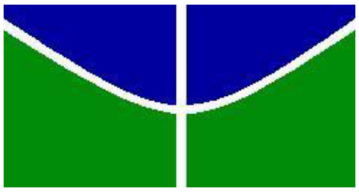

UNIVERSIDADE DE BRASÍLIA (UNB)
INSTITUTO DE CIÊNCIAS SOCIAIS (ICS)
DEPARTAMENTO DE ESTUDOS LATINO-AMERICANOS (ELA)
PROGRAMA DE PÓS-GRADUAÇÃO EM ESTUDOS COMPARADOS SOBRE AS AMÉRICAS

CLARISSE DRUMMOND M. MACHADO

STILL NOT RECONCILED YET!
REPARATION INDIGENISM AND THE ATTEMPT TO SETTLE THE HISTORICAL DEBT WITH THE MARÃIWATSÉDÉ XAVANTE IN BRAZIL AND THE ANISHINAABEG OF LAC SEUL IN CANADA

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Approved on 29 March 2021.

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In the Anishinaabemowin language the word *meegwetch* is an important sign of gratitude. With this word I thank the people who kindly contributed to the realization of this work. In Xavante's language this word is *hepari*.

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To Amasili, Flávio and Ana Flávia.

To my father, Roberto (In Memoriam)

The Anishinaabe are guided by seven principles:

Zah-gi-di-win (love): To know love is to know peace.

Ma-na-ji-win (respect): To honour all of creation is to have respect.

Aak-de-he-win (bravery): To face life with courage is to know bravery.

Gwe-ya-kwaad-zi-win: (honesty): To walk through life with integrity is to know honesty.

Dbaa-dem-diz-win (humility): To accept yourself as a sacred part of creation is to know humility.

Nbwaa-ka-win (wisdom): To cherish knowledge is to know wisdom.

De-bwe-win (truth): To know of these things is to know the truth.

Excerpt from the book *Seven Fallen Feathers: Racism, Death, and Hard Truths in a Northern City*, Tanya Talaga, 2017.

ABSTRACT

Colonialism in Brazil and Canada has generated disadvantages for Indigenous Peoples in every aspect of their lives, evidenced by the disparity between these populations and other social segments in a wide range of socioeconomic indicators. The present study proposes a comparison between Brazil and Canada on how these countries present and negotiate policies to settle the debts generated throughout the colonization process, past and present, and as a result of economic development projects. Two cases of historical debt were brought for comparison: the *transfer* of the Xavante people from Marãiwatsédé in central Brazil, and the flooding of the Anishinaabeg people from Lac Seul First Nation, Northwestern Ontario, Canada. In Canada, the consequences of colonialism for Indigenous Peoples were and still are very similar to those in Brazil; however, how the process of (un)payment of the historical debt has been carried out in this country opens new keys of interpretation for thinking about interethnic relations in the context of global neoliberal capitalism and multiculturalism. In both countries, the political processes of reconciliation and reparation for Indigenous Peoples are directly associated with each country's economic and ideological contexts. However, much Canada has projected itself worldwide as a reference in the field of the policy of reparations towards Indigenous Peoples, the global and neo-liberal capitalist logic prevails in this country, albeit of a multicultural nature, which seeks the economic inclusion of excluded segments of the population under the paradigms of an idea of citizenship aligned with these values and principles. At this point, however, Brazil and Canada are entirely aligned.

Keywords: Indigenous Peoples; Reconciliation; Historical Debt; Reparation; Justice.

RESUMO

A história das políticas coloniais no Brasil e no Canadá tem gerado desvantagens para os povos indígenas em todos os campos, evidenciadas pela disparidade entre essas populações e outros segmentos sociais em uma ampla gama de indicadores socioeconômicos. O presente estudo propõe uma comparação entre o Brasil e o Canadá sobre como esses países apresentam e negociam políticas para pagar as dívidas geradas ao longo dos projetos de desenvolvimento colonial e econômico. Dois casos de dívida histórica foram trazidos para a comparação: a *transferência* dos Xavante de Marãiwatsédé, da região central do Brazil, e o alagamento dos Anishinaabeg de Lac Seul First Nation, região Noroeste da Província de Ontário, no Canadá. No Canadá, as conseqüências do colonialismo para os povos indígenas foram e ainda são muito semelhantes às do Brasil; entretanto, como o processo de (a)pagamento da dívida histórica tem sido realizado neste país abre novas chaves de interpretação para pensar as relações interétnicas no contexto do capitalismo neoliberal global e do multiculturalismo. Em ambos os países, os processos políticos de reconciliação e reparação para os povos indígenas estão diretamente associados aos contextos econômicos e ideológicos de cada país. Entretanto, muito do Canadá se projetou mundialmente como referência no campo da política de reparação aos povos indígenas, a lógica capitalista global e neoliberal prevalece neste país, embora de natureza multicultural, que busca a inclusão econômica de segmentos excluídos da população sob os paradigmas de uma idéia de cidadania alinhada com estes valores e princípios. Neste ponto, no entanto, o Brasil e o Canadá estão totalmente alinhados.

Palavras-chave: Povos indígenas; Reconciliação; Dívida histórica; Reparação; Justiça

RESUMEN

La historia de las políticas coloniales en Brasil y Canadá ha generado desventajas a los pueblos indígenas en todos los ámbitos, evidenciadas por la disparidad entre estas poblaciones y otros segmentos sociales en una amplia gama de indicadores socioeconómicos. El presente estudio propone una comparación entre Brasil y Canadá sobre cómo estos países presentan y negocian las políticas para pagar las deudas generadas a lo largo de los proyectos de desarrollo colonial y económico. Se trajeron dos casos de deuda histórica para comparar: el *traslado* de los Xavante de Marãiwatsédé, en la región central de Brasil, y la inundación de los Anishinaabeg de la Primera Nación de Lac Seul, en el noroeste de Ontario, Canadá. En Canadá, las consecuencias del colonialismo para los pueblos indígenas fueron y siguen siendo muy similares a las de Brasil; con todo, la forma en que se ha llevado a cabo el proceso de (a)pagar la deuda histórica en este país abre nuevas claves de interpretación para pensar las relaciones interétnicas en el contexto del capitalismo neoliberal global y el multiculturalismo. En ambos países, los procesos políticos de reconciliación y reparación de los pueblos indígenas están directamente asociados a los contextos económicos e ideológicos de cada país. Sin embargo, por mucho que Canadá se haya proyectado mundialmente como un referente en el campo de la política de reparaciones a los pueblos indígenas, en este país prevalece la lógica capitalista global y neoliberal, aunque de carácter multicultural, que busca la inclusión económica de los segmentos excluidos de la población bajo los paradigmas de una idea de ciudadanía alineada con estos valores y principios. En este punto, al fin y al cabo, Brasil y Canadá están totalmente alineados.

Palabras clave: Pueblos Indígenas; Reconciliación; Deuda histórica; Reparación; Justicia

LIST OF ABBREVIATIONS AND ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
ABECAN	Associação Brasileira de Estudos Canadenses
ACP	Ação Civil Pública
ADR	Alternative Dispute Resolution Process
AGU	Advocacia Geral da União
AFN	Assembly of First Nations
ALN	Aliança Libertadora Nacional
AMC	Act for the Preservation and Enhancement of Multiculturalism in Canada
APIWTXA	Associação Ashaninka do Rio Amônia
ASCURI	Associação Cultural de Realizadores Indígenas
CAPES	Coordenação de Aperfeiçoamento de Pessoal de Nível Superior
CASCA	Canadian Anthropology Society
CEPPAC	Centro de Pesquisa e Pós-Graduação Sobre as Américas
CIARS	Centre for Integrative Anti-Racism Studies
CIRNAC	Crown-Indigenous Relations and Northern Affairs Canada
CEP	Common Experience Payment
CIS	Certificado de Status Indígena
CNPI	Conferência Nacional de Política Indigenista
DIAND	Department of Indian Affairs and Northern Development
ELA	Departamento de Estudos Latino-Americanos
FAP	Fundação de Apoio à Pesquisa
FSN	Força de Segurança Nacional
FUNAI	Fundação Nacional do Índio
GDF	Governo do Distrito Federal
INAC	Indigenous Northern Affairs Canada
IBAMA	Instituto Brasileiro do Meio Ambiente
INCRA	Instituto Nacional de Colonização e Reforma Agrária
ICCS	International Council for Canadian Studies
ILO	International Labour Organization

IRS	Indigenous Residential Schools
IRSSA	Indian Residential Schools Settlement Agreement
ISA	Instituto Socioambiental
ISC	Indigenous Services Canada
LSFN	Lac Seul First Nation
MDS	Ministério do Desenvolvimento Social e Combate à Fome
MPF	Ministério Público Federal
MST	Movimento dos Trabalhadores Rurais Sem Terra
OEA	Organização dos Estados Americanos
ONWG	Orillia Native Women Group
OPAN	Operação Amazônia Nativa
PAEG	Programa de Ação Econômica do Governo
PDSE	Programa de Doutorado Sanduíche no Exterior
RCAP	Royal Commission on Aboriginal Peoples
SESAI	Secretaria Especial de Saúde Indígena
SCC	Supreme Court of Canada
SPILTN	Serviço de Proteção aos Índios e Localização de Trabalhadores Nacionais
SUDAM	Superintendência do Desenvolvimento da Amazônia
TC	Termo de Conciliação
TCPS	Tri-Council Policy Statement
TRC	Truth and Reconciliation Commission
UN	United Nations
UNDRIP	United Nations Declaration for the Rights of Indigenous Peoples

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CONTENTS

PRESENTATION

The present work results from research conducted over the years 2016 and 2019[1]. This brief presentation aims to present how the fieldwork in Canada and Brazil was developed to write this dissertation.[2]

Most of the discussions addressed here are the result of interactions with Indigenous Peoples in Brazil and Canada, added to the accumulations provided by learning from professors, colleagues, intellectuals, public administration managers, and non-Indigenous People. I conduct the discussions under a critical and decolonial theoretical approach, having Canada as the main comparative counterpoint to the Brazilian experience on reparation policies for historical debts concerning Indigenous Peoples.

The two ethnographic situations compared are the removal of the Xavante people from Marãiwatsédé, in the central region of Brazil, and the flooding of the Lac Seul First Nation territory, Northwest of the Ontario Province, Canada.

My interest in the topic of reparations began in 2003. As an employee of the Ministry of Social Development and Fight Against Hunger (MDS), I helped monitor the inclusion of indigenous families in conditional cash transfer programs, especially the Bolsa Família Program (BFP). Throughout this period, I had the opportunity to contact social policies for income distribution designed to serve the non-indigenous Brazilian population, classified as poor and extremely poor. However, assistance to indigenous communities was not guaranteed at that time. In 2005, the scenario changed due to pressure from indigenous movements for the federal government's income distribution policies to be

[1] In 2018, I did fieldwork in Thunder Bay and Lac Seul during the months of June to August. From October 2018 to May 2019 I did 9 months of fieldwork in Orillia and three months in Thunder Bay and Lac Seul, from June to August 2019.

[2] I thank CNPq for the doctoral scholarship granted for four years, crucial for the completion of this dissertation. I also had a sandwich scholarship (PDSE) from the Coordination for Higher Level Improvement (CAPES), for twelve months, which was fundamental for the fieldwork in Canada. I am grateful to Professor Frederico Oliveira of the Department of Anthropology at Lakehead University and to the Department of Latin American Studies (ELA) of the University of Brasilia (UnB) for the financial and logistic support. Finally, I thank the Research Support Foundation (FAP) of the Federal District Government (GDF) for the fundings that allowed me to participate in two conferences in Canada.

extended to Indigenous Peoples, even though negative impacts could occur in the communities.

In 2009, motivated by the desire to delve deeper into the Brazilian indigenous issue, I worked at the National Indian Foundation (FUNAI) for five years to monitor judicial decisions regarding compensation for peoples who suffered direct violence from the Brazilian state, such as the Avá-Canoeiro people of Araguaia. This small indigenous group was almost totally exterminated in the 1960s by the entry of pastoral and agricultural colonization and expansion fronts into the Araguaia Highlands (RODRIGUES, 2013).

The fieldwork for this research on settling the historical debt related to Brazil's Indigenous Peoples begins at the end of 2015. Having just entered the doctoral program (ELA/UnB), I was introduced to Rafael Weree and his wife, Ana Paula Sabino, with whom I had the first conversations about the Xavante case Marãiwatsédé and their struggle for reparation. On that occasion, I sought to broaden the dialogue with the couple, and we walked a path of friendship, collaboration, and partnership. In November 2013, three years before entering the doctorate, I had already been in the Marãiwatsédé Indigenous Land, as a member of the multidisciplinary working group formed in partnership with the Special Indigenous Health Secretariat (SESAI) to support the Xavante in the implementation of a Territorial and Environmental Management Plan (PGTA). The plan aimed to contribute to the full reoccupation, autonomy and sustainability of the Marãiwatsédé territory by the Xavante, in a moment of retaking it. I say “retaken” because, although the Xavante's return to their traditional land was legally authorized, the process of return was not peaceful and required much determination for them to face the resistance of good and bad faith occupants who refused to leave the area. The eviction only occurred after the National Security Force (FNS) action, which removed the non-indigenous invaders from the area.

At the time of the visit, four children in the same age group had died due to malnutrition and contamination of the water by pesticides. The deaths aggravated the Xavante discontent regarding health and strained the state's relationship, especially with SESAI. The tension was evidenced in the field, in the speech of the leader Cosme, whose son died in this situation. On the way to the village Cosme asked the FUNAI team if there was a

SESAI representative in the group and said that this person would be received in the village at the point of using "borduna" and arrows. [3]

Cosme is the son of Cacique Damião and his probable successor. He is the leader of the movement to open new villages in the land, has a degree in languages and plans to do a master's degree in linguistics. The Xavante complained all the time about the lack of medicine and equipment in the local health center. They also asked for two cars, given the distance from neighbouring municipalities, especially Água Boa/MT and Barra do Garças/MT, to which they travel whenever they need to take medical exams. During this visit, I met Chief Damião Paridzané, a symbol of the Xavante people's resistance and survival against the violent removal process imposed in the 1960s.

In the case of Lac Seul, the process of case selection was due to a field situation whose doors had already been opened by Professor Frederico Oliveira. Given his research projects already underway with that nation, Professor Frederico agreed to co-supervise the research because he shared interests in understanding the relationships between Indigenous Peoples and nation-states and understood the importance of comparative approaches to motivate discussions about the inclusion, on a global scale, of unconventional legal systems such as those advocated by Indigenous Peoples.

Throughout 2016, after defining Canada as a comparative counterpoint to Brazil in my research, I established the first contact with the country by participating in the Decolonizing Conference, held in November at the Centre for Integrative Anti-Racism Studies (CIARS).[4] In the paper presented, I defended the oral testimonies of the Xavante survivors of Marãiwatsédé as decolonial praxis that make it possible to re-signify how the Xavante give meaning to situations of past violence and create emotional conditions for overcoming colonial agency. "Collecting survivor's testimonies" was a technique developed by Rafael Weree that helped the collaborative work. Rafael's work was essential because it involved young indigenous people in the struggle for reparations.

[3] "Borduna" is an indigenous weapon for attack, defence or hunting, made of hardwood and usually cylindrical, heavy, and elongated.
[4] Ontario Institute for Studies and Education (OISE), of the University of Toronto.

In 2017, my second insertion in Canada occurred through participation in the meeting of the Canadian Anthropology Society (CASCA), where I highlighted the protagonism of the Xavante in recounting a history made invisible by the "coloniality of knowledge, power and being" (QUIJANO, 2005), emphasizing the utopian narrative of survival testimonies[5]. Still in 2017, my first visit to the Anishinaabeg of Lac Seul was made possible through funding obtained from the International Council for Canadian Studies (ICCS), with the Brazilian Association of Canadian Studies (ABECAN). ICCS and ABECAN supported the fieldwork for considered it relevant the comparative research on the reparation and reconciliation processes with Indigenous Peoples in Brazil and Canada, not only because the governments of these two countries over the last 50 years have recognized the commission of serious human rights violations against these populations, but because these processes, besides complex, are still far from a satisfactory end. [6]

By this, I mean that the Indigenous People of these countries continuously question the capacity of governmental "reconciliation" initiatives to guarantee that the violence of the past will not be repeated. These initiatives have not only been unable to alter the structural asymmetry of power that characterizes inter-ethnic relations, but they also collaborate to maintain the dynamics of coloniality unchanged, even though many of these measures are essential in compensating families and securing rights.

The choice of Lac Seul as a comparative case was due to several factors. The main one was that Professor Frederico Oliveira was already developing several projects involving community members, which allowed me to get in touch with the Anishinaabeg and follow the research protocols Indigenous People require. In Canada, research protocols with indigenous people are strict, and the problematic access to indigenous lands and the Indigenous People themselves in these territories are processes that can take some time to occur. [7] In this sense, it was strategic and fruitful to be presented to the Anishinaabeg by Professor Oliveira as a result of ongoing research projects with Lac Seul's people, for

[5] Canadian Anthropology Society (CASCA) meeting at Ottawa University. The paper was presented at the panel Hope, futures and worldmaking: critical anthropology beyond the tropes of suffering, named: "Beyond doom and gloom: utopia and death in the oral narratives of the Xavante of Marãiwatsédé, Central Region of Brazil, as a discursive strategy of survival, overcoming and healing".

[6] I am grateful to ICCS and ABECAN for the opportunity to carry out the first contact with the field that served as an elucidative and comparative counterpoint to the case of the Xavante of Marãiwatsédé, in Brazil.

[7] One of these protocols is the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS 2), which the present research needed to follow up.

which I was very well accepted and welcomed since the first contact in the summer of July 2018.

Since my first contact with Canada, the strangeness of being in a country with a fully capitalist economy, too developed, but with an indigenous issue that is far from being satisfactorily solved and that lives up to the peacemaking image that the country projects to the world were determinant to build a critical view on the reconciliation policies underway there. The image that I had of Canada with ethical and moral obligations towards indigenous populations up to date gave way to a vision of an unequal, unfair and racially undemocratic Canada, in many ways similar to the unequal reality of Brazil.

From the first contact, I had the opportunity to experience life in different cities: Toronto, Ottawa, Orillia, Thunder Bay, Montreal, as well as visiting numerous other small towns and villages in the interior of the Provinces of Ontario and Quebec, such as Barrie, Halliburton, Omemee, Sudbury, Lindsay, Peterborough, Huntsville, Midland, New Gravenhurst, Drummondville, Quebec City, Gatineau. The four years I spent visiting and finally living in Canada for thirteen months were crucial for deepening the knowledge of reconciliation and improving my English language skills.

The nine months I lived in Orillia, from October 2018 to May 2019, and the three months in Thunder Bay, from June to August 2019, were the most relevant for firming stable bonds and experiences around how Indigenous and non-Indigenous people in Canada perceive Canada's reconciliation processes.

Although located only an hour and a half from multicultural Toronto, tiny Orillia has only thirty thousand inhabitants and many churches, mostly orthodox Protestants. The town has a small campus of Lakehead University, which recently completed a decade. Because of the university's existence, Orillia attracts young students from all over Ontario, which brings a counterbalance to the conservatism that marks their lives. There are only two taxi companies, buses do not run after 10:30 at night, and app-based transportation services are not allowed.

Therefore, Orillia is quite different from the large and sprawling Thunder Bay, negatively known for being the focal point of racial tension and interethnic conflict in Canada.

Because of this characteristic, I have nicknamed Thunder Bay the “Canadian Dourados”. The nickname is an allusion to the city in South Mato Grosso's state, Brazil, with one of the highest violence rates against indigenous people. Walking through the streets of TBay, as the city is called, it is possible to observe the life of the urban Indians in total socio-economic disparity and constant tension with the other Canadian citizens.

Having formed as a merger of Port Arthur's cities – located on the north shore of Lake Superior – and Fort William, greater Thunder Bay maintains Port Arthur as its “white face” and Fort William as its “red face.” The differences between the two urban portions of the city are visible to the naked eye, and local newspapers frequently highlight the unsolved deaths of indigenous youths, whose bodies are usually discarded in Fort William's alleys as if they were like objects, usually in places used for the purchase and consumption of drugs. On the city's “white face” is the main campus of Lakehead University, with two-story houses lining the streets that run up and down the Canadian Shield, overlooking Lake Superior, home to one of the most representative symbols of Canada's lush geography, the Sleeping Giant, whose original name – Nanabijou – was given by the Anishinaabeg. Fort William, the “red face” of the city, was built on traditional Ojibwe land on the banks of the Kaministiquia (locally known as Kam) River near Mount McKay's base. Residents with much lower incomes than those on the “white face” inhabit bungalows of much lower quality than those on the other side (TALAGA, 2017, p. 3-4).

During my stay in a residence that I shared with three female university students, I realized that I could not analyze the reconciliation issue if I did not include information conveyed in newspapers and cable news, not to mention Indigenous People's articulations in social networks. In this sense, much of the truth that is not governmentally conveyed about Canada's reconciliation process can be understood through, for example, reading the comments made by ordinary people on news stories about the “Indian Question” (DYCK, 1991).

In exploring these alternative sources of information that served to situate me in the field, I noticed two polarizations in the way the issue of reconciliation is highly politicized in Canada today: on the one hand, while the federal government works with a discursively

well-constructed, long-term project for reconciliation, Indigenous Peoples work with the prospect of decolonizing Canada so that some reconciliation is then possible.

What is conventionally called *Canada*, for example, should be called by its indigenous name, *Turtle Island*; what is called *reconciliation* should be understood as a process of giving land back to the indigenous people; and what the government calls "Indian reservations" are for these communities authentic "concentration camps". The same process of immersion in newspapers, news media, and social networks contributed to the fact that I was slowly able to discard the optimistic view of the constant apologies issued by members of the provincial and federal governments as part of the reconciliation process.

While I was in Canada researching the topic of reconciliation for this dissertation, I witnessed the eruption and escalation of a crisis between a First Nation in the Province of British Columbia, the federal government, and a company involving the construction of a natural gas transmission line (pipeline) designed to cut through the territory of the We'tsuwet'en peoples. The conflict has been the subject of constant media debate and extensive press coverage. It has also brought about the reconciliation discourse that paved the way for the election of Prime Minister Justin Trudeau, who is continuously confronted about his ambiguous positions, never fully committing himself to either side, and always weighing the interests at stake – Canada's economic interest, the interest of Canadian citizens who hold jobs in the industry, environmentalists, and Indigenous people. The conflict prompted Indigenous Canadians to launch the hashtag *#reconciliationisdead*.

Prime Minister Justin Trudeau has gone on television several times to express his position, taking a mediating stance. Just like in Brazil, significant crises and turmoil like this are not uncommon to observe in Canada, nor is the double-dealing of prominent figures in politics. At the same time, other situations are interpreted as advances by the Canadian government. Take the recent case of an indigenous community in the province of Manitoba, which is treated as both progress and delay at the same time because this community finally gained access to clean drinking water. Progress because now 40% of the community has access to clean drinking water. Delay because this access has only arrived in the year 2019. This is why state racism issues will be addressed in light of the

treaties signed in the colonial past between the British Crown and the First Nations, which came to be recognized as Treaty Peoples.

With this brief presentation, I aim to bring to the fore an aspect that permeates this dissertation that is, despite being a fully developed society, Canada's ethical and moral issues in the scope of reparations for historical debts concerning Indigenous Peoples are closer to the Brazilian reality than we first imagined. This closeness points us to the fact that the challenges faced by these populations in the Americas do not become less complicated when these communities are part of fully capitalist nations, such as Canada. As we will see throughout this dissertation.

INTRODUCTION

> *For there to be mobilization around the banners of equal treatment, it is not enough that a situation of inequality be identified: this inequality must be experienced as abuse or as an offence to the dignity of those who make the demand.*
> (ROBERTO CARDODO DE OLIVEIRA, 2015, p. 47, my translation)

Reparation for historical debts is one of the most sensitive and dearest to the Indigenous Peoples. Beforehand, I register my deep respect for the struggle of all the original peoples of the Americas who suffered state violence in the face of colonization and economic development processes that are still in force. The present dissertation attempts to contribute to the theme and understand these processes, which are more and more complex and whose confrontation demands the look not only of the Social Sciences. Facing our historical debt to the Indigenous Peoples and transforming reality requires the difficult task of questioning the morality, values, and principles that have always ruled, and still rule, our societies.

The dissertation deals with the analysis and comparison of policies and actions aimed at paying the historical debt of two Indigenous Peoples of Brazil and Canada. As exemplary case studies concerning histories of survival and reparation, this dissertation selected for comparative purposes that I will indicate later the cases of the Auwe people, known as Xavante, from the Marãiwatsédé Indigenous Land, located in the state of Mato Grosso, in the central region of Brazil, and the case of the Anishinaabeg people, of the Ojibwe language, from the Lac Seul Indigenous Land, in the Northwest of Ontario Province, in Canada.

Recovering the questions enunciated in the research project and refined throughout the fieldwork, this dissertation adopts a critical perspective of transitional justice models offered today as alternatives to resolving these conflicts in Brazil and in Canada. What was evident is that the dissertation should critically discuss the so-called "reconciliation policies" as actions constructed and practiced from the perspective of the sophistication of the "coloniality of power" (QUIJANO, 2005) and of "indigenism as an ideology of domination" (TEÓFILO DA SILVA, 2012). To this end, it is essential to observe how such policies are constructed and put to work to respond to interethnic

conflicts pertinent to the two national contexts, integrating with ideologies and indigenisms that have operated, and still operate, to a greater or lesser extent, under the status of historical inter-ethnic relations of domination and racialization.

Parallel to these primary objectives, it is important to observe what indigenous social movements in Brazil and Canada are demanding from national states in the field of reparations for historical debts, and to identify some of the main classificatory variations for the notions of historical debt and reparations. The establishment of historically circumstanced typologies corresponds to the development of abstractions built to make possible the observation of recurring regularities among cultures of localities with distinct historical processes. The object is thought of on a larger conceptual scale and not to serve a trace-by-trace comparison based on the identification of similarities and differences between the two countries, although observing these characteristics is, to some extent, inevitable.

Also central is the observation of how survivors of violent stories seek to attach meaning to the forms of reparation and compensation to which they have judicially obtained entitlement, seeking to understand to what extent these measures are, in fact, capable of repairing something. To do so, it was necessary to tangent the field of law and decisions of the judiciary. There is a tacit consensus that the judicial arena is the residual space that most offers indigenous peoples the opportunity to express themselves and be heard according to their ways of thinking (MERLAN, 2009). According to Justice William Ian Corneil Binnie of the Supreme Court of Canada, "more than 90% of the disputes that come before the judiciary are settled in conciliation." One of the factors discouraging litigation is the high cost of litigation and lawyers. According to Foucault, judicial practices, i.e.:

> The way in which, among men, damages and responsibilities are arbitrated, the way in which, in the history of the West, the way in which men could be judged according to the mistakes they had committed, the way in which reparation for some of their actions and punishment for others was imposed on certain individuals, all these rules or if modified endlessly throughout history - seem to me one of the ways in which our society defined types of subjectivity, forms of knowing, and, consequently, relations between man and truth that deserve to be studied (FOUCAULT, 2005, p. 11).

The judicial arena is not only relevant for the realization of the right to justice, memory, truth, and reparation, but it has also played a leading role in clarifying the truth, promoting the memory of human rights violations, and defining responsibilities that

provide reparation and guarantee non-repetition (OSMO, 2016). However, despite being an important repository for maintaining and guaranteeing indigenous collective rights, the judiciary still favours conceptions and values that help maintain national society's normative frameworks. Even though there is an increase in “legal sensitivity” (CARDOSO DE OLIVEIRA, 2010) in these spheres, they still do not translate into sufficient conditions for establishing symmetrical intercultural communication. Both the language of law remains obtuse and mythified for Indigenous Peoples, as well as the existence of tensions “located between law and politics” (VERONESE, 2009, p. 249), evidenced in cases that challenge, for example, the positivist perspectives of law, as we will see through the Lac Seul First Nation and the Xavante of the Marãiwatsédé court cases.

Still, the judiciary has asserted itself in Canada as a useful forum to discuss indigenous self-determination: “despite the unpredictability, excessive costs, and delay in reaching a judicial decision, Indigenous Peoples have realized that they no longer need to depend on the Crown for the recognition of their rights and have been forcefully using the judicial system as a way to pressure the federal government for a treatment more attuned to their demands and their stories of land connection” (BARBOSA DE OLIVEIRA, 2013, p. 15). For this author, “despite the long history of interethnic contact, it was only until the past four to five decades that the indigenous peoples of Brazil and Canada started to organize themselves politically, seeking to affirm their identities and fight for their original rights, while attempting to avoid assimilation at all costs” (BARBOSA DE OLIVEIRA, 2013, p. 2).

Similarly, in Brazil, the trend towards judicialization has asserted itself as a less insecure path for indigenous peoples to maintain their sustained rights, which does not prevent the constant threat of setbacks. According to Rifiotis (2014), judicialization is a growing global phenomenon through which social struggles for the recognition of subjects of law have been taking place, and it is also a device for the construction of subjects of law themselves, an eligibility matrix for understanding various contexts in which they seek to affirm the rights of subjects constituted by this very process (RIFIOTIS apud OLIVEIRA, 2020, p. 1). However, reparations to Indigenous Peoples are currently treated very differently in Brazil and Canada.

State violence against Indigenous Peoples in Brazil came to the fore at the end of the 20th century, after the military dictatorship, the reestablishment of democracy, and the legal-normative recognition of Indigenous Peoples' rights in the 1988 Federal

Constitution. In unprecedented acts, newly democratized Latin American states began to face social demands for the prosecution of crimes, accountability of guilty parties, symbolic restitution, and material reparation for damages resulting from their direct or indirect actions.

In the Brazilian context, the creation of the Amnesty Commission in 2001, the installation of the National Truth Commission (CNV)[8] in 2012, and the release of the Jader de Figueiredo Correia Report were relevant.[9] However, despite the emergence of these facts, it is the indigenous movements' claims for justice for the atrocities committed in the past that have been contributing decisively "to resignify the very meanings of received notions of citizenship, political representation, and, as a consequence, democracy itself" (ALVAREZ; DAGNINO; ESCOBAR, 1998, p. 2).

Since the creation of this body, Indigenous Peoples who suffered violence at the hands of the state have been able to recount their stories and expose the violations they were subjected to, such as robberies, evictions, rapes, murders, and torture. The cases of violated Indigenous Peoples also began to demand incorporating new meanings to the Brazilian justice system's constitutive dimensions, forming a multidisciplinary field that was favourable for the comparative approach to relations between national states and colonized populations.

According to the authors who analyze the trajectory of the legal tendency to establish the transition from the dictatorial to the democratic regime and who have compared the compensatory measures adopted by Brazil, Chile, and Argentina, there is a movement to valorize the truth, coupled with the introduction of mechanisms to define proper forms of reparation and institute institutional reforms to the detriment of the so-called "politics of forgetting" (CUYA, 2011; MEZAROBBA, 2007). The observation and comparison of concrete situations from Brazil and Canada allowed us to appreciate and reflect on crucial issues concerning indigenist regulations in the present that are based on reparations for violent practices from the colonial past of both countries.

In the Canadian context, to understand the political processes that led this country to establish a reconciliation agenda as part of its policies of recognition, which included public apologies and other measures to re-establish and widely publicize the colonial

[8] It was created to investigate serious, regular, and non-accidental human rights violations from September 18, 1946, to October 5, 1988.

[9] Jader Figueiredo Correia travelled throughout Brazil between 1967 and 1968, collecting official records and documents proving the State's irregularities against indigenous people. Available at: http://pt.scribd.com/doc/142787746/Relatorio-Figueiredo. Access on 21.09.2015.

history that for more than a century was responsible for a process of ethnocide, especially in the governmental and religious institutions known as “Residential Schools”. It is also necessary to observe the longings and expectations of the indigenous survivors of the violence of the Canadian state and the so-called “politics of forgetting” that, even in Canada, also insist on prevailing. This expression is a clarification since it refers to the paper's title and the play on words payment/forgetting.

In recent research on the political memory of the military dictatorship, Ansara (2012) observed that the “politics of forgetting” conducted during the dictatorship and in the process of re-democratization in the Brazilian context contributed to impose an official memory aimed at promoting the forgetting of repressive facts and events, generating an “atmosphere of normality” concerning these events (ANSARA, 2012, p. 301). According to Ansara, the “policies of forgetting” communicate that only the victors can tell the “truth” about the country's memory, and there must be policies aimed at recovering the “memory of the vanquished” (ANSARA, 2012, p. 302). According to Huyssen (2000), the culture of memory should encompass the creation of “public spheres of 'real' memory that act contrary to the politics of forgetting promoted by post-dictatorial regimes, whether through national reconciliations and official amnesties or through repressive silence” (HUYSSEN, 2000, p. 16). For Ricoeur (2003), amnesty processes result in forgetting when they suspend judicial actions and prevent the investigation of political crimes in the name of reconciliation and social harmony.

It is known that, although one of the recommendations of the CNV of Brazil has provided for the implementation of guarantees of non-repetition of violence committed during the dictatorship, “in May 2015, this issue no longer appeared in the press, nor was it the object of work of the segments of the State, which should address the directions suggested by the National Truth Commission to achieve Transitional Justice” (ZELIC, 2017, p. 143).

In a globalized and monetized world context, the term “payment” in the paper title was intended to refer the interlocutor to a mental association with money and the ideas of discharge, indemnity, and financial compensation. However, to be adequate, monetary payments resulting from reparation policies must go beyond the limits of financial compensation, at the risk of provoking an effect of erasure and forgetfulness, which are two of the dimensions that we sought to emphasise throughout the research.

To cite an example, the offensive aspect of this relationship was highlighted by Bruce Miller, a US anthropologist and professor at the University of British Columbia

(UBC) in Canada. Citing the context of the great Kelowna Accord, signed in 2005 between the Government of Canada, Provincial Prime Ministers, Territorial Leaders, and leaders of five national indigenous organizations, a series of governmental commitments aimed at promoting the health, education, and housing of aboriginal peoples were signed, in addition to the payment of 78,000 compensation payments to indigenous survivors of the policy of compulsory internment in "Residential Schools." In all, the payment totalled $5.1 billion. Miller observed that the monetary compensations offered to the Indigenous People as a form of retribution for past violence were, on the one hand, received as necessary, but, on the other hand, interpreted as a serious moral offence to the honour of the people who suffered the violence (MILLER, 2006). In this sense, the play on words pay/pay is relevant to discuss the discharge of historical debts because, beyond debts that can be monetized, these are debts of moral and symbolic orders. That is why, as we will see throughout this dissertation, the historical violence against the Indigenous Peoples is inscribed in the register of moral insults, such as humiliation, and is difficult to understand and to restitute. It is no wonder that these payments, especially in Canada and Australia, are usually accompanied by apologies.

Regarding the expression "reparation indigenism," we point to a current tendency of state indigenism that has Canada as a reference field, and that presents itself as an unfolding of those social-type indigenisms very well explored in the discussion by Verdum (2006). In his work, Verdum recovers several strands of indigenist thought from the work of Mexican anthropologist Díaz-Polanco (1991), such as "neoliberal liquidationist indigenism", "integrationist indigenism", "participation indigenism", and "social indigenism". We could add to these typologies that have Mexico as a reference field, the "reparation indigenism" and the "multicultural indigenism", situated in the scope of the indigenisms practiced in Canada. Permeated with supposedly positive aspects, these two sophisticated strands of indigenism update aspects of all previous forms: relativist ideological discourses, integrationist practices disguised by a supposed policy of respect for cultural differences, neoliberal and mercantile vision of progress, ideas of modernization exogenous to indigenous communities, developmentalist mentality, long-term strategies of ethnocide disguised as policies of conciliation.

However, beyond a state-centred approach, the research focused on the principle that the experiences of Brazil and Canada on reparations for historical debts, instead of promoting the desired reconciliation between Indigenous and non-Indigenous Peoples, point to numerous challenges that remain open to ensure that the historical violence of

the past and recent past are not repeated, that non-compliance with obligations, laws, agreements, and treaties is acknowledged and publicized, that dialogic debate is expanded, and the discursive and epistemological field is restructured to account for indigenous perspectives on facts unilaterally assumed as historical truths (HENDERSON & WAKEHAM, 2009).

Therefore, the subject of this dissertation focuses on how Brazil and Canada, having acknowledged the commission of rights violations concerning Indigenous Peoples, act to settle their respective historical debts accumulated in different contexts. Those debts concern to the maintenance of territorial prerogatives and also to the field of internationally established human rights[10], including the collective subject of rights, constituted as a "living, acting, and free subject, who self-determines and modifies the globality of the historical-social process" (WOLKMER, 1997, p. 211), as opposed to the individual subjects of rights produced by the modern State.

Although initially motivated by the great questions of reparation, reconciliation, and the payment of historical debts, the paths of the dissertation reoriented the research to what Jacques Derrida called "state racism" (DERRIDA, 2005, p. 56), understanding the state as that instance "holder of the monopoly of legitimate symbolic violence" (BOURDIEU, 1984, p. 490) and that exercises coercion in favour of the interests of the dominant classes. Manuela Carneiro da Cunha referred to the same process as "crimes against the person and the patrimony of the Indian", citing the Figueiredo Report (CUNHA, 2019), in an article in which she exposed in a synthetic and didactic way the current state of setbacks in the relations between the State and indigenous peoples in Brazil. One point in common with Canada is that there is no country in the world, no matter how progressive its government, in which interethnic relations are close to finding symmetry. I have not observed this in Canada. On the contrary, as the Canadians themselves say, what I saw was "a lot of talk and no action".

