadian Constitution in 1982 to the process of land claims policy review.

They were unanimous in pointing out that this process had a significant impact on the policy process and in the Indigenous policy overall. The first one was on the extinguishment policy. As I1 recalled, "*the policy of the day sought the extinguishment of rights as part of any agreement, and that policy was not in keeping with the new constitutional guarantee of aboriginal rights.*" After 1982, the "*extinguishment, a fundamental pillar of the existing claims policy was no longer an option.*" Clearly, says the interviewee, "*the government was looking for a policy approach which respected the new constitutional reality.*"

To I3 the impact of the constitutional framework was even more in-depth than the one highlighted by I1. In his view,

> The constitutionalization of aboriginal and treaty rights in 1982, even prior to some definitive Supreme Court of Canada precedent setting as to the reach of the 1982 amendments, meant that it was no longer plausible to believe that sustained policy indifference or drift on Aboriginal and treaty rights could not have long-term negative consequences. Parliament's power to always fix/change things later had been fundamentally qualified, and the profile of Aboriginal and treaty rights issues had been permanently raised.

The same tone was adopted by I5, to whom "*1982 constitution strengthened and recognized aboriginal rights, completely changing the legal nature of those rights*". However, as clear as this diagnostic may be, it misses the point that the "Aboriginal title" referred to in the constitutional text was not entirely clarified. This was the goal of the Aboriginal constitutional conferences that happened in the aftermath of the repatriation of the constitution.

The interviewees differently evaluated these conferences and most of them were unable to point out any specific impact of the same. I3, for instance, was emphatic in his view: "*no, I don't think they did* [had an impact] *the fact that the three post-1982 conferences floundered without express new amendments regarding aboriginal self-government meant that the Task Force had a pretty clean agenda to work on, for better or worse*".

I6, however, successively, pointed out a more nuanced evaluation:

The constitutional conferences established the determination of the Aboriginal peoples to have their rights respected and implemented, not extinguished. The constitutional conferences did not produce the expected results of clarifying "Aboriginal and treaty rights." A significant amendment that did take place after the 1st conference was the recognition of rights in land claim agreements as constitutional rights which emboldened Aboriginal titleholders to have their land claim settlements confirm their rights and not extinguish them.

In sum, the constitutionalization of Aboriginal rights in the 1982 Canadian Constitution had a profound impact on the policy change under analysis because 1. Terminated the extinguishment policy and therefore forced the updating of the previous land claim policy; 2. Brought to light and contradicted the long-term governmental indifference towards Indigenous and treaty rights. Even though the Aboriginal constitutional conferences that have followed the 1982 constitutional process was unsuccessful in clarifying the legal meaning of the Aboriginal title to land, it did have an impact in deepening the stance of the Indigenous claims for treaty rights.

Federalism: the moderating effect of the provinces and the bipartisan understanding in the Parliament

There was no formal role for provincial governments in the TF policy review. However, provincial officials were consulted on an informal basis after the TF team had asked them to provide any input they found useful.

The Canadian confederation is often called a "mosaic" by representatives from Native groups, Provincial and Federal governments in the documents analyzed. The idea of a multicultural assemblage of peoples, languages, heritages, and cultures is constitutive of the Canadian self-perception. In this sense, it would be expected a more prominent role of the subnational entities in the policy review here under analysis.

However, that was not the case. Provincial governments responded differently to the call for proposals issued by the TF. The government of Nova Scotia, for instance, found it inappropriate to contribute to the TF, since they understood that the Indigenous policy was a federal matter[261]. The Province of Prince Edward Island stated that the government would not have human resources to provide a detailed submission and preferred to meet the TF members personally[262]. The government of Saskatchewan welcomed the initiative but stated that it was their understanding that the new policy would apply for lands not covered by treaties, which was not the Province's case[263]. The Province of Ontario also praised the initiative and expressed interest in the outcomes of the final report, but promised no formal submission[264]. Finally,[265] New Brunswick issued a protocolary response, stating their availability to meet with members of the TF[266].

Other Provinces responded with more thorough considerations. The Newfoundland and Labrador Minister for Intergovernmental Affairs Gerald R. Ottenheimer expressed concern over the possibility that a policy change would have any impact in their negotiations with the Labrador Inuit[267]. Moreover, the role of each level of government should be clarified before entering in tripartite negotiations with Native groups. The statement of the Premier Brian Peckford about land claims in the Province in 1980 is clear on the subject, affirming that it is "*important to note that land claims have been made against the Federal Government, not the Province. However, most of the elements that will be associated with a settlement will fall within provincial*

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[261] Nova Scotia Attorney General, Gordon F. Coles, letter to TF Chairman Murray Coolican - 16/09/1985. This position was a reiteration of the previous position of the Province expressed at the 1983 First Ministers Conference on Aboriginal Matters. On this occasion, the minister responsible for native affairs, Mr. Edmund Morris, quoting the speech from his throne, opening the second session of the 53rd general assembly of that province, states that *'significant strides have been made by my government towards a greater understanding of the unique problems of native people. My government fully supports the view of native people that their lands are a total federal responsibility. My government will vigorously support their demand for improved federal performance of its responsibilities to the native people* [...]' (p.52)

[262] Prince Edward Island Minister of Energy and Forest, Fredrick L. Driscoll, letter to TF Chairman Murray Coolican - 07/09/1985

[263] Hon. Sid Dutchak, Minister Responsible for Saskatchewan Indian and Native Affairs Secretariat letter to Hon. David Crombie, 06/08/1985; Ian B. Cowie letter to TF Chairman Murray Coolican 14/08/1985

[264] Ontario Attorney General Ian Scott letter to Hon. David Crombie, 25/07/1985; Ontario Attorney General Ian Scott letter to TF Chairman Murray Coolican, 29/08/1985

[265] We were not able to find the responses of the provinces of Alberta and Manitoba.

[266] New Brunswick Native and Indian Affairs Coordinator, Daniel D. Horsman, letter to TF Chairman Murray Coolican, 15/08/1985

[267] Newfoundland and Labrador Minister for Intergovernmental Affairs Gerald R. Ottenheimer, letter to TF Chairman Coolican Murray, 16/07/1985.

jurisdiction[268].The Québec response to the TF call for proposals should be understood in the light of the Province refusal to sign the 1982 Constitution[269]. Finally, the Province of British Columbia response challenged the existence of the very idea of native claims.

Despite such differences in the responses to the TF call for proposals, all interviewees agreed that the consultation of provincial governments was carried out cooperatively. By the same token, they had a "moderating effect" in the final report, though with limited influence.

Further, provincial officials had good reasons to cooperate because, as I4 stated, "*they would ultimately benefit from the settlement of claims.*" In her view, "*their main concerns revolved around containing costs related to settlements and protecting the rights and interests of third parties within their jurisdictions.*" In other words, they were worried about the impacts of the land claim policy for companies and industries operating in the provincial territory and the local economy at large.

Correspondingly, the same cooperative spirit could be found in the Parliament at the time. To be sure, there was no formal role for the elected officials in the TF process either. Per contra, as we have discussed in our chapter dedicated to the variables used in this investigation, the presence of strong opposition to land claims policy review by congressmen and congresswomen could be a crucial factor to jeopardize or even block any policy change proposals.

Primarily, as I1 recalls, "*there was recognition* [at Parliament] *that further discussion was required to give more meaning to the constitutional changes.*" Reinforcing this perception, as I5 affirmed, "*there was concern about the slow speed at which comprehensive claims were being resolved.*" This "recognition," withal, seemed not to have been translated into a real interest in the TF policy review

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[268] Newfoundland and Labrador Minister for Intergovernmental Affairs Gerald R. Ottenheimer, letter to TF Chairman Coolican Murray, 24/09/1985

[269] Just one more chapter in the long and dramatic relationship between the Province of Québec and the Federal government of Canada, the discussion about Québec's refusal to sign the Constitution is out of the scope of this thesis. Just to give a sense of how heated the issue was at the time, in the 1983 First Ministers Conference on Aboriginal Constitutional Matters, the Premier of Québec, Hon. René Levésque, had some harsh words to describe the Province's disagreement with the new Constitution. In his words, « *Très simplement, le Québec ne reconnaît pas la legitimité du Canada bill qui sert maintenant de Constituition au Canada. C'est le resultat d'un coup de force qui a été consommé en notre absence et dans notre dos. En ce qui nous concerne, ce Canada ne crée qu'une situation de fait et absolument pas une situation de droit. Et tant que le Québec n'aura pas été pleinement rétabli dans ses droits, il refusera de reconnaître cette nouvelle constituition* ». (p.48)

process. In I4's own words, "*I don't recall much interest in Parliament in the settlement of claims or the work of the Task Force. Nor was there much pressure for change from the general public*".