The theoretical framework for this research was based on the understanding of indigenism and its practices as an "ideology of domination" (TEÓFILO DA SILVA, 2012a), together with the methodology of comparative exploration of the diversity of cases of (ethno)survival that allowed us to shed light on and establish generalizations

[10] The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights became international law in 1976. Together with the Universal Declaration of Human Rights, these two Covenants constitute the so-called "International Bill of Human Rights".

about the reparation policies that are currently directed to the Indigenous Peoples of these two countries.

Even though Indigenous Peoples' rights in Brazil has moved away from the assimilationist and integrationist paradigms that prevailed as ideological guidelines until the last half of the 20th century, and even though this recognition has led Indigenous Peoples to start demanding that the Brazilian state acknowledge the violence committed during the colonization process and authoritarian and non-democratic regimes, since this research began, the scenario of indigenous rights in Brazil has undergone a drastic turnaround.[11]

In "Silenced Genocide" (2019), Ricardo Verdum points out the main political ruptures that have occurred in Brazil since 2016, which are responsible for threatening and putting at risk the rights that Indigenous Peoples have won since the enactment of the 1988 Federal Constitution. In a process that became known as a parliamentary coup, the removal of Dilma Rousseff from the presidency of the Republic was voted by the National Congress and created the conditions for the most conservative ultra-rightist sectors of Brazilian politics to retake the primary command posts in the Executive Branch and, in general, in the public sphere. These sectors, as described by Verdum, are "sectors that act historically and systematically against or for the revocation of any right that creates 'obstacles' to the free access and incorporation of new lands and territories to the capitalist system of production and the exploitation of the natural resources available therein" (VERDUM, 2019, p. 72). The culmination of the process of the rise of the extreme right, initiated with the political process of impeachment of President Dilma Rousseff in April 2016, was the seizure of power by the occasional Vice-President, Michel Temer, followed by the election of Jair Bolsonaro, for the Presidency of the Republic for the period 2019-2022.

While in Canada researching the topic of reconciliation, I witnessed the eruption and escalation of a crisis between a First Nation in the Province of British Columbia, the federal government, and a company involving the construction of a natural gas transmission line (pipeline) envisioned to cross the territory of the We'tsuwet'em peoples. The conflict has been the subject of constant media debate and extensive press coverage. It has also brought about the reconciliation discourse that paved the way for Prime

[11] It was the first time in 500 years "that a legal suit in favour of an Indian community is so clear in recognizing that the shock produced by brutal interethnic contact engenders crimes against indigenous peoples and abuses by the State, the self-proclaimed defender of the Indians" (RAMOS, 1999, p. 14).

Minister Justin Trudeau's election. Trudeau is continuously confronted about his ambiguous positions, never fully committing himself to either side, and always weighing the interests at stake – Canada's economic interest, the interest of Canadian citizens who hold jobs in the industry, environmentalists, and Indigenous Peoples. On several occasions, the Prime Minister was on television to express his position, taking the stance of a mediator. Significant crises and tensions like this are not uncommon in Canada, nor is the double-dealing of prominent figures in politics. At the same time, other situations are interpreted as advancements of the Canadian government. Take the recent case of an indigenous community in the province of Manitoba that finally gained access to clean drinking water. That event is considered to be progress because 40% of the community has now access to clean drinking water and a setback because this right was only achieved in the year 2019.

Methodological course

On the methodological path, we sought the theoretical and conceptual formulation of the object to understand how Brazil and Canada have been accumulating discussions and decisions, organizing legal and administrative structures, and operationalizing the payment of historical debts to Indigenous Peoples in the respective national contexts. Next, we located histories of indigenous survival in the two countries to compare their respective forms of reparations as constituting the means that these countries find today to settle their historical debts. As already mentioned, the reference cases selected were, in Brazil, the history of the Xavante people of Marãiwatsédé, and, in Canada, the history of the Ojibwe-speaking Lac Seul First Nation, located in northwestern Ontario.

We located histories of indigenous survival in the two countries to compare their respective forms of reparations as constituting the means that these countries find today to settle their historical debts. The comparison sought multidisciplinarity through the law and history approach, besides the anthropological literature, to analyze the power exerted on Indigenous Peoples in the recent history of Brazil and Canada.

Although the direct violence of both cases varies significantly, the object was thought of on a larger conceptual scale and not to serve a trace-by-trace comparison. The objective was to recognize how, despite the long-lasting colonizing and historical process of each country, it is possible – or not – to bring to light pathways to settle historical debts contracted with the Indigenous Peoples. On the other hand, the comparison aimed to

elucidate how the resolutions' slowness inflicted new sufferings and challenges on these populations, turning the policy into a new form of symbolic violence.

We made an effort to pay attention to symbolisms and "legal sensibilities", (CARDOSO DE OLIVEIRA, 2010) observing how the Canadian model presents itself and interferes in the lives of Indigenous Peoples, for better or worse. The universe of the symbolic in the process of paying the historical debt generated during the colonial process against the Indigenous Peoples can be observed through how the concept of historical debt is conceived and how the subjects involved live and mean the experience of reparation, with or without reconciliation.

These two cases were chosen for different reasons. In the case of the Xavante of Marãiwatsédé, I can say, without any embarrassment, that I was chosen by them immediately before the doctorate began, still during the selection process in 2015. At that time, without knowing details of their history, I was introduced to Rafael Weree and his wife, Ana Paula Sabino, by a friend who had already commented to them that my research would be dedicated to the theme of reparation. This fact caught the couple's attention with whom, since then, I have followed a fruitful collaboration.

In the case of the Anishinaabeg from Lac Seul, the strategy was to use a field situation whose doors had already been opened by Professor Frederico Barbosa de Oliveira.[12] In Canada, protocols to do research with Indigenous Peoples are more formal and rigid than in Brazil, and difficult access to indigenous lands and the indigenous people themselves can take some time to occur.[13] In this sense, it was useful to be inserted in Professor Oliveira's ongoing research projects with Lac Seul's people, for which I was very well accepted and welcomed since my first contact, in the summer of 2017.

The comparison sought multidisciplinarity, that is, to the analysis of the power exerted on Indigenous Peoples in the recent history of Brazil and Canada. We added the relationship between history and culture to understand how law and justice in these two countries have been applied in cases involving payment reparation for historical debt. Besides making viable an ethnography of indigenism of reparation in Brazil and Canada

[12] Professor Frederico Oliveira is an Associate Professor of Anthropology at Lakehead University, Ontario Province, Canada. Professor Oliveira agreed to co-supervise the research because he shares research interests in understanding the relationship between indigenous peoples and nation-states on reparations, and also because he understands the importance of comparative approaches to motivate discussions aimed at including non-conventional legal systems, such as those advocated by indigenous peoples on a global scale. Professor Oliveira also helped with the inclusion of recent debates in Canadian anthropology and provided the necessary logistics for fieldwork with the Lac Seul First Nation (LSFN) community.

[13] One such protocol is the Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans (TCPS 2), to which the present research needed to agree and follow up.

based on, but not limited to, the comparison of specific cases, this methodological approach made it possible to reveal how such policies and ideological responses are historically contextualized at a global level. For these reasons, this dissertation configures an ethnography of the interconnection of processes directly related to the consequences and negative impacts of Brazil and Canada's national states' colonization and economic development processes, which are similar and comparable although the direct violence and death tolls of both cases vary significantly.

The comparison of both cases aims to identify common, divergent and generic traits relating to national policies of reparation that could not be envisioned otherwise. The objective is to recognize in what ways, on the one hand, despite the long-lasting colonizing and historical process of each country, it is possible to bring to light pathways for the payment of historical debts contracted with the Indigenous Peoples. On the other hand, the comparison will elucidate how the slowness of the resolutions inflict new sufferings and challenges to these populations turning the policy itself a new form of symbolic violence. It is a matter of opening up possibilities for breaking structural racism and historical differences between racialized segments by making it possible to deepen knowledge of legal systems "to ensure greater effectiveness of international law" (CANÇADO TRINDADE, 2002, p. 148). This possibility is presented by the fact that "one of the most important effects of Comparative Law is an acceleration in the process of evolution of rights, given that it causes greater circulation of rights" (SANTOS, 2007, p. 235).

This does not mean that advances in the Canadian legal system in the field of reparations, even if positive, can be incorporated without the proper interpretation and cultural adaptation to the Brazilian reality. As much as interpreting and translating legal systems in the light of the cultural system in which they are inserted, observing how legal knowledge evolved in these two countries, the immersion in the field of Law by Anthropology implies a "hermeneutic coming and going between the two fields, looking first in one direction, then the other, in order to formulate the moral, political and intellectual questions that are important to both" (GEERTZ, 1997, p. 253).

To this end, an effort to look at this area of knowledge, paying attention to its symbolisms and "legal sensibilities", observing how the Canadian model presents itself and interferes in the lives of Indigenous Peoples, for better or worse, was necessary. The universe of the symbolic in the process of paying the historical debt generated during the colonial process against the indigenous peoples can be observed through how the concept

of historical debt is conceived and how the subjects involved live and mean the experience of reparation, with or without reconciliation.

Another aspect involves understanding how the affected communities organize themselves in the context of the struggle for justice while at the same time envisioning a future. The analysis and comparison of reparation experiences deepen the understanding of 'sensitivities' and 'senses of justice' that come from legal structures and Indigenous Peoples. Senses of justice are guided by that Geertzian sense, meaning "how legal institutions translate the language of imagination into the language of decision" (GEERTZ, 1997, p. 260). Legal sensibilities, in turn, will vary "in the power they exert over the processes of social life, vis-à-vis other ways of thinking and feeling" (GEERTZ, 1997, p. 261). According to Luís Roberto Cardoso de Oliveira, in order to capture such dimensions,

> the researcher must take seriously the validity pretensions of the 'natives' as to the equanimity of the adopted procedure and of the respective forwardings (....) always taking care to avoid, at the same time, ethnocentrism (authoritarian and excluding by definition) and relativism-nihilism, which cannot accept the argumentative capacity of the interlocutor and the possibilities of substantiation of their justifications (CARDOSO DE OLIVEIRA, 2010, p. 466).

Such a path demands that the researcher understand how offender and offended identities attribute a different meaning to violence experiences but requires a "critical ethics" to apprehend how violence is constituted from the historical victims (CARDOSO DE OLIVEIRA, 2000, p. 213). This is because the symbolic dimension of interethnic violence "goes far beyond what is expressed in any code of law, or even in the formal principles that guide the procedures and positive laws" (CARDOSO DE OLIVEIRA, 2010, p. 457). Anthropology must explore the symbolic potential of reparation policies and give visibility to "significant aspects of conflicts and rights that tend to be invisible in the judiciary" (CARDOSO DE OLIVEIRA, 2010, p. 467).

The bijuralism of the Canadian legal system is a consequence of the historical process of colonization of this country by France and the United Kingdom. On the other hand, the Province of Quebec was colonized by the French that imposed the Seigneurial

System[14], which provided, along with the Napoleonic Code, the basis of a different civil law system under British rule. The other Provinces of Canada adopted the English Common Law legal model.

Canada also incorporates into its legal framework legislation and court decisions from other countries that may benefit its citizens, which is an essential point of its jurisprudence. Thus, for example, the Supreme Court of Canada's decisions are applicable and those of the Supreme Court of the United States, the Supreme Courts of the United Kingdom and the Commonwealth countries (SANTOS, 2007). Canada has an open-mindedness and a sense of equality that guides its constitutional premises and societal values continually being improved. In addition to its Constitution, which "has recognized 25 documents as constitutional, the first being the British Northern Act and the most recent being the 1982 Act itself" (SANTOS, 2007, p. 240) (my translation)[15], Canada has a Charter of Fundamental Rights and Freedoms, also of constitutional level, which ensures citizens political rights, freedoms, equality, and guarantee rights. This does not mean that Canada, like Brazil, does not coexist with archaic laws that maintain the representative structures of the colonial order.

Structure of the dissertation

In the first chapter, in light of emblematic cases and "flashpoint events" that resulted in the removal of the Xavante and the flooding of Lac Seul, I address how Brazilian and Canadian law has historically and contemporaneously interpreted and decided conflicts concerning comprehensive federal land claims policy, which remain open, despite multiculturalism as official policy, which I enunciate as fake. The first chapter also addresses indigenous rights under the light of Canadian treaties (modern treaties) and common law jurisprudence.

[14] According to Jacques Mathieu (2015), the Seigneurial System – based on the European feudal model – was an institutional form of land distribution established in New France in 1627 and abolished in 1854. Its operating dynamics involved the dependence of tenants on the seigneur where the seigneur granted a piece of land to a family, and that family, in return, engaged in subsistence farming to meet their food and heating needs. Available at https://www.thecanadianencyclopedia.ca/en/article/seigneurial-system. Accessed 05 April 2021.

[15] "O Ato Constitucional de 1982 reconheceu 25 documentos como constitucionais, sendo o primeiro o Ato da América do Norte Britânica e o mais recente o próprio Ato de 1982".

These insights are essential to understanding how much Brazil and Canada have in common in matters of state, institutionalized racism, regardless of the legal traditions that regulate these matters here and there. The coloniality of power operates, updates and sophisticates itself in the Global North and its decisions and actions are usually imported by the Global South. To this end, it will be interpreted cases that have contributed to determine and form the understanding of what constitutes indigenous territorial rights in Canada, as well as the customary rights and cultural rights of these populations in a country famously known for its progressivism in the field of ethnic and cultural minorities.

The second chapter deals with both Canadian and Brazilian indigenous legislation and constitutional bodies, intending to demonstrate that despite great differences on colonization processes, society and economics, these countries are very close in terms of managing the otherness represented by the Indigenous populations, which is a very peculiar kind of brotherhood that links them.

Considering multiculturalism as a backdrop, Chapter III will discuss some differences between Brazil and Canada regarding reparations, bringing the perspective of two Indigenous scholars, such as Taiaiake Alfred and Jeff Corntassel, who are critical of the apologetic culture and 'agenda' nature of the Canadian government's reconciliation program.

The fourth chapter will address Indigenous Peoples' struggle for historical justice through the Truth Commissions' work in Brazil and Canada, considering both final reports and their recommendations. Unfortunately, despite the promises to transform colonial relations, these Truth Commissions could not modify the structural violence against Indigenous Peoples. In this sense, chapter four will also revise some critical concepts and challenges that the literature on transitional justice scenarios has already explored.

Finally, it is worth saying that this research's inspiration was mostly due to the anthropologist Roberto Cardoso de Oliveira's influence and the encouragement of his former student and admirer, Professor Dr. Cristhian Teófilo da Silva. Both have always articulated to their research themes the analysis of moral, ethical, and symbolic practices related to interethnic relations and the violence it has produced, and still produces, throughout history. Roberto Cardoso de Oliveira was one of the first to note that violence against Indigenous Peoples, beyond an issue not confined to the limits of a single nation, is a question to be morally and symbolically dimensioned as a challenge to social

researchers from all the Americas and the entire Western Hemisphere, in the sense of a true “self-critical indigenism” (CARDOSO DE OLIVEIRA, 1996; 2006). This has always been the ethical investigation line of this dissertation, along with an interest in understanding the differences between a “rich” and a “poor” society on the indigenous issue equation. This was the reason that led us to Canada, and that made us choose this country as the main comparative counterpoint to the Brazilian experience. Also, Roberto Cardoso de Oliveira's son, the anthropologist Luís Roberto Cardoso de Oliveira, although thriving his own disciplinary path, deepened his father's studies through the interface of anthropology and law. Luís Cardoso de Oliveira observed that to study and analyze inter-ethnic relations it is also necessary to focus on its symbolic dimension since, without this, it is not possible to understand what indigenous survivors expect from agreements and court decisions involving the payment of historical debts (CARDOSO DE OLIVEIRA, 2010, p. 457).

CHAPTER I

TWO CASES, TWO DEBTS: THE TRANSFER OF THE XAVANTE OF MARÃIWATSÉDÉ LAND AND THE FLOODING OF THE LAC SEUL FIRST NATION TERRITORY (LSFN)

Initially they were massacred; later they were worked to death in the mines or on the plantations; but the greatest killer was disease and the famine and dislocation that went with it
(MAYBURY-LEWIS, 1997, p. 2)

On the evening of December 31, 1966, while the Xavante of Marãiwatsédé were about to be transferred to a Salesian Mission in the city of San Marcos/MT, 600 km from their traditional territory, the territory of the Anishinaabeg of Lac Seul First Nation (LSFN) in the Province of Ontario, Canada, had been already flooded for 47 years. For this crime, the Anishinaabeg received a court-ordered $30 million compensation. The Xavante of Marãiwatsédé have not yet obtained proper financial compensation from the Brazilian state for their transfer and death and illness consequences. However, as we will be defended here, the Xavante of Marãiwatsédé have been the agents of their own reparation since the moment they took part in their group reorganization to the resumption of their territory in 2012. The Xavante of Marãiwatsédé today counts a thousand people. In 1966, about three hundred and almost one hundred died because of the forcible removal.

This dissertation works on a comparison of the reconciliation policies of Brazil and Canada for the Indigenous Peoples of these respective countries, considering as ethnographic situations the cases of the people of Lac Seul First Nation (LSFN), who obtained the right to financial compensation in court, without an official and specific apology offered to this community. In contrast, the Xavante of Marãiwatsédé has not yet been obtained either. These cases are two situations at different stages of reparation, but in methodological terms, the absence of full equivalence on the type of damage or the stage of reparation does not impede the analyses since it is not a literal comparison.

One of the contributions that this dissertation intends to give is to understand the legal and political challenges that the Indigenous Peoples of Canada and Brazil face in accessing reparatory measures, as well as to compare its constitutionally protected rights and observe recent jurisprudence that reaffirms or invalidates the territorial, cultural, political and civil rights of these populations both here and there. In this sense, the work is following Peiranos' view of the comparison; the objective is to promote a discussion of the relations between national states and Indigenous Peoples in contemporary times as a reflection of the fact that these problems are not only not confined to Brazil but are shared within the entire American continent as a kind of "plural universalism" (PEIRANO, 2000).

The "Indigenous issue" is not solved in Canada; on the contrary. By saying "Indigenous issue," I mean the payment of the *historic debt* that the Canadian state, in the figure of the Crown and the federal and provincial governments, still owe to these populations. To do this, it was necessary to access the bibliographic production relating to law and the interface of common law with the field of Indigenous rights, which, in Canada, has been produced since at least the Royal Proclamation of 1763 (VITENTI, 2017).

Many of the analyses based on anthropology's interface with the law are not the result of social scientists' work but lawyers and jurists' experience with experience in Indigenous rights lawsuits in Canada. One of these most significant contributions to clarifying basic concepts and premises of law in tangency with Indigenous rights in Canada is the book *Aboriginal peoples and the law: a critical introduction* (2018), by attorney Jim Reynolds, which poses questions about the aura of justice that is supposed to hover over Canadian society. Ask Reynolds in the Preface: "But is there now justice for Aboriginal People? Do we have a just society? Are Aboriginal and treaty rights now restored?" (REYNOLDS, 2018, p. iv).

These are the questions that stimulated and encouraged a comparison between Brazil and Canada, as we mistakenly assume that in this society, the issue of justice in the broadest sense is best equalized for all citizens, including Indigenous People. With little time for observation based on field research, it was possible to see that the ideas of equality and justice in Canada are better considered in Canada than in Brazil only in the field of material goods and population access to general goods and services (CARDOSO DE OLIVEIRA, 2008). However, the issues of concern to enthusiasts of the Canadian myth of a stable, egalitarian nation with one of the best qualities of life in the world are

not those in the field of socioeconomics and access to material goods, but rather in the field of consolidating a universal, non-exclusive morality and ethics in a sense advocated by Roberto Cardoso de Oliveira. The answers to the questions posed by Reynolds are the undoubted realization that "civic equality" (CARDOSO DE OLIVEIRA, 2018) does not yet exist for the Indigenous peoples of Canada, beyond the broader idea of *justice*.

1.1 Historical debt: reflections from a concept of "experience-near."

From Geertz (1997), we have learned that anthropological analysis involves capturing concepts that may vary from the degree of proximity that people have to a unique and personal experience. Such concepts can thus be classified as "experience-near" and "experience-distant" concepts. "Experience-near" concepts are those used "spontaneously, naturally, so to speak, colloquially" by "natives" (GEERTZ, 1997, p. 87); a "experience-distant" is one that specialists of any kind – an analyst, a researcher, an ethnographer, or even a priest or ideologist – use to carry out their scientific, philosophical, or practical goals" (GEERTZ, 1997, p. 87).

Lage (2009) summed up these concepts in a didactic way, as follows:

> The publication of Malinowski's intimate diary was perceived by Geertz (2001) as a way of questioning the myth of the researcher who adapts perfectly to the exotic environment: "how is it possible for anthropologists to come to know the way a native thinks, feels and perceives the world? (GEERTZ, 2001, p.86)". Geertz's strategy to answer this question is related to the constant anthropological search to see the world from the native point of view. According to the author, through the capture of concepts that are like "close experiences" for other individuals one could try to clarify them in order to articulate them to the concepts of "distant experience", which are theoretically created for the understanding of social life. In this sense, Geertz believes that the anthropologist must discover the meanings attributed by the natives to their practices and representations. This task is made difficult by the fact that the ethnographer only partially captures what others perceive, so there must be a constant search for understanding the native categories and an articulation with the concepts created scientifically (LAGE, 2009, p. 5).

Considering this dissertation's purposes, defining the concepts of "experience-near" with which we work was fundamental to understand the interlocutors'

understanding of the aspects considered striking to the historical debt of each case addressed. The Anishinaabeg people of Lac Seul First Nation, for example, in their narratives of survival, use the categories of *disrespect*, *imposition of laws*, *violence*, in a similar way to the Xavante survivors of Marãiwatsédé. The latter also use the categories of *trap*, *suffering*, *deal*, *situation*, *awful taste play* – these being the concepts of "experience-near" captured. In neither case did the interlocutors directly use the category *historical debt* to refer to the violence against them. By capturing these concepts of "experience-near," we operated a concept of "experience-distant" for the notion of *historical debt*.

Taking Koselleck's History of Concepts, in the context of conceptual construction, language must be articulated to social, political and economic relations, and the experience lived in the past is presented as incorporated present and remembered through memory. In this sense, past and future are two categories that cannot be thought of separately, i.e., "There are no experiences without expectations, and every experience, every memory or experience of the past is, in a way, informed by a vision of the future. Expectations, in turn, do not exist independently of experiences. In the articulation between these two dimensions, Koselleck identifies "historical time" (KOSELLECK apud ZEMA, 2018, p. 75).

The native categories and the intrinsic temporality of the experience of violence experienced by Indigenous survivors allow the social scientist to observe how the dimension of suffering acts and is continuously updated, acting on the construction of an expectation for the future anchored in the idea of *healing*, or *reconciliation,* for the Canadian governmental policies. The language and categories used to refer to the *historical debt* are thus a means through which such combinations and expectations can be captured.

The *historical debt* towards the Americas' Indigenous Peoples begins with concealing other identities and cultures and is consolidated with the original population being affected biologically by contact with European conquerors from 1492 onwards. The so-called "conquest" of the Americas, beyond an "extreme encounter," was characterized by Todorov as "the greatest genocide in human history" (TODOROV, 1982, n/n). The historiography of interethnic contact in the Americas allows us to assume that the entire native population was irreparably affected by contact with the invaders, conquerors and colonizers of Europe and continued to be impacted by policies that, until today, generally ignore their traditional dynamics and disregard the international protocols and legislation

that ensure their rights as original peoples.[16] In general, economic exploitation of the Americas' territories, occupied by original peoples, was aimed not only at colonizing the new lands but also at supplying colonial enterprises.

The social and power relations that have built the modern capitalist "world-system" (WALLERSTEIN, 2006; MIGNOLO, 2007) have been structured around the classification of colonized peoples according to the idea of *race* – a mental scheme of domination to establish control over all forms of subjectivity, culture, knowledge production, and labour (QUIJANO, 2005). The peoples of the invaded, stolen or conquered territories were categorized as *primitive* and *barbaric* in opposition to the *civilized*, *modern* and *developed* European. With the process of "concealment of the other" (DUSSEL, 1993), thousands of socially diverse alterities were reduced to totalizing and homogenizing categories – *Indian, Black, Mestizo, Oriental, Yellow, White* – and disregarded as human, or accepted only as second-class humans (MIGNOLO, 2007).

The symbolic and material schemes that made possible the political-economic and juridical-administrative domination of the European metropolis over American colonies served to maintain a pattern of power that was globalized based on definitions rooted in all dimensions of human existence, naturalizing the *center* X *periphery* relationship and the social asymmetry between populations. It also had consequences on the colonization of subjectivities, knowledge, the exploitation of territories and all forms of work (ESCOBAR, 2003; CASTRO-GOMEZ, GROSFOGUEL, 2007; MALDONADO-TORRES, 2007).

The belief in the inferiority of the Indigenous *race*, under the scientific influence of social Darwinism, gave support to the advent of assimilationist and integrationist policies (VERDUM, 2006), making possible the primitive accumulation of capital by Europe and the exploitation of Indigenous wealth and human resources of Africans. The colonization processes of each country in the Americas did not occur in a homogenous way, but all of them involved an expressive level of "war, territorial conquest, genocide and economic exploitation" (URT, 2014, p. 2). The genocide of the Indigenous Amerindian population resulting from the European invasion and colonization began in

[16] The International Labor Organization (ILO) Convention 169, ratified by Brazil in June 2002, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

1492 and continued to occur due to the development of political and economic projects that served the "invention" of the continent's National States (HOBSBAWM, 1984).

If, on the one hand, the contraction of the *historical debt* towards the Indigenous Peoples of the Americas is a long-standing process (BRAUDEL, 2005)[17], the discussion on the concept of "historical debt" applied to Indigenous peoples has its roots in the reflections provided by the post-World War II context. The atrocities committed by Nazism, the emergence of social movements in the 1970s, and the manifestations of the *social issue* (CASTEL, 1999) in the global North have become incompatible with the image of liberal democracies as just and egalitarian nations, projecting a doubt about the ability of these states to incorporate differentiated citizenship and demonstrate neutrality to treat individuals equally (HENDERSON & WAKEHAM, 2013). This latter is precisely the case in Canada.

According to Ph.D. in Anthropology, Dara Culhane (1998), the Post-War period, Hitler's fall in Germany, and the Nazi regime's atrocities represented a turning point in relations between Indigenous and non-Indigenous peoples. Canada's international image as a free and democratic country, where all citizens are treated equally regardless of *race*, religion or origin, was marked by the existence within its borders of a category of people whose legal, political and social identity had been racialized by the Indian Act (1876) and the Constitutional Act (1867). The Indigenous poverty and marginalization have become a constant source of public embarrassment, and many efforts have begun to improve living conditions on reservations without, however, leaving behind the idea of assimilating them into the Canadian mainstream (CULHANE, 1998). The Indigenous Canadian issue has assumed such a point of unacceptability on society and the mainstream media that there has recently been talking of *genocide* against that country's people.

To Alex Alvarez, a criminal justice professor at Northern Arizona University and violence against American Indigenous Peoples researcher, the term *genocide* was coined by Polish Raphael Lemkin in 1944, since the terms "massacre," "war crimes", and other synonyms did not capture the scale and nature of the atrocities committed by the Nazis. As Alvarez explains, the word *genocide* results from the fusion of the Greek word for a

[17] The notion of "long duration" is used here to refer to the persistence and temporal continuity of violence against indigenous peoples and think about the deep movements and underlying phenomena that help to understand the reasons that make this persistence and continuity possible.

race (*genos*), added to the Latin designator for murder (*cide*) and can mean both the death of a tribe and any activities that directly or indirectly result in the systematic annihilation of a group (ALVAREZ, 2014, p. 26).

For the United Nations (UN), genocide's definition encompasses any act committed to destroy, in whole or in part, a national, ethnic, racial or religious group, by killing its members; causing them serious bodily or mental harm; violating living conditions that cause their physical destruction; imposing measures to prevent the birth of new children, or compulsorily transferring children from one group to another group(s). In addition to the commission of several episodes that can be classified as genocide as defined above, the historical debt of the Brazilian and Canadian states to Indigenous Peoples also involves violence and crimes that transit in the sphere of internationally established human rights. For the Truth and Reconciliation Commission of Canada (TRC, 2015), cultural genocide is defined as:

> The destruction of those structures and practices that allow the group to continue as a group. States that engage in cultural genocide set out to destroy the political and social institutions of the targeted group. Land is seized, and populations are forcibly transferred and their movement is restricted. Languages are banned. Spiritual leaders are persecuted, spiritual practices are forbidden, and objects of spiritual value are confiscated and destroyed. And, most significantly to the issue at hand, families are disrupted to prevent the transmission of cultural values and identity from one generation to the next. In its dealing with Aboriginal people, Canada did all these things (CANADA, 2015, p. 1–2, 3, 57). [18]

According to Maybury-Lewis, “The destruction of a people's way of life is on the other hand not even condemned when it comes to Indigenous Peoples. On the contrary, it is normally advocated as an appropriate policy towards them. Indigenous Peoples are normally looked down upon as 'backward', so it is presumed that their ways must be changed and their cultures destroyed, partly in order to civilize them and partly to enable them to coexist with others in the modern world” (MAYBURY-LEWIS, 1997, p. 9). *Genocide*, then, is a crime “extremely difficult either to prevent or to punish. It requires international action against the perpetrators, and that is very rarely possible to organize” (MAYBURY-LEWIS, 1997, p. 9).

[18] “Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada”.

In punctuating the contemporary definitions of *genocide*, it is crucial, according to Ramos (2018, p. 7), to establish that the case regarding Indigenous People is conceptually different from that practiced against the Semites:

> Unlike the extreme and concentrated Jewish holocaust of the 20th century, the process of extermination of the Indigenous Peoples of the Americas is an equally violent but long-lasting phenomenon and takes many different forms. The most common do away with Nazi-style summary executions of gas chambers, and crematory ovens are no less devastating and infallible. In Brazil, specifically, it is possible to kill Indians even with gifts, as in the fronts of attraction, an official tradition of leading Indigenous peoples to dependence on the State (RAMOS, 2018, p. 7). [19]

Brazil is a signatory to treaties that classify *genocide* as an unspeakable crime of inhumanity. Nevertheless, international treaties' ratification has not ensured or guaranteed truth and increased access to justice for these populations. Recent setbacks in the field of reparations in Brazil, as well as in Canada, call for analyses aimed at interpreting the processes and dynamics that allow the so-called "politics of forgetting" to gain prominence, despite the existence of a widely spread "culture of reparation" (HENDERSON, WAKEHAM, 2013).

In the context of colony Brazil's economic policy, which has caused irreversible damage to Indigenous Peoples, the monoculture latifundium stands out and the extraction of drugs from the hinterland in the Amazon region and the exploitation of minerals. These enterprises have made use of Indigenous forced labour, although in smaller quantities compared to the employment of black African labour (FURTADO, [1959] 1986).

In the republican phase, Indigenous People were involved in military projects to occupy the country's more Northern edges to protect the national boundaries (FARAGE, 1991). Only in 1793, Indigenous slavery in Brazil was banned. In the republican phase, Indigenous People were involved in military projects to occupy the more Northern edges of the country to protect the national boundaries (FARAGE, 1991). In the phase in which Brazil was governed through institutional acts, the tutelage mechanism made possible the

[19] "Diferentemente do holocausto judeu do século XX, extremo e concentrado, o processo de extermínio dos povos indígenas das Américas é um fenômeno igualmente violento, mas de longa duração e toma muitas formas distintas. As mais comuns prescindem de execuções sumárias no estilo nazista de câmaras de gás e fornos crematórios, mas nem por isso são menos devastadoras e infalíveis. No Brasil, especificamente, pode-se matar índios até mesmo com dádivas, como no caso das frentes de atração, tradição oficial de levar os povos indígenas à dependência do Estado" (RAMOS, 2018, p. 7).

integration of the so-called *silvícolas* (BRAZIL, 1973),[20] to which the State was attributed the relative civil capacity and legitimacy to act in defence of their interests, aiming, ironically, to prevent them from being harmed in business transactions (CARNEIRO DA CUNHA, 1994).

Brazil's dictatorial military regime (from 1964 to 1985) also forced the interaction with isolated peoples and recent contact Indigenous Peoples to allow the entry of economic enterprises, such as the National Integration Plan (PIN). During this period, robberies against the Indigenous patrimony led to territorial confinement situations, following the Guarani Kaiowá peoples' example in Mato Grosso do Sul. The military dictatorship in Brazil also promoted the removal of entire communities, in addition to kidnappings, rapes, murders and crimes, as exhaustively documented in the "Figueiredo Report".

We here call *historical debt* the cumulative result of the "long-term" colonization process (BRAUDEL, 2005) that acted to classify, sedentary, evangelize, enslave, exploit and despoil the Indigenous Peoples of themselves and their territories, placing them in a situation of impoverishment, marginalization and structural dependence in all the countries of the world where this process occurred. The category of *historical debt*, which refers to the injustices and violence of all kinds committed throughout the colonial process against Indigenous peoples, remains unresolved from these very peoples' perspectives. In many cases, this violence continues to be committed by the State itself.

According to UN data, there are Indigenous Peoples in ninety countries, with a total of 370 million people living in poverty and marginality: "They are often among the poorest peoples and the poverty gap between Indigenous and non-Indigenous groups is increasing in many countries around the world" (ANAYA, 2009, p. 9).[21] In Canada and Brazil, Indigenous people are the population segments with the worst human development indicators – schooling level, *per capita* income, mortality and birth rates – compared to the low sectors of these same countries. The Amnesty International's Report – Indigenous Peoples' Long Struggle to Defend their Rights in the Americas (2014) – highlights that "Indigenous women and men are underpaid, have lower levels of education, die in childbirth, and have a lower life expectancy.

[20] Bill Nº. 6.001 of December 19, 1973.
[21] Available at http://www.refworld.org/pdfid/53e9c0364.pdf. Access in 27.09.2015.

1.2 The compulsory transfer of the Xavante of Marãiwatsédé

Without showering I had to get on the plane to leave the ground and I got on the painted plane of our party and arrived there in San Marcos
(Rafael Tsereuabdi, Xavante survivor)[22]

Like the history of the Anishinaabeg people of Lac Seul First Nation, in Canada, the history of the Xavante of Marãiwatsédé is complex, old, and involves state agents' participation, church members and Brazilian agribusiness entrepreneurs. With no cultural similarities, these two peoples from different poles of the American continent connect by the extreme violence inflicted against them, dictated by both national states' desire for the liberation of their lands, considered strategic for the economic development and national integration projects of both countries. The historical debts accumulated against these two groups by Brazil and Canada are illustrative of how, structurally, indigenism as an "ideology of domination" (TEÓFILO DA SILVA, 2012a) and the dynamics of coloniality operate and impose, in the Global North and South, control over Indigenous territories and lives, despite the closure, in theory, of colonialism.

Removal, deportation, transfer or event consented?

Nobody wanted to leave. And yet, against their will, they went. Nobody hid in the bush. They could, but, even against their will, everyone went on the plane. They hoped to live well in San Marcos. And the plane they came for was huge. Everybody left their food, nobody took their roots, their hunts, nothing of their belongings, our parents went with nothing
(Donalino' testimony, Xavante survivor 2014). [23]

[22] "Sem tomar banho eu tive que entrar no avião para deixar a terra e entrei no avião pintado da nossa festa e cheguei lá em São Marcos."
[23] "Ninguém queria sair de lá. E mesmo assim, contra a sua vontade, eles foram. Ninguém se escondeu no mato. Poderiam, mas, mesmo contrariados, todo mundo foi no avião. Esperavam viver bem em São Marcos. E o avião que veio buscar era enorme. Todo mundo deixou seus alimentos, ninguém levou suas raízes, suas caças, nada de seus pertences, nossos pais foram sem nada. E foi assim a nossa história. Eu acho que esse avião é o que está lá em Canarana, mas não tenho certeza" (Donalino, sobrevivente Xavante, 2014).

The 1960s in Brazil were marked by significant political and economic instability, and, in 1966, the dictatorial political scenario inspired fear and apprehension. The year began with the decree of Institutional Act No. 3, which instituted indirect elections for governors and vice-governors, in addition to the process of appointing mayors. On June 6 of that year, Luis Carlos Prestes was sentenced to fourteen years in prison. On July 25, a bomb against Marshal Costa e Silva, candidate for the President of the Republic, left dead and wounded. In the field of rights, President Castelo Branco sanctioned the law of the Guarantee Fund for Time of Service (FGTS), one of the main foundations of Brazilian labour rights until today. On October 3, adding up to 295 votes, the National Liberation Alliance (ALN) candidate, Artur da Costa e Silva, was elected President in an indirect election of the National Congress.

In addition to establishing a dictatorial regime that lasted twenty years, the period was economically marked by inflation, falling growth, and difficulty maintaining fiscal austerity and balancing public accounts. The Government's Economic Action Program (PAEG) was the first economic plan implemented after the military coup of 1964 and aimed to re-establish short-term economic stability through a set of structural reforms aimed at increasing growth rates. That was the political and economic scenario of 1964, two years before removing the Xavante people of Marãiwatsédé. There was "a *sense of urgency* in quickly achieving favourable results" in combating inflation and economic instability, and the success of PAEG would mean that other reforms could also be implemented (BASTIAN, 2013, p. 141-142). The federal government's propaganda at the time preached:

> The relative scarcity of transportation hampers the colonization of the Amazon. The Transamazon highway is a huge step toward the rational occupation of an area that is characterized by a demographic vacuum comparable only to those of the desolate polar regions. President Médici has expressed his confidence that the Transamazonica can be the way to meet the true economic vocation of the Amazon. The heart of the Amazon is the scenario to tell the people that this government's revolution is essentially nationalist, with the prevalence of Brazilian solutions to Brazil's problems. Two of these problems are a man without land in the Northeast and lands without men in the Amazon. (Documentary "The Valley of Forgotten", RADUAN, 2013) (my translation). [24]

[24] "A colonização da Amazônia é dificultada pela escassez relativa de transportes. A Transamazônica é um passo imenso no sentido da ocupação racional de uma área que se caracteriza por um vazio demográfico só comparável aos das desoladas regiões polares. O Presidente Médici expressou a sua confiança de que a Transamazônica possa ser o caminho para o encontro da verdadeira vocação econômica da Amazônia. O

Stimulating the remote's occupation regions, Ariosto da Riva, defined by the website Portal Mato Grosso as "the great colonizer of the region commonly called Nortão de Mato Grosso," taking advantage of the advantages and tax incentives that the government offered at the time, carried out processes of interiorization and colonization oriented to agribusiness, resulting in the formation of the municipalities of Naviraí, Caarapó, Glória de Dourados, in addition to the Suiá-Missu Farm itself, in a traditional Xavante area. The land release process did not exclusively affect the Xavantes. Throughout the State of Mato Grosso, similar ventures caused the territorial expropriation of other peoples, affecting the Tapirapé, evangelized by the Little Sisters of Jesus, and had their lands sold to the Tapiraguaia S/A company.

It is essential to understand each of the agents who, in the 1960s, dictated the direction of the colonization processes of the interior of Brazil and the Amazon, aiming at a project of economic development and integration of the interior of Brazil with other regions based on the opening of roads, such as *Cuiabá-Santarém*, *Cuiabá-Porto Velho*, *Transamazônica* and *Perimetral Norte*, in addition to the exploitation of land for the landowner agribusiness, directed by the Superintendence of Development of the Amazon (SUDAM): Ariosto da Riva, Dario, a large landowner and owner of Fazenda Suiá-Missú; Dario Carneiro, administrator of the farm and Ariosto's right-hand man; Chief Damião Paridzané, still a boy, would become the outstanding leadership of the Xavante da Marãiwatsédé people; Dom Pedro Casaldáliga, bishop who worked in the region; Gilberto Rezende, known as Gilbertão, one of the prominent landowners who sold bad faith titles to squatters and *land grabbers*, delivered illegal deeds of the possessed lands for a fee and charged to measure the land. The deeds had no legal validity and were refused by banks.

Those were some protagonists' names of the events that culminated in the complete removal of the Xavante to São Marcos, an action prohibited by the current Brazilian Constitution of 1988. Uniting and opposing large landowners, land grabbers, squatters, camped families of the Landless Rural Workers' Movement (MST), and the Xavante, an aggressive dispute over land.

coração da Amazônia é o cenário para que se diga ao povo que a revolução desse governo é essencialmente nacionalista, com prevalência das soluções brasileiras para os problemas do Brasil. Dois desses problemas são: o homem sem terras no Nordeste e a terra sem homens na Amazônia" (Documentário "O Vale dos Esquecidos", RADUAN, 2013).

Before the arrival of Ariosto da Riva in the territory of the Xavante de Marãiwatsédé, the father of Chief Damião Paridzané commanded a group that had the habit of constant locomotion, motivated by hunting. He founded a village in the region that would become the Suiá-Missú Farm. According to reports by Cacique Damião, Ariosto's intention has always been to remove the Xavante from the farm region, which he ended up doing through subtle techniques of seduction and convincing. During the many years of conviviality between these Xavante and Ariosto's Farm members, a cemetery with the bodies of the Indigenous people killed by the white invaders was gradually cultivated. The territory corresponding to Fazenda Suiá-Missú was bought as a gleba, seen as a rural property suitable for planting and breeding.[25]

In a statement for the documentary "The Valley of the Forgotten" (RADUAN, 2013), Dario, at the time 23 years old, reveals in a romantic way that he always dreamed of knowing a wild territory, of meeting "Indians," and even cries when he remembers the death of the Indigenous by measles, right after his *transfer* to São Marcos:

> At the time we landed, the Indians were there, on the track. And the time I came down was that emotion, right? They were still naked, some had shorts on, and I already played with them, they didn't speak Portuguese... There was no one there who spoke their language, but there was one (makes a gesture of approach with his hands), right at the beginning, nah (Documentary "The Valley of Forgotten", RADUAN, 2013) (my translation). [26]

Dario's audio recording, at the time of the first contact, reveals that the approach mentioned by Dario's manual gesture was occasioned by the receptivity of the Xavante to them: they offered corn cake, danced and sang to the new visitors, illuminated only for a handmade fire:

> My work on the farm was the office part, but most of the time of the day, because the Indians wandered around the farm, came into the office, sat around the table, and there I stayed talking with them, trying to learn their language. So I got in touch with them, and in the end, all

[25] *Gleba* is a term used to define a measure of land that does not have residents or infrastructure to receive these residents (according to https://www.dicio.com.br/gleba/).

[26] "Na hora em que pousamos, os índios estavam lá, na pista. E a hora em que eu desci foi aquela emoção, né... Eles estavam, ainda, nus, uns tinham calção, e eu já brinquei com eles, eles não falavam português... Não tinha ninguém ali que falava a língua deles, mas houve um (faz um gesto de aproximação com as mãos), logo de início, né". (Documentário "O Vale dos Esquecidos", RADUAN, 2013).

> that was Indian about the farm was me." (Documentary "The Valley of Forgotten", RADUAN, 2013).[27] (my translation).

In testimony for the same documentary, Dom Pedro Casaldáliga [28], states:

> When we got here, we soon realized this lack of infrastructure and presence of the State, on one hand. And, on the other hand, that the problem was really land. The land of the Indians, the land of the farmers, the land of the landless, of the squatters, and the land of the pedestrians who worked for the land of the farmers. Then the word "land" became the watchword: land. On the other hand, we were in the middle of a military dictatorship. SUDAM (Superintendence of Development of the Amazon) was established. Officially, we would say that Brazil adopted a landowner position. We, contesting the latifundium, contesting SUDAM, defending the land of the Indians, defending the labor rights of pedestrians, automatically set ourselves against the State. The people even, at one time, thought that SUDAM was the name of a lady, of an owner, the SUDAM lady who had a lot of land, a lot." (Don Pedro Casaldáliga, The Valley of the Forgotten, RADUAN 2013) (my translation). [29]

Casaldáliga also recognizes the "Indigenous problem" in the region in a 1971 text: "The Suiá-Missu, in establishing itself where it is located, faced the problem of the presence of the Xavante Indians. Several means were used to approach it, trying to avoid a direct confrontation" (CASALDÁLIGA, 1971, p. 16). The Suiá-Missú Farm received from SUDAM financing of 30 million dollars, made possible by the issuance of a FUNAI document attesting to the non-existence of Indigenous People in the region, as shown below:

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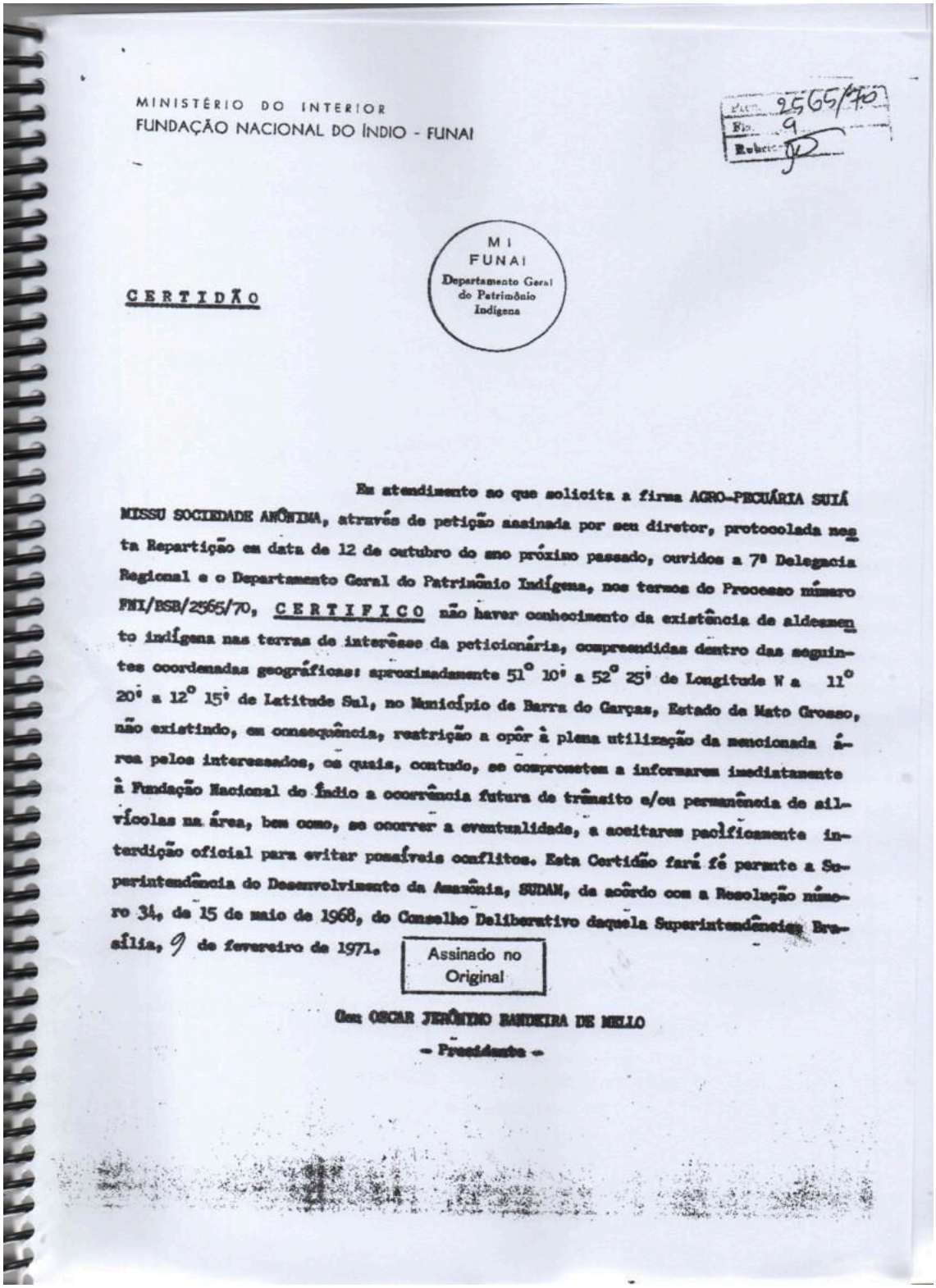
[27] "O meu trabalho lá na Fazenda era a parte de escritório, mas, a maior parte do tempo, do dia, porque os índios perambulavam lá pela Fazenda, entravam no escritório, sentavam em volta da mesa, e ali eu ficava conversando com eles, tentando aprender a língua deles. Então, eu fui me entrosando com eles e, no final, tudo o que dizia respeito a índio, na Fazenda, era comigo". (Documentário "O Vale dos Esquecidos", RADUAN, 2013).

[28] Bishop Emeritus of São Félix do Araguaia and candidate for the Nobel Peace Prize in 1992 and 2002, also known for being one of the main exponents and propagators of Liberation Theology.

[29] "Quando nós chegamos aqui, nós percebemos logo essa falta de infraestrutura e presença do Estado, por um lado. E, por outro lado, que o problema era mesmo terra. A terra dos índios, a terra dos fazendeiros, a terra dos sem-terra, dos posseiros, e a terra dos peões que trabalhavam a favor da terra dos fazendeiros. Então, a palavra terra passou a ser a palavra de ordem: terra. Por outra parte, estávamos em plena ditadura militar. Se instituiu a SUDAM (Superintendência de Desenvolvimento da Amazônia). Oficialmente, diríamos que o Brasil adotou uma postura latifundiária. Nós, contestando o latifúndio, contestando a SUDAM, defendendo a terra dos índios, defendendo os direitos trabalhistas dos peões, automaticamente nos colocávamos contra o Estado. O povo, inclusive, numa época, achava que a SUDAM era o nome de uma Senhora, de uma proprietária, a Senhora SUDAM que tinha muita terra, muita mesmo..." (Don Pedro Casaldáliga, "O Vale dos Esquecidos", RADUAN 2013).



MINISTÉRIO DO INTERIOR
FUNDAÇÃO NACIONAL DO ÍNDIO - FUNAI

Proc. 2565/70
Fls. 9
Rubrica

M I
FUNAI
Departamento Geral
do Patrimônio
Indígena

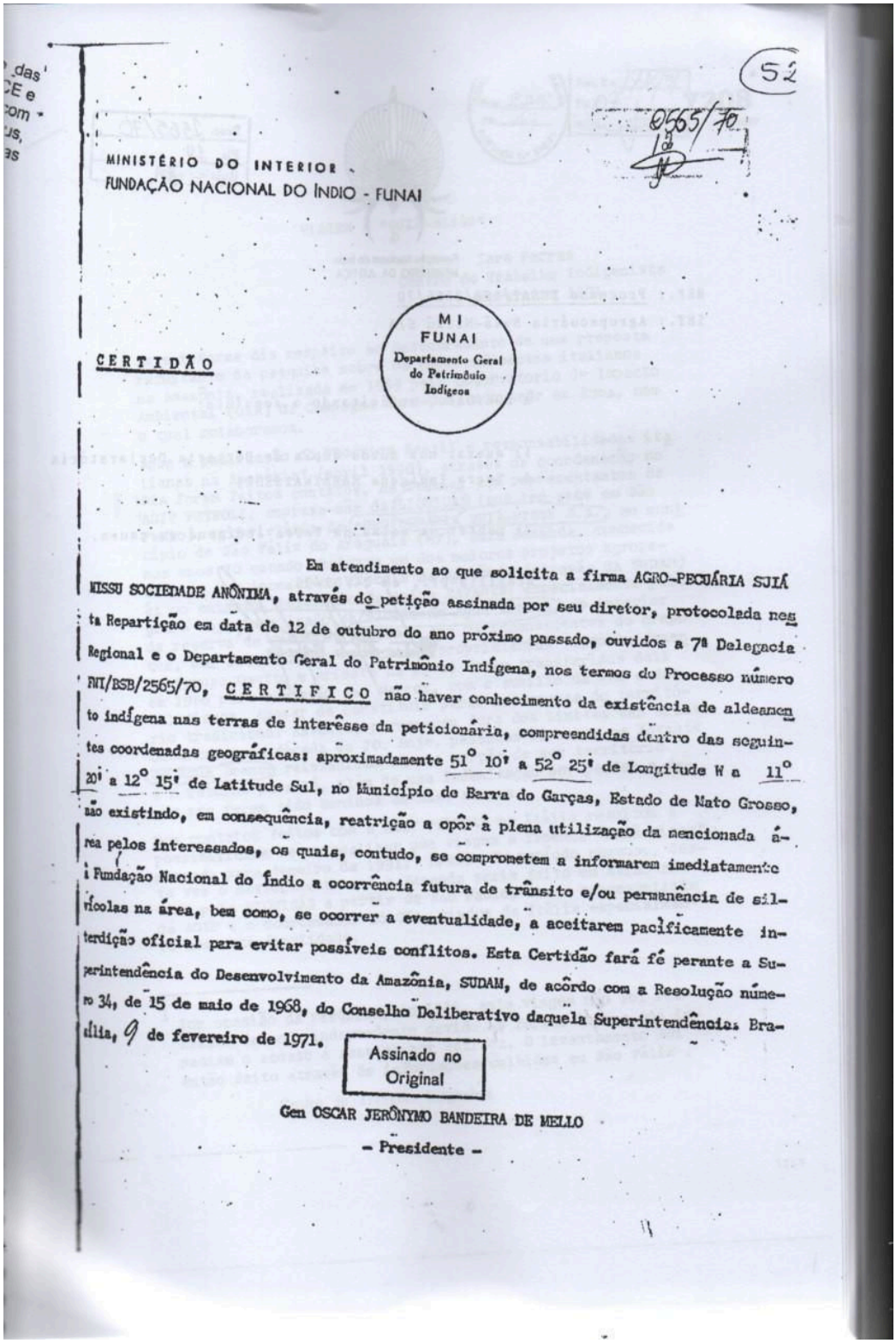
CERTIDÃO

Em atendimento ao que solicita a firma AGRO-PECUÁRIA SUIÁ MISSU SOCIEDADE ANÔNIMA, através de petição assinada por seu diretor, protocolada nesta Repartição em data de 12 de outubro do ano próximo passado, ouvidos a 7ª Delegacia Regional e o Departamento Geral do Patrimônio Indígena, nos termos do Processo número FNI/BSB/2565/70, CERTIFICO não haver conhecimento da existência de aldeamento indígena nas terras de interêsse da peticionária, compreendidas dentro das seguintes coordenadas geográficas: aproximadamente 51° 10' a 52° 25' de Longitude W a 11° 20' a 12° 15' de Latitude Sul, no Município de Barra do Garças, Estado de Mato Grosso, não existindo, em conseqüência, restrição a opôr à plena utilização da mencionada área pelos interessados, os quais, contudo, se comprometem a informarem imediatamente à Fundação Nacional do Índio a ocorrência futura de trânsito e/ou permanência de silvícolas na área, bem como, se ocorrer a eventualidade, a aceitarem pacíficamente interdição oficial para evitar possíveis conflitos. Esta Certidão fará fé perante a Superintendência do Desenvolvimento da Amazônia, SUDAM, de acôrdo com a Resolução número 34, de 15 de maio de 1968, do Conselho Deliberativo daquela Superintendência. Brasília, 9 de fevereiro de 1971.

Assinado no Original

Gen. OSCAR JERÔNIMO BANDEIRA DE MELLO
- Presidente -

Image 1a: FUNAI's Negative Certificate



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MINISTÉRIO DO INTERIOR
FUNDAÇÃO NACIONAL DO ÍNDIO - FUNAI

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FUNAI
Departamento Geral
do Patrimônio
Indígena

CERTIDÃO

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Assinado no
Original

Gen OSCAR JERÔNYMO BANDEIRA DE MELLO
- Presidente -

Image 1b: FUNAI's Negative Certificate
Source: Marãiwatsédé Indigenous Land Identification and Delimitation Report (RODRIGUES, FERRAZ, 1992).

According to the statement of the squatters Neto Figueiredo, for the documentary "The Valley of Forgotten" (RADUAN, 2013):

> The legitimate *land grabber* is the one who invades, right? The *land grabber* is the one who invades; now the squatters are those who are here, who have already bought from others and are producing. Generally, the one who grills the land, he does not produce, is only to make commerce. (Documentary "The Valley of Forgotten", RADUAN, 2013) (my translation).[30]

In 1996, the American citizen, John Carter – known as the Xingu cowboy – came from Texas to Brazil flying his own single-engine plane to start breeding Nelore cattle on his father-in-law's property, *Fazenda Esperança*, next to the Xavante of Marãiwatsédé territory. Graduated in geology with a postgraduate degree in rural administration from the University of Texas, Carter thought he had reached the "tropical Old West", nurturing the romantic image of a wild Brazil, with jaguars crossing the forest and naked natives. But Carter's romantic image was soon dispelled by the intense land dispute in the region. According to journalist Sabrina Craide, who interviewed Carter in May 2014:

> The Texan spent nights lying on the road with the cowboys to watch his property. He saw trucks with illegal wood and woods being burned to become pasture. And it was also flying his plane that Carter saw his farm being invaded (...) He entered the woods camouflaged, spent days burning lodgings of invaders, but guarantees that he did not kill anyone. He even got involved in a dispute with the Xavantes of the region, who killed 12 of his nelores to feed the tribe - each animal was worth R$ 15 thousand. The Indians were camped next to Carter's farm after being removed from the lands they lived in a polemic dispute. The farmer went to take satisfaction on the robbery and found Indians painted and armed with bow and arrow. Even so, he petitioned the chief. The leader said: "Excuse me. My people are dying of hunger by the roadside. Seven children have already died. Carter was moved, shook the cacique's hand and promised to take one animal a month to feed the Indians. He became a friend of the Xavantes. Carter says he sought out authorities, entities, and even foreign NGOs for help in containing the irregularities he was witnessing but had no answers. He says he was threatened with death, had his land burned, and his plane was sabotaged (CRAIDE, 2014) (my translation).[31]

[30] "O grileiro legítimo é aquele que invade, né? Agora, os posseiros são aqueles que estão aqui, que já compraram de terceiros e estão produzindo. Geralmente, quem grila a terra, ele não produz, é só para fazer comércio" (Documentário "O Vale dos Esquecidos", RADUAN, 2013).

[31] "O texano passou noites deitado na estrada com os vaqueiros para vigiar sua propriedade. Via a todo momento caminhões com madeira ilegal e matas sendo queimadas para virar pasto. E foi também pilotando seu avião que Carter viu sua fazenda sendo invadida (...) Entrou na mata camuflado, passou dias queimando alojamentos de invasores, mas garante que não matou ninguém. Envolveu-se em disputa até com os xavantes da região, que mataram 12 nelores seus para alimentar a tribo – cada animal valia R$ 15 mil. Os índios estavam acampados ao lado da fazenda de Carter após terem sido retirados das terras onde viviam,

In his testimony for the documentary "The Valley of the Forgotten" (RADUAN, 2013), John Carter stated:

> I see the Indians as a serious problem, because nobody wants them here. The other farmers don't want them, of course the land grabbers don't want them either, but the fact is that they won't leave. They are here to stay forever, they are occupying the land, they have a cemetery and have already buried some of their people. The government will never take them away and transfer them again to another place. This will not happen. So, you need to be proactive and accept this, or else you are an idiot, you create the turmoil that is happening and you continue to inflame the wound. So, my position is that I am here in the middle of all this, surrounded by adversaries, and I have a strategy to deal with each one. With the landless people here, I don't have any strategy, just be cordial and try to help them get jobs. If they can, they can, if they can't, they can't, but regardless of anything, they are human beings and deserve respect. A line was drawn on the sand, it's like good against evil, and I don't want to be in the devil's position. I think the more people see the story from here the more they understand that there is no way to solve this without people feeling around the table and committing themselves (Documentary "The Valley of Forgotten", RADUAN, 2013) (my translation).[32]

The articulation and accomplishment of the *transference* are, until today, an object of controversy, even for the Xavante. For some of them, the *transfer* was articulated by businessmen from the Mato Grosso – called agribusiness – and *consented* to by the Indigenous People, in

em uma polêmica disputa. O fazendeiro foi tirar satisfação sobre o roubo e encontrou índios pintados e armados com arco e flecha. Mesmo assim, peitou o cacique. O líder disse: "Me desculpe. Meu povo está morrendo de fome na beira da estrada. Sete crianças já morreram". Carter se comoveu, apertou a mão do cacique e prometeu levar um animal por mês para alimentar os índios. Virou amigo dos xavantes. Carter diz que procurou autoridades, entidades e até ONGs estrangeiras em busca de ajuda para conter as irregularidades que presenciava, mas não teve respostas. Afirma que foi ameaçado de morte, teve suas terras queimadas e seu avião foi sabotado". Available at https://super.abril.com.br/ideias/o-cowboy-do-xingu/. Access on 27.08.2020.

[32] "Eu vejo os índios como um problema sério, porque ninguém os quer aqui. Os outros fazendeiros não os querem, claro que os grileiros também não os querem, mas o fato é que eles não irão embora. Eles estão aqui para ficar para sempre, eles estão ocupando a terra, têm um cemitério e já enterraram alguns do seu povo. O governo nunca vai tirá-los e transferi-los de novo para outro lugar. Isso não acontecerá. Então, você precisa ser proativo e aceitar isso, ou então você é idiota, cria o tumulto que está acontecendo e continua a inflamar a ferida. Então, a minha posição é a de que estou aqui no meio disso tudo, rodeado de adversários, e eu tenho uma estratégia para lidar com cada um. Com os sem-terra daqui eu não tenho nenhuma estratégia, apenas ser cordial e tentar ajudá-los a conseguir empregos. Se eles conseguem, conseguem, se não conseguem, não conseguem, mas independentemente de qualquer coisa, eles são seres humanos e merecem respeito. Uma linha foi desenhada na areia, é como se fosse o bem contra o mal, e eu não quero estar na posição do diabo. Eu acho que quanto mais as pessoas veem a história daqui mais elas entendem que não há maneiras de resolver isso sem que as pessoas sentem ao redor da mesa e comprometam-se" (Documentário "O Vale dos Esquecidos", RADUAN, 2013).

addition to the involvement of priests and political agents of the military regime who had, at that time, the support of a reduced number of indigenous leaders who were closer to these characters. For others, the *removal* was undeniably a forced and non-consensual act. We have noticed these two visions' in several of the testimonies of surviving elders with whom we worked on this dissertation.

Tsaré Xavante's testimony makes it clear that the Xavante did not want to be transferred and did not know of the articulation for the liberation of the lands:

> Well, we lived very well there. We performed our ceremonies without any problems, log race and everything else. It was very good to live, and there was nothing wrong with it. But then, a long time later, all of a sudden, Mauricio came looking for us. He killed our joy. He made us move. Since then, Father Pé Grande arrived to wait for us. Our traditional festivals were going on, everything was fine, everything was fine. Our uncle, nobody helped him to talk so he wouldn't let us go. Our uncle, nobody helped, he didn't want to go. And we were transferred" (Tsaré Testimony, 2014) (my translation).[33]

About the divergence of points of view, Rosa points out: "One possibility to explain this fact is in the choice of Tibúrcio as the mediator of the Xavante and Dariozinho, manager and representative of Suiá-Missu. This is because Tibúrcio was not the chief at the time and needed the endorsement of the elders and the chief Caetano, father of the current chief Damião Paridzané" (ROSA, 2015, p. 106) (my translation). [34] Tibúrcio, father of Chief Damião Paridzané and his predecessor in the leadership of the group, is one of the characters that most appears in the statements of the survivors. He would have been one of the people closest to the political agents, priests and businessmen who articulated the removal.

The testimonies of the Xavante of Marãiwatsédé survivors allow us to problematize a crucial point for reparation: to what extent was the *transfer* of the Xavante to the San Marco Salesian Mission consented or did it happen through a strategy

[33] "Bom, lá a gente vivia muito bem. Nós realizávamos nossas cerimônias sem problemas, corrida de tora e tudo o mais. Era muito bom de se viver, não tinha nada de problema. Mas, depois, muito tempo depois, de repente, o Maurício chegou à procura da gente. Ele matou a nossa alegria. Ele fez a gente se deslocar. Desde então, chegou o Padre Pé Grande para esperar a gente. Tava rolando nossas festas tradicionais, tava tudo muito bem, tava tudo bem. Nosso tio, ninguém ajudou ele na fala para não deixar a gente ir. O nosso tio, ninguém ajudou, ele que não queria ir. E fomos transferidos" (Depoimento de Tsaré , 2014).

[34] "Uma possibilidade de explicação desse fato está na escolha de Tibúrcio como o mediador dos Xavante e Dariozinho, gerente e representante da Suiá-Missu. Isso porque Tibúrcio na época não era o cacique e precisava do aval dos anciões e do cacique Caetano, pai do atual cacique Damião Paridzané" (ROSA, 2015, p. 106).

negotiated by political agents, the Church, and agribusiness entrepreneurs, who made use of tactics of seduction and convincing? Until what extent, too, is the controversy surrounding the removal consented to, or not, important, given the consequences of the near extermination it generated? For Rosa, compulsory removal was categorized as deportation, a term equally used by Dom Pedro Casaldáliga in two of his statements:

> But this presence was becoming heavy. Every day an ox was killed for the Indians (O Estado de São Paulo, 25/04/69) (my translation).[35]

> It was necessary to find a solution. The Indians could not remain on the land of the latifundium! And the solution found was easy: deportation (ROSA, 2015, p. 100) (my translation).[36]

Rosa's conceptual definition for the deportation category comes from the dictionary: "Deport. From lat. *deportare*] To take away, away; to condemn to degradation; to banish; to expatriate; to exile, to banish: to banish a conspirator" (HOLANDA FERREIRA, 1986, p.538). The author also justifies herself by explaining that: "The expression was used by the Xavante and groups of Indigenous supporters, and can be considered a native category, since it is used by the socio-historical agents involved" (my translation)" (ROSA, 2015, p. 101).[37]

Although the idea of *deportation* is valid as a categorization of the removal's events, in the "Report of Identification of the Marãiwatsédé Indigenous area," by Rodrigues and Ferraz (1992), the fact is treated as a *transference*, as in most of the statements of the Xavante survivors whom we worked. On a smaller scale, the categories *withdrawal* and *displacement* are used. However, we have opted here for the use of the *transference* category.

In the statement below, the survivor's understanding is that the group did not know the articulation that was being made and did not know where they would be led. Most parts of the group got on the plane not because they wanted to, and there was resistance indeed. In his statement, Gregório Xavante reveals his understanding of the political

[35] "Mas essa presença ia-se tornando pesada. Cada dia era um boi que era morto para os índios".
[36] "Era necessário encontrar uma solução. Os índios não poderiam permanecer em terras do latifúndio! E a solução encontrada foi fácil: a deportação" (ROSA, 2015, p. 100).
[37] "A expressão foi utilizada pelos Xavante e por grupos de apoiadores dos indígenas e pode ser considerada categoria nativa, por ser utilizada pelos agentes sócio-históricos envolvidos" (ROSA, 2015, p. 101).

process of releasing land for agribusiness and the planning of the group's *transfer* as a way to achieve that end:

> In fact, all the people involved there against us really wanted the land. It was all right from our transfer, and they knew that we were going to die too, but nobody spoke to us. Nor were we informed where we were going to be taken and what might happen. (Gregório Xavante's Testimony, 2014) (my translation).[38]

Through the testimony of another survivor, the Xavante's "mistake" was that they did not sufficiently resist the removal. Vanda Tsinhõts' understanding brings complexity to the facts because it assumes that the elders knew of the articulation being made and agreed to the *group's transfer*.

> What was priority nobody thought. If any old man realized he was too good to live, he could have resisted*, but instead everyone agreed to retreat to San Marcos*. That's why I'm telling you this. They always walked a lot, where they established a village where they carried out the initiation of Darini and our elders like this ceremony very much (A'uwe). The elders were silly, they were silly, it does not exist. They always lived hunting in peace and who sought this? Who delivered us to Norotsurã, where we died? Today we would make visits without problems, but there are people who made maneuvers to take us to Norotsurã, where we died a lot. That's why I don't talk about it a lot, I just told you a little bit" (Vanda Tsinhõtsé's Testimony, 2014) (my translation) (my emphasis).[39]

But Gregory Xavante's statement confirms that there was resistance from the Xavante to the *transfer*:

> In fact, there was resistance the day before the transfer. Our uncle did not want to go. There were people who wanted to go, but they were in

[38] "Na verdade, todas as pessoas envolvidas ali contra nós, queriam mesmo a terra. Estava tudo certo da nossa transferência e eles sabiam que a gente ia morrer também, mas ninguém falava para nós. Nem fomos informados para onde a gente ia ser levado e o que poderia acontecer." (Depoimento de Gregório Xavante, 2014).

[39] "O que era prioridade ninguém pensou. Se algum ancião percebeu que era muito boa de se viver poderia ter resistido*, mas, em vez disso, todo mundo concordou com a retirada para São Marcos*. Por isso estou contando isso. Eles sempre andavam muito, onde firmaram aldeia realizaram a iniciação de Darini e os nossos anciões gostam muito desta cerimônia (A'uwe). Foram bobos os anciões, foram bobos, não existe. Sempre viviam caçando em paz e quem procurou isso? Quem entregou a gente para Norotsurã, onde morremos? Hoje a gente iria fazer visitas sem problemas, mas tem pessoas que fizeram manobra para levar a gente para Norotsurã, onde morremos muito. Por isso não falo muito disso, contei só um pouco" (Depoimento de Vanda Tsinhõtsé, 2014).

> the minority. It was inevitable that everyone would be transferred. But before, from where we were in the village, the news came, we walked to the farm where our old village was, so that we could see the last time the village we were leaving, the Suiá Headquarters. It was getting there that the other day the plane arrived. The same day we had our last ceremony in that land. At the same time, it was on purpose, to stain the plane. Many already knew that they would not survive. All that moment was the last time (Gregório Xavante's Testimony, 2014) (my translation) (my emphasis).[40]

In another (unidentified) survivor's testimony, we see again the understanding that adults and elderly people didn't know about the "sick joke" that was being articulated (referring to the *transference*) and that there was, yes, impasse and resistance to the entrance of the Xavante in the FAB plane:

> I don't expect another sick joke on us, other mistreatments, I don't expect that anymore (...) The death was not a little. For us to die, for our people to die that much, it was a trap for us. Who warned us about it? Who warned our parents? The beginners of the men's spiritual feast ended in a hurry for them at that feast. So, for transference, we did not know anything. My brother, who had already passed away, who warned us not to leave, that it was a trap, told us to live there, in Marãiwatsédé. This was only confirmed when we were transferred. But the mobilization was very strong against us, or the people who articulated, the priest, the church, were also involved, the governments, the farmers, the local politicians. And today, I want to know who is going to pay for our losses. Enough of thinking only about themselves. It's time to repair the damage that was done. Life is no joke. There's no turning back. That cost us a lot too. Your aunt, on the day that was scheduled for the plane to arrive, that my wife passed away, so I boarded the plane without hair, was still in mourning. Our father, who did not want to go, if I had witnessed when he manifested, I would certainly support him, I would stay with him. So, he had the argument. There was the resistance. There were people who didn't want to go. I didn't want to go. Others wanted to go. Then there was an impasse. I knew it was not a good thing for us to leave the land. We were on our way to suffering. The discussion in the middle of the stalemate was more or less like this: you have to think about your women, how are you going to take care of them there? You don't know the region, you don't know the people. My brother-in-law who just talked about his brother-in-law, he was there beside me. Why are you wanting to move there? You didn't argue with everyone! Why are you wanting to change? So, you don't talk to other chiefs? So, after this discussion, last time, we had our ceremony, the day was already scheduled for our transfer and the arrival of the plane. So, how did all this happen? In the morning, the plane was coming towards our village.

[40] "Realmente, teve resistência na véspera da transferência. O nosso tio não queria ir. Tinha gente que queria ir, mas era minoria. Foi inevitável a transferência de todos. Mas, antes, de onde a gente tava na aldeia, chegando a notícia, nós fomos caminhando até a fazenda onde era a nossa antiga aldeia, para gente ver a última vez a aldeia que nós vamos deixar, a Sede Suiá. Foi chegando lá que, no outro dia, o avião chegou. Ainda no mesmo dia teve a nossa cerimônia pela última vez naquela terra. Ao mesmo tempo, foi de propósito, para manchar o avião. Muitos já sabiam que não sobreviveriam. Todo aquele momento foi a última vez" (Depoimento de Gregório Xavante, 2014).