Unquestionably, political lack of interest can be a double-edged sword. It can mean a lack of political support that can ultimately undermine and terminate any effort to change policy or mean that policy change has a free road ahead. The last-mentioned seemed to be the case for the TF process. I3, for instance, when asked about the political mood at the time of the TF and if the Parliament had any influence on the final report, concluded that:

> I do not think there was any great pressure to reform the land claims policy within Parliament or great opposition. I suspect an atmosphere of "pragmatic optimism," relatively free of fixed ideological starting or ending points, would fairly accurately describe the situation then (and perhaps before and after).

In other words, Indigenous issues seemed to be above partisan division lines and asked for a concerted effort to raise land claims profile. For I4, "*Aboriginal rights issues tend to receive bipartisan support in Canada. Everyone agrees that "something" should be done but then balk at the price. The issue seems to be how much should rights be accommodated*". This perception is in line with I2, to whom "*what we were doing mostly seeing as benign*."

It is important to consider, all the same, that the emphasis on the lack of interest or the "pragmatic optimism" expressed by bipartisan support for Indigenous issues in Parliament may overshadow the fact that the elected officials have little influence on government decisions. The critical assessment of I6 goes in this direction when he explains that:

> In the Canadian system, Parliamentarians have limited influence on policy and government decisions. It is the federal Cabinet and at senior levels of the bureaucracy and senior government ministries like the Privy Council Office, Justice Department, Finance Department and Treasury Board where the power resides.

I6's perception was not reinforced or discussed by other interviewees. His assessment, after all, points out a concrete feature of the Canadian governing system and has the merit to highlight how centralized governmental decisions are. Even though it is hard to imagine that representatives are entirely powerless, and they have no influence at all on Indigenous debates in Parliament, their influence is severely limited by the nature of the rules of the Canadian political system.

Conjointly, when it comes to assessing the provincial role in the TF process, on the one hand, the provincial representatives acted cooperatively and had a "moderating effect" on the policy change proposals. On the other hand, lack of decision power, bipartisan support for Indigenous policy and a relative disinterest for the TF work in Parliament seemed to have played a key role insofar it was not considered a veto player in the policy change process. To put it concisely, provincial governments were not in the way of policy change either through provincial officials or their representatives at the parliament.

Government agenda: the political irrelevance as an asset and the search for a fair balance of interests

All interviewees agreed that the land claims policy review was not central to the Mulroney's government agenda at the time. I3 goes even further in his assessment of the issue:

> I think it would be an overstatement to say that progress on concluding new modern treaties was central to the Mulroney government's agenda as a whole, and there were more cautious elements in that government who retained some scepticism about the urgency of reforming Aboriginal policies.

This perception can be confirmed especially by the budgetary constraints mentioned by some interviewees. Along with the tight timeframe to conclude the consultations, the lack of proper funding meant some critical restrictions, such as 1. The TF had to limit their consultations within Canada; 2. The TF process could not last long; 3. The TF could not hire more staff members or consultants; 4. They could

not carry out as many public hearings as they wanted; 5. They could not improve research on many topics related to the TF process. Moreover, it also had an impact on the ability of some Indigenous groups to participate meaningfully in the process. As I4 remembers, "*we were pressured by Aboriginal leaders to provide funding for the preparation of their submissions.*"

The lack of political centrality, however, seemed to be compensated by personal efforts to push the process forward effectively. Two interviewees highlighted the enthusiasm of the DIAND's ministry, Hon. David Crombie. Even though he had "*no background or knowledge in Indian or Northern Affairs*" (I2), he came into office with "*a personal desire to 'make things happen' on Aboriginal issues*" (I3) and was "*very supportive of the process*" (I4). He was committed to hiring "*people who had some direct experience working with Aboriginal peoples, who were keen to speed up what was widely seen as a very arthritic policy shop at DIAND*" (I3).

Furthermore, more than just the personal engagement of the Ministry, other governmental agencies cooperated with the TF process, though in an informal fashion and distinct ways. One of them, for instance, "*reviewed our historical chapter for accuracy*" (I5). In turn, H1 underwent a series of meetings with a senior official in the Department of Justice. Those meetings were useful because "*It was important to us that the legal and constitutional construct of our recommendations would have some acceptance or at least understanding in government legal circles.*" Both statements confirm the importance of the input of distinct government officials' bureaucratic expertise into the process carried out by the TF.

Importantly, as I2 affirmed, there was "*no pushback from ministries, they were happy to go along if this is what the new government wanted to do.*" For H3, notwithstanding, in a more nuanced assessment, bethought that "*I do not recall any great enthusiasm on the part of key Ministries, particularly DIAND and Justice, but I also do not recall any concerted bureaucratic opposition.*" By and large, if there was no exceptional effort from the government as whole to change the parameters of the native land claims policy at the time, at least there was no "concerted bureaucratic opposition" to do it. Sometimes, less is more, as it seems to be the case.

The lack of political centrality does not mean, by any means, that the Canadian government was not interested in the economic development prospect that is closely associated with clear procedures to settle native land claims. Echoing the historical lessons we have learned in the previous chapter, I1 remembers that

"*throughout Canadian history, government interest in treaty making has been driven by development whether the settlement of the West, the building of the railroads, the James Bay hydro development or oil and gas potential in the Western Arctic.*" I5, consecutively, asserts that "*there was a great deal of interest in developing resources in vast parts of Canada where comprehensive claims existed, and therefore the government sought a review of its rather unsuccessful existing policy.*" Expressed differently, "*there was certainly a lot of focus on economic development throughout Canada at that time.*"

The push for economic development is the point of convergence of government officials and private companies. As aptly put by I4, "*the private sector, particularly the resource industry, was interested in removing uncertainties associated with unextinguished Aboriginal title that impeded development on Aboriginal land*s." If corporations raise profits, local governments raise revenues. Unsurprisingly , then, that the protection of "third party interests" were among the concerns of provincial governments.

Again, there was no formal role for private companies in the TF process, though some companies and industries were consulted as stakeholders. All interviewees agreed they were cooperative and had a relatively limited impact on the final report. Alternatively, as I5 stated, "*they did not influence the final report except to the extent that we were aware of the need for industry to have some certainty about control of land and resources through the claims process.*"

Lack of political centrality expressed by the lack of funding was somehow compensated by the absence of bureaucratic resistance and the long-term goal of economic development. All things considered, provincial governments and private companies were partners in the same broader economic strategy of resource development placed at the core interest of the Canadian government and clearing the procedures for settling land claims was undoubtedly a central part of it. As I1 summarized, "*It was important that our recommendations, while not providing the absolute certainty of extinguishment of title, would not also result in the extinguishment of development.*"

Indigenous collective agency: an atmosphere of tranquility and divergent assessments of native participation

All interviewees agreed that there were no acts of protest carried out by Indigenous groups during the TF process. The "*atmosphere of tranquility*" (I5) certainly contributed to the accomplishment of the activities. In I3's view, "*Aboriginal organizations took a pretty positive view of the purpose of the Task Force and its report*," even though, he concludes, "*many would have wished for more, of course.*"

Though, all the recommendations made by the report were not immediately put in place as I1 recalls, "*our report disappeared into the Department after David Crombie went to a new portfolio and did not appear again until after Oka.*" The interviewee acknowledges the well-known "Oka crisis," which still counts today as the most crucial Indigenous standoff in Canada. This point is significant because it brings the researcher's attention to the fact that, despite the absence of protests during the TF activities, it does not mean that the same holds true to its aftermath. Similarly, it brings the question about which factor is more important to consider: the frequency or the intensity of protests?