> The young people, the men, everyone painted, we felt powerless thinking, and now, who will defend us? I still say that when we lived together, our parents lived well among them. We young people failed to defend ourselves, much less did the chief defend us. I didn't want to go at all. Maybe, if I stayed, I would form a group and become chief, leadership. When I knew things I would seek my brothers. Our transfer occurred during the month of August. I felt sorry for myself, because I was hairless, I was grieving, I had just lost my wife. Thinking who will receive me? Who is waiting for me there? I have a strong memory thinking about all this. The measles was lethal for us. It killed our parents. But who really killed them? It was these governments (No name's testimony, 2014) (my translation) (my emphasis).[41]

Likewise, Irene's testimony reiterates that the transfer did not occur by the spontaneous will of the Xavante:

> My father-in-law, Buwawe, I saw him die holding his wife, barely wearing any clothes, no clothes at all, as soon as Wai'a finished. Still painted, they got on the plane. We didn't want to go and we were ready to live in the middle of the forest, hiding, but many were already talking about missing, missing their children, the young people who went, our children who went, we wanted them to survive, to grow up well. I had a lot of children. When we hear the history of the past, some people who have already written, I get emotional. We wanted to stay, the white people put our things inside the plane and we left. When we returned,

[41] "Eu não espero outra brincadeira de mal gosto para cima da gente, outros maus tratos, eu não espero isso mais (...) A morte não foi pouco. Para a gente morrer, para o nosso pessoal morrer daquele tanto, foi uma armadilha para nós. Quem avisou a gente disso? Quem avisou nossos pais? Os iniciantes da festa espiritual dos homens terminavam às pressas para eles, nessa festa. Por isso, para transferência, não sabíamos de nada. O meu irmão já falecido que avisou a gente para não sair de lá, que era uma armadilha, falou para gente viver lá mesmo, em Marãiwatsédé. Isso só se confirmou quando fomos transferidos. Mas a mobilização foi muito forte contra nós, ou as pessoas que articularam, o padre, a igreja, também estavam envolvidos, os governos, os fazendeiros, os políticos locais. E hoje, eu quero saber quem vai pagar para nós o prejuízo. Chega de pensar só neles mesmos. Tá na hora de fazerem a reparação do estrago que foi feito. A vida não é brincadeira. Não tem volta. Isso custou muito caro para nós também. A sua tia, no dia que estava marcado para o avião chegar, que a minha esposa faleceu, então, eu embarquei no avião sem cabelo, estava de luto ainda. O nosso pai, que não queria ir, se eu tivesse presenciado quando ele se manifestou, eu apoiaria com certeza, eu ia ficar com ele. Por isso, teve a discussão. Houve a resistência. Teve gente que não queria ir. Eu não queria ir. Outros queriam ir. Então, teve impasse. Eu sabia que não era uma coisa boa a gente deixar a terra. Estávamos a caminho do sofrimento. A discussão no meio do impasse, teve mais ou menos assim: vocês têm que pensar nas suas mulheres, como vocês vão fazer para cuidar lá? Vocês não conhecem a região, não conhecem as pessoas. Meu cunhado que acabou de falar do cunhado dele, ele estava ali do meu lado. Porque você está querendo mudar para lá? Você não discutiu com todos! Porque você está querendo mudar? Para isso você não conversa com outros caciques? Então, depois dessa discussão, última vez, fizemos a nossa cerimônia, o dia já estava marcado para a nossa transferência e a chegada do avião. Então, como que aconteceu isso tudo? De manhã, o avião estava vindo na direção da nossa aldeia. Os jovens, os homens, todo mundo pintado, sentimos impotentes pensando, e agora, quem vai nos defender? Eu falo ainda que quando vivíamos juntos, os nossos pais viviam bem entre eles. Nós, jovens, falhamos em defender e muito menos nem o cacique defendeu a gente. Eu não queria ir de jeito nenhum. Talvez, se eu ficasse, eu formaria um grupo e me tornaria cacique, liderança. Quando eu souber das coisas eu buscaria os meus irmãos. A nossa transferência ocorreu durante o mês de agosto. Eu sentia pena de mim mesmo, porque estava sem cabelo, estava de luto, tinha acabado de perder a minha esposa. Pensando quem vai me receber? Quem está me esperando lá? Tenho lembrança forte pensando nisso tudo. O sarampo foi bravo para nós. Que matou os nossos pais. Mas quem matou eles na verdade? Foram esses governos". (Depoiemento anônimo, 2014).

> there were already many white people, but we faced it" (Irene's testimony, 2014) (my translation).[42]

Gregory Tsiomonwawe's testimony also highlights the Xavante's opposition to the *transfer* that was being articulated:

> The river called Urebedza'uire, there was also a lot of cará there. As it is there in that region, the village fed a lot of caras. It was there that my mother passed away. I lost my mother. It was there that the plane landed, with Darius, Father Tiburcio. From there we were displaced, where we heard that the plane would arrive. My brother who did not come, he approached first with the white man. They and our group, together with the previous group, got in touch with the world of the white man. And it was them and my brother, Moses, who were the first to get on the plane. There, it was the first contact with the white man. There they ate the white man's food before we did. That's why he took Ariosto's plane tail. He jumped on the wing of the plane. Nobody had the courage to do this, it was only Moses. He was swinging the plane, with a lot of dust coming up. And that's why his compadre helped him, because he took pity on him, that way. Most were watching from afar. That's why, long before we did, they started eating their food, consuming rice, macaroni, they fed on it before we did. That's why, near the place of the white man, they made a village and took us walking there. And Ariosto, in the afternoon, abandoned the place and opened another area, where he actually made the house himself. The people went behind, all this walking. There was the edge of the Amazon forest already. There they started to live very close and Dario also got very close, but at the time of the confusion, he didn't defend us, he didn't show the strength. Tiburtius was his contact, and he didn't have the strength to do our defense either. They took care of us. The people in that community fed on rice, it was their food, the food of the white man. He, Darius, also brought a lot of flour, so they began to live nearby. They killed the cows for us, to feed us. But all this was a farce, because, in fact, they wanted our land and they gave it to us for this. Suddenly they were making a deal to take us away. I think they were already tired of us. We ate a lot of white people's food living near us, but I think they got tired of it too and that's why they wanted to take us away. He was ordered to take us away; he took us very close to the Xingu. And we were walking, he was on horseback. I know the Xingu, that I can talk about. In the Xingu I became a teenager. I became a teenager near the Xingu. That's where he took us. The village was called Udzu'rãiwawe. There they also opened a landing strip. The Xavantes opened it for him. In exchange he left us the flour. We stayed there for a year. Then the walk was very long. In fact, all the people involved there against us

[42] "Meu sogro, *Buwawe*, eu vi ele morrer segurando na esposa, mal usava roupa, sem roupa mesmo, assim que terminou o *Wai'a*. Ainda pintados, eles entraram no avião. A gente não queria ir e estávamos prontos para viver no meio da floresta, escondidos, mas muitos já estavam falando de saudade, muita saudade dos filhos, dos jovens que já foram, nossas crianças que foram, a gente queria que eles sobrevivessem, crescessem bem. Tinha bastante menino. Quando a gente escuta história do passado, algumas pessoas que já escreveram, eu fico emocionada. A gente queria ficar, os brancos colocaram as nossas coisas dentro do avião e a gente foi. Quando a gente retornou, já tinham muitos brancos, mas a gente enfrentou" (Depoimento de Irene, 2014).

really wanted the land. It was all right from our transfer and they knew that we were going to die too, but no one spoke to us. Neither were we told where we were going to be taken and what could happen. The disease was strange, it already left us weak, but also those who survived managed to get out of the disease, today we are here. I also got sick and survived, but we were not always lucky, not everyone survived. Many did not resist the disease. I always kept these stories for one day to tell and this moment is now that I am talking. The conversation before the transfer was good between us. But also, our uncle, if he had really decided to stay, he even talked: you can go, I'll stay, maybe I can die here, white people can kill me too, it's getting closer and closer! Indeed, it had resistance the day before the transfer. Our uncle didn't want to go. There were people who wanted to go, but they were in the minority. It was inevitable that everyone would be transferred. But before where we were in the village, the news arrived, we walked to the farm where our old village was, so that we could see the last time the village we were going to leave, the Suiá Headquarters, was arriving there the other day. The same day we had our last ceremony in that land. At the same time, it was on purpose, to stain the plane. Many already knew that they would not survive. All that moment was the last time (Gregório Tsiomonwawe's testimony, 2014) (my translation) (my emphasis).[43]

[43] "O rio chamado Urebedza'uire, lá também tinha muito cará. Como é lá naquela região, a aldeia se alimentava muito de carás. Foi lá que a minha mãe faleceu. Perdi a minha mãe. Foi lá que pousou o avião, com Dario, Padre Tibúrcio. De lá fomos deslocados, onde ouvimos falar que o avião chegaria. Meu irmão que não veio, foi ele que aproximou primeiro com o branco. Eles e nosso grupo, junto com o grupo anterior, que entraram em contato com o mundo do branco. E foram eles e meu irmão, Moisés, que foram os primeiros a entrar no avião. Ali, foi o primeiro contato com o homem branco. Lá que passaram a comer a comida do branco, antes da gente. Por isso, também, ele pegou no rabo do avião do Ariosto. Ele pulou na asa do avião. Ninguém teve coragem de fazer isso, foi somente o Moisés. Balançava o avião, com muita poeira que sobe. E por isso, o compadre dele o ajudou, porque ficou com dó dele, daquele jeito. A maioria ficou assistindo de longe. Por isso, muito tempo antes da gente, passaram a comer a comida deles, consumindo arroz, macarrão, se alimentavam disso antes da gente. Por isso, perto do local do branco, fizeram uma aldeia e levavam a gente andando, até lá. E o Ariosto, de tarde, abandonou o lugar e abriu outra área, onde fez de fato a casa mesmo. O pessoal foi atrás, tudo isso caminhando. Lá era a margem da floresta amazônica já. Lá passaram a viver muito próximo e o Dario também se aproximou muito, mas na hora da confusão, ele não defendeu a gente, não mostrou a força. O Tibúrcio era contato dele e também não teve força para fazer a nossa defesa. Eles que cuidavam da gente. O povo naquela comunidade se alimentava de arroz, era a comida deles, a comida do branco. Ele, Dario, também trazia muita farinha, por isso passaram a viver próximos. Matavam para gente as vacas, para nos alimentar. Mas tudo isso era uma farsa, porque, na verdade, eles queriam era a nossa terra e davam as coisas para nós por isso. Eles, de repente, estavam fazendo acordo para tirar a gente. Creio que eles já estavam cansados da gente. A gente se alimentava muito da comida do branco vivendo próximo deles, mas acho que eles se cansaram disso também e por isso quiseram tirar a gente. Ele ter recebido ordem para retirar a gente, ele levou a gente muito próximo do Xingu. E a gente caminhando, ele a cavalo. Eu conheço o Xingu, isso eu posso falar. No Xingu eu me tornei adolescente. Eu me tornei adolescente perto do Xingu. Foi para lá que ele levou a gente. A aldeia era chamada de Udzu'rãiwawe. Lá também abriram uma pista de pouso. Os Xavantes que abriram para ele. Em troca ele deixava para nós a farinha. Lá ficamos por um ano. Então, a caminhada foi muito grande. Na verdade, todas as pessoas envolvidas ali contra nós, queriam mesmo a terra. Estava tudo certo da nossa transferência e eles sabiam que a gente ia morrer também, mas ninguém falava para nós. Nem fomos informados para onde a gente ia ser levado e o que poderia acontecer. A doença era estranha, já deixava a gente fraco, mas também aqueles que sobreviveram conseguiram sair da doença, hoje nós estamos aqui. Eu também fiquei doente e sobrevivi, mas nem sempre tivemos sorte, nem todo mundo sobreviveu. Muitos não resistiram à doença. Sempre guardei essas histórias para um dia eu fazer relato e esse momento é agora que eu estou falando. A conversa antes da transferência era boa entre nós. Mas também, o nosso tio, se ele tivesse mesmo resolvido ficar, ele até falou: vocês podem ir eu fico, quem sabe eu posso morrer aqui, os brancos também podem me matar, está cada vez chegando mais próximo! Realmente, teve resistência na

Bernardino Paridzané's testimony recalls the moment of the *transfer* and the feelings, on the one hand, of hope about the future of the group, and on the other, of indignation because no one told them what would happen:

> And on the day of the transfer, we thought it would be peaceful for us and we thought we would live well. We got on the plane, but this commitment didn't stop us, it continued, the action of the priests. They really wanted to finish us off. They set us up. Did anyone know anything against us? No. Nobody knew anything. The situation that happened was like this. The rest of us here, the survivors here, the ones here, we stink. The ones we've grown, the ones we've survived. What's left. We grew up together and today we are here. The Pope must pay for this too. This crime that happened to us. Because many people died. SPI, at the time, agreed with our withdrawal, his authority, the government. I don't know who was the authority at that time, but they were all in agreement with the Church. They have to pay. That's why, while we're alive, we take this work seriously and run with this process. This one that you came may be the last time you see us, but while we are here, you must join forces to get something for us. Be in a hurry about this process. I ask this of the Church as well. They must consider the loss that we have had, the deaths, and they must now look at who is alive and receive the compensation. So you have to fight firmly in this process, because you can find another story so as not to pay for the mistake you have made. I am still touched by the memory. (my translation (Bernardino Paridzané's testimony, 2014) (my translation) (my emphasis).[44]

véspera da transferência. O nosso tio não queria ir. Tinha gente que queria ir, mas era minoria. Foi inevitável a transferência de todos. Mas, antes de onde a gente estava na aldeia, chegando a notícia, nós fomos caminhando até a Fazenda onde era a nossa antiga aldeia, para gente ver a última vez a aldeia que nós vamos deixar, a Sede Suiá, foi chegando lá que, no outro dia, o avião chegou. Ainda no mesmo dia teve a nossa cerimônia pela última vez naquela terra. Ao mesmo tempo, foi de propósito, para manchar o avião. Muitos já sabiam que não sobreviveriam. Todo aquele momento foi a última vez" (Depoimento de Gregório Xavante, 2014).

[44] "E no dia da transferência, achamos que ia ser tranquilo para nós e achamos que íamos viver bem. A gente entrou no avião, mas, também, esse cometimento não parou com a gente, isso continuou, a ação dos padres. Eles queriam mesmo era acabar com a gente. Eles que fizeram armadilha para nós. Alguém soube de alguma coisa contra nós? Não. Ninguém ficou sabendo de nada. A situação que aconteceu foi desse jeito. Esse restante que estamos aqui, os sobreviventes que estamos aqui, esses que estamos aqui, somos fedidos. Esses que a gente cresceu, que sobrevivemos. O que sobrou. Crescemos juntos e hoje estamos aqui. O Papa deve pagar por isso também. Esse crime que aconteceu com a gente. Porque morreu muita gente. SPI, na época, concordou com a nossa retirada, sua autoridade, o governo. Não sei quem era autoridade nesse tempo, mas todos eles estavam em acordo com a Igreja. Eles têm que pagar. Por isso, enquanto a gente tá vivo, leva esse trabalho a sério e corre com esse processo. Esse que vocês vieram pode ser a última vez que vocês veem a gente, mas, enquanto a gente tá aqui, deve juntar as forças para conseguir alguma coisa para nós. Tenham pressa em relação a esse processo. Faço esse pedido também à Igreja. Eles devem considerar a perda que nós tivemos, as mortes, e devem olhar agora para quem é vivo e receber a indenização. Por isso, tem que lutar com firmeza nesse processo, porque pode arrumar outra história para não pagar o erro que cometeram. Eu ainda fico emocionado com a lembrança" (Depoimento de Bernardino Paridzané, 2014).

The testimony of Rafael Weree's grandfather, one of the main interlocutors with whom we worked for the production of data for this dissertation, testified about his lack of knowledge regarding the Xavante's *transfer* plans that was in progress:

> Nobody called the plane, nor did our ancestors know about this story. Neither the grandchildren, today, did we know it either. But it turns out that the governments of the time made a deal. None of them were in the village. None of us arrived in Brasília, neither in São Paulo, nor in Barra do Garças. There was no such thing. Only we lived, our parents only thought of hunting, of doing the traditional festivals and all the activities of the village. That's all they did. And when the plane arrived, the day before, we were in ceremony. We also believed, a little bit, when the news came from the priests, we thought that they were not murderers either. We thought they were good. And inside the plane, the old people, nobody knew what plane was, they didn't know plane. They didn't want to get inside the plane. They even thought about sending only the young people to stay there for a while. Then, when we saw things, the conditions, and if something was wrong, we would return to our home. They, the old, our elders, didn't want to get in at all, neither did we, the young people. But because we were very uninformed about the situation, nobody stayed. We were still painted from the ceremony that we had done the day before. Only when we got there did we take out the painting and the plane that was carrying us was all red inside, with urucum. In fact, nobody called us. It was the priests who took us from here to the others. We fell into a trap (...) Plane made four trips. When we got off the plane, there were some old people who came to welcome us. I consider our arrival as animals arriving at the zoo. We had no leadership waiting for us. And our parents were made of children, took them to the center of the village, put in lines for recognition. And we young people went to the Mission. Then we didn't know anything else about the rest. I don't know what their reaction was. Within a week a lot happened for us and my mother died too, who always took good care of me during my ear-piercing ceremony and is now there, without visiting the tomb. That's how it happened (Rafael Weree grandfather's testimony, 2014) (my translation).[45]

[45] "Ninguém chamou o avião, nem os nossos antepassados sabiam dessa história. Nem os netos, hoje, nós nem sabíamos também. Mas, acontece que os governos da época fizeram acordo. Nenhum deles esteve na aldeia. Nenhum de nós chegou a Brasília, nem a São Paulo, nem Barra do Garças. Não existiu isso. Só viviam nós, nossos pais só pensavam em caçar, de fazer as festas tradicionais e todas as atividades da aldeia. Apenas isso que eles faziam. E quando o avião chegou, no dia anterior, a gente tava em cerimônia. A gente acreditou, também, um pouco, quando chegou a notícia dos padres, achávamos que eles não eram assassinos também. Achávamos que eles eram bons. E dentro do avião, os velhos, ninguém sabia o que era avião, não conhecia avião. Eles não queriam entrar dentro do avião. Eles pensaram até em mandar apenas os jovens para ficar lá um pouco. Depois, quando a gente visse as coisas, as condições, e se tivesse algo errado, a gente retornaria para a nossa casa. Eles, os velhos, os nossos anciões, não queriam entrar de jeito nenhum, nem a gente, os jovens. Mas, como a gente estava muito desinformado da situação, acabou que ninguém ficou. A gente estava ainda pintado da cerimônia que a gente havia feito um dia antes. Só quando a gente chegou lá é que tiramos a pintura e o avião que carregava a gente ficou todo vermelho por dentro, de urucum. Na verdade, ninguém chamou a gente. Foram os padres que tiraram a gente daqui para os outros. Caímos em armadilha (...) Avião fez quatro viagens. Quando descemos do avião, tinha alguns velhinhos que foram receber a gente. Considero a nossa chegada como animais chegando no zoológico. Não tínhamos liderança esperando por nós. E os nossos pais foram feito de crianças, levaram eles para o centro da aldeia,

The violence against the Xavante of Marãiwatsédé is fundamental to understand the Xavante's expectation of redress.

> And now they have to pay for us. I expect a lot of bag of money to send to them. For us to minimize our suffering. The life of our relatives has to cost dear, it cost dear for us. Those who destroyed Marãiwatsédé, land are not even theirs. The land is ours, it is where we were born, it is where our mothers were very pregnant waiting for us. So, no one else should touch that land but Xavante from there. They have to live where they were born, where the mothers carried in their bellies. Now Marãiwatsédé is where we were born. Marãiwatsédé is ours, no one else should touch Marãiwatsédé (No name's testimony, 2014) (my translation).[46]

For Rosa, the *deportation* of the Xavante in 1966, in itself unconstitutional under the Federal Constitution of 1946, was followed by a sequence of other violations that made its consequences extremely serious:

> (...) they had relatives killed by measles in the Salesian mission of San Marcos; they made pilgrimages to Indigenous lands of other Xavante, being rejected in all; they returned to Marãiwatsédé and lost three children to malnutrition and poisoning suffered on the edge of BR 158 where they camped. Even today, after the reconquest of the land, they suffer because Marãiwatsédé is the most deforested Indigenous land in the country and is the target of criminal fires and overflights of pesticides and herbicides on their village (ROSA, 2015, p. 16) (my translation).[47]

"We went in without thinking about the consequences" (my translation)" [48], said Chief Damião, about when the Xavante decided they would return to Marãiwatsédé, in

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colocaram em filas para reconhecimento. E nós, jovens, fomos para a Missão. Então, a gente já não soube de mais nada do restante. Não sei como foi a reação deles. Dentro de uma semana aconteceu muita coisa para nós e a minha mãe morreu também, que sempre me cuidou bem durante a minha cerimônia de furação de orelha e agora está lá, sem visitar o túmulo. Foi assim que aconteceu" (Depoimento do avô de Rafael Weree, 2014).

[46] "E agora eles têm que pagar para nós. Espero muito saco de dinheiro para mandar para eles. Para a gente minimizar o nosso sofrimento. A vida de nossos familiares tem que custar caro, custou caro para nós. Aqueles que destruíram Marãiwatsédé, terra nem são deles. A terra é nossa, é onde a gente nasceu, é onde as nossas mães andaram muito grávida esperando a gente. Então, ninguém mais deve tocar naquela terra sem ser Xavante de lá. Eles têm que viver aonde eles nasceram, onde as mães carregaram na barriga. Agora, Marãiwatsédé é onde a gente nasceu. Marãiwatsédé é nosso, ninguém mais dos brancos deve tocar *Marãiwatsédé*" (Depoimento anônimo, 2014).

[47] "(...) tiveram parentes vitimados por sarampo na missão Salesiana de São Marcos; peregrinaram em terras indígenas de outros Xavante, sendo rejeitados em todas; retornaram a Marãiwatsédé e perderam três crianças para desnutrição e envenenamentos sofridos à beira da BR 158 onde acamparam. Ainda nos dias atuais, depois da reconquista da terra sofrem em virtude de que Marãiwatsédé ser a terra indígena mais desmatada do país e ser alvo de queimadas criminosas e sobrevoos de agrotóxicos e herbicidas sobre sua aldeia" (ROSA, 2015, p. 16).

[48] "Nós entramos sem pensar nas consequências" (Depoimento do Chefe Damião, 2014).

2012, before the bad-faith invaders were removed by judicial order. According to him, the same inconsequent and impulsive thinking also guided them when they decided they would get on the plane, thinking they would spend a season elsewhere, which is very similar to a walk's characteristics and then return to their territory. Never, as is evident in the survivors' speeches, did the Xavante agree to be permanently *removed* to another region. As evidenced by the speeches of the leading agents that orchestrated the *transfer and based on the survivors'* testimonies, the Xavante people were convinced, by a sophisticated seduction process that used the imagetic figure of the airplane, of great coercive power over the Indigenous, that they would take a walk in a beautiful place, maybe spend some time there, but would return to their homes.

The Xavante de Marãiwatsédé account is equivalent to the "removal" of another Xavante group to the Pedro III Aldeamento do Carretão, as narrated by Oswaldo Ravagnani, "The Xavante experience with the world of whites". This another removal episode is also an essential reference to substantiate the long duration referred to in the concept of historical debt.[49]

The dispute over the territory corresponding to the Marãiwatsédé has already been the subject of an investigation by anthropologists, historians, government agencies, non-governmental organizations, and Catholic Church members. For this work, the works of Giaccaria & Heide (1984), Maybury-Lewis, (1984), Juliana Cristina da Rosa (2015), Patrícia de Mendonça Rodrigues (1992), as well as the statements and writings of Bishop Pedro Casaldáliga (1971), have been mentioned.

The Xavante people belong to the Macro-Jê language family and call themselves the *A'uwe Uptabi*, which means "true people." The total population of the Xavante, including all their subgroups, is eighteen thousand people (IBGE, 2010), distributed over more than 150 villages which, in turn, are spread over nine Indigenous Lands – in all, there is 1,380,000 ha – of which six are territorially discontinued" (PAULA, ISA/2001/2005, p. 737). The Xavante are characterized by internal political factions and subdivisions that are constantly reformulated:

> Like other Gê societies, the Xavante communities were temporary arrangements subject to constant divisions and reconfigurations, nucleations and dispersions. They were shaken by wars that originated in village politics and kinship relations, as well as in beliefs and attitudes proper to their culture, competition for natural resources, and

[49] See https://www.jstor.org/stable/41825752.

> interaction with non-Indians (...) Within the villages, Indigenous leaders tried to deal with internal divisions. They exploited SPI favors to reward friends and punish opponents, and could not ensure unanimity in the community. (FERGUSON, 1990, p. 26-55 apud GARFIELD, 2011, p. 342) (my translation).[50]

The Marãiwatsédé Indigenous Territory is located in the Northeast of the State of Mato Grosso, in the micro-region classified by the Brazilian Institute of Geography and Statistics (IBGE), as Norte Araguaia, which covers fourteen municipalities: Alto Boa Vista, Bom Jesus do Araguaia, Canabrava do Norte, Confresa, Luciara, Novo Santo Antônio, Porto Alegre do Norte, Ribeirão Cascalheira, Santa Cruz do Xingu, Santa Terezinha, São Félix do Araguaia, Serra Nova Dourada and Vila Rica. According to FUNAI data, the Marãiwatsédé Land has a total area of 165,214.2291 hectares and covers the municipalities of São Félix do Araguaia, Bom Jesus do Araguaia and Alto Boa Vista.

Marãiwatsédé, which in *A'uwe* language means "big forest," is surrounded by the valleys of the Araguaia, Xingu and Tapirapé Rivers. Separating each basin is the Serra do Roncador, considered part of the Xavante territory and a significant obstacle to the expansion fronts (RODRIGUES, 1992, p. 02). Rich in fauna, flora, and water, the Serra do Roncador has dense forest areas, plains that are flooded most of the year, called "varjão," and vast cerrado areas where the Xavante choose to establish their villages (RODRIGUES, 1992). In addition to "big forest" or "beautiful bush," the name Marãiwatsédé has meanings related to the riches and beauties present in the territory.

As described in the "Identification and Delimitation Report of the Marãiwatsédé Indigenous Area," there are specific names to delimit the traditional regions inhabited by each Xavante group: "the region where the Pimentel Barbosa Indigenous area exists today, for example, is called *wedeje* by them. The Xavante of *wedeje* are a group. The Xavante of Marãiwatsédé, another" (RODRIGUES & FERRAZ, 1992, p. 4-5).

For the Attorney General and Criminal Coordinator in the State of Mato Grosso, Ludmila Bortoleto Monteiro (2014, p. 1), the Marãiwatsédé land "is in the center of a soy

[50] "Como outras sociedades Gê, as comunidades Xavante eram arranjos temporários sujeitos a constantes divisões e reconfigurações, nucleações e dispersões. Eram abaladas por guerras que tinham origem na política das aldeias e nas relações de parentesco, bem como em crenças e atitudes próprias de sua cultura, competição pelos recursos naturais e interação com os não-índios (...) Dentro das aldeias, os líderes indígenas tentavam lidar com as divisões internas. Exploravam os favores do SPI para recompensar amigos e punir adversários, e não podiam assegurar unanimidade na comunidade" (FERGUSON, 1990, p. 26-55 apud GARFIELD, 2011, p. 342).

and cattle runoff axis, where the government itself aims to asphalt the BR-158, which connects the north to the south of Brazil, starting in Pará and passing through the states of Mato Grosso, Goiás, Mato Grosso do Sul, São Paulo, Paraná, Santa Catarina and Rio Grande do Sul, where it ends at the border with Uruguay, in the municipality of Santana do Livramento. For being in this strategic axis for the agribusiness of latifundium, the territory corresponding to Marãiwatsédé was always the object of intense dispute" (my translation)". [51] For being in this strategic axis for the agribusiness of latifundium, the territory corresponding to Marãiwatsédé was always the intense dispute object.

Understanding the facts involving the *transfer* of Marãiwatsédé*'s* Xavante in the 1960s, and all the tragic events that followed, demanded repeated reading and analysis of the survivors' accounts and their interpretation of what happened. It is the memory of the Xavante survivors that best recounts the events that occurred, mentioning the transfer and life in the Salesian mission, the deaths and the mass dumping of corpses in mass graves. Equally important was the consultation of previous works dedicated to the theme, such as the Master's dissertation of historian Juliana Rosa, "*A luta pela Terra Marãiwatsédé: povo Xavante, Agropecuária Suiá Missú, posseiros e grileiros do Posto da Mata em disputa* (*1960-2012*)" [52], defended in 2015. In her work, Rosa highlights the chaotic scenario involving the dispute for this territory and the many phases of the conflict that have not had a satisfactory outcome to date since there has not yet been proper reparation.

Without privileging the narrative of one or the other victim, the historian recounts with a wealth of images and administrative and historical documentary sources the chronology of the facts involving the dispute for Marãiwatsédé that involved the participation of various historical agents, with divergent conceptions of land use: "Farmers, settlers, entrepreneurs, peasants, workers, religious missionaries, agents and officials of the state, activists of Indigenous causes, squatters, land grabbers and local politicians" (ROSA, 2015, p. 20).[53] The complexity of the facts and narratives of the survivors is evident in excerpts from several statements by the survivors, including

[51] "Encontra-se no centro de um eixo de escoamento de soja e gado, onde o próprio Governo visa asfaltar a BR-158, a qual liga o norte ao sul do Brasil, iniciando-se no Pará e passando pelos Estados do Mato Grosso, Goiás, Mato Grosso do Sul, São Paulo, Paraná, Santa Catarina e Rio Grande do Sul, onde encontra seu término na fronteira com o Uruguai, no município de Santana do Livramento".
[52] "The struggle for the Marãiwatsédé Land: Xavante people, Suiá Missú agriculture, squatters and land grabbers of the Posto da Mata in dispute (1960-2012)."
[53] "Fazendeiros, colonizadores, empresários, peões, trabalhadores, missionários religiosos, agentes e funcionários do Estado, militantes das causas indígenas, posseiros, grileiros e políticos locais".

Francisco Tserewa'wa, Dario Tserenhõ'rã, Martinho Tsere'upte and Estevão Tsimituté, as follows:

> We listened to the words of the priest who articulated the plane to get us out, together with the military. I already had SPI at that time, but they were not smart. Nobody defended Marãiwatsédé, nor SPI defended us. That's why we changed villages again. Even though they were the owners of the land, they started to corner us. Then we moved from there. And then, we did our ceremony, as our tradition dictates. That was the last one we did, because our transfer was already articulated. The plane to get us out was already right. The day of the transfer was already near and the priest tied everything. It only remained to define where they would leave us, but it was right to take us to San Marcos. The old people weren't all going to die, but the disease killed a lot of people, so listen well to my speech, I am Tserewa'wa, my young name, then Francisco. Even so, we did Wai'a, our godson, Tirol, we were a singer, because it was close to our withdrawal. All at short notice now. The next day, early, the plane was already coming for us. They saw the plane coming. It was time for our transfer. We felt sorry for each other. Even being the owners of the land, this situation was happening. I had a lot of children, girls, old people, hot people, tempá, our group. The old Indians will stay, because they were already feeling the misfortune (Francisco Tserewa'wa's testimony, 2014) (my translation).[54]
>
> Well, we moved in together and it took us a while to change places, that's when the plane arrived, and the arrival of the plane meant what? For us to die, to leave the earth. White people like Ariosto, together with the military and the farmers, gathered to get us out of here (Dario Tserenhõ'rã's testimony, 2014) (my translation).[55]
>
> The plane was already waiting. The plane was big, from FAB. We were still painted and we were taken like this, we were together, we didn't want to get on the plane, we didn't want to leave the Suiá, but they pushed us into the plane. We missed a lot, our situation was poor and then they started to transport us. I think it was three trips and the plane was very big and long. We would get off the plane and people would

[54] "A gente escutava a fala do padre que articulava o avião para nos tirar, junto com os militares. Já tinha SPI nessa época, mas eles não foram espertos. Ninguém defendeu Marãiwatsédé, nem o SPI defendeu a gente. Por isso, mudamos de aldeia novamente. Mesmo sendo donos da terra, começou a encurralada para cima da gente. Depois, mudamos de lá. E aí, nós fizemos a nossa cerimônia, como manda a nossa tradição. Isso era a última que a gente fez, porque já estava articulada a nossa *transferência*. O avião para nos tirar já estava certo. O dia da *transferência* já estava próximo e o padre amarrou tudo. Só faltava definir aonde iriam nos deixar, mas ficou acertado tirar a gente para São Marcos. Os velhos não iam morrer todos, mas a doença matou muita gente, por isso, escuta bem a minha fala, eu sou *Tserewa'wa*, meu nome de jovem, depois Francisco. Mesmo assim, nós fizemos *Wai'a*, nosso afilhado, *Tirol*, a gente era cantor, porque já estava próxima a nossa retirada. Tudo em cima da hora já. No dia seguinte, cedo, o avião já estava vindo nos buscar. Eles avistaram o avião vindo. Era chegada a hora da nossa *transferência*. A gente ficava com dó um do outro. Mesmo sendo donos da terra, estava acontecendo essa situação. Tinha bastante criança, moça, velhos, *hotorã*, *tempá*, nosso grupo. Os índios anciãos vão ficar, porque já estavam pressentindo a desgraça." (Depoimento de Francisco Tserewa'wa, 2014).

[55] "Bom, passamos a morar juntos e demorava a gente mudar de lugares, foi quando chegou o avião, e a chegada do avião significou o que? Para a gente morrer, deixar a terra. Os brancos como Ariosto, junto com os militares e os fazendeiros se reuniram para tirar a gente daqui." (Depoimento de Dario Tserenhõ'rã, 2014).

> welcome us (Martinho Tsere'upte's testimony, 2014) (my translation).[56]
>
> They cheated and lied to get us out of here, so that we would die there. Dario had told them to take only a few young people (Nodzo'u) to send us to São Marcos to study, but they articulated everything to get us out of here. So they took the Xavante from another area to mediate, Aniceto, Tsitedzé and Serafim. Duté, when he was a teenager, they broke his shoulder to take the plane, for him to go along (Estevão Tsimituté's testimony, 2014) (my translation).[57]

Besides the statements of the Xavante survivors, other documents necessary for the understanding of the process of historical debt contraction of the Brazilian State concerning the Xavante of Marãiwatsédé were the "*Identification Report of the Indigenous area "*Marãiwatsédé*"*, by Rodrigues and Ferraz (1992), produced 25 years after the removal of the group, the "Valley of Forgotten" Documentary (op. cit.) and the accounts of Bishop Pedro Casaldáliga. For the Bishop:

> The owners of the farm (Suiá-Missu) sought out the mission of St. Mark of Xavante and persuaded their superiors to accept the Xavante of Suiá in it. This happened in 1966. The Xavante were transported by FAB plane, 263 in number, and most of them died a few days after arriving in São Marcos, victimized by a measles epidemic (CASALDÁLIGA, 1971, p. 16) (my translation).[58]

In the Timeline 1 (below) it is possible to observe how the history of irregular occupation of Indigenous territories in the state of Mato Grosso of Brazil evolved, as well the events that culminated with the resumption of Marãiwatsédé territory by the Xavante People. Timeline 2, in turn, presents the procedures for identification of Marãiwatsédé Land and some important events related to its judicial dispute.

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[56] O avião já estava esperando. Avião era grande, da FAB. Estávamos pintados ainda e fomos levados desse jeito, a gente estava junto, não queríamos entrar no avião, não queríamos deixar o Suiá, mas empurraram a gente para dentro avião. Muita saudade, a nossa situação era de coitadinho e aí começaram a transportar a gente. Acho que foram três viagens e o avião era muito grande e comprido. A gente descia do avião e as pessoas recebiam a gente." (Depoimento de Martinho Tsere'upte, 2014).

[57] "Enganaram e mentiram para nos tirar daqui, para nós morrermos lá. Dário tinha falado para pegar só alguns jovens (*Nodzo'u*) para mandar estudar em São Marcos, mas articularam tudo para nos tirar daqui. Então, eles pegaram os Xavante de outra área para fazer intermediação, Aniceto, Tsitedzé e Serafim. *Duté*, quando era adolescente, quebraram o ombro dele para pegar o avião, para ele ir junto." (Depoimento de Estevão Tsimituté, 2014).

[58] "Os proprietários da fazenda (Suiá-Missu) procuraram a missão de São Marcos, de Xavante e persuadiram aos superiores da mesma a aceitaram (sic?) nela os Xavante da Suiá. Isto acontecia em 1966. Os Xavante foram transportados em avião da FAB, em número de 263, tendo morrido boa parte deles aos poucos dias depois de chegados a São Marcos, vitimados por uma epidemia de sarampo" (CASALDÁLIGA, 1971, p. 16).

TIMELINE 1

HISTORY OF IRREGULAR OCCUPATION OF INDIGENOUS TERRITORIES AND LANDS IN THE STATE OF MATO GROSSO AND THE RESUMPTION OF INDIGENOUS LAND MARÃIWATSÉDÉ BY THE XAVANTE PEOPLE

MONTH	YEAR	EVENT / FACT
	1784 – 1788	A "bandeirismo" period that aimed at the exploitation of gold mines. After innumerable conflicts, there was the "pacification" of the Xavante in Pedro III Village, of the "Carretão" site, Goiás Province, together with other Indigenous Peoples (GOMIDE, 2011).
	1892	Through a process of "directed colonization" in the State of Mato Grosso, not only specific legislation was created, but "the institutional support necessary to activate the action of capital in order to intensify land investments, since it provided the sale of vacant lands" (LOMBA, 2003, p. 55)
	1938	The so-called "March to the West", during the Getúlio Vargas Government, attracted to the State of Mato Grosso rural producers interested in buying cheap land, supposedly characterized as "demographic vacuums" and "vacant land".
	1940 – 1960	This twenty-year period was marked by disorderly land occupation, with an exponential increase in "contracts for the purchase and sale of vacant land" in the State of Mato Grosso. The process contributes not only to intensify the occupation of the interior of Brazil, but also to increase the state's tax revenue. Here, private capital has acquired large portions of land, forming large soybean and cattle estates on lands considered "unproductive. According to Vasconcelos, "The indigenous lands included in the unclaimed list received no specific treatment, it was only determined that the state government should reserve public lands to settle tame Indians. Decree No. 200 of Colonel Generoso Paes Leme de Souza Ponce, president of the state of Mato Grosso, was not at all 'generous' to the Indians. This government's colonization plans included densely populated regions" (VASCONCELOS, 1999, p. 166) (my translation). [59]
	1966	The Xavante de Marãiwatsédé are removed from their traditional territory in a plane from the Brazilian Air Force (FAB) to the Salesian Mission of São Marcos, located about 600 km to the South, after negotiation between the Federal Government, the priests of the region and business rural groups.

[59] "As terras indígenas incluídas no rol devolutas não receberam nenhum tratamento específico, ficou apenas determinado que o governo do estado deveria reservar terras públicas para o aldeamento dos índios mansos. O Decreto n. º 200 do Coronel Generoso Paes Leme de Souza Ponce, presidente do estado de Mato Grosso, não foi nada 'generoso' com os indígenas. Foram incluídas nos planos de colonização deste governo regiões densamente povoadas" (VASCONCELOS, 1999, p. 166).