Given that other interviewees minimized or did not mention this factor at all, we assume that I1 was not affirming that the policy changed only after a graveclash between Indigenous groups and security forces, but that some policy recommendations and principles are never fully implemented or considered by the Canadian government if First Nations do not mobilize to put pressure on officials and elected representatives. I1 himself concludes that "*many of the principles we discussed come back again and again.*" Unfortunately, the lack of profundity of the answers did not provide us with any fruitful insight into the role of Indigenous protests in keeping those issues on the government's agenda.

Thus, the interviewees take on the associative capacity of Native groups were more useful. Though "*all three Aboriginal groups identified were equally involved in theory*" (I2), they agreed on the perception that the organizational capacity of the participants "*varies considerably*" (I4)." As I3 explains;

> That [the differences regarding political organization] is always a factor among First Nations, with clear differences readily apparent along a number of lines, particularly between historic treaty rights holder and those either with modern treaties or without treaties altogether. Other differences play out against the various geographic

regions, urban/rural splits, on-reserve/off reserve, English or French as a second language etc.

Importantly, despite the differences, "*the different Aboriginal groups were treated the same for the most part, though there were few instances where the Metis had solid Aboriginal title and rights claims so the number of opportunities for them to be consulted was less than for First Nations and Inuit people*" (I6).

Following the I6 assessment, Native groups were treated equally, but they did not have the same political weight. While most Métis groups were not eligible to file comprehensive land claims at the time, they made submissions to the TF asking for a policy designed to address their case. First Nations in British Columbia and northern Canada were also remembered as skilled and used to negotiate and dialogue with the Canadian government.

The major player in the process, however, was the Inuit people. As I4 explains, "*Inuit had been involved in claims negotiations from the early 1970's*". She argued that the group capacity to engage in negotiations might be related to cultural features of the group, especially the cohesion around a single language. In her own words, "*the Inuit have one national organization Inuit Tungavik Kanatami (ITK) that represents the 4 Inuit claim areas -- in NWT, Nunavut, Northern Quebec and Labrador. They are united by language and culture and work closely together*". I2, respectively, reinforced the importance of the Inuit participation in the TF process, as "*they had two of the settled claims, Makivik in northern Quebec and Inuvialuit in NWT and the big Eastern Arctic (TFN) claim and Labrador Inuit claim were pushing for reform and were priority claims.*"

There were differences regarding expertise, experience, and sophistication of the submissions. In I1's view, nonetheless, "*we were very flexible in our discussions with First Nations, and so I do not think this* [the differences related to political organization] *had an impact on their participation.*" That perception is in line with the one proposed by I5, to whom "*even the smaller organizations made submissions that we found useful.*" In other words, the interviewees considered that, despite the differences among Native groups, they were neutralized by the TF institutional design.

Contrast this favorable view with the sober assessment provided by I6. In his viewpoint, there was a clear association between the lack of proper funding of the TF

and an impact on Native groups ability to participate. In his own words, "*there were no resources available to the groups to support their participation, therefore, only organizations that had some capacity to do research, coordination and strategic planning had the ability to participate effectively.*" Whereas some interviewees had made the point that budgetary constraints did have an impact on the TF range of activities before, no one had been explicit about the importance of this constraint on Native participation.

To strengthen this perception, consider the following examination made by a native group representative in a letter sent to the TF in 21/07/1985:

> […] please advise whether or not the Minister of Indian Affairs will be making funds available to your task group to assist bands and/or tribal groups in preparing for and/or attending meetings with your task group. As the matter presently stands, some tribal groups are in a position to prepare and make submissions to your task group because they are funded under existing claims policy. Other tribal organizations, like ours, find it more difficult to get together to discuss these important issues due to high traveling costs. Additionally, because we do not have the financial resources, we are not in a position to hire anyone to assist in the preparation of submissions for your task group[270].

En masse, we can conclude that there were differences regarding the political weight and capacity among Native groups participating in the TF process. The interviewees had divergent assessments about the role such differences played in the final report and ultimately in the policy change. Whereas some of them think that those differences did not have any crucial impact on the outcome, one of them concluded the opposite, a point reinforced by the above-cited submission made by a First Nation to the TF.

5.2. Conclusion: the reasons behind a relative success of Indigenous land claims policy change

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[270] Carrier-Sekani Tribal Council letter to Mr. Coolican Murray - 24/07/1985

There were distinct evaluations on the extension of the policy changes and the impact of the TF over the Indigenous policy as a whole and the Native land claims policy in particular. For I2, for instance, "*Coolican Report fully met expectations. Good members, good analysis, good consultation, creative approaches to difficult problem […] and was instrumental ultimately to reforming various aspects of claims policy*". I6, sequentially, affirmed that;

> The changes that were made to the Comprehensive Claims policy by the federal government did not reflect the more transformative recommendations from the Task Force. The lack of fundamental or transformative change to the Comprehensive Claims policy essentially meant that the policy and process still didn't produce agreements and to this day the policy is ineffective.

Instead of opting for any of those extreme perceptions of the TF and its impacts, we prefer to stick to the soberer evaluation that there was a "*relative, if modest*" (I3) success of the TF process in its goal to propose recommendations to effectively change the native land claims policy at the time. Some proposals were able to make their way into the new policy framework; others did not.

In our explanatory model, we proposed four macro factors that could be related to the "relative, if modest" policy change observed. Those factors unfolded in 8 sub-variables, designed to highlight the variability of some political aspects that otherwise would not be observable if the variables were to be considered in broader terms. We conclude this chapter trying to connect the dots and proposing a temporal sequence and a coherent explanation drawn from the observations and discussions held above.

First and foremost, the importance of the repatriation of the Canadian constitution in 1982 seemed to be the most important single factor related to starting the process of native land claims policy review and change. Native groups mobilized nationally and were able to secure, for the first time, Aboriginal rights in the new constitution. The constitutional debate itself may have been impacted by some earlier court decisions favorable to Aboriginal title and right to the land. The constitutional framework transformed the previous policy of extinguishment of Inidgenous rights to land obsolete and, therefore, was a substantial incentive to change.

Secondly, the interest in developing resources within native lands also played a crucial role as a macro incentive to policy change. In this sense, provincial governments and private companies converged in the goal of cooperating with the TF seeking for the procedural certainty that allows for economic endeavors.

Once the Task Force was set up, its flexible, agile and informal features were essential to do as many activities as possible within a tight timeframe and restrained budget. A motivated and technically skilled team also composed with Native individuals worked together and pooled resources to systematize contributions made by three distinct Indigenous groups, government agencies, provincial governments and private companies. Working outside the normal bureaucratic channels and operating under the radar, the TF was able to carry on the consultation process without strong political pressures and protests by any Native groups.

The TF force did not have any concerted bureaucratic opposition. Similarly, a bipartisan understanding that "something has to be done" regarding the living conditions of Canadian First Nations discouraged any strong political effort to block policy initiatives towards this population. In other words, the TF process did not have any strong,powerful veto player obstructing its activities.

Our findings were inconclusive regarding the importance of Indigenous protests during and after the TF process. The differences on political organization seemed to be largely compensated by the TF design, but a red flag should be raised regarding the unclear extension of the budgetary restriction on Indigenous participation in the policy review.

In sum, the combination of two strong political factors - the change of constitutional framework and the governmental and private sector interest in developing resources – provided the broader context of incentives for political actors to change native land claims policy; a carefully crafted institution was able to carry out a meaningful process of consultation with stakeholders, even though they had different patterns of political organization; finally, the absence of bureaucratic resistance, protests or political opponents facilitated the work.

In other words, a virtuous interplay of all variables operating together provided for the policy change observed. Again, the success can be described only in relative terms, and the interviewees were aware of it. I3, for instance, voicing his opinion on the impact of the TF at the time, affirmed that "*neither it, nor any single Task Force likely to be appointed to study the wide range of issues surrounding negotiation and*

implementation of treaty rights today or in the future, could likely deliver one-size-fits-all solutions." I1, in turn, considered that "*it is a long way from treaties written and understood in a literal and legalistic manner to agreements which define a relationship which needs to be worked on every day.*" I4, remembering the TF daily life, affirmed that "*there was genuine effort to reach consensus on very difficult issues*" and that the team "*wanted to help the parties reach agreements that would be fair and would facilitate the best possible outcome for all concerned […] to ensure that agreements would be both flexible and enduring*".

From 1985 onwards, there were other land claims policy reviews. The Coolican report was nor the first neither the last policy review process, but it was certainly the first involving Indigenous participation through consultations over the country. It was a step further in the long and windy road followed by Indigenous peoples and the Canadian towards reconciliation of past grievances and the construction of a brighter future for all nations involved.

6. CHAPTER 6: CONCLUDING REMARKS: TOWARDS A RESEARCH AGENDA ON INDIGENOUS PEOPLES, POLITICAL PARTICIPATION AND LAND CLAIMS RECOGNTION POLICIES

? Podrán resistir los territories indígenas no sólo los assédios corporativos sino las dinâmicas de la globalización? La respuesta al interrogante depende de cuán assentados se encuentrem los derechos territoriales así como de los distintos regímenes políticos, los grados de dependência y soberania de los países, y de cuán arraigadas sean las territorialidades indígenas y su cemento social. Em suma, depende de cuán acotados sean los contextos políticos, sociales, institucionales y económicos preexistentes em que se inscriben o enclavam los processos globales.(LLANCAQUEO, 2005, p.83)

A maior parte dos pesquisadores sociais aprendem mais por estar errado do que por estar certo- desde que então eles reconheçam que estavam errados, vejam por que eles estavam errados e sigam em frente para melhorar seus argumentos. Interpretações post hoc dos dados minimizam a oportunidade de reconhecer as contradições entre argumentos e evidências, enquanto a adoção de formalismos aumenta esta oportunidade. Formalismos cegamente seguidos levam à cegueira. Inteligentemente adotados, no entanto, eles melhoram a visão. Ser obrigado a explicitar os argumentos, checar suas implicações lógicas e examinar se as evidências se conformam aos argumentos promove tanto a acuidade visual quanto a responsabilidade intelectual (TILLY, 2004, p.4)

6.1. Introduction

In this concluding chapter we take the aim to summarize the main findings of the research. Moreover, as a "side effect" of the difficulties we faced during the fieldwork, we highlight the challenges researchers interested in the Indigenous politics field may experience and discuss strategies to circumvent them. Finally, we discuss the heuristic value of some questions we could not answer in this dissertation and propose a comparative research agenda on the topic, with the explicit goal of encouraging further scholarship on the topic.

Brazil and Canada have at least one relatively unknown historical fact in common. In 1532, after the deception of the French Crown with the expeditions of Jacques Cartier to establish an alternative route to the west, the royalty decided to invest in two other colonies down south, notably in Florida and in Brazil, at the

provinces of Rio de Janeiro and Maranhão. Curiously, there was a time, back in the past, when French citizens preferred to immigrate to Brazil rather than to Canada (BLACK, 2014; DAHER, 2007).

During the five years of the research that gave birth to this thesis, we had to justify repeatedly the same questions: is it possible to compare Brazil and Canada? Are you not comparing apples to oranges? To be fair, the question usually came much more from the Brazilian audience than from the Canadian one. It is easy to understand why. From the academic perspective, our task of designing a reasonable comparison was far more difficult due the remarkable lack of comparative studies in Brazilian political science, let alone a comparison between Brazil and Canada. Besides, from a subtler and somehow deeper perspective, Canada appears on the average Brazilian imaginary as its inverted image on the mirror, that is to say, , Canada is the country that we could have been, somewhere in the past, if we had had a better luck regarding our colonizers[271], our politicians, and our society. The country of the social justice and distributed wealth, in contrast with the one of the most unequal societies in the world, with its pattern of development is at the same time socially exclusionary and economically unfair (O'DONNELL, 1998).

Putting common sense aside, both countries have more in common than it is supposed at a first glance, as we have seen in the introduction of this dissertation. Moreover, both countries share a history of a long and tortuous relationship with the first inhabitants of the lands conquered by European colonizers.

As a Brazilian Indian of the Kayabi people smartly stated, the history of Indigenous population in the Americas should be divided in "Before White man/ After White man" (CUNHA, 2009, p.129). This concise formula shows how decisive the fact of the colonizers showing up to the New World shores was to the fate of the natives of the continent. One cannot underestimate the massive destruction of entire societies, which have disappeared even before having any contact with the invaders. It is not without reason that Viveiros de Castro, prominent Brazilian anthropologist, recently affirmed that Indigenous societies are "specialists of the end of the world"[272]

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[271] It is not unusual to hear Brazilians say that "we would be better off if we had been colonized by British, French or Dutch empires instead of by the Portuguese". This unfortunate perspective simply overlooks the tragedy of the former colonies of those empires in Africa and Asia.

[272] This is an expression used by the famous Brazilian anthropologist in a conference delivered at the III Curt Nimuendajú Conference held at the Universidade de São Paulo in 2013. Its video record can be found in: https://www.socioambiental.org/pt-br/noticias-socioambientais/os-indios-sao-especialistas-em-fim-do-mundo-diz-o-antropologo-eduardo-viveiros-de-castro

because they have experienced the complete destruction of the world as they knew it and therefore we should learn from them how to survive in the context of an imminent environmental holocaust.

Indigenous peoples were in both countries among the "infamous of the history", and along with the slaves and, later, mentally ill people, were not considered able to proper reasoning (LOBO, 2008). Besides, as Gould (2014) argues, "red people" was considered, following the most influential anthropological theories of the late eighteenth century, as a degeneration of the human being that could become "civilized" through an adequate "education" that would strip the "Indian inside the Indian".

6.2. Summarizing the main findings of the research

Despite separated by huge social, political, historical and geographical distances, Canada and Brazil have shown strikingly historical convergences when it comes to the way they handled indigenous issues over the centuries. Regardless of the similarities between the goals of the Indigenous policies, however, both countries have paved very different ways to concretely address those groups claims for territorial recognition.

On the other hand, Indigenous groups in both countries also share some interesting similarities. In both contexts, Indigenous groups were massacred until the verge of extinction. Both have survived regardless of the betrayals, dispossessions, contamination by diseases, and attempts to assimilate them to mainstream society. Both have strived to collectively organize in order to make "credible threats" during the 60's and 70's decades of the twentieth century and now have large and influential national organizations that represent them at the federal level.

Importantly, at some time in their modern history, Brazil and Canada tried to include Indigenous peoples in the reviewing of the policy designed to address their claims for recognition of their traditional lands. With this common goal, they carried out participatory processes with distinct designs and arrived at different outcomes. Whereas the Brazilian NPPCIP was unable to effectively help Indigenous peoples to

change Brazil's Indigenous land claims policy, the Canadian TF obtained a modest success, but a success, nevertheless.

To make sense of the interaction between the modern Nation-states of Brazil and Canada and their Indigenous peoples through participatory channels, we proposed the consideration of four macro independent variables: 1. Institutional design; 2. Federalism; 3. Government agenda and; 4. Native collective agency. To further complexify our analysis, those variables unfolded in 8 sub-variables, designed to capture nuances within each one of them: a. Participatory institutional design; b. Constitutional design; c. interest representation within parliament; d. judicial dynamics of federal conflicts; e. political centrality of the issue; f. economic strategy; g. repertory of action; h. associative density.

We now turn briefly to compare how each one of those variables and sub-variables help – or do not help – to account for the variation of the outcome of interest in our research. At the end of each section we present a table organizing the information provided, and finally a table summarizing the main findings of the research.

Institutional design

Institutional design, broadly defined as the "rules of the game", structuring the range of preferences available to the political actors as well as their interactions was the first variable investigated. We considered that at least two sets of rules could be important to explain why the observed variation in the outcome: 1. The ones related to the design of the participatory processes put in place by nation-states to include Indigenous peoples in discussions about Indigenous land claims policy and; 2. The constitutional framework regarding Indigenous rights.