	1967	Agropecuária Suiá-Missú, of 1.8 million hectares, is set up in the Marãiwatsédé region, after being acquired by Ariosto da Riva.
	1970	The company Liquigás buys the area referring to the Xavante territory and sells it to the Italian company Agip Petroli. According to Monteiro, although the latter company recognized the traditional occupation of the area by the Xavante, "there was a meeting between farmers and local politicians, where politicians publicly encouraged squatters and landless families to enter the Indigenous territory in question" (MONTEIRO, 2014, p. 6)
	1971	FUNAI issues Negative Certificate refuting the traditional existence of Xavante in the area of Suiá-Missú Farm.

TIMELINE 2

ADMINISTRATIVE PROCEDURES FOR IDENTIFICATION OF MARÃIWATSÉDE LAND AND THE JUDICIAL DISPUTE FOR ITS *RETAKEN* BY THE XAVANTE PEOPLE [60]

MONTH	YEAR	EVENT / FACT
January	1992	Ordinance No. 09, of 01/20/1992, authorizes the identification process of the Marãiwatsédé Indigenous Territory, with the formation of a Working Group coordinated by anthropologist Patrícia de Mendonça Rodrigues, resulting in the Identification Report of the Marãiwatsédé Indigenous Area.
October	1993	The Ministry of Justice's Ordinance No. 363 of October 1, 1993 declares Marãiwatsédé as an Indigenous Land.
	1995	Preliminary decision authorizes the disintrusion of the non-Indigenous Marãiwatsédé.
February	1998	Five years after the declaration, Presidential Decree, of 02/11/1998, homologates the Marãiwatsédé Indigenous Land, following the administrative process defined by Decree 1.775/96.
	2000	A Federal Judge of the 5th Federal Court of the Mato Grosso Judiciary Section determines the return of the Xavante to Marãiwatsédé, under the responsibility of FUNAI, still occupied by bad-faith occupants.
October	2004	Four years later, through an extraordinary appeal before the Supreme Court Minister Ellen Gracie reaffirms the decision to return Marãiwatsédé to the Xavantes, in coexistence with bad-faith occupants.
	2007	New sentences are handed down against the defendants (bad-faith occupants) for their disintrusion and with provision for penalties relating to environmental crimes committed at the Indigenous territory. The Federal Public Ministry made the request for compliance with the sentences, for which the defendants imposed appeals in the Federal Regional Court of the 1st Region, which orders suspensive effect and interrupts the execution of the sentence.
	2010	Three years later, a partial dismissal of the official referral denied the defendants' appeals and gave conditions to the Federal Public Ministry to request continued compliance with the sentence of disintrusion of bad-faith occupants of TI Marãiwatsédé.

[60] The idea of return as “retaken”: a "recovery processes, by the Indigenous People, of areas traditionally occupied by them and which were in the possession of non-Indians" (ALARCON, 2013, p. 23).

	2011	Based on Bill no. 215/2011 of the State Government, Judge Fagundes de Deus suspends the entire process in order to discuss the possibility of exchanging the area in dispute. In the same year, Judge Souza Prudente declares without effect the suspension of the process.
December	2012	The Federal Public Ministry determines that the National Indigenous Foundation present a Plan of Disintrusion of TI Marãiwatsédé and begins the formation of a task force between several institutions and the Army to execute the plan. The Federal Police and the National Security Force work together to carry out the disintrusion bad-faith occupants, which effectively takes place on December 10, 2012, with much resistance from the objects of the action.

In 2000, the Xavante were judicially authorized to return to Marãiwatsédé, but only in 2009 was the occupation by ranchers and squatters considered bad faith by the Brazilian justice. The area's complete disintrusion was only concluded in 2013, but the invaders returned the following year after the Federal Police left the area. The threats to the physical integrity of the Xavante are constant to this day. The struggle of these people to prove the violence practiced against them, since the compulsory removal until today, has been a saga, even though the Federal Constitution of 1988 is very precise about the impossibility of removing Indigenous Peoples, except for the hypotheses of catastrophe or epidemic, foreseen in § 5 of Article 231. After the National Congress's approval and a guarantee of an immediate return to the land by the end of the risk, situations like these allow the removal of indigenous groups temporarily.

1.3 The Numbered Treaties in Canada (*Trick or Treaty*?)

Before starting the Lac Seul First Nation (LSFN) case, it is worth to pointing out an important difference between Canada and Brazil in terms of the model of land appropriation traditionally occupied by Indigenous peoples. In *Kanada*, throughout the 16th and 17th centuries, several documents were signed between representatives of the British Crown and Indigenous Peoples whose lands were the target of greed. These

documents became known as the *Numbered Treaties* and this phase of the Canadian colonization as the Treaty Era.[61]

The treaties are the root of Canada's tutelary and colonial treatment, and the Indigenous People included in them have been officially categorized as *Status Indian*. The Numbered Treaties were also signed in exchange for weapons and gifts to expel the English and exploit the fur trade in the Hudson Bay region. As a result, Indigenous persons were entitled to receive the so-called British Crown protection for agreeing *to surrender* their lands for the fur trade exploitation, as well as gifts and benefits, as annual payments of five dollars (known as annuities), which are made to this day in the very same value (MACKLEM, 1997).

Despite the fact that the Treaties signed between Indigenous bands and the British Crown established that settlers could reside and benefit from the natural resources existing in Indigenous territories, the understanding of Indigenous has always been of *sharing* the land, never *surrendering* (ASCH and ZLOTKIN, 1997). The Numbered Treaties were signed in the following chronological sequence:

- Treaty 1 - August 1871
- Treaty 2 - August 1871
- Treaty 3 - October 1873
- Treaty 4 - September 1874
- Treaty 5 - September 1875 (with adhesions from 1908 to 1910)
- Treaty 6 - August to September 1876 (with accessions in February 1889)
- Treaty 7 - September 1877
- Treaty 8 - June 1899 (with subsequent signatures and accessions until 1901)
- Treaty 9 - July 1905
- Treaty 10 - August 1906
- Treaty 11 - June 1921

Source: “Pre-Confederation Treaties”, *The Applied History Research Group*, informative pamphlet, 2000.

The first agreements were established along the East coast in the year 1700 through the Treaties of Peace and Friendship and again, in 1764, through the Treaty of Niagara. A common understanding of the Numbered Treaties by Indigenous Peoples in Canada is that these negotiations were primarily aimed at extinguishing their territorial rights. Noel Dyck addresses the Canadian tutelage administration and the dynamics and premises of the traditional forms of Canadian federal tutelage.

[61] “We are all treaty peoples” is a very common expression used nowadays in the social media by the Canadian society that wish that the reconciliation project happens.

The notion of *coercitive tutelage* (DYCK, 1997) is important because helps to understand the transactional nature and ideological bases of the services – educational, economic and social – extended by the liberal-democratic governments to native communities, the so-called "welfare colonialism": while seeking to help the *natives*, the government programs actually put them more and more in a position of dependency and subordination. State tutelage has dominated Indigenous Peoples differently from the promising era of today, with new developments being forged by contemporary Indigenous leaders (DYCK, 1997). Also, according to Dyck (1991a), the main element of the Indigenous administration system operated by the Canadian government since the 19th century was based on bargaining between native communities and successive colonial and imperial regimes.

In exchange for delivering large portions of land to the newcomers, the Indigenous were free to seek traditional ways of subsistence and participate in the fur trade business. In areas where the persecutions of Euro-Canadian colonization had ended, Indigenous groups were helped on their path to find new ways of life, understand, to become full Canadian citizens. During the period when the Department of Indian Affairs was administered by British imperial authorities, this tacit agreement gave Indigenous bands some autonomy while imperial military authorities relied on the support of Indigenous allies in times of conflict with the United States.

With the devolution of the Indigenous administration powers to Canadian officials, and with the advent of large-scale European immigration, this relationship was transformed into a unilaterally imposed system of coercive guardianship that intended to transform the Indigenous People into Christians with the habits of European civilization, which means the complete assimilation of Indigenous people into the Euro-Canadian society. In sum, Indigenous Peoples were to be subjected to a strict tutelage program control which intended to turn them into *brown white men* while large amounts of land were released for colonization and economic exploitation.

The Canadian government's tutelage structure included federal legislation, a federal government Department responsible for intervening in every aspect of Indigenous lives, the establishment of reservations administered by Indian agents, residential schools located outside reservations that separated Indigenous children from their parents, and a set of administrative prohibitions aimed to protect the Indigenous until they were deemed able to leave their reservations and emancipate themselves as full Canadian citizens (DYCK, 1991b).

1.4. The Treaty N. º 3

With the expansion to the West and the process of establishing treaties between the British Crown and Indigenous Peoples of Canada, the Anishinaabeg were included in Treaty N. 3, signed in 1873, but fully effective only in 1874, when the then Chief *Napanayyahgaynum* agreed to sign it.

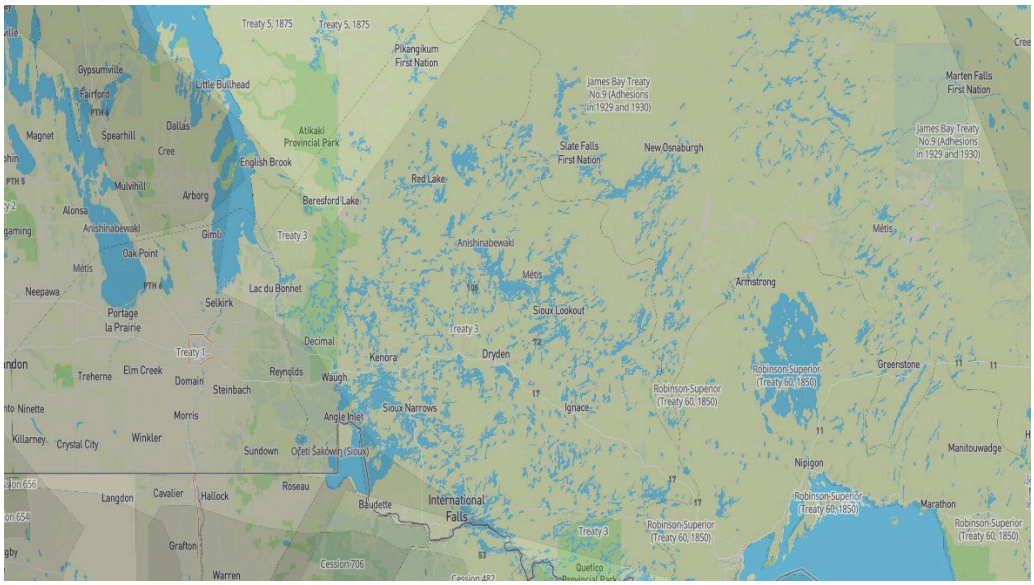
According to John Long (2010), negotiations to convince the Ojibwe to sign the treaty, however, began in 1870 when Wemyss Simpson, a retired member of HBC refused to accept the Ojibwe's requests that included perpetual annuities worth $10 per person and an annual supply of "flour, pork, tea and tobacco" as compensation for the transportation corridor that would pass through the territory. Simpson and the other commissioners then proceeded to the Lower Fort Garry region and negotiated Treaties 1 and 2 in 1871. Two years later, Simpson again failed to reach an agreement on the terms of the Treaty with the Ojibwe, who considered that the dues offered – of $3 per person (as provided for in Treaties 1 and 2) – did not reflect the value of gold and silver deposits recently discovered in their territory. Simpson was authorized to make a more robust offer and in 1873, with the Canadian Pacific Railway (CPR) scheduled to cross the region in three years, Alexander Morris, Lieutenant Governor of Manitoba and Northwest Territories, headed to the Northeast region of Lake of the Woods, where he began a new negotiation. Knowing that his territory was the only transportation route westward, known as the Dawson Route, and that the federal government aimed to build a highway-hydro system and a railroad to connect Canada, the Indigenous were in good bargaining position. Morris offered bonuses of $10 and perpetual annuities of $5 per person (quadrupling the amount offered in treaties 1 and 2), schools, hunting and fishing in unoccupied territory and $20 per year for chiefs. The Ojibwe demanded bonuses of $15 and annuities of $10, being $50 for chiefs, $20 for advisors and $15 for "soldiers" (LONG, 2010).

The Ojibwe knew that cattle and tools for agriculture had been offered as external promises not written into Treaties 1 and 2 and were aware of the generous (but not perpetual) provisions of the treaties south of the international border with the American Ojibwe, the Northwest Angle Treaty. In 1873, Morris increased bonuses from $10 to $12, but dues remained at $5. Implements and seeds would be provided to the flocks that cultivated (LONG, 2010). Ammunition and twine would be distributed, with a maximum

value of $1500. Before agreeing, the Ojibwe also extracted additional concessions: new saddlebags for the boss every three years, a toolbox for the flock and protection for the inhabitants of their reserves. They also received confirmation that they would be exempt from military recruitment in the event of war. A request for free passage on the steamboats and the railroad that would transform their homeland was, however, denied (LONG, 2010).

The negotiation of Treaty Number 3 with the Anishinaabeg was done orally. Its terms were read in English to a people who barely spoke that language and presented as a device that would protect them from the invasion of new settlers. At the time, Canada's integration project included the construction of new railways as part of a national unification strategy. As pointed out by several scholars that focus the land claims debate in Canada, the Treaties were not only unilaterally misunderstood by Indigenous but also were the legal device used by the British Crown to extinguish Aboriginal land titles (CULHANE, 1998; LONG, 2010; ASCH, 2014; COULTHARD, 2014; BARROS, 2019). The scope of Treaty Number 3 is pictured as follows:

Image 2: Scope of the Treaty Number 3 (where it is also possible to visualize the Robinson-Superior Treaties – 1850 - and Treaties Number 1 and 5 - 1875).



Source: https://native-land.ca/.

Treaty No. 3 was then finally signed in 1873. *Sahkatcheway*, the leader of the people of Lac Seul, left his mark on Treaty No. 3 by supporting Morris' initial offer. After the signing, the federal government honored the external promises made during the signatures. A court ruling would change these situation years later, when rights to non-reserved land and natural resources were passed to the Ontario provincial government. By granting a license for logging on Lake Wabigoon to St. Catherine's Milling and Lumber Company in 1883, the Province of Ontario challenged the authority of the federal government. The repercussions of Indigenous rights in this case were striking for the Indigenous Peoples, who never participated in the legal proceedings. The case reached the Judiciary Committee of the Privy Council of Great Britain, the highest court of appeal in Canada, and the province won the case in 1888 (LONG, 2010).

According to the ruling, *Indians* had no right to land after the Confederacy, but only a limited right to use it for the pleasure of the Crown. The Crown had the title to land simply by virtue of claiming it. As historian David Calverley notes:

> Ontario's victory at St. Catherine's Milling (...) strengthened Ontario's control over natural resources, degraded the status of treaties and rights related to provincial power and affected the federal government to such an extent that it was reluctant to challenge the laws of the Ontario game. But the disputes between the federal government and the Province of Ontario over Treaty 3 did not end with the St. Catherine's Milling case.

> In the 1960s, the courts reassessed the treaty's rights (CALVERLEY, 2009, p. 142).

1.5 The history of Lac Seul First Nation (LSFN)

Like Brazil, Canada has a trajectory of colonization and inequality permeated by negative and traumatic experiences, while it is also endowed with a sense of historical responsibility, revealed in the fact that it no longer denies, but seeks to acknowledge and enunciate, that its civilization project has undergone assimilation, integration and the "cultural genocide" of Indigenous Peoples (WOOLFORD; 2016). Let's see, then, the case of Lac Seul First Nation and its historical background.

The Lac Seul First Nation reserve is located 400 km north of Thunder Bay. The first time I visited the region in the summer of 2018, I decided to travel from Orillia to Thunder Bay by *Greyhound*.[62] Although very tiring, the overland travel allowed me to observe that Canada's border with the United States gets further south, Canada's Indigenous diversity is increasing and becoming evident. Indigenous peoples – First Nations, Métis, and Inuit – are Canada's "inside other" in addition to the Quebecois; however, unlike the latter, it is Indigenous people who experience societal exclusion and "poverty" in Canadian society, although we must use the latter term in quotation marks, underlining, and italics.

If in Brazil there are 896,000 Indigenous persons (CENSO/IBGE/2010), in Canada, this number is not much higher, ranging from 1.39 to 1.43 million people.[63] In both countries, Indigenous People are the population segments with the worst human development indicators compared to other non-indigenous fellow citizens considered flawed. Data from the Tapirisat Kanatami Inuit revealed that staple foods cost three times more in Clyde River, Nunavut Territory, as in Ottawa ($31.22 against $9.47). Not to mention that Indigenous Peoples living in Canada's urban areas are twice as likely to live in poverty as other Canadians.[64]

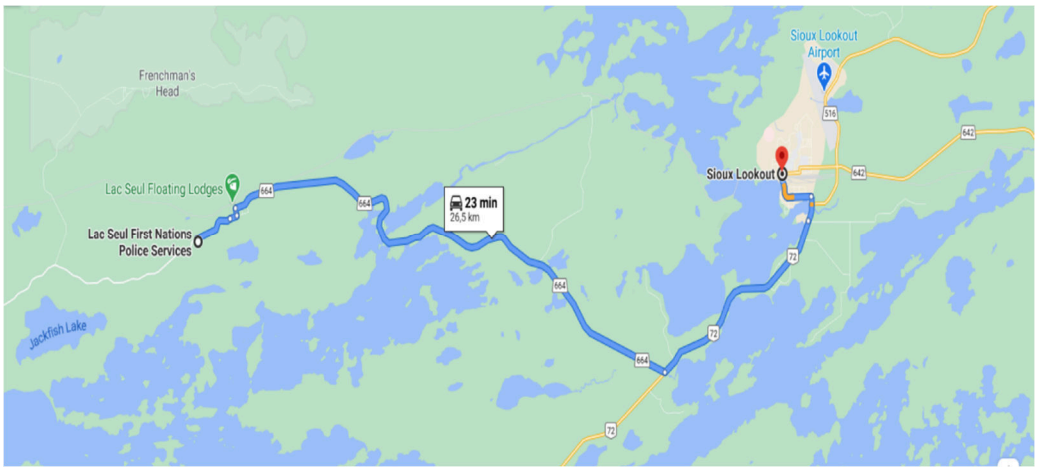
The Lac Seul First Nation reserve covers 66,248 acres of land and consists of three distinct communities: Frenchman's Head, Kejick Bay, and Whitefish Bay. These communities are located on the southeastern shores of Lac Seul Lake and the northern

[62] There is no direct bus from Orillia to Thunder Bay. However, services are departing from Orillia and arriving at Thunder Bay via Sudbury and Sault Ste. Marie. The journey takes approximately 20h 20m.
[63] According to Statistics Canada.
[64] According to the Canadian Council for Social Development

shores of Lost Lake. The site where Lac Seul's reserve is located today is rich in fishing, access to fresh water and has an ideal coastline for the cultivation of wild rice. The area was chosen by the Chief *Napanayyahgaynum*, with the support of a group of elders, in order to preserve their traditional lifestyle. The table that follows, obtained from the band's office, presents the population data of the LSFN reserve. The general membership consists of about 2,700 people, two thirds of which live off reserve.[65]

The people of Lac Seul are speakers of the Ojibway, Oji-Cree, and English languages. The reservation is 26,5 kilometres from Sioux Lookout, as showed in the Image 3, below:

Image 3: Route from Sioux Lookout to LSFN



Source: Google Maps

The terms "Anishinaabe" and "Ojibway" basically describe the same group of people but may have different implications. Ojibway is used to identify the Ojibway language that has existed since before the arrival of Europeans. Anishinaabe is a more intimate term that encompasses deep feelings about the past, as well as being the way people call themselves (SINCLAIR, 2013). According to Roger Spielmann, the term *Anishinaabe* (pronounced Aw-nish-naa-bay) "is the most common used for group self-identification among Indigenous People who live around the Great Lakes – Ojibwe / Chippewa, Algonquin / Nipissing, Saulteaux / Missisauga, Odawa, Delaware,

[65] According to 2018 data from the Lac Seul Band Office and information available at: https://lacseulfn.org/about/history/

Potawatomi and Oji-cree – because of its unique, culture-specific meaning as 'The First Peoples'" (SPIELMANN, 2009, p. 11).[66]

At the end of the 19th century, economic and religious interests drove the invasion of the Northwestern portion of Ontario, focusing on the territory of the Ojibwe-speaking peoples. The growing wave of European settlers and the large-scale exploitation of natural resources, particularly wood, began to affect the traditional Anishinaabeg way of life. The installation of Hudson Bay Company's commercial warehouses, located at strategic points for the fur trade, would forever change inter-ethnic relations in the region, coupled with a paternalistic force that played a dominant role in Indigenous lives, the Canadian tutelary power dictated by the Indian Act.

By the end of the 1870s, with the Northwest region of the province considered unsuitable for colonial agriculture, the Ojibwe-speaking people suffered fewer invasions that other parts of Canada with the already dominant and permanent European presence in Ontario Province. During the early 1880s, the Canadian government built the Canadian Pacific Railway on the traditional Anishinaabeg lands, linking Rat Portage to Winnipeg in the West and Thunder Bay in the East. From the end of the 19th century, besides fur trade, wood extraction became a strong industry and source of employment for European settlers: the first sawmill in Rat Portage started operating in 1880, and in 1924, the first pulp and paper mill became productive. In 1905, the name of Rat Portage was changed to Kenora.[67]

As part of its economic development projects, in 1911 Canada began to invest in a major hydraulic project aimed at providing sufficient hydroelectric power for the city of Winnipeg, the gateway to the so-called "North Chicago".[68] In the view of the entrepreneurs, although the Winnipeg River flows West towards Manitoba, it did not represent a safe source of energy because its waters did not fall high enough to be used for hydroelectric power generation and its flow diminished significantly during the winter, when electricity is most needed in Canada. More than this, in addition to places of rich hydraulic use, the Province of Manitoba also needed to find places to store water

[66] Roger Spielmann lived for eleven years in the Anishinaabe community of *Pikogan*, located Northwest of Quebec. His book is a survival manual for Canadians unfamiliar with the Indigenous universe and addresses broad topics: how to refer to Indigenous Peoples in Canada – First Nations, Aboriginal, Native, Indian or Indigenous – residential schools, treaty rights, self-government, sovereignty, land claims, restorative justice, healing circles, Truth and Reconciliation Commission, spirituality, pow wow and other common Canadian vocabulary on the Indigenous issue.

[67] Available at https://www.winnipeg.ca/police/History/story13.stm.

[68] Winnipeg's nickname due to the connection between its architecture and the US city of Chicago. Source: https://skyrisecities.com/news/2016/06/cityscape-winnipegs-historic-exchange-district-chicago-north

and release it as required during the harsh winters. The solution found was to store water from two lakes located Northwest of Ontario that flowed into the Winnipeg River: The Lake of the Woods and the abundant aquifer complex of the Lac Seul First Nation reserve.

The Province of Manitoba was created in 1870 by the Manitoba Act, marking the struggle for self-determination among the people of the Red River Colony and the federal government, which began with the purchase of Rupert's Land by Canada. Despite providing protections for the Métis in the region, these devices were not fully maintained, and many left the province for the Northwest Territories (REA and SCOTT, 2006).

In 1803, the Hudson Bay Company (HBC) established the first temporary trading post at Lac Seul. The HBC established a permanent post in 1815. The area was traversed and mapped by the explorer and fur trader Edward Umpfreville in the late 1800s. In 1873, the people of Lac Seul and others in Northwestern Ontario signed Treaty 3 with the British Crown representatives. Under the terms of the treaty, vast traditional territories of the Anishinaabeg were 'ceded' to representatives of the Canadian government in land exchange, called ‘reserve’ lands and ‘treaty rights’.[69]

1.6. Expropriation and flooding of Lac Seul's territory

As explained, in 1911, Canada began investing in a water storage project to supply hydroelectric power to Winnipeg. In addition to a suitable place to store hydroelectric power, it was also necessary that the water could be released little by little as the winter needed it. The solution was to store water in two lakes that flowed into the Winnipeg River in northwestern Ontario: Lake of the Woods and Lac Seul. In 1929, the project was undertaken with the Provinces of Ontario and Manitoba, causing Lac Seul Lake to rise around 10 to12 feet and flooding over 11,000 acres of the reserve. The completion of the project resulted in a breach of Canada's fiduciary duties to Lac Seul's people, which is why Roger Southwind, on behalf of the community, brought legal action seeking compensation (Southwind *v.* Canada [2018] A 337-17).

According to the narrative of Lac Seul's residents with whom I could talk, the *Obishikokaang Anishinaabeg* already inhabited the region since the retreat of the last Ice Age glacier. For the Anishinaabeg, the territory they inhabited was a gift from the *Giche-Manidoo* God and the camps formed during the short summer periods served as spiritual

[69] The Indigenous Peoples of Canada who signed treaties with the British Crown are called "treaty peoples".

centers of *Midewiwin*, the Great Medicine of the Ojibwe world spiritual society. The Anishinaabeg of Lac Seul have lived since always, and this can mean thousands of years, based only on their traditional food practices, such as hunting and the use of traps to capture animals, fishing, and especially the planting and harvesting of wild rice, the main food of the Anishinaabeg diet.

At the beginning of the 20th century, the demand for electricity in the Northwest portion of the Province of Ontario grew and the Lac Seul lake system, considered abundant, was identified as a promising reservoir for hydroelectric power generation. Work began in the late 1920s and in 1934, without the knowledge and permission of the Anishinaabeg, the dam was activated and the lake rose around 3 meters. The Anishinaabeg hunters were returning from a winter's capture and found their summer camp along the reserve's shore completely flooded. Eighty-two houses were destroyed, along with council houses, farms, barns, lands reserved for the *Pow Wow* ceremony, and the sacred *Midewiwin* Grounds. Hundreds were left homeless and many families were forced to leave the reserve to survive elsewhere. The flooding affected the resources on which the people of Lac Seul have always depended. Wood, swamp areas and agricultural areas were lost. Members of the seven original Anishinaabeg clans were left homeless and began to consider themselves indigent.

To be properly compensated for the flooding and loss of 11,000 acres of land, Roger Southwind, on behalf of all members of the LSFN community, appealed for compensation. The judge in charge of the case found that Canada violated its fiduciary obligations and awarded compensation in the amount of $30 million. The so-called fiduciary obligation can be understood as all those duties that the British Crown should negotiate for the best benefit of Indigenous who had “agreed to surrender” their land in favor of the subjects, but as a rule, the best benefit of Indigenous was not always prioritized, with the breach of this duty by the British Crown and its representatives being one of the main arguments used in the courts to date on behalf of the Indigenous (Southwind *v.* Canada [2018] A 337-17).

Under the Indian Act, Canada had only two ways to get permission to flood reserve lands. The “usual procedure” was for Canada to first negotiate a surrender of these lands with the band, in exchange for compensation. Alternatively, Canada could expropriate these lands without the consent of the band, but to do so would require the Governor in Council to consent to both the taking of reservation lands and the compensation, and to determine whether any terms and conditions should be imposed.

In determining the amount of compensation owed to LSFN, the judge of first instance assumed that, if Canada had acted within the law and followed its fiduciary obligations, the reserve land would have been expropriated by means of a one-time payment for the community's losses, losses that were foreseeable in 1929. It then offset the payment Canada had already made to the gang in 1949 to arrive at a final amount (Southwind *v.* Canada [2018] A 337-17).

Citing the Indian Act, 1876, the judge understood that Canada had two ways to obtain an authorization to flood the LSFN reserve land: the so-called usual procedure, which was to negotiate a delivery of the land in exchange for financial compensation or, alternatively, the expropriation of the land by Canada without the consent of the band, but this would require the Governor on the Council to consent to the taking of the reserve and to establish due compensation, determining the terms and conditions to be applied (Southwind *v.* Canada [2018] A 337-17).

For the judge, at no time did Canada take any steps to follow these procedures. In his understanding, Canada already knew in 1916 that the project would impact the reserve, but it did not take steps to minimize the consequences of the flooding. In addition, Canada excluded the band from the decision to flood the reserve and from an assessment of the terms of compensation. Canada also failed to inform the band of when the flooding would occur or the extent of the flooding (one-third of the houses were flooded). Finally, when Canada offered compensation fourteen years after the flooding, including $1.00 per acre for 8,000 of the more than 11,000 flooded acres, the federal government made improper deductions from the compensation to satisfy its own liabilities. In doing so, Canada has broken its fiduciary duty to protect the interests of the band in relation to Lac Seul First Nation (Southwind *v.* Canada [2018] A 337-17).

To assess the damage caused by flooding of the reserve land, the judge relied on evidence of the gross market for “comparable bush land,” and determined that the flock would have received $1.29 per acre in 1929 for the flooded land under expropriation. He further considered that Canada could have avoided a violation of its obligations if it had expropriated the flooded reserve and paid compensation when the illegality occurred in 1929. Thus, as compensation, the payment of $30 million was determined for the damage caused. Accordint to Southwind *v.* Canada [2018] A 337-17, Canada's fiduciary obligations consist of:

> a. “Protect and preserve the interests of the bands against encroachment or destruction” by allowing the Governor in Council to impose a set of terms and conditions on the taking;
>
> b. Act with ordinary diligence in demanding compensation before flooding “to prevent encroachment or destruction of the quasi-property of the band interest by a bargain of exploitation with a third party or, indeed, exploitation by the Crown itself.”
>
> c. To exercise the utmost loyalty by putting the interests of the beneficiary flock first, ahead of the Crown's and provinces' own interests, in negotiating compensation;
>
> d. “Seek to obtain as good a return on the trust beneficiary's property as could reasonably and legally be achieved using his influence as a proponent of the project and custodian of the flock's reservation lands; and
>
> e. To evaluate proposed transactions diligently, inform the beneficiary flock, and seek instructions from them on the terms in order to avoid exploitative bargains. (Southwind *v.* Canada [2018] A 337-17).

In the first trial, the judge's decision was based on a limited understanding of Canada's so-called fiduciary obligations and the parliamentary limitation on the expropriation powers under the Indian Act. There was an error when the judge assessed the band's losses based on what was foreseeable in 1929, rather than assessing the actual losses at the date of trial with the benefit of hindsight. In the 1929 expropriation scenario, the judge assessed the best opportunity from the Crown's perspective, not the band's. In that scenario, Canada played no role and had no responsibility to help the gang get a better deal. The gang had no bargaining power, but its fiduciary, Canada, did. It was not just a case of returning the land because the property – flooded since 1929 for the benefit of the Crown – cannot be returned to its original condition. Instead, Canada should fully compensate the First Nation for its illegal activities.

The errors in the first trial led to an appeal, another trial, and another decision in which the judge found that Canada had breached its fiduciary duties. Compensation of $30 million was determined based on the benefit of hindsight.[70] As for illegal land expropriation, Canada obtained a flowage easement over the flooded lands of the reserve.

The Lac Seul case involving the unauthorized use of reserve land was considered very serious because Canada committed 11,000 acres of land without even attempting to

[70] Damages are assessed based on what was foreseeable at the time of the tort, and the basis of compensation is the restoration of the actual value of the thing lost, including lost opportunities.

obtain a surrender or initiate an expropriation process. Canada needed land for the project and knew that Lac Seul's community depended on the land to be flooded for their survival. Nevertheless, Canada used its power of expropriation. Canada did not bother to prepare a draft consent for approval by the Lac Seul Tribal Council. Besides, it also did not inform the flock about when the flooding would happen or the extent of the flooding. Canada did not offer compensation to the community until fourteen years after the flood, but the amount was $1.00 per acre for 8,000 of the more than 11,000 flooded acres (Southwind *v.* Canada [2018] A 337-17).

The conclusion is that Canada is committed to a convenient and reduced understanding of its fiduciary duty. As a fiduciary, Canada is considered a reasonable entity, but Canada has failed to fulfill the most basic duty to the fiduciary function: *obtaining permission to use land. The Supreme Court of Canada has established that the* Crown cannot shirk its fiduciary duty by invoking conflicting interests, i.e. Canada has a duty of loyalty to the flock-not to Ontario and Manitoba-and should have conducted the best possible bargain for the flock. Nevertheless, as the judge in the Lac Seul case concluded on March 19, 2018, "the band was at the mercy of Crown's discretion."

1.7. The perspective of the Lac Seul survivors

The word Ojibwe to English settlers is zhaaganaash and
means a person who gives and takes away
The word Ojibwe for French settlers is wemtigoojiinh and
means one who goes into the forest.[71]

Throughout the field work for the thesis, I had the opportunity to hold formal conversations with five Indigenous people from Lac Seul First Nation, in addition to professors, research colleagues and citizens of that country. All the formal interviews were held during the month of July 2019 and recorded with the consent of the interlocutors.

On July 9, 2019, I met with Andy Lac Seul, a 79-year man who lives alone in a simple but comfortable house on the LSFN reservation. Andy agreed to talk to me about the compensation he received for flooding the territory in 1929. It wasn't exactly a formal

[71] DOERFLER, Jill, Sinclair, NIIGAANWEWIDAM, James and STARK, Heidi Kiiwetinepinesiik. *Centering Anishinaabeg Studies: Understanding the World Through Stories.* Michigan State University Press, 2013.

interview, since the conversation took place inside the car, while we offered him a ride to the nearest hospital in Sioux Lookout. Andy was complaining that he woke up that day with a numbness in his left arm and we were worried about his condition because he was alone. When I asked how was he doing, Andy answered me with a smile on his face and said, “not so bad. He repeated the mantra “not so bad” for three times. We then offered him a ride to the hospital. The day before, when I met Andy for the first time to ask if he would agree to have a conversation with me, I realized a certain discomfort in approaching the topic of the $25,000 compensation he obtained for the flooding of Lac Seul. I had just met him and had no intimacy to ask such an intimate question. The conversation unfortunately could not deepen due to Andy's condition. I accompanied him at the hospital and waited with him for about three hours in the infirmary of Sioux Lookout hospital, helping him in whatever he needed until the arrival of his niece. Only amenities were the subject of conversation.

The next day, on the morning of July 10th, our team woke up early and left the Forest Inn hotel to pick up old Juliette Blackhawk at her home in the city of Sioux Lookout. She would follow us to LSFN. Our work base was established in a blue medium sized container, where the *Wahsa Distance Education Centre*[72], a distance education program linked to the *Northern Nishnawbe Education Council* and which involves the most educated youth in the community in the development of various educational activities. After some conversations with the other members of our team about the work that would be developed that day[73], I sat down next to Juliette to start a conversation about the compensation offered to her. However, as I did realize the day before, from my brief approach with Andy, the best way to start a conversation on the topic of reparation and, consequently, financial compensation and the meaning of *reconciliation* project, is simply not to force questions on these subjects and let the conversation follow the paths that the interlocutor naturally opens.

Juliette likes to tell stories about her past and her youth, and in this way she invariably touched on the topics that were of direct interest to my research. After telling many stories about her granddaughters and her life, Juliette finally gave me the chance to ask a question about what *reconciliation* meant to her. In her words, the relationship

[72] The *Washa Center for Distance Education* has provided education to the Sioux Lookout District and the First Neighboring Nations for the past 30 years.
[73] Professor Dr. Frederico Barbosa de Oliveira, Holly Flemigan, MSc student in archaeology, Gavin Shields, research assistant with a degree in Indigenous Learning and Philosophy, with a Master’s in Education, and Caleb Kuchta, geographer with specialization in outdoor recreation.

between Canada and the First Nations has been difficult for a long time and in many ways still is. For her, it would be necessary for politicians, chiefs, Indigenous peoples, all Canadians, to begin to listen to each other, all doing their part to move forward. Despite being one of the oldest members of the community, Juliette, claimed that she had not been included in the compensation payments obtained by LSFN, a fact that would later be clarified through a conversation with Tom Chisel.

The next day, we left in the morning for LSFN for a meeting with the Band Office, including councillors Elvis Trout and Raymond Angeconeb, and Derek Maud, current Chief of the reserve. After a brief individual presentation of each of the team members and their respective projects, we began a direct conversation and asked the band members what would be the meanings of *reconciliation* to them. Raymond began his talk, explaining about the first time he heard this word three decades ago. Raymond explained that at that time this word referred in large part to the survivors of the Residential Schools, himself being one of them. For Raymond, there is all the time, on television and in the media in general, a lot of talk about *reconciliation*, but at the same time, in his own words: "to reconcile with someone is not about to compensate someone with money, and also is not to deliver a written apology. There was always a systemic racism in Canada".

About the thirty million dollars paid to LSFN as compensation, Raymond understands that the amount does not fairly repair the ninety years of backwardness and suffering that the community lived, because 11,000 acres of land were lost and with them many lives. In fact, during the expedition I had the opportunity to participate with Professor Scott Hamilton, in which we visited several beaches of Lac Seul Bay by boat, it is possible to find bones of people from the community who died due to the flooding, as well as many pieces and household utensils that belonged to the now flooded houses. Raymond went on to say that the entrepreneurs and all the parties involved in the hydroelectric project, "they are making billions". To summarize your dissatisfaction with the amount paid, from your point of view, the logic involved in this situation could be summarized as follows: "if you open up a bush to build a road, we give you 90 million dollars; but if you go the Court to fight for justice and compensation, they give you just 30 million, and this is nothing compared with what was lost".