The design of the participatory institutions would be the first "place" where any researcher would look for effects regarding the outcome of interest. After all, both designs, despite their similarities, had clear differences that could have had significant impacts on policy change. Whereas National Public Policy Conferences are well-studied mechanisms used by several Brazilian governments to receive input from civil society, Task Forces are usually top-down initiatives from governments with a clear mandate and timeframe to achieve policy goals.

Discussing the Brazilian case, we were able to see that even a well-established participatory mechanism cannot realize its full potential to conduct Indigenous inputs into the government if the government itself acts to undermine the process. Fundamentally, the NPPCIP had no political weight and was carried out in a politically sensitive moment to the president. Moreover, its slow pace and the long time taken to its concretization were frustrating to Indigenous peoples and state agents alike.

The Canadian case, on the other hand, showed that even a top-down institution with limited resources and tight schedule can be successful. A truly low-profile political initiative operating under the radar being carried out by skilled and motivated agents with mixed professional backgrounds was able to promote modest changes on the policy of the day.

Surely, the usual "protocol" to call and materialize a National Conference was followed: there was a national commission including Indigenous leaders to design and implement the Conference; there were local and regional stages; Indigenous representatives were selected across the country to attend the National Conference stage; Indigenous peoples were able to make recommendations and claims at the NPPCIP. Everything looked like "participation as usual". It did not work, though.

In sum, regardless of the importance of the symbolism - Indigenous peoples being able to, for the first time in Brazilian history, discuss Indigenous land claims policy with state-agents – the NPPCIP design was not able to circumvent the challenges posed by the political context of the time the way the TF did. If the TF was not fully supported by the government of the day, at least it was not weakened or used for political goals other than including Indigenous peoples in the process of reviewing Indigenous land claims policy.

Concluding, it is hard to accurately identify how much of the failed NPPCIP was due to its internal flaws or to its external "enemies". Similarly, we cannot be sure of how much of the TF's modest success can be attributed to its design. What we can affirm, undoubtedly, is that both institutional designs seemed to be vulnerable to external political forces. Decisive was the fact that the NPPCIP was actively undermined by the Federal government whereas the TF had a relatively free road ahead to be conducted without major political influences.

The constitutional framework proved to be a sub-variable worth investigating not because of the extent of the constitutional protection provided by each one of

them, but by the timing of the constitutional provisions. As we have seen in the first chapter, the Brazilian constitution has a broad range of Indigenous rights and is considered among the most protective of Indigenous peoples in the world. Undeniably, the 1988 constitutional provisions regarding Indigenous peoples were a turning point in the relationship between them and the Brazilian state. Moreover, the *Magna Carta* strongly encourages participatory processes as the NPPCIP.

Unfortunately, the existence of a progressive set of Indigenous rights in the constitution does not reflect its actual application in the real world of daily politics. Indeed, many of the proposals made Indigenous peoples at the NPPCIP use defensive language to express their concerns regarding their perceived attack to their constitutional rights. There were surely claims for policy change, but there were also claims for policy continuity based on the already existing bundle of rights.

For the Canadian case, conversely, what seemed to be decisive was the proximity of the repatriation of the Canadian constitution in 1982 and the TF. Despite failed attempts made to clarify Indigenous rights in the constitution years subsequent to Constitutional conferences, it is perceptive that Indigenous groups were motivated and mobilized when the TF process began. The language of rights is omnipresent at the Indigenous submissions to the TF. On the other hand, state-agents decided to change the previous Indigenous land claims recognition policy to better fit it to the new constitutional "spirit".

Hence the questions: Would the NPPCIP have taken place in the aftermath of the 1988, would the Brazilian Indigenous land claims policy have a different design? If the TF would have conducted its consultative process 30 years after the constitutional repatriation, would Indigenous peoples have success? One can only speculate. The matter of fact is that one cannot understand the cases under study without keeping in mind that constitutional aspects did have an impact on the observed outcomes.

Table 12: summary of the effects of the variable institutional design

Variable	Sub-Variables	Canada	Brazil
	Participatory Institutional	Agile, flexible, and	Protocolary,

V1- Institutional design	Design	operating under the political radar	internally undermined by the government, slow, long and ineffective
	Constitutional design	Impacted and provided incentive for policy change	There is a gap between constitutional provisions and Indigenous policy

Federalism

The role of sub-national entities on the processes under scrutiny was the second variable examined in our study. Our main theoretical challenge was to break down the generality of the concept into two sub-variables that would be able to capture a more nuanced and concrete picture of the relationship between states/provinces and Indigenous peoples.

Firstly, we dedicated our efforts to understand how local and regional political and economic forces are represented in the parliaments of both countries. Our assumption was that powerful actors with veto powers within a government branch could be major obstacles to policy change if they wanted.

This initial insight proved to be right. The cases could not be more different in this regard. Our interviewees were able to provide colorful testimonies on how the ruralist caucus acts interfered in the Indigenous land claims policy. Not only agribusiness and mining interests are overrepresented in the Brazilian parliament – the parliament design itself is among the most restrictive in the world. In other words, even a moderate number of congressmen would be enough to form a coalition to block any proposal or political initiative regarding Indigenous peoples.

Importantly, our discussion showed that our informants understand that the main problem is not exactly the political power of the ruralist caucus – despite its growing influence in the last decade; it has always been there after all – but the ability – or the lack thereof of the president to mediate their demands. Our informants were adamant in drawing the differences between the former presidents Lula da Silva and Dilma Rousseff in this regard. Whereas the former was a skilled negotiator, the latter was unable to adequately balance interests. In sum, if we were

not able to affirm that the NPPCIP itself was directly influenced by the ruralist caucus, we have shown that their political influence stretches to the highest echelons of power in Brasília and the president at the time of the participatory process was not able to mediate or mitigate its effects on the Indigenous policy.

This experience contrasts sharply with the Canadian experience discussed in the previous chapter. One of our informants summarized the argument: there is a bipartisan effort in Canada that "something must be done" to address Indigenous claims. Besides, the cabinet-oriented parliamentary system in Canada somehow prevents the influence of backbenchers on policy issues.

Notwithstanding, it does not mean that agribusiness and mining interests are not represented in the Canadian parliament or that they do not have any influence on Indigenous policy at all. What seems to be an accurate statement, however, is to claim that the TF benefited from the combination of a political consensus and the institutional design of the Canadian parliament to advance their agenda and deliver its final report. The absence of such a powerful political actor with unmediated political influence such as the ruralist caucus in Brazilian political landscape is certainly a factor that should be considered when it comes to understanding the political dynamics of Indigenous land claims recognition policy change in Canada.

Subsequently, we investigated the overall relationship between sub-national entities and Indigenous peoples. We asked ourselves if both parties acted cooperatively or divergently in the processes hereby analysed, with the clear assumption that the degree of contentiousness could reflect difficulties regarding the prospects for policy change.

The challenge here was to operationalize this "degree of contentiousness" in a more empirical fashion. The anthropological literature on the topic claims that federal governments in Brazil and Canada tend to be less influenced by local and regional interests and therefore would be less interested in political conflicts with Indigenous peoples than provincial and state-level governments.

We proposed that the dynamics of the judicial conflict between sub-national governments and Indigenous peoples could provide an empirical base of understanding of how this relationship plays out. We have shown that whereas the Canadian Supreme Court has decided favourably to Indigenous peoples in some landmark cases brought to trial by provincial governments, there is an enormous

number of ongoing litigations at the Brazilian Supreme Court regarding Indigenous issues.

Our Brazilian informants highlighted the degree of contentiousness regarding Indigenous policy in many Brazilian states. In some of them it is even dangerous to be a FUNAI servant. Even though we were not able to better capture how this could have influenced the NPPCIP process, to understand the conflictive nature of the relationship between state-level governments and Indigenous peoples in Brazil as a potential blocking factor for policy change is not an unreasonable assumption.

In Canada's case, provincial government representatives cooperated with the TF and were able to "moderate" its final report. Equitably, their initial response was somehow elusive and varied from the explicit willingness to be part of the process to its complete denial. However, once engaged in the consultation, the relationship turned out to be productive.

It is clear from our discussion that the operationalization of the concept of federalism needs further effort to clarify the relationship between the Brazilian state and Indigenous peoples. The information provided by our key informants regarding the influence of powerful economic and political interests into the Indigenous policy implementation was crucial to the Brazilian case. Therefore, we can make the broader point that "sub-national entities matter" when it comes to understanding the prospects for policy change regarding Indigenous policy. We failed, however, to connect more explicitly the contentiousness of this relationship to the concrete case of the NPPCIP.

Table 13: summary of the effects of the variable federalism

Variable	Sub-Variables	Canada	Brazil
V2- Federalism	Interest representation within parliament	Bipartisan effort and the lack of decision-making power of Parliament	Political power of the ruralist caucus unmediated by the executive branch
	Pattern of relationship between Indigenous	Cooperative and moderating role	Conflictive role

peoples and sub-national governments

Government agenda

The executive branch of the federal government oversees drawing up and implementing public policies towards Indigenous peoples in both countries. Its economic and political agenda is therefore relevant to understand the political dynamics of policy change and Indigenous participation into administrative activities.

Our first assumption was that if a policy has political centrality, it is more likely to receive government attention in terms of budget and staff. Conversely, the lack of political centrality means that officials and politicians do not care about financial constraints and tend to ignore problems around the policy issue. Curiously, data available proved that the budget assigned to Indigenous issues at the time of the NPPCIP and TF was on the rise.

Our analysis showed that Indigenous policy is not central to federal governments in both contexts of investigation. The difference from case to case is what this lack of political interest meant to the observed outcomes.

For the Canadian case, the lack of political interest meant that the TF operated "under the radar" and that there was an absence of any concerted political or bureaucratic opposition to its activities. Whereas for the Brazilian case, it meant that the federal government was not interested in engaging in any attempt to effectively put in place any of the proposals Indigenous peoples made at the NPPCIP. The lack of political centrality worked as an asset to the TF, insomuch as helped to further undermine the political support for the NPPCIP.

Equally important to understanding executive propensity to support Indigenous claims for policy change channeled through participatory processes is to correctly evaluate the place Indigenous issues have within the economic agenda of the government of the day. Constitutional or treaty protections around Indigenous lands tend to be considered obstacles for economic development both by private companies and government agencies. It was therefore relevant to our discussion to comprehend how our informants connected governmental economic strategy and policy issues concerning Indigenous peoples.

Our informants for the Canadian case emphasized the fair balance of interests among Indigenous peoples, government agents and private companies as the TF goal. As we have seen, Indigenous peoples themselves differed in their perspectives concerning economic development. Economic representatives were fundamentally interested in legal certainty to deal with Indigenous lands. Finally, state agents were interested in clear Aboriginal title over traditional lands to facilitate economic activities within Indigenous lands. The TF managed to find a point of balance where all parties won.

In Brazil, our analysis showed the importance of the neodevelopmentalism as the economic axis of the PT's governments. Here our informants were able to distinguish the degree between centrality (Lula da Silva) and hegemony (Rousseff) of economic goals. Following the testimonies, the Brazilian government under Rousseff was like a "tractor running over anything ahead" and the absence of mediation between private and public economic interests and Indigenous political claims was a point of tension in the relationship between the parties.

Table 14: summary of the effects of the variable government agenda

Variable	Sub-Variables	Canada	Brazil
V3- Government agenda	Political centrality of the issue	Lack of political centrality and budgetary constraints were not obstacles to policy change	Lack of political centrality more important than budgetary constraints
	Developmental strategy	The search for a fair balance of interests between government, businesses and Indigenous peoples	Hegemonic neodevelopmentalism colliding against Indigenous policy

Native collective agency

Lastly, we looked into the collective agency of native people in both countries as a potential relevant factor to help to understand the reasons behind the variation observed in the dependent variable. We assumed that Indigenous peoples in both countries developed strategies to associate and to make their political claims heard whenever they wanted to. In this sense, we investigated the modern pattern of Indigenous association and the repertory of acts of protest carried out by Indigenous groups at the time of the NPPCIP and TF.

Our first challenge regarding Indigenous contentious and non-contentious protests was to find an empirical indicator to give us a more reliable base of comparison across cases. For the Canadian case we used Howard Ramos's database. Such indicator, however, did not apply to the Brazilian context and we managed to construct a new database of Indigenous protests between 2009 and 2016.

There is a spread perception among anthropologists and other interested observers of Indigenous issues in Brazil that Indigenous peoples would have increased their acts of protest across the country. Our measurement suggested that this perception may be an optical illusion. On the contrary, it showed a decreasing number of activities during the period around the NPPCIP. It is in consonance with one of our informants who explained how the Brazilian government actively undermined Indigenous mobilization over the years.

For the Canadian case, we concluded that Indigenous protests were absent and played no role in the process. It does make sense: when Indigenous peoples and governments are engaged in participatory processes, it is unlikely that the former will cause any disruptive action that may hinder the prospects of cooperation between the parties.

The analysis of the Indigenous associative landscape showed the effective increase in the number of associations over the last decades in both countries. To support our argument, we again relied on Howard Ramos's database for the Canadian case. For the Brazilian case, we also had to build a new database.

Our informants suggested that many Indigenous groups, organized around associations, were fully capable of engaging in meaningful talks and negotiations with federal governments. They presented a complex panorama of a multitude of Indigenous and non-indigenous associations working in partnership to advance Indigenous movement and political agenda. This point seems to be particularly

important because while acts of protest are events which typically do not last long, associations are meant to last. In other words, there may well be a more consistent base to Indigenous mobilization in the future in both countries.

For the Brazilian case, evidence suggests that differences in organizational capacity among Indigenous groups may have had an impact in the capacity of engaging in the NPPCIP activities. For the Canadian case, our data suggest that such differences may have been neutralized by the TF design.

Table 15: summary of the effects of the native collective agency variable

Variable	Sub-Variables	Canada	Brazil
V4- Native collective agency	Associative density	Plurality of organizational forms may have been neutralized	Plurality of organizational forms may have weakened Indigenous mobilization
	Acts of protest	No protests before or during the policy review process	Protests actively demobilized by the federal government.

Conclusion

Looking at the variables used in this study in a comparative fashion helps us to make sense of the data produced, collected and analysed over the years. As expected in any exploratory research, we are now able to highlight which factors seemed to have more impact than others in the dependent variable.

Several factors related to the political forces at the parliament and the economic strategy of the government at the time of the NPPCIP stand out for the Brazilian case. The unmediated force of the ruralist caucus at the Brazilian parliament in tandem with the hegemony of the neodevelopmentalist economic strategy and the politically hostile environment in the states provided the worst-case scenario for any attempt to provide Indigenous inputs to change policy through participatory institutions. Now the puzzle seems to be different from the one that

animated this research: if the ruralist caucus has gained power over the last decade, and became the effective dominant political force in the Brazilian parliament after Rousseff's impeachment, why can't they also pass their attempted changes to Indigenous land claims recognition policy?

On the other hand, the constitutional timing, the compact institutional design of the TF and, more importantly, the bipartisan consensus at the Canadian parliament that Indigenous issues and policies must be carried out further turned out to be crucial factors to understand the TF process. It does not mean that Indigenous policy is absent of political contentiousness in that country, but it does mean that it is not an unbreakable barrier to Indigenous peoples, government agents, politicians and civil society activists to push forward a policy agenda permeable to Indigenous inputs thorough participatory institutions.

Other facts seemed to have distinct effects depending upon the context- such as the case of the political centrality of the issue, which turned out to be an asset to the Canadian case and an obstacle for the Brazilian one. It is clear from the discussion, though, that better indicators and further research is needed to better understand the role Indigenous policies play in government agendas in elected governments. We are still in the dark when it comes to having a systematic and comprehensive assessment of the political (lack) of centrality among the countries of the American continent.

Finally, there were sub-variables with little or no effect at all at the observed variation in the outcome, such as the ones comprising the variable "native collective agency". The result for the Brazilian case is in consonance with the data we presented, showing that there was an effective reducing of Indigenous protests since 2011. What is new was the evidence brought by some of our interviewees that the Rousseff's government acted deliberately to undermine Indigenous capacity of protesting during the period. For the Canadian case, on the other hand, TF activities unfolded in a time where Indigenous mobilizations seemed to be constant, with no explicit influence in the participatory process at all.