On July 10, 2019, I finally had one of the most awaited conversations with Tom Chisel, a member of the *Midewin* Society – Ojibwe spiritual society – and a great connoisseur of the region's native medicinal plants. In addition to being one of LSFN's leading healers and spiritual guides, Tom conducts sweat lodge ceremonies and prepares

others to join the *Midewin* Society. Our 30-minute interview took place on the shores of High Beach, in one of the dunes of Kejick Bay.

Our conversation began with a first question I asked Tom: what is the path leading to reconciliation and what are the challenges involved in this trajectory, as the government of Canada talks about it all the time, but it is remarkable that the Indigenous people of Canada are not happy about the ways in which this national project is being implemented. In the same question, I asked him to comment on whether the people of LSFN would be happy or satisfied with the compensation received and how Tom himself felt about it. Tom responded as transcribed below:

> I don't believe our people are happy with the compensation that was offered, I guess. I think that most of part of the people think that if they don't agree with this they might not get anything. That was the sentiment that was around at that time, they are not happy but they accepted. I saw a little bit about the compensation on a research that was done. I was a student employment worker in Lac Seul band office back in 1974 and to get started the claims to do the research, I read some of the historical stuff and it always seems to me that the people here were never really consulted about what they were going to do. Even the DIAND employees didn't have much to say to us to about what it was going to happen, it was already decided a long time ago. They were probably having meetings in the 1800s, already, about doing what they did here and then, because they had the Province of Manitoba in there, and the Province of Ontario and the hydro people and Canada, so you had all these parties, planning what they wanted to do here and didn't bother really telling the people. So, in the way, that's why the lost did happened, you know? That's why to me they are not happy, but they accepted because they it has taken so long, too much time, and the people that really suffered are no longer here anymore…so…you know, I think the people that we interviewed about 30 people, we did a research on land claims, we researched back in the early 90s and we interviewed myself and we partnered up with the Ernest and a lawyer, we interviewed 28 or 29 elders back then and there was only one left and so they talked about the time they were children when the flood happened and we were lucky to have interviewed them. We have this material somewhere in Lac Seul, the band office might have some stuff, there are some recordings, there are maps, we have to maybe talk to someone around there…even my father, he was a boy a kid by the time when that happened, he remembers seeing the tree tops down the water so he wondered why they did that…I asked my father why that happened so that's how we found out that the dam was here and flooded the lake, so yes… I happened to hear the stories of some of the elders when they talked about what happened to them and it was not easy for them to talk about, it was hard to them, and so we use to give them tobacco because we knew that it was be hard for them to talk about those kinds of things. That was all we could do at that time (Testimony of Tom Chisel, 2019).

Tom Chisel's testimony exposes a recurring aspect of coercive guardianship, exacerbated, for example, in cases of corporate indigenism (BAINES, 1991), that is, planning is done without the presence of or consultation with the Indigenous People. The justification is paternalistic and racist. It is, therefore, a situation analogous to what happened with the Xavante. Another similar aspect is that the indigenous people carry out their own research on the traumatic events they suffered, and this is one of the aspects that make them memorable events, in contrast to the policy of forgetfulness practiced by national governments.

I then asked Tom if he thought the government of Canada was interested in knowing if the people of LSFN were satisfied with the compensation offered and he answered me as follows:

> I don't think that it's not that "they don't care" but that the colonizers when they first got here and sat up the rules, sat up the laws, sat up everything so everything had the flavour of the colonizers so they're stuck with the systems that their forefathers sat up for them and we are stuck with the system that these colonizers sat up so we had a disadvantage in everything, laws, everything about our life is not very good. We were residential school people and today there's talk about going after the healthcare system because a lot of our people were mistreated, so the medical system in Canada as well, there were the sterilization of Indigenous women in the hospitals and it is still happening and so those kinds of system, it's like every single thing about Canada is set up so that they have a power over the Indigenous peoples, so that's how basically I feel, even though I live in town, even though I live in a non-native community, I belong here and I see what's happening in here. There's all kinds of rules and policies and regulations and stuff like that, so that prevented me to coming back, once I left I couldn't come back, it was hard for me to come back, but I don't blame the community, I don't blame the leadership, it's the system, the laws (Testimony of Tom Chisel, 2019).

I also mentioned to Tom the conversation I had with Juliette Blackhawk the day before, with the intention of understanding more about how the internal process of distributing the money, since Juliette had mentioned that not everyone had received it, including her, and that this decision was under the management of the Band Office members. To this question, Tom answered me with surprise: "But she was entitled to it! She decided to ask for it, but she has to officially requested it. I got mine, they sent a check for me, it was deposited." I then asked Tom what he thought about Band Office's proposal to return the compensation resource to the community in the form of educational

projects and if this was really happening: “The last pay, they are investing it into the community and I don’t know how many millions…I guess Andy got 12.50 thousand and the children they don’t get anything until they complete 18 years old.”

Finally, I asked if Tom thought that the financial compensation was enough to supply the community, considering the population and the demands of Lac Seul.

> No, never will be. Because the main thing that was lost here was the wild rice, manoman, and we really don’t know how many millions of dollars were lost and the other stuff, timber, the loss of land, but, again, one of things, the loss of land and the loss of our ability to our governmental stuff were basically lost and they imposed the government structure, which was not the way we did it, the political structure interfering…we didn’t had a Chief or a Counsellor back in that days, it was just a clan system, the head of the clans they were leaders, the were the spoke persons for the clans and also the women they were also important long ago…. It’s getting chill here it’s getting windy…I like it because there’s no bugs (Testimony of Tom Chisel, 2019).

A curious fact occurred before we started the interview, while we were looking at the beautiful landscape of the beach in front of us. Tom warned me not to point my finger towards the island we saw naked, the Spiritual Island, but as I didn't understand very well what he said, I suddenly pointed to the island I shouldn't point to and he started laughing and lowering my arm, asking me not to make the gesture. I asked him why not to point his finger towards the island and he explained that the gesture can irritate the spirits who, in response, can start blowing a strong wind. In fact, at the end of our interview, we need to interrupt the conversation due to the strong and sudden wind that started to blow over the beach, towards us.

According to the Anishinaabeg tradition, an offering (*bagijigan*) is perceived as a gift that symbolizes the values of respect and responsibility intrinsic to the relationship between people, but not only between people; between people and animals, people and the spiritual world, people and things, and between all the entities present in the universe, whether animate or inanimate, because this is how the Anishinabeg divide the world. Making an offering of tobacco (*asemaa*), of money (*zhooniyaa*), of a story, of knowledge, of food, or even of a song (*nagamowin*), are ways to show respect, commitment and to recognize the presence of other ways of being. At the end of the conversation with Tom Chisel, he asked me to remove some tobacco from my cigarette and deposit a handful at the foot of a tree, an offering as a sign of respect to the ancestors of LSFN.

In the case of the LSFN trial, it was decisive that Canada failed in its fiduciary duty – to act in the best interests of the band. Following common law, i.e., considering the precedents set by the Supreme Court of Canada in the Guerin case, the losses of LSFN's Anishinaabeg were evaluated considering the retrospective of events to the year 1929, when flooding occurred, which allowed the Court to determine the actual losses resulting from the flooding of the reserve.

As previously pointed out here, after the case was processed in the first instance, it was considered that the judge erred in assessing the losses of the band based on what was materially predictable in 1929, instead of assessing the actual losses based on the trial date, considering the benefit of the retrospective. In the expropriation scenario, which dates back to 1929, the so-called "trial judge" realized the best opportunity from the point of view of the Crown, not the band. In this scenario, Canada would have no responsibility to help the band get a better deal for the perpetual use of their land. The band had no bargaining power, but its trustee, Canada, had it in abundance. Since the federal government should have acted in the best interests of the band, and as the only interested party that could say no to expropriation, he was charged with that. The judge also considered that it was not a simple case of returning the land because the trust of the property – flooded since 1929 for the benefit of the Crown – could not be returned. Instead, Canada should compensate Lac Seul for its illegal act. As the beneficiary, it had to pay a higher amount than it had foreseen at the time of the violation (Southwind *v.* Canada [2018] A 337-17).

1.8 Judicial precedents on Indigenous court-cases in Canada

> *When Aboriginal people say today that they have to go to the courts to prove that they exist, they are speaking not only poetically, but literally*
> (CULHANE, 1998)

Most jurisprudence in Canada is based on common English law. The exception is the Province of Québec, which uses the 1774 Québec Civil Code, with federal issues based on common law. Common law is not legislation, but a system of rules based on legal precedents:

> Although legislation is not the primary source of common law, it may be informed by and engage with legislation. Civil law in Quebec uses a comprehensive set of rules (the Code), set up as a set of general principles. Court decisions in Quebec refer to the Code first and then check for consistency between the Code and any provincial legislation in effect, and previous judgments. Note that there are two meanings of the term "civil law". One refers to the Quebec legal system. The other refers to private matters between citizens. Criminal law deals with public matters involving breaches of law that affect society in general. Most tree case law will be based on civil law, where person A sues person B by filing a suit or action in court. Infractions of provincial statutes or local bylaws are criminal cases. In criminal cases, one of the parties is the Crown acting on behalf of society in general. Most of the cases cited in this book fall under the law of torts, as opposed to criminal law. Tort law mainly deals with people who have suffered injury or damage resulting from criminal, or non-criminal conduct. They are seeking some form of compensation for the losses claimed. Linden and Feldthusen (2015) define a tort as "... an injury other than a breach of contract, which the law will redress with damages". The Canadian court system is shown above (DUNSTER, 2018, pp. 2-3).

Thus, common English law governs Canadian courts in all provinces except in Quebec:

> In all jurisdictions the court process employed is similar, but there are regional variations about court procedures and requirements, and how these are named. In most cases there is a lower court that deals with claims limited in extent and value - typically referred to as small claims or Provincial Court. Where a claim's value exceeds that amount the case is heard in a Superior or Supreme Court. There are variations on this approach. For example, BC introduced a Civil Resolution Tribunal in 2017 that deals with claims under $5,000 and claims involving Strata corporations. Claims up to $35,000 are now heard in Small Claims Court and claims above that in Supreme Court (DUNSTER, 2018, p. 1).

Despite the supposed universality of legal concepts established by English and French traditions in Canada, with regard to Indigenous rights, judges have described the legal aspects of the overall relationship between Indigenous peoples and mainstream Canadian society as *sui generis*, and the courts have difficulty reconciling Indigenous concepts with Euro-Canadian legal concepts. On the one hand, the *sui generis* theory of Indigenous rights recognizes the "cultural specificity" of Indigenous titles and does not attempt to restrict it to European categories, but on the other hand, since Canadian law and culture are founded on the belief in European racial supremacy, Indigenous rights

end up being considered “different,” meaning that they are viewed as “minor” or “inferior. Although these concepts have undergone considerable expansion and refinement, they have not been able to accommodate the rights provided for in the treaties established with Indigenous Peoples. At a stroke, Canadian courts are trying to be sensitive to the uniqueness of legal concepts resulting from the relationship between Indigenous and non-Indigenous people, without this interfering with or undermining the legal framework of the Canadian federation.

During the 1980s, significant victories were won by Indigenous Peoples in Canada, including Fletcher v. Peck (1810); Johnson v. McIntosh (1823) and Worcester v. Georgia (1832). However, “none of the Indigenous peoples whose lands and rights were at issue in the litigation described above were represented in court. As if they didn’t exist” (CULHANE, 1998, p. 64).

In her book, *The Pleasure of the Crown* (1998), Culhane analysed the Delgamuukw v. Queen case, known as *Nishga's*, which was one of the longest involving land disputes between Canada and Indigenous Peoples – it lasted from May 1987 to March 1991. The Chief Justice in the case, Allan McEachern, rejected all anthropological evidence confirming the occupation of the *Gitksan* and *Wet'suwet'en* before the British Crown asserted supremacy over the disputed territory. McEachern created a controversy against the land rights of the *Gitksan* and *Wet'suwet'en*, determining that before the Europeans arrived in the late 18th century, the property laws and institutions of the First Nations were too primitive and that, therefore, Indigenous People would not be entitled to any rights. McEachern was accused of favoring the interests of large forestry companies and elites against the rights of the *Nishga*, even admitting that his decision might not be fair, but it was legal. Still, the *Gitksan* and *Wet'suwet'en* chiefs challenged the judge to hear them on their own terms saying, “Never before has a Canadian court been given the opportunity to hear Indian witnesses describe within their own structure the history and nature of their societies” and they won recognition on the right to own 22,000 miles of land on the grounds that they were descendants of the region's original inhabitants:

> A total of 318 days of evidence from over 61 witnesses had been heard, additional evidence had been supplied by affidavit, and legal argument had taken up na additional 56 days in court. Verbatim transcripts of testimony now fill 23.503 pages of text, 82 binders of authorities now hold 9.200 pages of exhibits. An estimated 25 million dollars of public funds had been spent (CULHANE, 1998, p. 26).

With the analysis of the *Gitksan* and *Wet'suwet'en* case, Culhane (1998) sought to provide a contribution to discussions on the possibilities for justice in relations between Indigenous and non-Indigenous people in Canada and in general disputes related to the struggle for social justice in the world. His work has become a reference for pointing out the issue of the "communication problem" that exists between deeply different cultures, pointing out the challenges faced not only by Indigenous peoples in the courts to assert their accounts and memories, but also by anthropologists and historians who base their work on oral evidence.

Oral accounts and stories based on the words of people already dead tend to be discredited in the courts, and in Canada the situation is neither different nor better. According to Julie Cruikshank, oral transmission of stories is probably the oldest form of history taking and functions as a coherent and open system for the construction and transmission of knowledge that anchors the present in the past (CRUIKSHANK, 1994 *apud* MILLER, 2011). Oral history differs from Western science and history, but both are organized systems of knowledge that take many years to learn and both are perpetually open and incomplete (CRUIKSHANK, 1992), Thus oral narratives should be treated in parallel to Western history, which at first did not occur with respect to the oral materials presented in the case summarized below

For the Xavante survivors of Marãiwatsédé who lent their images and memories to the recording of audio-visual material, oral narratives represent the possibility of reparation, making the Xavante story gain legitimacy, be legally (re)known and move to the condition of truth, contributing to social suffering being resigned and overcome. The Xavante survivors want to be recognized as living proof of the violence suffered and the Indigenous protagonism in all stages of the harvest gives legitimacy to the narratives; mutual identification is preponderant so that the memories of suffering are relived in memory and retold. The "harvesting" of oral narratives breaks the asymmetries of anthropological doing, establishing dialogic relations that balance the existing disembodiment between the worlds of the researcher and his interlocutor (CARDOSO DE OLIVEIRA, 1996).

Culhane (1998) points out that reports by anthropologists and ethnohistorians submitted to expert opinion on behalf of the Gitksan and Wet'suwet'em developed strategies for analyzing oral histories based on methods for verifying family history, when and where events occurred, examining various sources, and comparing events. In evaluating oral histories during the course of *Nishga's* case, the judge sought to

distinguish “historical facts” from “beliefs,” but became impatient to hear the oral histories, reprimanding witnesses who sang in Court.

The point of the *Nishga's* case that tangents the theme of this thesis refers to the discussion on the financial compensation that, in thesis, would pay the historical debt of the state. In the trial on screen, the debate on compensation caused a dispute between the Federal Government and the Province of British Columbia, both wanting to get rid of the responsibility to indemnify the Indigenous people. The province of British Columbia argued that although the Gitksan and Wet'suwet'em did not have legitimate claims at all, should the court find that they did, and that any damages or compensation should be paid, these would be the responsibility of the federal government. The federal government, for its part, argued that some of the costs should be provided by the province. The province argued that the Gitksan and Wet'suwet'em were only minimally organized during what the Crown called “prehistoric times” and that the only places that possibly would have been used and occupied and therefore could be recognized as subject to an Indigenous claim were the village sites by the rivers, with large salmon runs. In this sense, the only resource the Gitksan and Wet'suwet'em could have any claim to was salmon, a federal responsibility, according to the Province.

The Crown claimed that hunting grounds and access routes outside the large villages were used only sporadically and arbitrarily, although Gitksan and Wet'suwet'en maps pointed to 133 distinct territories that included villages, camps, and places where the resources were located. The province also argued that no Indigenous group has ever traveled far from a river village to hunt or collect in these territories. Finally, the Crown argued that concepts and systems of elementary property rights arose between the Gitksan and Wet'suwet'em after the beginning of European-aboriginal commerce: during a period referred to as “protohistoric times. Ultimately, the British Crown had the right to assert sovereignty and extinguish Indigenous titles and rights, the Gitksan and Wet'suwet'em societies were “disorganized” before contact with the Europeans, as they lacked hierarchical organization and social law ownership, They developed in response to the European-aboriginal contact of the fur trade, in a process of assimilation of Indigenous forms of life by those of European settlers and, worse, the Gitksan and Wet'suwet'em consented to British and Canadian rule.

The Crown expert, Sheila Robinson, Ph.D. in cultural geography, was accepted by the judge as an expert witness in anthropology, but according to Culhane (1998), Robinson never published his reports. She helped the Crown lawyers discredit Indigenous

people and the experts who testify for them by invoking academic sources to describe the Gitksan and Wet'suwet'em social organization before the European contact as "segmented" and "devoid of mechanisms to sustain a centralized political and economic authority" (CULHANE, 1998). Ironically, despite discredited the oral tradition as a source, she used 47 bibliographical references selectively based on oral tradition to support the descriptions of pre-contract aboriginal cultures.

In the judgment of Regina v. Sparrow, 1990, "The Supreme Court concluded that the fishing rights of the *Musqueam* First Nation had existed in British Columbia prior to the arrival of Europeans; that they had not been extinguished by the simple assertion of British sovereignty during the colonial era; and were now protected by section 35(1) of the Constitution Act (1987), the supreme law of Canada" (CULHANE, 1998, p. 28).

For Culhane (1998), Canadian law should assume that all human beings are equal and worthy of respect, in theory and practice. But more than that, there should be a prevalence of equality before the law and justice as a result of due process, as well as judicial neutrality and guarantees of equivalent resolutions for disputes between any people. Its conclusions are that judicial decisions reflect prejudices present in contemporary society, rather than being determined by legal concerns. The fundamental question asked by Culhane (1998) and which remains today is: how did the British Crown acquire rights over the territories of the country we now call Canada? It was not through the establishment of a rule of law or military force, but through the assertion of sovereignty over Indigenous titles to its own pleasure.

Another important precedent was set in the 1979 Baker Lake trial, which involved the Inuit Association of Hunters and Fishermen of Baker Lake of the Northwest Territories. The defendants were the attorney general of Canada, the Minister of Indigenous Affairs and a consortium of mining companies. The plaintiffs requested the court to prevent the government from issuing land use permits for prospecting, granting mining leases and mining claims that would allow mining activities in the Baker Lake area. Judge Mahoney's decision recognized the complexity surrounding the issue involving Indigenous land titles, but the legal issues remained the same: were the Indigenous People occupants of the region when the Europeans arrived? Did they have an organized society with property laws? Whose land is it? The test applied to the Baker Lake case defined the terms of the legal and anthropological research questions for the next decade.

To sum up, the Euro-Canadian rule was enacted by the oppression of settlers over Indigenous Peoples who survived the first waves of epidemics brought by European fur traders during the 18th century. Even so, Indigenous Peoples have insisted that they have surrendered neither to themselves nor to the ownership of their lands, nor to their political autonomy. And that they have not ceased to exist either.

In Canada, the doctrine of discovery, based on the notion of *terra nullius*, established that lands already inhabited by Indigenous Peoples would be considered legally uninhabited if the people living on them were not Christian and "sufficiently evolved". The 1763 Royal Proclamation, based on the doctrine of conquest, states that where Indigenous populations were found on the lands intended by the colonizer, British sovereignty should either be gained through military conquest or through treaty negotiation. Over the past two centuries, differing interpretations of the historical, legal and political implications of the Royal Proclamation have been central to the debate on Indigenous titles in Canada. The position of delegated rights argues that no rights can exist except those created by the will of the sovereign. Thus, contemporary Indigenous rights could only be those that a sovereign, a court or a Parliament chose to create (CULHANE, 1998).

There is some agreement, however, that in at least five points the Royal Proclamation differentiated aboriginal land titles from non-Indigenous titles: In 1763, the Crown assumed that it should recognize the legitimacy of Indigenous nations and negotiate on equal terms; Indigenous titles should be defined as collective and limited to the right of use, such as hunting and fishing; Indigenous titles could only be transferred to the Crown; Indigenous people would be identified as nations or tribes and would have the protection of the Crown; and Indigenous territorial rights could only be suspended by holding public assemblies and with the consent of Indigenous people. As Culhane (1998) concluded, while the British, through the Royal Proclamation, were interested in securing their power over the new territories, the First Nations were concerned to preserve their lands and sovereignty.

Once again, the original questions exhaustively brought by Culhane (1998) remain: why are Indigenous Peoples forced to present a defense of their histories and cultures to the courts by the rules of the courts, in the language of the courts, within the theoretical frameworks of the courts? As Culhane (1998) concludes, Indigenous Peoples were here and had laws governing relations with strangers. The British arrived and had laws governing relations with strangers, but the settlers neither respected Indigenous laws

nor obeyed their own. The difference is that, since from the first contact, Indigenous People have insisted on negotiating a mutually respectful relationship with the newcomers.

An important observation from the Lac Seul case regarding the idea of hindsight can be made given the Xavante reparatory action. Hindsight is an essential element of judicial reparation because it seeks to determine the actual losses and opportunities lost in light of the violation and aims to restore the community to the position it would have been if the violation had not occurred. It is the community's right to have its property restored or its value restored in its place, even if that value is more significant than it was at the time of the violation. This means that, based on the benefit of hindsight, the Xavante's losses should be assessed based on what was foreseeable, not at the time of the removal, but on the date the judgment occurs. In the Xavante case, who have had their territory cut off by roads and invaded by bad faith occupants, restoration of the territory and compensation are more than desirable. Not to mention the apology, never delivered and never expected to occur. In the case of Lac Seul, because the land was flooded, it could not be returned.

From an Indigenous perspective, for no other reason, the *reconciliation* project in Canada should primarily focus on the issue of returning land to Indigenous Peoples who, at the time of the treaties, had their representatives persuaded to sign the documents ignoring the fact that they were agreeing *to surrender* their lands to the Crown. For the Indigenous, the treaties provided for the *sharing* of the lands and the use of the wealth in it with the colonizers, never the handing over of the same, as was later demonstrated in controversial decisions of judicial cases involving land titles, like the *St. Louis. Catherine's Milling* and the *Guerin case*. The first case described the Indigenous right to occupy the land as dependent on the “good will” of the sovereign. In the latter, the Supreme Court of Canada ruled that the aboriginal title is *sui generis* and considered the application of property law as inappropriate for Indigenous peoples.

CHAPTER II

BRAZIL AND CANADA: A BROTHERHOOD IN COLONIALISM, 'INDIGENEITY REGIMES' AND RACISM OVER INDIGENOUS PEOPLES

> *Indigenous peoples, though they are difficult to define, in fact make up about 5% of the total population of the globe. They are the descendants of peoples who were marginalized by the major powers and especially the expanding empires in their regions of the world-- the European overseas empires in the Americas, Africa, Asia and Australasia, and the Russian and Chinese land empires in the heartland of Eurasia*
> (MAYBURY-LEWIS, 1997, p. 10-11).

In this chapter, I intend to demonstrate how close Brazil and Canada are in terms of managing the otherness represented by the Indigenous populations of both countries, which is a very peculiar kind of brotherhood that links these two countries.

It is not the purpose to make an exhaustive analysis of the various Brazilian and Canadian legislation that have tame the Indigenous populations over the centuries but to highlight important aspects that have contributed to placing Indigenous populations in Brazil and Canada on a constant level of subordination and how close and similar they were. This means that in both Brazil and Canada there are qualifying variations to designate those people whose presence in the territory predates that of the continent's colonizers. For the purpose of this dissertation, the classification of the Indigenous population is important because it helps to better capture the limits, boundaries and challenges of the so-called *reconciliation* state policies (JOHNSON, 2012; CORNTASSEL & HOLDER, 2008; HENDERSON & WAKEHAM, 2009; LITWACK, 2008).

The many ways in which the Indigenous Peoples of Brazil and Canada were racialized and classified during its colonial periods – and continue to be classified today – are key elements to understand the permanent state of (un)settling payment concerning the historical injustices and the so-called "wrongdoings of the past" committed against them.

The classification and naming of Indigenous Peoples have been a strategic tactic used in colonization. Starting from Columbus' mistake calling the natives of the *Abya Ayala* continent as *Indians*, to the ultimate definition of the Convention 169, of the International Labour Organization, and of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) for what we now get used to defining as *Indigenous Peoples*, the effort to identify and catalogue these multiple categories throughout the history of the interethnic contact in the Americas has been undertaken by several authors of Brazil and Canada, such as Michael Asch (2014), Bruce Miller (2003), Dara Culhane (1998), Alcida Ramos (1990, 1999, 2012, 2018), Stephen Baines (1991, 1997, 2004), Cristhian Teófilo da Silva (2007, 2012b, 2013), among others. Just as important as the classifications attributed to the native populations of the Americas were the bureaucratic institutional structures designed to manage the *otherness*, and also the administrative agents, legislation, rights, duties and budgets associated with them.

2.1 Names and terminologies for Indigenous Peoples in Brazil and Canada

Among the classifications to designate the autochthone population in what now is Canada are the terms *Indigenous*, *Indian*, *Aborigines*, *First Nations*, *Métis* and *Inuit*. In Canada, an *Indian status* person has specific rights under treaties signed between the British Crown commissioners and representatives of the Indigenous *bands*. These include the right to live in communities/reserves, the right to hunt and fish in territories and lakes, the right to housing, exemption from some taxes, and the receipt of welfare benefits.

According to Culhane (1990):

> 'Indigenous' is the most all-encompassing and is the term of global representation chosen by the United Nations. Some people feel it erases the specificity of particular Nations and suffers from an imprecise time frame, i.e., some people who others consider 'settlers' identify themselves as 'indigenous' because their families have lived in a region for many generations. 'Indian' began with Christopher Columbus' errors: landing in the Caribbean, he believed he had reached his destination of Indian, and so he called the people he encountered "Indians". 'Indian' is a term used in many legal documents, and in historical records. Some people find it offensive and feel its continued use reproduces its colonial legacy. 'First Nation' is a term of recent emergence that is particularly popular in British Columbia. It is the language used in the Constitution Act 1982. Some people, particularly Metis representatives, interpret the 'first' in the 'First Nation' as an implicitly hierarchical term that

> renders them “Second Nations”. “Aboriginal” is also a recent term that encompasses First Nations, Metis, Inuit, and Non-Status people. It is also used in legal documents, including the Constitution Act 1982. Some people feel that it is too broad and general and blurs important differences and erases identity. I use all these various terms either because they are appropriate to the topic or time frame being discussed, or to the particular context (CULHANE, 1990, p. 24-25).

The term *Aboriginal Peoples* has been the way in which the British Crown has called the indigenous groups included in the so-called Treaties Era, but, in general, the term *Aboriginal* is used to cover the First Nations, Métis and Inuit groups. This later terminology is often found in official documents, and several authors maintain it when dealing with the facts described in these treaties, such as Miller (2009) and Asch (2009).

According to Miller (2006), the term *First Nations* is used only for some communities which, in Canada's case, includes over 600 groups. The term *First Nations* was adopted “from the 1970s onwards in place of *bands* and *Indians*, considered pejorative terms” (TEÓFILO DA SILVA, 2012b, pp. 400-401). The term *Inuit* is used for the Indigenous Peoples of the Northern Arctic and the term *Métis* for mixed descendants of 19th-century communities arising from the interaction between indigenous persons and non-indigenous settlers.

According to Silversides (2007), based on the 2001 Census, the Inuit make up 5% of the Indigenous population (about 45,000) and the Métis about 30%. To date, it is important to say that *Aboriginal* and *Indigenous People* are terms commonly accepted, and this is the reason why in this dissertation they are used when in reference to the Canadian context. In some cases, the term “Indigenous” is used to emphasize priority in terms of land rights and resources. The term *Crown* today refers to the apparatus of government, specifically the Department of Indian Affairs and Northern Development (DIAND), responsible for the Indigenous affairs, and the staff involved in proceedings against Indigenous groups.

Considering a critical point of view of the Indigenous Peoples classification, it is worth to note that,

> Indigenous peoples are defined as much by their relations with the state as by any intrinsic characteristics that they may possess (…) Indigenous peoples are always marginal to their states and they are often tribal [in the sense that they belong to small-scale preindustrial societies that live in comparative isolation and manage their own affairs without the centralized authority of a

> state]. ... The point is that there are no hard and fast distinctions that enable us to place societies unambiguously within these categories (MAYBURY-LEWIS, 1997, pp. 54-55).
>
> Indigenous peoples claim their lands because they were there first or have occupied them since time immemorial. They are also groups that have been conquered by peoples racially, ethnically or culturally different from themselves. They have thus been subordinated by or incorporated in alien states which treat them as outsiders and, usually, as inferiors (MAYBURY-LEWIS, 1997, pp. 7-8).

Concerning the use of the term *band*, the colonization processes in Canada led to the grouping of Indigenous peoples into small units that established formal relations with the Crown. These political units are called *bands*. The term Nation is used to refer to the province-to-province relationship that the Indigenous groups wish to establish with the Federal Government.[74]

It should be noted that the terms *Aboriginal*, *Indian* and *Native* are often used as synonyms but are considered negative as a rule. Sometimes, a term has connotations that are acceptable to some peoples and not to others. Miller (2009) uses the term Aboriginal to cover all three groups. The Canadian federal legislation adopts both terms Aboriginals and Indians, the latest used by Miller only when he is referring to legislation and the language of government agencies.

Another important distinction has to be done concerning the use of the term *autochthone*, which seems to be a neutral category but it is not. This happens because the anthropologists themselves insist on portrait this category without defining them correctly, and placing the so-called native peoples in a situation close to the natural world as if they were sprouting and developing their cultures by methods of spontaneous generation. Also, the anthropological theory has adopted the use of the term *autochthone* without problematizing it, which can be a trick. So, let's pay attention to the words of Teófilo da Silva, who criticizes the use of the term *autochthone* in English:

> The idea of autochthony applied by colonialists to represent the inhabitants of deterritorialized lands is a mistake. Unfortunately, like many other mistaken notions transmitted to anthropology by colonialism, such as cannibalism, barbarism,

[74] Although Indigenous Peoples search for some powers held by provinces – such as control over healthcare, education, forest management and tourism – they do not necessarily seek the status of "provinces." The Inuit of Nunavut did seek something close to that status, but as the Quebec case shows, province status does not necessarily go with recognizing cultural distinctiveness by the Federal government.

> primitivism, and savagery, which helped shape the erudite ethnocentrism of social evolutionists, it is truly appalling that anthropologists continue to think of others in terms of autochthony. Therefore, it is essential to question the current anthropological meanings of autochthony and what purpose they serve in the discipline beyond perpetuating a perverse style of "othering." According to standard English dictionaries, for example, the common usage of the word "autochtonie" is rooted in the 16th century, literally meaning "arising from the earth," from autos 'self' + khthon 'earth, soil.' (...) Thus, from a vernacular point of view, autochtone is something/someone "naturally originated from a particular place," regardless of what their previous locations might have been. According to this logic, presumably primordial natural ties bind individuals to each other and a particular land, region, or territory, giving rise to a particular genus from a unique generative environment. Hyperreal autochtone is a figure of popular imagination that lends those who do not consider themselves an autochtone per se the authority to portray the former as they please. Autochtonie, however, misplaced in the vulgarized sense, functions for some anthropologists as a condensing symbol that unleashes the Western imagination toward paths of experimentation with the thinking of others. autochtonie remains a central issue for Anthropology, not because it adequately portrays Indigenous Peoples, but because it does not. (TEÓFILO DA SILVA, mimeo).[75]

It is not the purpose of this dissertation to debate the controversial uses of the various classifications used to define and control the indigenous populations but to point out and to consider the critics against them because here the decolonial theoretical

[75] "A idéia da autoctonia aplicada pelos colonialistas para representar os habitantes das terras desterritorializadas é um erro. Infelizmente, como muitas outras noções equivocadas transmitidas à Antropologia pelo colonialismo, como canibalismo, barbárie, primitivismo e selvageria, que ajudaram a moldar o etnocentrismo erudito dos evolucionistas sociais, é realmente terrível que os antropólogos continuem pensando em outros em termos de autoctonia. Portanto, é importante questionar quais são os atuais significados antropológicos da autoctonia e que propósito cumprem na disciplina além da perpetuação de um estilo perverso de "othering". De acordo com os dicionários regulares de inglês, por exemplo, o uso comum da palavra "autochtonie" está enraizado no século XVI, literalmente significando "surgido da terra", de autos 'self' + khthon 'terra, solo'. (...) Assim, de um ponto de vista vernáculo, a autochtone é algo/alguém "naturalmente originado de um determinado lugar", independentemente de quais poderiam ter sido suas localizações anteriores De acordo com esta lógica, existem, presumivelmente, laços naturais primordiais que unem indivíduos entre si e a uma terra, região ou território em particular, originando um gênero singular de um ambiente generativo único. A autochtonie hiperreal é uma figura da imaginação popular que empresta àqueles que não se consideram uma autochtone *per se* a autoridade para retratar a primeira como lhe agrada. Autochtonie, por mais equivocada que seja no sentido vulgarizado, funciona para alguns antropólogos como um símbolo de condensação que desencadeia a imaginação ocidental em direção a caminhos de experimentação com o pensamento dos outros. A autochtonie continua sendo uma questão central para a Antropologia, não porque retrata adequadamente os Povos Indígenas, mas porque não retrata" (my translation). Source: Teófilo da Silva, Cristhian (mimeo). "Autochtony". Anthropen. From: https://www.anthropen.org/entree/rechercher

framework it is being used and help us to understand the roots of the domination against this population in the world.

So, moving on into this criticism and considering the international Indigenous activity, according to Merlan (2009), the term *Indigenous* has become a geocultural category representative of generic collectivities despite the fact that in 2007 four countries rejected the adoption of the Declaration on the Rights of Indigenous Peoples (UNDRIP): Canada, Australia, United States, and New Zealand. For Merlan, the seemingly paradoxical rejection is not surprising but consistent with the combination of driving and restraining forces that are characteristic of the political cultures of these liberal democracies. The Canadian government's position changed, however, after the TRC launched its 94 recommendations as necessary steps in the *reconciliation* process, one of the most important calls being the full adoption and implementation of the UNDRIP. To acquire the Certificate of Indian Status, (Image 3), the person registered under the terms of the Canadian Indian Act must seek out the Indigenous registration administrators of their respective local band offices or the regional offices of Aboriginal Affairs and Northern Development Canada (AANDC).

According to Iarocci, Root and Burack (2009):

> The many communities of First Nations, Inuit, and Métis who collectively represent Canada's Aboriginal peoples (INAC 2002) differ in historical origins, culture, language, social organization, lifestyles, traditions, and geography but share a history of profound disruption and loss of their traditional life course through contact with Euro-American cultures. Millions of Aboriginal people and even entire communities perished due to infectious disease epidemics, were denied access to land and their livelihood, were forced to relocate and were confined to reserves, were separated from their families to be educated in institutional settings, and were forbidden to practice their native language and spirituality (KIRMAYER, 1994 *apud* IAROCCI, ROOT & BURACK 2009, pp.83-84).

In Brazil, there are more than 300 ethnic groups that are called "indigenous peoples". They are peoples speaking 180 different languages, besides those who live in voluntary isolation, another state category. The multiplicity and ethnic-cultural diversity existing in Brazil put it in a prominent position in relation to other Latin American countries where the indigenous population is also significant, but not so diverse. The heterogeneity of the indigenous universe in Brazil is due not only to the number of ethnic groups but also to the variety of languages, cultures, ways of life, socio-political

organizations and relations with national society (ZEMA, 2014, p. 42). However, despite quantitative diversity, the Indigenous Peoples in Brazil represent a small portion of the general population.

The Demographic Census of the Brazilian Institute of Geography and Statistics (IBGE) collects data on the population that claims to be Indigenous based on the "color or race" requirement. From the years 2000 on, the Census has captured the growth of this population, which went from 294,000 to 734,000 individuals. The growth of the Indigenous population in Brazil resulted from the increase in birth rates and migration, and the increase in the number of people who began to recognize their Indigenous ancestry, resulting in increased self-declaration. According to Gersem Baniwa, the phenomenon of "ethnogenesis" or "re-ethinicization" has also enabled Indigenous Peoples to recreate their cultural traditions that have long been denied "by political, economic, and religious pressures or by being stripped of their lands and stigmatized for their traditional customs." (BANIWA, 2006, p. 41).

Since colonial times, the question of who is Indian in Brazil and the concern of governments to emancipate them have always been linked to the land issue. "Indians" and other designations were created so that it was possible to exercise control over populations considered non-white, non-Christian. Columbus would have called "Indians" the peoples he had met on these lands that he believed were in India. The Latin term "silvícola" means "one who was born or lives in the forest." (MACEDO *apud* ZEMA, 2014, p. 41).

The adjectivization of indigenous populations in Brazil has always been an imperative, and here no effort will be made to catalogue these expressions. Just an example: in the era of Colonial Brazil, the so-called Indians were adjectivized as "brave" or "tame".