Finally, the number of Indigenous political associations arouse in both countries a sign of vitality of Indigenous peoples and certainly a good indicator for citizen engagement in political activities. Only the fact that Indigenous organizations were able to participate meaningfully in such lengthy and costly participatory processes is testimony of their growing political capacity of organizing to make claims

and influence politics. The fragmentation of leadership, however, apparently posed some challenges to the inclusive features of the participatory experiences under scrutiny.

A summary of all variables, sub-variables and their respective values at each one of the cases studied is presented in table 16 below.

Table 16: summary of the effects of all variables used in this study

Variables	Sub-Variables	Canada	Brazil
V1- Institutional design	Participatory institutional design	Agile, flexible, and operating under the political radar	Protocolary, internally undermined by the government, slow, long and ineffective
	Constitutional design	Impacted and provided incentive for policy change	There is a gap between constitutional provisions and Indigenous policy
V2- Federalism	Representation of interests within parliament	Bipartisan effort and the lack of decision-making power of Parliament	Political power of the ruralist caucus unmediated by the executive branch
	Pattern of relationship between Indigenous peoples and sub-national governments	Cooperative and moderating role	Conflictive role
V3- Government agenda	Political centrality	Lack of political centrality and budgetary constraints were not obstacles to policy change	Lack of political centrality more important than budgetary constraints
	Economic		Hegemonic

	strategy	The search for a fair balance of interests between government, businesses and Indigenous peoples	neodevelopmentalism colliding against Indigenous policy
V4- Native collective agency	Acts of protest	Plurality of organizational forms may have been neutralized	Plurality of organizational forms may have weakened Indigenous mobilization
	Associative density	No protests before or during the policy review process	Protests actively demobilized by the federal government.

6.3. Indigenous land claims policy: critical voices

As useful as Indigenous land claims recognition policies may have been to advance Indigenous rights to land in the American continent in the last decades, they also have been severely criticized by both Indigenous and non-Indigenous scholars in this field of study. Those critical voices deserve to be mentioned here to show how the scholarship regarding Indigenous land claims policies, though small-sized when compared to other study domains, have already produced arguments and counterarguments which animate debates and spark controversies. Without the goal of being exhaustive, we briefly outline below the arguments and criticisms posed by two Indigenous and non-Indigenous Canadian scholars on the topic.

The *Mohawk* political scientist and philosopher Gerald Taiaiake Alfred is certainly the most prominent Indigenous scholar in the contemporary Canadian political science field. He is professor for *Indigenous governance* at the *Victoria University* in British Columbia. In three of his most outstanding works - *Heeding the Voices of Our Ancestors: Kahnawake Mohawk Politics and the Rise of Native Nationalism* (1995), *Wasáse: Indigenous Pathways of Action and Freedom* (2005) and *Peace, Power and Righteousness: An Indigenous Manifesto* (2009), Alfred

discusses how the acritical mimetic adoption of western culture and political institutions by First Nations Band Councils and their leadership helped to weaken traditional ways of organizing Native groups and ultimately collaborates with the settler enterprise towards total assimilation of Indigenous peoples. Not surprisingly, Poelzer and Coates (2015) call Alfred, along with other scholars such as Joyce Green, Kiera Ladner, John Borrows and Patricia Monture-Angus, as a "traditionalist", an Indigenous thinker concerned with the singularity of cultural traditions of First Nations and its central role in broadening the prospects for political autonomy from a decolonial perspective.

Secondly, it is worth mentioning the virulent criticism made to Canadian Indigenous land claims recognition policy by Glen Coulthard, member of the *Yellowknife Dene First Nation* and professor of the *First Nations and Indigenous Program* from the Department of Political Science at the *University of British Columbia*. In his acclaimed book *Red Skins, White Masks: Rejecting the Colonial Politics of Recognition* (2014), the author uses the theoretical approach of the French thinker, Franz Fanon, to describe Indigenous land claims recognition policy as just an instrument of the Canadian state to further strengthen the colonial grips of the settler society over Indigenous peoples. The assumed goal of his book is to challenge the notion that Comprehensive Land Claims Agreements could be a component of the political autonomy of Indigenous peoples. Coulthard is acid in his views that the terms of those agreements are set by the colonial state following its priorities and therefore operate to domesticate Indigenous claims for self-determination. Finally, he concludes that the capitalist economy promotes the "structured dispossession" of Indigenous lands in Canada and elsewhere and must be repealed if Indigenous peoples really want to take back the control over their traditional territories.

Indigenous policy writ large has also been under severe criticism by some non-Indigenous political scientists. Among the most prominent, Tom Flanagan certainly stands out as one of the most controversial to the date. Presently a retired professor for political science at the *Calgary University*, in 2000 Flanagan published a widely cited and controversial book titled *First Nations? Second Thoughts* in which he develops the argument against what he calls the "Aboriginal orthodoxy". Indigenous policy – so the argument goes- confers to a segment of the Canadian society an unjust bundle of rights based on false premises or mistaken policy assumptions, and any attempt to criticize any of them will be met with accusations of racism, blocking

the debate and keeping unchallenged the "orthodoxy" built by scholars, activists and Indigenous leadership around Indigenous issues. This "orthodoxy" would be comprised of eight theses, and Flanagan's task in the book is to offer an alternative view to each one of them.

By the same token, Frances Widdowson and Howard Albert, political scientists at the *Mount Royal University*, in their coauthored book *Disrobing the Aboriginal Industry: The Deception Behind Indigenous Cultural Preservation* (2008) argue that Indigenous peoples, lawyers, government agents, civil society activists, scholars and anthropologists benefit from what they call "Aboriginal industry". In their view, there is a whole set of political and economic actors with vested interests on the subject of Indigenous land claims because a whole "industry" around the issue would have been built: the hiring of consultants and lawyers to help Indigenous groups prepare their land claims; the hiring of negotiators; the money transfers to Indigenous groups once the claim is settled; public funding for scholars to carry out researches among Indigenous groups etc. The authors are adamant in their criticism of what they view as a coalition of actors that simultaneously block the debate on Indigenous issues and promote a public discourse of helping Indigenous peoples while, in reality, they are only benefiting from the *status quo*.

Poelzer and Coates (2015) provide a much bigger list of Indigenous and non-Indigenous Canadian scholars that developed other arguments for and against Indigenous policy and Indigenous land claims recognition policy in that country than the one offered here. We opted to present to the Brazilian audience the ones we considered more fruitful and productive to be used by Brazilian researchers in the future, but there are certainly others to be discovered and debated. Those are qualified criticisms informed by theoretical arguments and filled with empirical evidence, far away from the common-sense and sometimes quite frankly racist criticisms made by politicians every time controversies around Indigenous issues arise in the public sphere.

Moreover, it is food for thought to think how a similar criticism will play out in the future in Brazil. Unfortunately, important Brazilian Indigenous thinkers of the last three decades such as Ailton Krenak and Davi Kopenawá Yanomâmi, did not translate their public criticisms about Indigenous policy to academic literature in a systematic fashion. On the other hand, hundreds of thousands of Indigenous members of the numerous Indigenous groups in the country had access to tertiary

education in the last decade for the first time in the nation's history. We consider that it is just a matter of time until we start to see political scientists with Indigenous backgrounds starting to carry out studies on Indigenous policy.

6.4. The quest for data: a reality check on our research goals.

The scope and strength of our claims for generalization are severely curtailed by the small number of cases discussed and the limited number of informants interviewed. As Rueschemeyer (2003, p.322) aptly notes, "*dual case studies very rarely can settle questions about the impact of factors that differ across cases*". Moreover, the lack of systematized hard and qualitative data regarding Indigenous issues demands from the researcher flexibility to articulate distinct set of information and humility to draw conclusions.

"*It is really hard to get data on Indigenous issues, either in archival form or through interviews. This is one of the reasons why there are not so many political scientists in the field*"[273], told us a prominent Canadian scholar of the field of Indigenous politics. During the whole period of the research, we have learned how true this simple but profound sentence could be. Moreover, we have learned that, whatever the research design may be, it must consider from its outset the amount and the type of data available, as well as the practical means to have access to them. In this conclusion, we would like to point out some practical concerns that may be useful to political scientists interested in doing research on Indigenous politics.

a) Datasets on Indigenous issues are rare, sparse and lack organization: The messy state of data on Indigenous peoples is an international issue (REINIE et al, 2017). Good and available datasets on the many aspects of Indigenous politics are rare, varying from the sometime well-structured health and housing indicators to the virtually non-existent data about the native political organization, just to name a few. Sometimes, the national census is aggregate by national or regional levels but may lack territorial and community-level microdata. Moreover, one of the causes why it is hard to state precisely the

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[273] Prof.Dr. Christa Scholtz, personal communication, 20/06/17.

effect of a land claim settlement in the political and economic life of a native community is the lack of reliable data about such dimensions before and after the treaty or the land demarcation, which makes the theoretical obstacles of the remote causation and missing variables almost impossible to avoid.

b) Bureaucracies and bureaucrats: National and regional bureaucracies may vary from well-organized and transparent to obscure and impenetrable ones, with many gradations between the extremes. In many cases, files related to native land claims spread across ministries, agencies, and libraries, which makes the life of the researcher harder when trying to track down the claim within the government. In others, such files may simply not exist, given the importance of informal exchanges between state agents and native peoples in many cases of land claims processes. Usually, the files are not in a digital format, and the researcher must be able to deal with old and dusty files *in loco*, which can make the research activity more expensive and time-consuming. Finally, some files are not open to public consultation due to legal restrictions. Bureaucrats, in turn, can be very helpful providing information and helping the researcher to navigate the Kafkian waters of the administrations, but they can also be important veto players, making it difficult to access some crucial information. State agents in the field are not always available or willing to give interviews, and many of them could have worked to privatize companies that may not exist anymore. Some, especially the ones active in claims settled in the early 90's, may be retired or dead. To find out who they are, to approach them, negotiating and effectively carrying out the interview can be a time-consuming process that may be considered by the interested researcher.

c) Field work specifics: To carry out field work is usually a challenging and time-consuming task, regardless the topic of investigation. However, there are some practical concerns that are specific to the research with Indigenous communities and on Indigenous politics in general. National bureaucracies are often composed by many administrative levels, sometimes with offices located in different cities. Indigenous communities can be – and many are, indeed – remote with access by only airplanes or boats, and in extreme cases, not in

all seasons. An expedition to some Indigenous lands, especially in the Amazon or in the Canadian north can be as expensive as any international flight. Ethic certificates or official allowance to access Indigenous lands are not taken for granted and the process to get them can last for months. All those practicalities are probably well-know to anthropologists used to expend an extended period carrying out in-depth researches in Indigenous communities, but perhaps not to the political scientist interested in the field.

d) Ethical issues: Indigenous communities in Brazil, Canada and elsewhere have been subjects of scientific investigations during centuries, often been mistreated by scholars that just wanted to gather data without any concern related to the harm such practices may have on individuals and communities. Native groups are increasingly aware of such abuses and not cooperating with the researcher is perfectly understandable and must be considered not as an obstacle impossible to overcome, but a crucial concern to be tackled.

During our research, we have faced all those challenges, in some degree, which compelled us to make some hard decisions during the process, for instance, giving up interviewing Indigenous individuals. This "reality check" and those warnings are not intended to discourage researchers, but, rather the opposite, stimulate more investigations and production of reliable public data that could be used to deepen the understanding of the many aspects of the complex issue of Indigenous politics.

6.5. Conclusion: towards a comparative research agenda on indigenous peoples, political participation, and land claims recognition policies

We have shown elsewhere that Brazilian political science simply ignored Indigenous peoples and their politics over the decades (SOARES, forthcoming). The net result of this lack of scholarly interest is that there are no sound theories or studies about Indigenous policy and politics in the Brazilian academic landscape and the interested researcher must rely almost solely on anthropological or law studies. In some sense, in the Brazilian political science field, everything remains to be done.

In this final section, we would like to lay out what we think are the most pressing issues around Indigenous peoples that could well be suited for research from a political science perspective. The list does not intend to be exhaustive, but only a modest research agenda focused mainly on the Brazilian context, but not limited to it. Indigenous issues are a truly transnational topic of research and therefore comparative studies are especially welcomed in the field.

In our judgment, the first and foremost question that needs to be urgently answered is: why does it take so long to achieve territorial recognition? Indigenous peoples around the world, more often than not, must wait decades before having their traditional territories officially recognized by a nation-state, and it holds true to the Brazilian case. In other words, it usually means living long periods in constant fear of external invasions, threats of physical and cultural violence, economic uncertainty and poverty. Political science scholarship could be instrumental in opening the black box of political decisions and struggles around Indigenous land claims recognition policies, helping to improve its effectiveness and agility.

The second topic of interest directly related to the former is the search for the factors that could explain why some Indigenous groups manage to have their lands demarcated by the state whereas others never get to it. What is more important to achieve land recognition, the political organization of an Indigenous group or its connection with international organizations; the region of the country where the land is located or its size? The path-breaking work of the Canadian scholar Christopher Alcantara (2013) addressed both questions in the same research and is certainly a framework Brazilian political scientist could use as inspiration after the necessary adaptations to the Brazilian reality.

Alcantara and Nelles (2016) also pioneered in their study about the political relationships between Indigenous communities and local governments in Canada. Again, a similar theoretical framework could be translated to the Brazilian context to explore the almost entirely unknown frontier of the local governments ran by Indigenous individuals, as Paula (2017) has recently shown in his study about Indigenous candidacies in Brazil. Does the fact of the mayor or his deputy being Indigenous Individuals mean that the relationship between local government and Indigenous communities has improved? Which factors could explain the emergence of cooperative behavior between Indigenous peoples and local administrations? Those questions are a few that were not even posed, let alone answered.

Researchers could carry out an extensive research on the political economy of land claims recognitions processes. Debates over the economic use of traditional lands tend to be controversial and are plagued by ideological arguments from all sides. Political scientists, along with economists, could help Indigenous peoples, politicians and economic players to understand the impacts of distinct modes of Indigenous governance over resources located in traditional lands.

Researches about the mechanisms designed by the Brazilian state to include Indigenous and traditional peoples in some of governmental decisions could spark renewed interest on participatory institutions among Ph.D. students. It is simply unjustifiable, from an intellectual and political point of view, that participatory institutions regarding traditional peoples have attracted so little or no scholarly attention at all. The list can continue indefinitely. In sum, the sky is the limit when it comes to using political science's theoretical and methodological tools to investigate Indigenous policy and politics.

Just as Ramos (2012) does, we take as an irrefutable fact that all American societies are constructed above the ashes of Indigenous peoples and each country deals with this primal guilt differently. To further deepen the rights of Indigenous peoples is not only just one of the many challenges for citizenship in Latin America (OXHORN, 2005) but also for Canada, where the praised conquest of their welfare-state still does not reach Indigenous peoples of this country properly.

In this research we dealt with more or less successful state initiatives to include Indigenous peoples into governmental decisions. Despite the flaws of the participatory institutional design, obstacles and difficulties faced by Indigenous peoples in the processes here analysed, it is worth acknowledging that both were positive steps towards a more equal relationship between Indigenous peoples and the nation-states. Some participation is better than none.

As we finish this text, Jair Bolsonaro, a right-wing candidate is leading the polls in the 2018 presidential election in Brazil. His views on Indigenous issues are quite clear and there is be no doubt that if he succeeds, Indigenous peoples will face the worst threat to their existence in the next fifty years. It is a reminder that a tense, fragile and often frustrating relationship as the one between Indigenous peoples and the Brazilian state can fall into the racist and assimilationist pattern of the past. Strengthening participatory mechanisms such as the NPPCIP, addressing their flaws

and enhancing their potentialities should be at the center of the political agenda of any of the other candidates to the presidential office.

Finally, we remember Antonio Carlos de Souza Lima (2015) affirming that there wouldn't be anything more contemporary than to build up "sociologies" of the Indigenous Brazil. We should add, if we are allowed to do so, that this thesis is a modest contribution towards, perhaps, the beginning of the Political Science of the Indigenous Brazil.

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