An important part of Brazilian history was the one that tried to get rid of the indigenous status, in the military period, through the Decree of 1978. There may be an inclination to compare this attempt to emancipate indigenous people in Brazil to that which also took place in Canada through the White Paper. However, these two attempts at emancipation, however similar in form, were different in content. While in Brazil, the emancipation of the indigenous aimed to difficult access to the land and their traditional territories, the emancipation of the Indian in Canada would eliminate their status and certain privileges coming from this condition. So, despite the fact that these two

attempters were similar in form, the results that each government was trying to achieve within the emancipation were essentially different.

In 1981, the Brazilian agency responsible for the indigenous issues – FUNAI – proposed to establish a "criteria of Indianness" based on the blood quotient, which apparently would be equivalent to the blood quantum policy that prevailed in Canada to define those entitled to Indian status. Once more, it is important to note that this "equivalence" does not mean similarity. While in Brazil the criteria for indigeneity were racially phenotypical, in Canada it was rationally genotypical.

Currently, the recognition and homologation of a traditional Indigenous territory result from an administrative demarcation procedure, regulated by Decree 1775/96. Such a procedure constitutes an anthropological report that attests to the "Indianness" of a certain group. In this sense, in order to determine the Indigenous right to land in Brazil, it is necessary that their suitors be defined or not as "Indians" by a technical working group.

The legal definition for the category of Indian in Brazil is determined by the Indian Statute, Law 6001 of December 19, 1973, still in force. The Indian is an individual who belongs to an ethnic community of pre-Columbian descent and origin. The individual identifies himself/herself and is identified by his/her community, which is then called "indigenous community" or "tribal group," whose characteristics include non-integration into the "national communion" and distinct cultural specificities of national society (ZEMA, 2014, p. 43).

> Article 3 - I. Indian or Forestry – It is every individual of pre-Columbian origin and ancestry who identifies and is identified as belonging to an ethnic group whose cultural characteristics distinguish him from national society. II – Indigenous Community or Tribal Group – It is a group of Indian families or communities, either living in a state of complete isolation from other sectors of national communion, or in intermittent or permanent contacts, without, however, being integrated into them (Indian Statute, Law 6001 of December 19, 1973).

According to Manuela Carneiro da Cunha, the pre-Columbian ancestry in the context of the definition of the criteria of Indianness should not be taken as a "rational" criterion, but in the sense of the "awareness of a historical link with pre-Columbian communities (...) transmitted within the group." (CARNEIRO DA CUNHA, 1987, p. 43). Given the fact that the cultural criterion may correspond to "many empirical situations

encountered", it would not be right to resort only to distinctive cultural traits for the identification of an ethnic group. Culturalism, or the tendency to identify a group by its culture, implies that the culture should not be taken as a "primary characteristic" but as a "consequence of the organization of an ethnic group". Moreover, the shared culture may not necessarily be the culture that was once the ancestor one (CARNEIRO DA CUNHA, 1987, p. 24).

Fredrik Barth's classic anthropological conceptualization of ethnic groups in the book "Ethnic groups and boundaries" inaugurated a "new theoretical framework to study the constitution and persistence of ethnic groups and their social borders. Barth advocates social organization as the key factor that gives meaning to culture, not the opposite. According to this author, ethnic groups are "forms of social organization that result from the interaction of the group with the environment in which it lives. For this reason, the study of ethnicity should be interested in "the boundaries that govern the identities that a group gives itself and that are attributed to it by its neighbours," rather than making an inventory of the specific cultural traits of each group (MORIN; SALADIN D'ANGLURE, 1995 apud ZEMA, 2014, p. 43). Thus, for Carneiro da Cunha, the concept of "ethnic group" solves "the question of continuity in time of a group and its identity," because he understands that the cultural traits of a group can vary in time without affecting its identity, and that "culture is something essentially dynamic and perpetually reworked" (CARNEIRO DA CUNHA, 1987, p. 25).

The concept of Indian, as established by the Statute of the Indian, encompasses all societies of pre-Columbian origin existing in Brazil in the same legal category, that is, all individuals and ethnically differentiated communities of the "national society" belong to the generic category "Indian". However, "Indian" is an exogenous assignment with legal and symbolic implications. There is a set of prejudices and negative and inferior connotations around the generic idea of Indian (ZEMA, 2014, p. 46). There are no people in Brazil or in Canada who consider themselves as "Indians" or "Aboriginals" even though they might use the term in specific interethnic circumstances. Each people identifies themselves by its own denomination, generally associated with the notion of people or person, as the Xavante call themselves Au'we people, which means "the true people".

Another characteristic is that Article 4 of the Statute of the Indian establishes the criteria for classifying the Brazilian indigenous population according to their degree of integration into the national society. According to this classification, the Indians may be:

"isolated", "on the road to integration" or "integrated". The "integrated" are those who are already "incorporated into the national community and recognized in the full exercise of civil rights, although they retain uses, customs, and traditions characteristic of their culture" (ZEMA, 2014, p. 45). Carneiro da Cunha criticizes this classification due to the confusion between the concepts of "integration" and "assimilation. Integration refers to an articulation of indigenous societies with the dominant society (CARNEIRO DA CUNHA, 1987, p. 26). In this case, indigenous groups do not lose their ethnic identity. Assimilation would be the stage after integration, that is when the indigenous see their identities diluted within the identity of the dominant society. According to Roberto Cardoso de Oliveira, assimilation would be the "process by which the ethnic group is incorporated into another, losing: a) its cultural peculiarity; b) its previous ethnic identification" (CARDOSO DE OLIVEIRA, 1976 *apud* ZEMA, 2014, p. 45).

The history of the legal categorization of the term "Indian" in Brazil takes place in the broader context of the struggle for land and the strengthening of the Indian movement from the 1970s onwards, when the word "Indian" will be resigned by the Indians themselves to become an "important self-designation, a marker of identity in the struggle of indigenous peoples to guarantee their rights" (MACEDO, 2013 *apud* ZEMA, 2014, p. 46). Most important is to stress out is that in Brazil the term "Indian" has nothing to do with physical appearance or ideas about race, but it is a juridical definition in relation to the State.

According to Baniwa, when Indigenous Peoples realized the importance of "maintaining, accepting, and promoting the generic denomination of Indian or indigenous, as an identity that unites, articulates, makes visible, and strengthens all the original peoples of the current Brazilian territory. Such an attitude would also serve to "demarcate the ethnic and identity border" between the native and native inhabitants of these lands and those coming from other continents (BANIWA, 2006, p. 46). The resignification of the term "Indian" has made it possible to strengthen politically the indigenous movement, previously more fragmented in Brazil, and has contributed to the broader recognition of the causes common to most peoples. This process of articulation "resulted in the recovery of the self-esteem of the indigenous peoples. The indigenous peoples that once hid and denied their ethnic identities now claim their recognition" (BANIWA 2006, p. 46). Despite political strengthening, demographic recovery, and the consolidation of rights in the constitutional text, indigenous peoples in Brazil today

represent the smallest portion of the population (0.44%) dispersed throughout the national territory (ZEMA, 2014, p. 46).

To finish this brief introductory discussion on the concepts applied in Brazil and Canada to define, categorize and control the Indigenous populations, it is important to observe that some Indigenous scholars are working on these concepts.

> According to Gurr's definition, being conquered and being dominated by another group are preconditions for being considered Indigenous. However, not all Indigenous peoples were 'conquered' militarily by the colonial powers that now dominate them. Treatymaking, rather than outright military conquest, took place in North America on a wide-scale between Holland, France, or Great Britain, and the original peoples of what is now called Canada and the United States. Nor are all Indigenous peoples non-dominant, whether one looks at the large populations of Indigenous peoples within certain states, such as Bolivia (66 percent), or in terms of Indigenous peoples mobilizing to pose a credible political threat to the survival of the state. As Niezen concludes, 'A rigorous definition [of Indigenous peoples] . . . would be premature and, ultimately, futile. Debates over the problem of definition are actually more interesting than any definition in and of itself.' What, then, does it mean to be Indigenous, given the colonial legacies of blood quantum measurements, state assimilation policies, self-identification as a challenge to community citizenship standards, acceptance of colonial labels of 'aboriginalism', and gendered identity constructions? Postmodern imperialists attempt to partition Indigenous bodies and communities by imposing political/legal fictions on cultural peoples. How can we promote balance between political and cultural notions of being Indigenous? Cree/Métis writer Kim Anderson outlines several 'foundations of resistance' for being Indigenous, which include: strong families, grounding in community, connection to land, language, storytelling and spirituality. For Anderson, these form a basis for action. (ALFRED and CORNTASSEL, 2005, p. 607).

2.2 Regimes of indigeneity in Brazil and Canada

Despite having experienced different processes of colonization and formation of their national states, Brazil and Canada have the same characteristics in terms of having developed and applied policies of assimilation and integration, not to mention cultural and physical genocide, over their respective indigenous populations. This is to say that these two countries have presented the very same characteristics of violence over Indigenous population within the national societies in the formation and this fact is not a coincidence but the very nature of settler-colonialism in its way to liberating territories

and natural resources considered strategic to the economic exploitation in a worldwide scenario.

Using the notion of "regimes of indigeneity" as a mediator of indigenous experiences, Teófilo da Silva (2016) compares "the operationalization of the "'Indian' category to guide tutelary action in different national contexts with the objective of recognizing the institutional violence practiced against indigenous people as a result of the stereotypes associated with the term" (TEÓFILO DA SILVA, 2016, p. 195). According to this author, despite the socioeconomic differences between Brazil and Canada, "we will find in the Brazilian and Canadian tutelary regimes of indigeneity a very similar way to legitimize inter-ethnic domination from the symbolic violence of classifications (TEÓFILO DA SILVA, 2016, p. 197). Also, according to Teófilo da Silva, the "continental dimension reached by assimilationist indigenism in the 20th century makes it possible to comparatively address the power effects of its multiple variations on Indigenous Peoples" (TEÓFILO DA SILVA, 2016, p. 196).

Based on the notion of "regimes of indigeneity" (TEÓFILO DA SILVA, 2016), it is possible to comparatively observe the violence practiced against Indigenous Peoples and the so-called "historical debt" it generated as sociological facts that were present not only in Latin America but also in the global North, that is, Canada and the United States, where genocide, ethnocide, symbolic and literal control of bodies, removals, evangelization, allied with extremely racialized colonization projects (STOLER, 2001) occurred with equal force and violence.

According to Teófilo da Silva, the "regimes of indigeneity" refer to the "juridical-political ensembles that define the condition or status of an Indigenous People" (TEÓFILO DA SILVA, 2016, p. 196) and have as their objective the assimilation of Indigenous Peoples to the national contexts in which they are inserted. In the article "The astonishing resilience: ethnic invisibility of Indigenes from a Brazilian perspective", Teófilo da Silva (2005) compares the "regimes of indigeneity" that were undertaken from Brazil and Canada, based on some of the discussions and questions raised by Bruce Miller in the book "Invisible Indigenes" (2003), in which this author addresses the situation of the Snohomish and Samish of the State of Washington, United States, in the 1980s.

The questions raised by Miller and developed in Teófilo da Silva's article have as their horizon the realization that the establishment of definitions about the status of Indigenous Peoples and the consequences of these in terms of rights is a determining factor for governments and nation states to establish expenditures and investments that

should be oriented to these populations in budgetary terms, and this is one of the issues that is often absent from the debates about the widening/shrinking of the rights of these peoples in the world. Who are the Indians? Why some tribes were recognized and some were not? To be or not to be an Indian was not the question but how much did it cost for an Indian to be supported by the state (MILLER, 2003, p. 2).

According to Teófilo da Silva, the creation of new rights implies the creation of new budgetary expenditures and the installation of specialized administrative structures, these two main reasons being the avoidance of the indigenes themselves by the national states, i.e.: “in order to avoid new expenditures with indian assistance or losing the economic gains from the exploitation of indigenous resources by big companies, state's officials simply avoid the 'x' of the equation: the indian themselves” (TEÓFILO DA SILVA, 2005, p. 100) . The issue of ethnic non-recognition and the impasse regarding the guarantee of Indigenous rights configure what Teófilo da Silva characterizes as “ethnic invisibility” and “legal invisibility” of Indigenous Peoples. The first situation refers to cases in which the State does not recognize certain peoples as ethnically differentiated collectivities and, the second, when the State does not recognize the collective rights of certain ethnic groups. And since the issue of recognition of indigenous rights primarily involves the question of the sources of financing for their realization, the same goes for policies of reparation and reconciliation, which can represent an even greater cost, since indemnities and financial compensation tend to be in the millions / billions.

Indigenism is a concept built on the formation practices of National States (RAMOS, 2009; SILVA, 2009) and that propagates the logic of the Nation-State, postulating an equivalence between the State and the Nation, hiding the polyethnic or multinational dimension of socio-political realities in Latin America (VERDUM, 2006, p. 33). For Cardoso de Oliveira, indigenism as an ideology was present in all Latin American countries under the logic of protection. However, we can say that indigenism was not only present but continues to be present, and not only in Latin America, but throughout the American continent, and not only as an ideology of protection, but assumedly of assimilation, followed by the ideology of integration and, more recently, under its most sophisticated version, that of *reconciliation*, which operates in the context of the prominent advent of the Canadian multicultural model.

2.3. Regime of Indigeneity on Turtle Island

Looking back to Canadian history, the Royal Proclamation of 1763, the Numbered Treaties signed from 1871 to 1923, the Indian Act of 1876, the White Paper of 1969 (later repealed), followed by the 1982 Constitutional Act, were all documents that determined the control of indigenous identity and lives. In the case of Brazil, the Constitution of 1934, the Civil Code of 1916, the Indian Statute of 1973, the Constitutions of the 20th Century and the Federal Constitution of 1988 are the main documents that regulated the indigenous lives.

According to Dara Culhane (1998), France preceded England both in the colonization process and in the establishment of treaties with groups of the *Micmac*, *Maliseets*, *Montagnaix-Naskapi*, *Huron* and *Abenaki* peoples. The intention was to guarantee them as allies against the Iroquois and the English colonizers themselves:

> Throughout the seventeenth century, numerous agreements were entered into between and among Aboriginal peoples and the French and English. Many of these treaties were verbal agreements, solemnized through assembly and gift exchange, and symbolized by, for example, wampum belts. Other treaties were written in French, and later, in English, by colonial representatives, and signed by themselves and by Aboriginal representatives (CULHANE, 1998, p. 50).

Culhane lists the fundamental principles on which the Canadian state was built and from which all the "Indian regimes" that established classifications and definitions about indigenous populations were derived:

> (...) the ultimate power of the British Crown to assert its will through simply declaring its sovereignty over foreign lands and peoples, supported, if necessary, by armed force; the fundamental relationship of Euro-Canadian domination and Aboriginal subordination; and, the protection and advancement of the interests of the wealthy and the powerful classes of colonial society (CULHANE, 1998, p. 48-49).

The Royal Proclamation of 1763 was considered the main instrument of political dominance and control over Indigenous Peoples and the first one to contain regrammes on these populations. According to Cook, "The Royal Proclamation of 1763 was a defining document in the relationship between Aboriginal and non-Aboriginal people in North America. Issued in the name of the king, the proclamation summarized the rules that were to govern British dealings with Aboriginal people — especially in relation to the question of land" (COOK, 2018, pp. 4-5). With an authoritarian tradition, however, it

had a clause that seemed to put the Indigenous in an equal position with colonizers by prohibiting the purchase of their lands.

In Culhane's (1998) vision, with the Royal Proclamation Act of 1763, Britain sought to secure jurisdiction over the territories in Canada, while the *First Nations* were concerned with preserving sovereignty over their lands. Initially, the Indianness criteria used in Canada to define who would have access to the rights set out in the treaties covered not only so-called *Aborigines* but all people living with them. When the native population outnumbered the settler population, the treaties tended to follow the alliance-based model. However, with the increase of the population of Europeans in Canada, the treaties began to be based on the model of "acquisition" of land.

With the Gradual Civilization Act of 1857, the Government of Canada gradually began to limit the number of people considered eligible for Indian status, promoting a gradual process of emancipation that involved the stripping of aboriginal rights under the treaties and the granting of Canadian citizenship to Indigenous. The next act was to determine that indigenous women married to non-indigenous men be emancipated, i.e. that they lose their status as an Indian (Enfranchisement Act, 1868).[76] The loss of Indian status meant disregarding the rights provided for in the treaties, so that "cooperation from the beginning was replaced by policies of assimilation and soon legal traditions were ignored and many customary paraphernalia were banished" (ZEMA and ARAÚJO, 2014, p. 262).

In his book – "Anishinaabe world: a survival guide to building bridges between Canada and First Nations" – Spielmann wonders why most Canadians are so outraged at the prevalence of the Apartheid system in South Africa, but at the same time there is an indifferent gap between Indigenous and non-Indigenous people within Canada itself. In so doing, it refers to the explicitly discrepant manner in which Indigenous and non-Indigenous Peoples are treated in Canada, and more than that, it convincingly affirms the existence of a regime of separation in Canada, which the author attributes to the 1967 Indian Act, one of Canada's building block of its regime of indigeneity.

According to Spielmann, the Indian Act is a document exclusively based on race: "It's a separate set of laws, applied only to one group of people, and based exclusively on race – the classic definition of Apartheid. (SPIELMANN, 2009, p. 18). Not only

[76] Bill C-31 (or a Bill to Amend the Indian Act) passed into law in April 1985 to bring the Indian Act into line with gender equality under the Canadian Charter of Rights and Freedoms. The *Enfranchisement* principle was then repealed.

Spielmann, but several other authors are opposed to the thesis that Canada is a country where racial equality is a socially established fact. Not only do we agree with it, but we add that Canada is a country that is politically progressive and racially egalitarian in its own right, even though it has the same conditions of racism internally for all those who, unlike those of non-European descent, are not considered white. For this, Canada has its own classification: the so-called visible minorities, a subject that is not exactly the subject of this dissertation, but one that deserves attention, because this is how they also, in some way, treat all immigrants who, not of European descent, are distinguished from the European descendants who invaded and conquered the country.

2.4 A brief look into the Treaties Era in Canada: The Treaty Number 9

The so-called ‘treaties era’ corresponds to the period ranging from 1871 to 1921 in which eleven treaties were signed and established essential terms of the relationships between the Euro-Canadian societies and the *aborigines*. It was in this period that several controversies involving misunderstandings and interpretations of the terms of the treaties, especially over the 'surrendering' of the indigenous lands on behalf of the settlers, took place. Some of them persist to date. Again, it is not in the frame of this chapter to exhaustively discuss the treaties and their consequences for the *First Nations* in Canada. However, a comprehensive look at these documents is necessary in order to better understand and assess what happened with the people of Lac Seul First Nation, enrolled under Treaty Number 9 or Treaty of James Bay.

My process of understanding the Numbered Treaties in Canada has passed through the attendance of a course about the Treaty Rights, under the supervision of Professor Barbosa de Oliveira, at the Lakehead University during the fall-winter semester of 2018. Due to this, much of the bibliographic research incorporated involved the work of anthropologists who dealt with this topic from a critical perspective, as Sean Coulthard, Taiaiake Alfred, James Waldram, Noel Dyck, among others. Also, considering the purpose of this dissertation, it was absolutely necessary to get to know the Treaties Era to build a broader understanding of the federal Reconciliation agenda and the critics that all the time come up from its most important counterparts: The Indigenous Peoples themselves. My understanding of the meaning of the treaties in the context of a supposed broader *reconciliation* agenda in Canada also came from reading Indigenous authors and intellectuals who make this criticism from an insider's perspective. The analysis of the

numbered treaties is important to situate the legal and juridical context in which Indigenous Peoples in Canada are currently inserted, especially with regard to demands for comprehensive land claims, and of particular importance is also the analysis of Treaties 3 and 9, which have had direct impacts on the Lac Seul First Nation community.

The numbered treaties signed from 1871 to 1921 between representatives of the British Crown and Indigenous Peoples in Canada, is an essential part of understanding why Canada has a complex and broad interpretation of the Indigenous issue under modern law. From an English legal tradition, common law is the way in which civil conflicts are resolved. According to Kant de Lima, in the tradition of common law, whose motto is "the rule of law", the legal field finds legitimacy and *raison d'être* in reference to the social phenomena to which it is intrinsically and progressively articulated (KANT DE LIMA; 2012). In societies such as Brazil, unlike the Anglo-American legal traditions with a Protestant religious inclination, the predominance of the Catholic perspective of pacifying is present in law and in social norms, so that "the law was made not to administer institutionally, by resolution, inevitable conflicts arising from the existence of rules, but to pacify society, thus bringing it back to a state of harmony from which it was torn by conflict" (KANT DE LIMA, 2012, p. 43).

Based on historical evidence, Patrick Macklem (1997) analyses how Treaty N. 9 was written and how its observation may impact on the exploitation of natural resources in Indigenous territories located in Northern Ontario. In Macklem's short view, the treaties were the legal form found by the British Crown to extinguish indigenous land titles of Indigenous Peoples in Canada. As he explains from the analysis of historiographic documents, the wording of the treaties did not make clear to the Indigenous People the consequences that could result from handing over the titles to the Crown, which included the possibility that the natural resources of these regions could be exploited both by the Crown and by third parties, opening space for ambiguities and gaps in interpretation. However, the poor drafting of the treaties cannot open up "loopholes" that are detrimental to Indigenous ways of life, depending on the interrelationship that judges give to the written text.

Regarding the wording of the treaties at the time they were signed, Macklem explains that the tendency of the Supreme Court of Canada (SCC) has been to consider that these documents "are to be interpreted in a manner sensitive to Aboriginal expectations," since the way they were written at the time may have failed to capture the full extent of what was said orally among the signatories. Macklem explains that the

Supreme Court of Canada has not only been in favour of interpreting these texts from a point of view more favourable to Indigenous Peoples, but has also considered that the treaties, as written documents "did not always record the full extent of the agreement. Thus, says Macklem, the Supreme Court of Canada has chosen to think that "where a treaty right admits of more than one interpretation, the Court will look to extrinsic evidence, and ambiguities are to be resolved in favour of Aboriginal interests" (1997, unnumbered).

The Treaty 9 covers land located North of the Province of Ontario, and North of the 1850 Robinson-Superior and Robinson-Huron Treaties, which limit the border to the east with the Province of Québec, beyond the territory covered by Treaty 3 to the west, and Hudson Bay and James Bay to the North. According to Macklem, it was the Indigenous People of Northern Ontario who, at the turn of the 19th to the 20th century, asked the federal government to heed their demands, since they had not been included in the treaty signed for the Robinson-Superior region, the Great Lakes, in 1850. More specifically, in 1884, the Indigenous Chief, Louis Espagnol, representing the *Eshkemanetigon* people, requested by letter, the inclusion of its subgroup in a treaty. The request was motivated by the fact that the animals hunted by these Indigenous People and the basis of their food culture, would be suffering a decrease due to the advance of colonizers on indigenous lands. The food shortage led to the sickening of women and the elderly, motivating the request for inclusion in a treaty that imposed rules and limits on the exploitation of natural resources in the region. The letter was addressed to James Phipps, Superintendent of Indigenous Affairs for the area of Manitou Island and Lake Huron, but only in 1889 was the request discussed by representatives of Indigenous Affairs, who considered the possibility of signing a treaty between the Indigenous People and the federal government, Treaty Number 9 (MACKLEM, 1997).

Similarly, other indigenous subgroups residing along the Albany River, and lakes Joseph and Osnaburgh, also requested inclusion in treaties in 1901. In general, it can be said that for the *bands* of the Northern region of the Province of Ontario, the idea of protection and compensation in the face of the increasingly constant and threatening presence of the "white man", and the consequent advance of economic development projects, towards indigenous ancestral territories, was already interpreted as a part of a sense of justice by these populations. In Macklem's words:

> (…) petitions made by aboriginal people living in northern Ontario at the turn of the century indicate that aboriginal leaders generally desired to enter into treaty with the Crown to offset social and economic damage that had befallen their people. Railway, construction, surveying activity, and an unprecedented rise in hunting, trapping, and fishing by non-Aboriginal people had increased Aboriginal dependence upon Hudson's Bay posts and made it increasingly difficult for Aboriginal people to maintain their traditional ways of life. Agreement was sought with the federal government to provide protection for Aboriginal hunting, trapping, and fishing on ancestral lands in the face of economic and railway development. Financial aid was also sought to alleviate the economic suffering caused primarily by the depletion of game and fish. The petitions illustrate a desire on the part of Aboriginal peoples to maintain traditional ways of life in the face of economic development and increased settlement (MACKLEM, 1997, no number).

The construction of the Canadian Pacific Railway and the road connecting the city of North Bay to the *Temiskaming* territory added to the decrease in hunting and fishing activities, and the consequent increase in the dependence on manufactured goods that gradually began to be supplied by the Hudson Bay Company stations, were recognized, including by government agents responsible for establishing communication with the indigenous *bands*[77] and operationalizing the procedures related to the treaties, as preponderant factors that already threatened the way of life – of hunting and fishing – of the Indigenous People of the Northern region of the Province of Ontario, contributing to stimulate the request for inclusion in a treaty with the Crown.

However, according to Patrick Macklem's analysis, unlike government agents often well-intentioned in guaranteeing that the signing of the treaties would guarantee some protection to the signatories, because they could see the colonizing advance on these populations *in situ*, The interest of the provincial and federal governments in signing an agreement with the Indigenous People of the region did not seek to protect them from the imminent exploitation of natural and economic resources, but to facilitate the process of liberating these lands for the realization of enterprises that would link this region of the province with others and free access for mineral exploration of gold and other precious metals already located. This becomes evident when Macklem presents one of the main findings of his research, the draft of the Treaty N. 9, which was submitted to the

[77] Since we are always dealing with categories corresponding to each regime, in its respective era, terms such as *bands* and *indigenous communities*, among others, which derive from the Indianity regimes of each country and correspond to a state classification logic, appear in italics throughout the text.

evaluation of the governments of the Province of Ontario and the federal government before it was signed, and where the latter expresses its desire to pave, literally, the way for the exploitation of the Northern region of Ontario, through the extinction of all indigenous rights in the territories. Even in the face of disagreement between the provincial and federal governments over the treaty's provisions, it was necessary for both governments in 1891 to sign a law defining these terms, the Act of Settlement of Certain Questions Between the Governments of Canada and Ontario Respecting Indian Lands.

Another point that stands out when we delve deeper into the history of Treaty N. 9 is the fact that not all *bands* in Northern Ontario were in favour of the idea of signing a treaty with the Crown. Macklem proves his thesis by presenting an internal correspondence exchanged between Hudson Bay Company officers in 1902, which said:

> Whatever is done in the matter by the Department the sooner the better. The Osnaburgh Indians are anxious for it. There may be some little difficulty with the Fort Hope Indians now but it may not be insurmountable. They were alright last year. Unless they have changed their minds the Indians as far as the Attawapiskat River northward from the Albany were inclined to accept it. The Roman) Catholic Attawapiskat Indians are led by Kachang who is not anxious for government control (MACKLEM, 1997, no number).

Based on the historical documents he analyzed, Macklem can observe that, as a rule, the following causal logic prevailed: the closer a *band* was to a large railway or road, the greater his interest in signing a treaty with the Crown that could bring “protection”. On the other hand, as many agents had already verified, some Indigenous People somehow already knew that protection means nothing but control, and they were not interested in this. In conclusion, Macklem attests that at the turn of the nineteenth century to the twentieth, the requests made by the Indigenous Peoples of the Northwest region of Ontario indicated that, in general, the Indigenous leaders were eager for an agreement with the Crown that could compensate them, socially and economically, for the damage caused by numerous development projects – road construction, exploratory activities, and more importantly, an unprecedented increase in interest in hunting and fishing activities by non-Indigenous people, simultaneously causing a decrease in flora and fauna and an increase in dependence on industrialized goods from Hudson Bay Company posts. In this sense, for the Indigenous People, the treaties were a way to seek the protection of the

Crown for the maintenance of traditional ways of life in the face of growing economic development and the constant opening of new roads (MACKLEM, 1997).

When finally signed in 1905, Treaty N. 9 recognized the existence of the indigenous land title, but also assumed that the *Ojibways* agreed "to surrender" parts of their land to the British Crown in exchange for some "benefits". The commissioners sent on these missions had the power to offer certain conditions to the indigenes in return for the surrender of land, but were not allowed to alter or add to it if it was not accepted by them. The treaties lasted about four days or less to be signed. Nowadays, it takes decades to correct them off.

The treaties are the legal forms that the Crown developed to extinguish indigenous title over ancestral indigenous lands. Treaty 9 recognized the existence of an indigenous land right prior to the invasion of the Europeans. In this dissertation, however, unlike some authors who treat the event as "arrival", the event will be treated as an "invasion" (KOVAC, 1964).

Treaty 9 assumed that the *Ojibway* were agreeing "to surrender" portions of land. The commissioners were empowered to offer certain conditions but were not allowed to alter or add anything if it was not accepted by them. Compared with Treaty No. 3., the annuity payable under the new agreement was one dollar less and also there was no distribution of ammunition, issue of implements, cattle or seed-grain (MORRISON, 1986, p. 5).

For many authors, the Indian Act of 1876 was the most important document to establish control over Indigenous Peoples in Canada. According to Vitenti, the Indian Act can be defined as a "state power, exercised over indigenous populations and their territories, which seeks to ensure a monopoly on the procedures of definition and control over them" (VITENTI, 2017, pp. 176)[78]. In this sense, the Indian Act – despite not being explicitly described in terms of guardianship can be understood as a tutelary power created to control all aspects of indigenous lives. In 1951, the Indian Act had some provisions amended and others repealed. The indigenes were allowed, for the first time since 1884, to consume alcohol in public places but not in their own homes. The provision that indigenes with university degrees would automatically lose their status was repealed, and women from the First Nations were allowed to run for a *band* council election for the first time. In 1996, the liberal wing of the Canadian federal government proposed new

[78] "Um poder estatal, exercido sobre as populações indígenas e seus territórios, que procura assegurar o monopólio dos procedimentos de definição e controle sobre os mesmos".

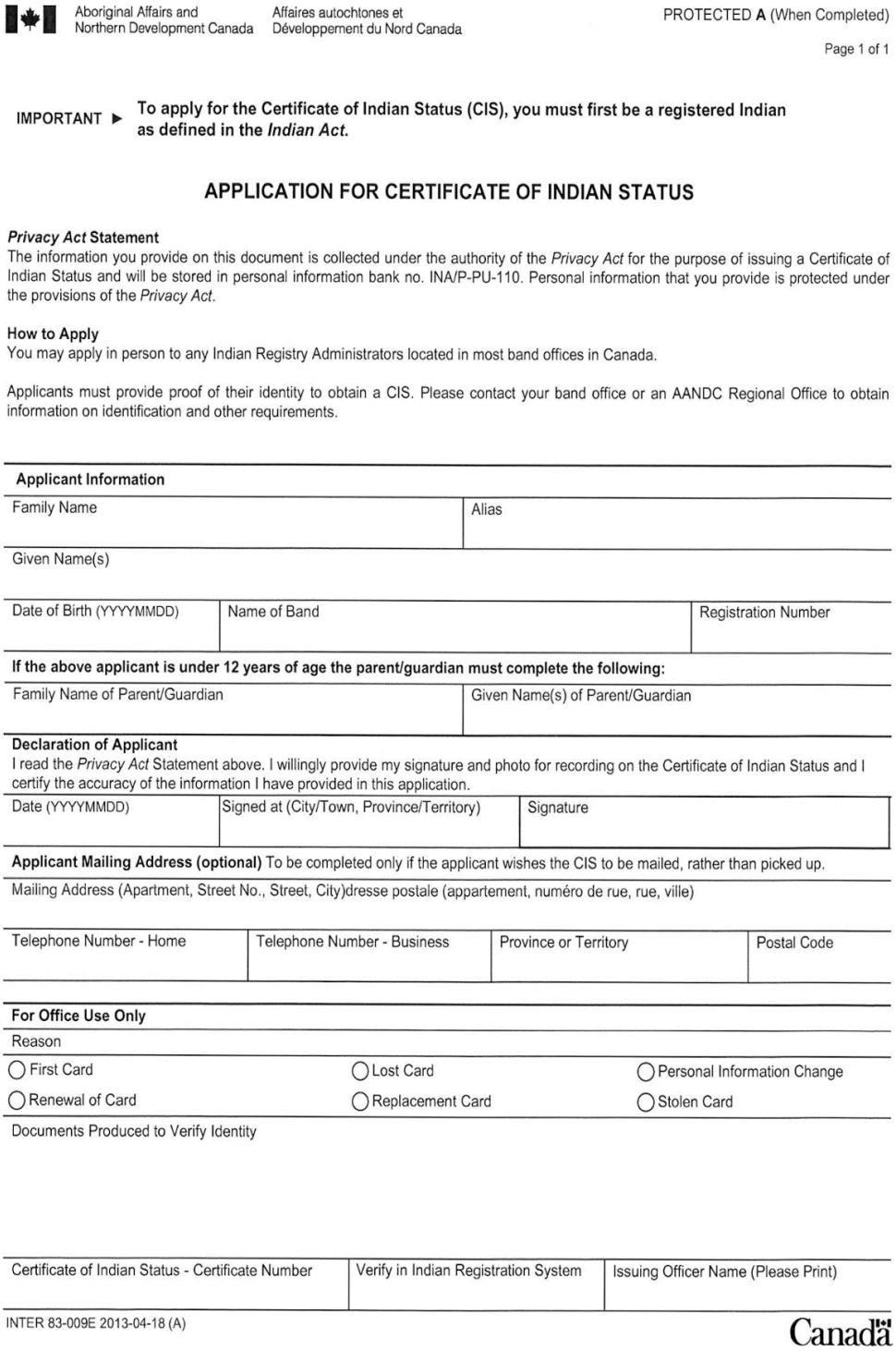
changes to the Indian Act to encourage relations between multinational companies, the private sector and the First Nations. Critics argued that the changes would lead to the resurgence of the late 20th Century "business-city" monopolies granted to the Hudson Bay Company in the 19th Century. They also accused the federal government of using the rhetoric of self-government and promoting the discourse of indigenous entrepreneurship as a way to legitimize the abandonment of its legal responsibilities and obligations – especially the fiduciary obligations.

Below is the application model for obtaining the Certificate of Indian Status, as required by the Canadian government:

Image 4: Certificate of Indian Status

All applications are formalized by completing a form such as the following:

Image 5: Application for Certificate of Indian Status



Aboriginal Affairs and Northern Development Canada | Affaires autochtones et Développement du Nord Canada

PROTECTED **A** (When Completed)

Page 1 of 1

IMPORTANT ► **To apply for the Certificate of Indian Status (CIS), you must first be a registered Indian as defined in the *Indian Act*.**

APPLICATION FOR CERTIFICATE OF INDIAN STATUS

***Privacy Act* Statement**
The information you provide on this document is collected under the authority of the *Privacy Act* for the purpose of issuing a Certificate of Indian Status and will be stored in personal information bank no. INA/P-PU-110. Personal information that you provide is protected under the provisions of the *Privacy Act*.

How to Apply
You may apply in person to any Indian Registry Administrators located in most band offices in Canada.

Applicants must provide proof of their identity to obtain a CIS. Please contact your band office or an AANDC Regional Office to obtain information on identification and other requirements.

Applicant Information

Family Name	Alias
Given Name(s)	

Date of Birth (YYYYMMDD)	Name of Band	Registration Number

If the above applicant is under 12 years of age the parent/guardian must complete the following:

Family Name of Parent/Guardian	Given Name(s) of Parent/Guardian

Declaration of Applicant
I read the *Privacy Act* Statement above. I willingly provide my signature and photo for recording on the Certificate of Indian Status and I certify the accuracy of the information I have provided in this application.

Date (YYYYMMDD)	Signed at (City/Town, Province/Territory)	Signature

Applicant Mailing Address (optional) To be completed only if the applicant wishes the CIS to be mailed, rather than picked up.

Mailing Address (Apartment, Street No., Street, City)dresse postale (appartement, numéro de rue, rue, ville)

Telephone Number - Home	Telephone Number - Business	Province or Territory	Postal Code

For Office Use Only

Reason

◯ First Card	◯ Lost Card	◯ Personal Information Change
◯ Renewal of Card	◯ Replacement Card	◯ Stolen Card

Documents Produced to Verify Identity

Certificate of Indian Status - Certificate Number	Verify in Indian Registration System	Issuing Officer Name (Please Print)

INTER 83-009E 2013-04-18 (A)

Canada

According to Douglas (1983), the year 1969 marked the beginning of the contemporary era of Indigenous law in Canada, with advances in the definition and protection of aboriginal rights. On one hand, the White Paper of 1969 "advocated the dissolution of any distinct legal or political status for Indigenous peoples, or their lands, and the rapid assimilation of Aboriginal peoples into the mainstream of Canadian society" (CULHANE, 1998, p. 84). On the other hand, while the White Paper proposed the repeal of the Indian Act and the dismantling of the Department of Indian Affairs, advocating the transferring of the federal programs to the provinces and the complete elimination of the status of *Indians* and Inuit, its rejection provoked a vigorous reconsideration of the legal, political and cultural life in that country for the Indigenous groups. They strongly stood up to say that the recognition of the Indian status was essential for them to be treated fairly in their relations with Canadian society. Canada's government, then, redirected the Indigenous policy and took initiatives to address the social, economic and political marginality experienced by Indigenous within the Canadian society (DYCK & WALDRAM, 1983). In this period, at least theoretically, the guidelines for integrating Indigenous Peoples were left behind.

2.5 Regime of Indigeneity in Brazil

Going back a few centuries in Brazilian history, since 1509, indigenous lands have been considered the property of the King of Portugal and wars of annihilation against the *natives* could be fought in case of resistance. It is possible to find in the legislative body numerous designations for the *native* peoples, ranging from those used by the settlers, such as *gentiles* and "blacks of the earth", to *indian* and *indigenous*, which constitute the fundamental contemporary concepts of indigenous law and which have replaced the designation *silvícolas* (forest dwellers), with an inferior connotation, contained in the Constitution of 1934. From 1808 on, the lands of captured and defeated indigenous groups were considered *Nullius Land*. In 1850, the Land Act n. º 601 was issued to regulate the areas considered unowned or unused (vacant), allowing the illegal plundering of indigenous lands.

According to Law No. 3348, 1887, the land of the decimated indigenous populations was taken over by the provinces and municipalities. In 1891, the new secular Constitution issued the separation of the State from the Church and, as a consequence, the Christianization of the indigenous population was no longer a state objective. At the

same time, no norms related to the "Indian question" were included in the Constitutional text. With the Proclamation of the Republic, in 1889, the competence over the civilization (to be understood as a verb) of indigenes was transferred to state governments and endured until 1906, when the Ministry of Agriculture was established (Act No. 1606). In 1910, the National Indian Protection and Worker Location Service was created as "the first indigenous assistance agency in Latin America" (Decree no. 8072). In 1916, the enactment of the Civil Code established the relative incapacity of Indians. This enactment was followed by the Statute of the Indian, of 1973 (still valid), which brought the definition of "silvícolas" and "indigenous communities", in its article 3:

> I - "Indian – is every individual of pre-Columbian origin and ancestry, who identifies and is identified as belonging to an ethnic group, whose cultural characteristics distinguish him from national society;
>
> II - "Indigenous community" – is a group of indigenous families" (Statute of the Indian, 1973).

It is important to note that both the National Indian Protection and Worker Location Service – which in 1967 gave way to the National Indian Foundation (Fundação Nacional do Índio – FUNAI)– and the 1973 Statute of the Indian (Law nº 6.001/1973) – federal legislation dealing specifically with the regulation of who is Indian or not in Brazil still has validity – can be equated to what in Canada were the Department of Indigenous Affairs and Development of Northern Territories and the White Paper, 1969. Also, according to Teófilo da Silva, the "Statute of the Indian, promulgated during a military dictatorial regime, has the same weight and importance for Brazil as the Indian Act for Canada, with all its totalitarian implications for the lives of Indigenous Peoples: the (non) recognition of their original rights and the management of their territories and life projects" (TEÓFILO DA SILVA, 2016, p. 202). The integrationist Statute of the Indian, besides providing the integration of the Indigenous Peoples into the Brazilian national society, warned about the possibility of the removal of indigenous groups by a Presidency's Decree. It also established the indigenous lands as inalienable and unavailable goods and the rights over them as imprescriptible. The Statute of the Indian "accompanies the Civil Code of 1916, which recognizes Indigenous Peoples as 'relatively incapable', subject to guardianship by a state agency" (TEÓFILO DA SILVA and LORENZONI, 2012, p. 13):

> Art. 60 - They are incapable, in relation to certain acts (art. 147, I), or the manner of exercising them:
>
> I - Those over 16 (sixteen) and under 21 (twenty-one) years of age (articles 154 to 156);
> II - The prodigal;
> III - The silvicultural ones.
>
> Single paragraph. The silviculturalists will be subject to the tutelary regime, established in special laws and regulations, which will cease as they adapt to the country's civilization (wording gave by Law No. 4,121 of 08.27.1962).

The New Civil Code (Law No. 10.406/2002) reads as follows:

> Art. 4 They are incapable, in relation to certain acts, or the manner of exercising them:
>
> I - Those over 16 and under 18 years of age;
> II - The habitual drunkards, addicted to toxic substances, and those who, due to mental deficiency, have reduced discernment;
> III - The exceptional, without complete mental development;
> IV - The prodigal;
>
> Single paragraph. The capacity of the Indians will be regulated by special legislation.

In 1928, the Decree nº. 5484 regulated the guardianship and the legal relations of indigenes in the Brazilian Republic, providing a background for the state actions oriented to transform the indigenous populations into rural workers and small farmers. According to the Decree's text, “the State assumes responsibility for creating favourable conditions for the 'evolution' of Indians, such as demarcating land, protecting it and promoting knowledge of modern agricultural techniques”.

In 1934, for the first time, the second Republican Constitution of Brazil established respect for the ownership of the indigenous land and established the Union's competence for the incorporation of the so-called “silvícolas” into the national society. In 1936, Decree 736 prohibited the removal of *indigenous communities* from their lands and the federal agency responsible for the indigenous issue was explicitly charged with legalizing and demarcating their lands; indigenous areas were defined according to three criteria (occupation, reproduction, and ancient possession). Some articles of this Decree

were included in the 1934 Constitution (article 198) and in the 1973 Statute of the Indian. The Constitution of 1824 did not provide for any rules on indigenous issues.

In the 1937 Brazilian Charter, the right to the land was considered as a "fundamental right" for *indigenous communities*. The 1988 Constitution of Brazil does not adopt the term "Indigenous Peoples", but "*Indian*", "*indigenous community*", "*indigenous group*" and "*indigenes*", the latter being defined as an "'isolated Indian or a greater number of Indigenous peoples" (KAYSER, 2010).

2.6. Constitutional provisions on Indigenous Peoples in Brazil and Canada

Concerning the last constitutional charts of Brazil and Canada one can note that both documents are assertive in guaranteeing the rights of the Indigenous Peoples, mainly culture, land, language and sociopolitical organization, i.e., self-determination. This means that these countries are, at least theoretically, compromised with plural and multicultural society and that their charts are in accordance with what Antonio Wolkmer signaled as epistemic and methodological marks of pluralism, i.e., they recognize the value of diversity and emancipation and try to balance the forces existent between hegemonic and non-hegemonic groups (WOLKMER, 2011, p. 373).

According to the work of Leonardo Barros Soares, who recently defended a political science Ph.D. dissertation comparing the land claims in Brazil and Canada, "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" (SOARES, 2019, p. 56). Brazil and Canada experienced constitutional reforms in the 1980s and in these two countries "there have been remarkable efforts made by Indigenous groups to entrench Indigenous rights in the new constitution" (SOARES, 2019, p. 60).

Comparing the constitutional design of Brazil and Canada charts, "Whereas the Anglo-American model is concise and establishes the governmental framework and thus leaves many of the political interaction 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 *apud* SOARES, 2019, p. 57).

The repatriation of the Canadian constitution took place in 1982 and the Brazilian Constitution was promulgated in 1988. Brazil and Canada are "countries with market

economies strongly based on the extraction of natural resources", which decisively impact the relationship between the national state and Indigenous communities (SOARES, 2019, p. 40). However, "In a sharp contrast to Canada, Brazil has had eight constitutions since its Independence in 1821" (SOARES, 2019, p. 59). Add to this that "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" (SOARES, 2019, p. 57-58).

Considering the Canadian chart of 1982, it is important to highlight that,

> Three groups of Aboriginal peoples are recognized by the Canadian Constitution: Indian, Métis, and Inuit. Today, the term "First Nations" is preferred to the word "Indian" in Canada. "Aboriginal," "Indigenous," and "Native" are often used interchangeably. However, certain terms may be applied within specific contexts. In the context of constitutional rights, the term "Aboriginal" is appropriate. Non-Indigenous people are referred to as "settlers," and Canada, for example, could be referred to as a "settler society.[79]

According to Stephen Baines, Section 35 of the Canadian Constitution Act, 1982, recognized and affirmed the "rights of the existing treaties and aboriginal rights of Canadian aboriginal peoples" (BAINES, 2003, p. 10). Section 35 of the Constitution Act states:

> (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
>
> (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

According to Otis,

> The rights of aborigines protected by the Section 35(1) should be interpreted in the context of the history and culture of the aboriginal society in question, to give them meaning to the aboriginal people. These rights are varied and cover a potentially wide range of interests. The main traditional component of the Aboriginal rights doctrine concerns the Aboriginal title, i.e. the sui generis right to land which gives Aboriginal people the right

[79] Information took from Indigenous Canada Course, a Massive Open Online Course (MOOC) from the Faculty of Native Studies, that explores Indigenous histories and contemporary issues in Canada. Available in: https://www.coursera.org/lecture/indigenous-canada/introduction-RaIWE.

> to occupy and use the land in question, subject to the Crown having the final title and the exclusive right to buy the land in question. However, the Aboriginal title does not exhaust the doctrine of aboriginal rights. Rather, this doctrine encompasses a broader set of rights based on the occupation and historical use by Aboriginal people of their ancestral lands, which includes not only the Aboriginal title, but also the rights to hunt, fish and trap Aboriginal people, as well as customs, practices and traditions that are not related to the land. The general analysis to define the nature and scope of Aboriginal rights is based on the notion of "integral to the distinctive culture of Aboriginal peoples", whose protection is the general purpose of the s. 35(1). Thus, the customs, practices and traditions protected by Art. 35(1) should be considered as those that are sufficiently important and fundamental to the social organization and culture of a particular group of Aborigines (OTIS, 2005, p. 4) (my translation).

In the case of Brazil, resulting from the context of political re-democratization that occurred after twenty years of military dictatorship, the 1988 Constitution was a milestone in the history of indigenous rights in Brazil. Other Latin American countries that have also lived undemocratic experiences, such as Argentina, Chile, Peru and Uruguay, have equally experienced the "rebirth of ethnic groups (...) as a response to the decades of authoritarianism, and a recognition of differences, which had been the hallmark of the continent since the conquest at the end of the 15th century" (MARÉS, 2013 apud ZEMA, 2014, p. 265).

With the 1988 Constitution, Brazil followed international trends of subordinating individual citizenship rights to collective rights. According to Marés (1991), it was the first time, on a constitutional level, that collective rights were admitted, both in terms of recognition of the social organization, customs, languages, and indigenous traditions and in terms of assigning rights to communities, such as the right to opine on the use of natural resources and to postulate in court (ZEMA, 2014, p. 265). In addition to overcoming the integrationist bias and the assimilationist perspective of previous legislation – which understood *Indians* as a transitory condition from a mistaken social-evolutionary perspective – the 1988 charter recognized Brazil's multiethnic composition, "guaranteeing Indians the right to continue being Indians" and establishing their social and territorial rights (MARÉS, 2013 apud ZEMA, 2014, p. 264 - 265).

Documents with constitutional law status, such as the Convention 169 of the International Labour Organization (ILO) on Indigenous and Tribal Peoples (Decree 5.051/2004), have also been incorporated into the Brazilian legal system.

The 1988 Constitution, which did not adopt the term Indigenous Peoples, but *Indians* and *indigenous communities*, brought eleven articles that generally refer to these populations, and two specifically about indigenous communities, Art. 231 and Art. 232. Although the Statute of the Indian, 1973, still in force, continues to keep indigenous populations under tutelage, the citizenship status of these individuals was recovered, and the Federal Public Ministry (MPF) became the defender of the rights and interests of Indigenous Peoples in Brazil (ZEMA, 2014, p. 266).

Article 231 recognizes customs, languages, beliefs, and traditions, "provided that one understands customs and traditions not only the rules of coexistence, marriage relations, internal punitive system, hierarchy, and divisions, including clanic ones, but also gastronomy and art" (MARÉS, 2013 apud ZEMA, 2014, p. 267).

The wording of article 231, *caput*, states:

> Art. 231. Indians are recognized for their social organization, customs, languages, beliefs and traditions, and for their original rights over the lands they traditionally occupy, and it is the Union's responsibility to demarcate them, protect them, and ensure that all their goods are respected (BRASIL, 1988).

It should be noted that the social organization of Indigenous Peoples, recognized in the 1988 Constitution, should not be understood as a generic category: it means that "each people that maintains its social organization is, as such, recognized. Considering the great diversity of peoples and contact situations that these peoples have experienced, and still experience, the "constitutional provision recognizes each of these peoples and the collective subjective right of each group to claim it" (MARÉS, 2013 apud ZEMA, 2014, p. 266-267). Likewise, by establishing the recognition of societal autonomy, article 231 guarantees the right of Indigenous Peoples to preserve their culture and maintain their social organizations for present and future generations. It is also the Indigenous People themselves who, in the exercise of their autonomy, will have to give their opinions and decide on the development processes they wish to follow (ZEMA, 2014, p. 267).

Article 232 recognizes the legitimacy of Indians, their communities, and organizations to go to court in defence of their interests and rights, and the Federal Justice is responsible for judging cases related to Indigenous rights (art. 109, XI) and the MPF is responsible for defending their rights and interests (art. 129, V). It is up to the Indigenous

people, however, to decide whether to avail the MPF or defend themselves directly. In any case, it is the MPF's function to monitor all acts of the process (ZEMA, 2014, p. 267).

Articles 215 and 216 guarantees the right of all Brazilians to cultural diversity and establish the duty of the State to preserve the multiplicity of cultures and encourage the appreciation and dissemination of different cultural manifestations (MARÉS, 2013 apud ZEMA, 2014, p. 267). Other indigenous rights are also regulated by the Constitution, such as the right to the use and protection of mother tongues and their own learning processes (article 210, paragraph 2).

When it comes to indigenous land rights, the 1988 Constitution now considers the right to land as "original," that is, "prior to and independent of any act of the State. Here, according to Tides, there is a breakthrough with the previous paradigm because it is a "recognition" of a pre-existing right. This "recognition" is due to the fact that the *Indians* were the first occupants of Brazil. Thus, Indigenous Peoples have the right to their lands and the Brazilian State must recognize and guarantee it. Still, according to Tides, the demarcation and registration of indigenous lands fulfil only the role of "giving knowledge to others. This also means that one cannot demand a "territorial memoriality or fidelity" of more than 500 years of the Indigenous Peoples, not least because the State policy in Brazil, until the 1980s at least, was to remove these peoples to other places, as happened with the Xavante de Marãiwatsédé and other communities that were entirely removed from their traditional homelands.

Another conceptual innovation is the idea that Indigenous land is not only necessary for housing, but also for its physical and cultural reproduction. The characterization of indigenous lands as "traditional", therefore, is not related to the historical element, but to the traditional ways of occupation. The STF's interpretation has been to remove occupants "in bad faith" (i.e., landgrabbers) of traditional indigenous lands, as occurred in the case of the Raposa Serra do Sol Indigenous Territory, the Krenak, the Panará, and the Xavante themselves, when they were legally granted the right to return to their lands in 2012 (ZEMA, 2014, p. 269). As we read in the *caput* of article 231:

> § 1º The lands traditionally occupied by the Indians are those permanently inhabited by them, those used for their productive activities, those indispensable for the preservation of the environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, customs and traditions.

> § 2º The lands traditionally occupied by the Indians are destined to their permanent possession, being their exclusive use of the riches of the soil, rivers and lakes existing in them (BRAZIL, 1988).

It should be emphasized that the traditional occupation must be done "according to the indigenous customs and traditions". Tides explain that this is the social function of indigenous land, which is the guarantee of life and protection of the people who live on it. For this reason, the limitations of capitalist wealth production and the environmental limitations of the Fauna Protection Code and the Forest Code cannot be applied (MARÉS, 2013 apud ZEMA, 2014, p. 269). It is understood that *Indians* have the right to the exclusive enjoyment of the wealth of the soil, but the subsoil and mineral and water resources continue to belong to the Union (art. 176 of the Constitution) and the Congress may authorize the exploitation of this natural wealth for the national interest (art. 49 of the Constitution). According to Tides, "this authorization is only possible when it does not violate the *caput* of article 231 or the other paragraphs". Thus, the indigenous rights to land, to the exclusive enjoyment of the riches of the soil, rivers and lakes, and the right to society and culture are "constitutional limits to water or mining exploitation" (MARÉS, 2013 apud ZEMA, 2014, p. 270).

It was also established by the constitutional text, Article 67 of the Transitional Provisions, that the Union should complete the demarcation of all indigenous lands within five years of enactment of the Constitution. This deadline should serve to reinforce the Union's duty to demarcate all indigenous lands. Although the demarcation is a "mere declaratory act," it is an important action because once the land is demarcated, it is easier to demand the protection of the responsible organs of the State (MARÉS, 2013 apud ZEMA, 2014, p. 270).

The Constitution establishes that the Union must protect the rights of Indigenous Peoples, but does not speak of guardianship or relative incapacity of the *Indian*, finally overcoming the idea of civil and orphanological guardianship, which infantilized the person of the *Indian*. In its place, a public tutelage appears, with the same legal content as that established for cultural heritage (arts. 215 and 216) and the environment (art. 225). It is because of this protection that the Constitution also determines, in the fourth paragraph of article 231, that indigenous lands are inalienable and unavailable, in addition to the rights on them being imprescriptible (ZEMA, 2014, p. 271).

2.7 Comparative timeline on facts and legislations concerning Indigenous Peoples in Brazil and Canada

The analysis of legal and political events that have impacted the status and rights of Indigenous Peoples in Brazil and Canada throughout history has required the organization of a methodology of some correspondence between the facts, although not fully linear and equivalent. This correspondence can refer both to the most important facts on the subject of colonialism and reconciliation, and to other issues that have generally marked advances and setbacks in the field of indigenous rights in these two countries. The methodological solution found was to identify related facts and organize them in a comparative timeline, in the form of a table, which I present below.

TABLE 2

COMPARATIVE TIMELINE ON INDIGENOUS FACTS AND LEGISLATIONS IN BRAZIL AND CANADA

YEAR	CANADÁ	YEAR	BRAZIL
		1493	Pope Alexandrina's Bull grants Catholic kings the ownership of land and islands acquired 100 leagues West of the Azores and Cape Verde Islands.
1497	John Cabot, the first European to reach North America, arrives in the lands of Cape Breton Island, which he thought was the coast of Asia, and claims it in the name of King Henry VII, baptizing it Cape Discovery.	1494	Treaty of Tordesillas: "agreement between the Catholic kings of Spain and John II of Portugal that divided the 'Abya Yala' with an imaginary line".
		1509	The indigenous lands are considered the property of the King of Portugal and just wars of annihilation against the natives could be fought in case of resistance.
1609	Samuel de Champlain and indigenous allies enter the *Rivière des Iroquois* (Richelieu) and fight the Iroquois in a war that lasted for 150 years.	1609	Due to illegal Indigenous slavery, the July 30th Charter frees all the natives in Brazil.
		1611	Indigenous slavery is again authorized in case of "just war".
1613	The Alliance Chain, a series of agreements between the Confederation of *Haudenosaunee* and European representatives, is established with gift exchanges, promises and alliances to promote peace and the Indigenous political-economic sovereignty.		
1615	The first European missionaries (Récollets and Jesuits) arrived in North America to convert the Indigenous populations.	1628	King Philip IV's Royal Letter to the Council of Portugal asks for the elaboration of provisions on indigenous slavery.
1649	The Iroquois execute two Jesuit missionaries and the land of the Huron-Wendat is destroyed by the Iroquois. About 500 Huron-Wendat move to the region of Quebec City".	1653	A law issued for the state of Maranhão expands slavery in cases of resistance against the preaching of the Gospel, trade, refusal to pay taxes, work or fight for the King and the practice of anthropophagy.
1670	The Hudson's Bay Company is established and forms a monopoly on goods from the fur trade. In the following centuries, the HBC's blankets are widely traded, including the "Point	1680	Again, freedom is issued to all Indigenous peoples and their replacement by black slaves is set up.

	Blanket", first manufactured in 1779 and still available.		
		1686	The "Regimento das Missões" set up rules about the life in the missions, which lasts until the beginning of the Pombal reforms, initiated by the Marquis of Pombal, in 1750.
		1688	A permit for the State of Maranhão again authorizes Indigenous slavery in case of war prisons.
		1750	The Marquis of Pombal is implementing reforms to organize the political and economic situation of the colony. The Decree of Freedom of the indigenous is issued.
		1755	A new law for the State of Maranhão provides unrestricted freedom for all Indigenous people. The Freedom Decree integrates the Pombaline reforms to control the limits of the colony over Indigenous slavery. Marriages between Brazilians and Indigenous people are promoted and the Portuguese language is disseminated.
1756	The Seven Years War is fought in Europe, India and America. Britain and France (aided by Indigenous allies) fight for the supremacy of North America. With the Treaty of Paris, France cedes New France to the British.	1757	An Act of the Governor of Maranhão re-establishes forced labour to Indigenous already considered colonized.
1760	The Huron Treaty is concluded between the Huron and the British. The Huron receives the right to freely exercise their religion, local government and justice. In 1990, the treaty is recognized by the SCC.	1758	A charter extends the law of June 6, 1755, providing unrestricted freedom for all Indigenous people of Brazil.
		1759	The Jesuits are expelled from Brazil.
1763	The Royal Proclamation recognizes the Indigenous land titles to a limited extent and provides guidelines for negotiating nation-to-nation treaties. Under Pontiac's leadership, several Indigenous groups resist European occupation and rid the lower Great Lakes region of English soldiers. King George III of Britain declares their dominion over North America, East of the Appalachian Mountains.		

1791	The Constitutional Act creates representative assemblies elected for Upper and Lower Canada, with the Lower Canada one having a French and Catholic majority. In the same year, Koyah, head of the Haida people, organizes attacks against the British explorers of the coastal regions.	1808	The Royal Charter allows slavery for 15 years of Indigenous captured from baptism and the lands of the defeated ones are considered *terra nullius*.
		1809	Strategic letters are issued for offensive wars of extermination against the *Puri*, *Xamixuna*, *Canajá*, *Apinajé*, *Xavante*, *Xerente* and the *Canoeiro* peoples.
1812	The War of 1812 begins with thousands of Indigenous peoples fighting as allies of Britain or the US, for the maintenance of their lands, independence and culture. The Western Confederation, led by Tecumseh and Tenskwatawa, prevents the American invasion of Upper and Lower Canada. Some 10,000 Indigenous people die from wounds or disease. The Ghent Treaty, which was supposed to give back lands, possessions, rights and privileges to war-affected Indigenous peoples, is ignored.		
		1822	Proclamation of Brazil's Independence
		1824	The Constitution of the Independent Kingdom of Brazil does not provide for provisions on indigenous issues.
1831	The Mohawk Institute (Brantford, Ontario), run by the Anglican Church, becomes the first school in the Indigenous residential system. In the beginning, the school only admitted boys; in 1834, girls also began to be admitted.	1831	The Freedom Law is granted to all Indigenous people.
		1834	An additional act establishes the catechesis and civilization of the Indigenous People as a competence of the Portuguese Empire and the provinces.
1840	The Act of Union unites Upper and Lower Canada.		
1845	The report of the Bagot Commission (1842-1844) proposes the separation of Indigenous children from their parents as a way of assimilating them into Euro-Canadian culture. The commission also recommends that the Mohawk Institute be a model for other Residential and Industrial Schools.	1845	The Regulation of the Missions (Decree No. 426) re-establishes the system provided in Decree 3.5. 1757, forcing the labour of the Indigenous villagers and allowing the removal and the concentration of Indigenous People in the villages.

1850	The Robinson-Superior and Robinson-Huron Treaties are signed in what is now the Province of Ontario, as are the Douglas treaties in what is now the Province of British Columbia, allowing the exploitation of natural resources over vast areas of land in exchange for annual payments to Indigenous.	1850	The Land Act, No. 601, was issued to regulate the land areas considered unowned or unused (vacant), allowing the illegal plundering of Indigenous lands.
1857	The Gradual Civilization Act requires men and women over 21 to read, write, speak English or French and choose the last name approved by the government. The Act grants 50 acres of land to Indigenous men in exchange for the removal of the Indigenous membership and treaty rights.		
1867	The British North America Act unites the Province of Canada with New Brunswick and Nova Scotia and lays the foundation for the concept of "Dominion status. Under the Constitution Act, the federal government assumes authority over the First Nations and their lands.		
1871	The era of Numbered Treaties between the Canadian government and several Indigenous nations begins. The treaties release vast areas of Indigenous territories for settlement and project development in exchange for cash payments, access to agricultural tools, and hunting and fishing rights. Indigenous peoples' understanding of the treaties was that the land would be shared, but never handed over. Treaty #1 is signed at Lower Fort Garry between the Crown and Ojibwe Nations and Swampy Cree, who in exchange for the "cession" of large hunting areas, receive a supply of livestock, agricultural equipment and schools. Treaty No. 2 is concluded with the Chippewa of Manitoba, who "cede" the land from the mouth of the Winnipeg River to the Northern shores of Lake Manitoba to the U.S. border.		
1873	Treaty No. 3 is signed by the Saulteaux of Northwest Ontario and Manitoba. For the "delivery" of about 55,000 square miles, the Government reserves one square kilometre for each family of five, payments of $12 and an annuity of $5 per person.		
1874	Treaty #4 is signed at Fort Qu'Appelle, Sask, with the Cree, Saulteaux (Chippewa) and other First Nations.		

1875	Treaty #5 is concluded at Lake Winnipeg with the Chippewa and Swampy Cree (Maskegon) of Manitoba and Ontario, who "yield "100,000 square miles of territory.		
1876	The Indian Act is issued to eradicate the culture of the First Nations and promote its complete assimilation of the Indigenous peoples into Euro-Canadian society. Treaty #6 is signed with the Plains Cree, Woodland Cree and Assiniboine, who "cede" an area of 120,000 square miles of the plains of Saskatchewan and Alberta.		
1877	Canadian government officials meet with Indigenous chiefs to discuss the future of plain natives. Treaty #7 is signed at Blackfoot Crossing, south of Alberta. Under the treaty, Canadian authorities understand that the First Nations have agreed to "deliver" 35,000 square miles of land to the Crown in exchange for land, payments and dues.		
1880	An amendment to the Indian Act strips Indigenous women of their status when they marry non-Indigenous men.		
1883	Based on the recommendations of the Davin Report, John Macdonald authorizes the creation of the Residential School System, designed to isolate Indigenous children from their families.		
1884	Amendments to the Indian Act of 1876 provide for the establishment of Indigenous Residential Schools funded by the government of Canada and operated by Roman Catholic, Anglican, Methodist, Presbyterian and United churches. The Canadian government also prohibits traditional Indigenous ceremonies of *potlaches*, *pow wows* and sun dances.		
1896	The number of Indigenous Residential Schools throughout Canada exceeds forty. Each school receives one subsidy per student, leading to overcrowding and increased illness.	1887	The land of the extinct Indigenous populations is taken over by the provinces and municipalities (Law No. 3348).
		1891	The Constitution of the Republic provides for the separation of Church and State and catechesis is no longer a state objective. No norms on the Indigenous issue are included in the Constitution.

1899	With Treaty No. 8, the Cree, Beaver, Chipewyan and Slavey nations “ceded” the territory to the South and West of Great Slave Lake, and North of Alberta, to the Federal Government	1889	Proclamation of the Republic. Competence over Indigenous civilization was transferred to state governments until 1906 when the Ministry of Agriculture was established.
1906	Squamish Chief Joe Capilano goes to London to meet King Edward VII and Queen Alexandra and presents a petition on Indigenous rights to their lands.	1906	After almost 20 years being managed by the states, the competence of Indigenous policy passes to the Union, with the creation of the Ministry of Agriculture, Industry and Commerce (Act No. 1606).
1907	After visiting 35 Residential Schools, Dr. Peter Bryce, medical director of the Department of Interior and Indigenous Affairs, reveals that Indigenous children die at a mortality rate of 25%. That number rises to 69% after students leave school.		
1908		1908	Brazil is accused of indigenous genocide during an international congress in Vienna.
1909	The Boundary Waters Treaty is negotiated by a Canadian representative and the machines developed from the treaty are under Canadian, not British, control.	1910	Decree no. 8072 creates the National Indian Protection and Worker Location Service (SPILTN), “the first Indigenous assistance agency in Latin America”.
1914	Between 4 and 6 thousand Indigenous serves in the Canadian armed forces during World War I. Upon their return, they do not receive the same benefits as non-Indians war veterans.	1916	The enactment of the Civil Code brings tutelage regulations for non-Indigenous foresters and establishes the relative incapacity of Indigenous Peoples.
1919	The Treaty of Versailles elevates Canada to independent membership in the international community of nations.		
1920	The first session of the League of Nations confirms Canada's status as an equal and independent member of the international community of nations. The amendment to the Indian Act allows for the loss of status of Indigenous people assimilated or integrated from the First Nations. Deputy General Superintendent of Indian Affairs, Campbell Scott, makes attendance at Residential Schools mandatory for all children ages 7 to 16 of the First Nations. The policy also applies to Métis and Inuit.		

		1928	Decree no. 5484 regulates the guardianship and the legal relations of Indigenous in the Republic. With the Decree, “the State assumes responsibility for creating favourable conditions for the 'evolution' of Indigenous Peoples, such as demarcating land, protecting it and promoting knowledge of modern agricultural techniques”.
1929	Complaints about the Inuit that have no Christian names begin, initiating decades of government strategies to facilitate the registration of census information and consolidate federal authority in Northern Canada.		
1930	The network of Residential Schools expands, with more than 80 institutions in operation and some 17 thousand children in detention.		
1934	The Canadian government conducts researches on the education of the Inuit and Lorne Turner, Director of Lands, Northwest Territories and Yukon, asks the government to provide formal education to Inuit children.	1934	The second Republican Constitution of Brazil establishes, for the first time, respect for Indigenous land ownership. It establishes the Union's competence for the incorporation of forestry into the national society.
		1936	Decree 736 “deepens the issue of land contained in the 1934 Constitution: the removal of Indigenous People from their possessions is definitively prohibited, the SPI is explicitly charged with legalizing and demarcating Indigenous lands that have no actions; and Indigenous areas are defined according to three criteria (occupation, reproduction, and ancient possession). However, some articles of this Decree are included in the 1934 Constitution (article 198) and in the Indian Statute (1973)”.
		1937	After Getúlio Vargas' *coup d'état*, the Constitution granted recognizes the right to Indigenous possession of the land, prohibiting its sale.
1939	Second World War. Between 5 and 8 thousand Indigenous soldiers fight for Canada. Most do not receive the same support or compensation as other non-Indigenous veterans upon their return.		
		1946	The fourth Constitution of the Republic goes back on some Indigenous matters and reaffirms the regulations signed in the 1934 Charter.

1951	Amendments to the Indian Act give more power to the Indigenous Band Councils. The Indigenous lobby wins the right to vote for women. Prohibitions on dances, *pow wows*, and sun dances are lifted.		
1953	As part of the federal government's strategy to secure territorial sovereignty for Northern Canada during the Cold War, 87 Inuit of Inukjuak, northern Quebec, are forcibly removed to Ellesmere and Cornwallis in what has become known as the "Relocation of the High Arctic.		
1960	The Sixties Scoop. With the closure of Residential Schools, thousands of Indigenous children were taken from their families by provincial and federal social workers and taken to non-indigenous foster homes or orphanages. Some children were taken out of Canada. "Indian statuses" are given the right to vote in federal elections without loss of status or treaty rights.		
		1964	Military coup and fall of President João Goulart.
		1966	Through Decree No. 58,824, Brazil ratifies ILO Convention 107 on the Protection and Integration of Indigenous Peoples. After numerous accusations of corruption and other illegalities, the SPI is extinguished.
		1967	The fifth Constitution of Brazil brings norms on the Indigenous matters in the 1946 form and adds the binding of the ownership of Indigenous lands to the Union, recognizing the exclusive use of the Indigenous. The National Indian Foundation is created (FUNAI). The Committee of Investigation of the Ministry of the Interior establishes an Ordinance to investigate the situation of Indigenous peoples, resulting in the "Figueiredo Report".
		1968	The "Figueiredo Report", containing the names of officials involved in crimes and violations of rights against Indigenous Peoples, is published in the Official Gazette.

1969	The White Paper on Indigenous Issues proposes the abolition of Indian status and Indigenous reservations, with the transfer of responsibility for the Indigenous affairs to the provinces. In response, the head of the Cree, Harold Cardinal, writes the "Red Paper" calling for recognition of Indigenous Peoples as "Citizens Plus". After intense opposition from Indigenous organizations, the government withdraws the proposal. In the same year, the Canadian government assumes responsibility for operating church-run Residential Schools.	1969	A Military Junta enacts Brazil's sixth Constitution and maintains Indigenous rights as provided in the 1967 Charter. Land rights are expanded. "From a general point of view, this Charter coincides with the 1967 Text. The few differential details are the insistence on the impossibility of alienating land (Article 198) and the nullity of illegal occupations (Article 198, 1 and 2)". The Indigenous Rural Guard (GRIN) is formed under the responsibility of the Military Police of Minas Gerais, to teach torture techniques to Indigenous people and establish jails, the Krenak Indigenous Reformatory being the most famous of these, where Indigenous people were considered insubordinate. GRIN remained active until the late 1970s.
1973	In the Calder case, the Supreme Court of Canada ruled that Indigenous peoples owned land title before European colonization, forcing the government to adopt new policies to negotiate land claims with Indigenous peoples not included in treaties.	1973	Law no. 6.001 creates the Statute of the Indian, regulating the guardianship, rights and obligations of Indigenous Peoples, based on the final objective of their integration into the national society. It is specified that the deadline for the regulation of all Indigenous lands is 1978. To make the construction of the Cuiabá-Santarém highway (BR - 163) feasible, the Panará people are removed to the Xingu National Park, resulting in the death of 176 Indigenous by epidemics, hunger and difficulty of adaptation.
1974	The Native Women's Association of Canada (NWAC) is founded.		
		1978	The Emancipation of the Indian Project of Ernesto Geisel's military government "proposes the abolition of guardianship and the liberation of the Indigenous", but national and international protests have the government withdraw the initiative.
1979	There are still 28 Indigenous Residential Schools and thousands of students enrolled in these institutions in Canada.		
1980	Impasses and disputes on Indigenous lands generate the imprisonment of more than 800 people during the "Forest War," in British Columbia.		

1982	The First Nations Assembly is formed to promote the interests of the First Nations and the respect for the rights provided for in the treaties, in addition to education, health, land and resource services. The Canadian Constitution is patriated and Section 35 recognizes aboriginal rights to land titles and treaty rights. Subsequently, Section 37 is amended, obliging the federal and provincial governments to consult with Indigenous peoples on actions that affect their interests.	1983	The initiative project of Deputy Mário Juruna creates the Parliamentary Commission of the Indian, foreseeing that the Indigenous issues will be reviewed by the agency. In the same year, President Figueiredo "regulates the expropriation of mines on Indigenous lands. This provision contradicts the "right to the exclusive enjoyment of natural wealth," established in article 198 of the 1969 Constitution. The Decree stipulates that extraction concessions will only be granted to state companies and strategic minerals. An investigation prepared by the National Coordination of Geologists (CONAGE) in 1986 proves, however, the existence of many authorizations for private multinational companies. The effects of this Decree on the Indigenous population, according to this study, were disastrous".
1985	Sandra Lovelace, Wolastoqiyik (Maliseet) from New Brunswick, takes her case to the UN Human Rights Committee, resulting in an amendment to the Indian Act aimed at restoring Indigenous status and combating discrimination faced by women who have lost status by marrying non-indigenous people.	1985	Beginning of the re-democratization process in Brazil.
		1988	Promulgation of the seventh Brazilian Constitution, with two articles aimed at the cultural and territorial rights of Indigenous Peoples. It was the "First constitutional charter in which the same Indo-Brazilian groups participated. Their current valid rights are contained in this Constitution, in the Civil Code, in the 1995 Statute of Indigenous Societies, several ordinary laws voted by Parliament (for example, the Forest Code, Law No. 4.771 of 1965), decrees and international agreements, such as Convention 107 of the International Labour Organization (ratification in 1966).
1990	Phil Fontaine, head of the Assembly of the Chiefs of Manitoba, exposes the abuses he suffered at the Fort Alexander Residential School and calls for the opening of an inquiry into Residential Schools, which began in 1991. The Oka Crisis puts Mohawk activists in conflict with Québec police for 78 days. Activists travel by train from Vancouver to Ottawa aboard the Constitution Express to raise awareness among Canadians of the lack of recognition of indigenous rights in the new proposed constitution.		

1991	The Spicer Commission recommended that Quebec should not be recognized as a distinct society, but rather treated as any other province in the Canadian confederation. Prime Minister Brian Mulroney launches the Royal Aboriginal Peoples Commission with a mandate to study the evolution of the relationship between indigenous peoples, the government of Canada and Canadian society.	1992	Brazil's accession to the International Covenant on Civil and Political Rights brings provisions relevant to Indigenous rights and provides for the protection of minorities. Brazil adheres to the American Convention on Human Rights, with the protection of Indigenous Peoples within the framework of general rights and freedoms. ECO 92
		1994	End of the period stipulated by the 1988 Constitution for the demarcation of all indigenous lands in Brazil. Decree 1.141 creates provisions for environmental protection actions, health and support for the productive activities of indigenous communities, with the participation of indigenous communities.
1996	The last Residential School operated by the federal government is closed. Federal and provincial authorities sign a land claims agreement with the Nisga'a of British Columbia. The agreement provides for the payment of $190 million, recognition of community land ownership and self-government of the Nisga'a, Nass River Valley, over some 2,000 km of land. The preliminary report of the Royal Aboriginal Peoples Commission recommends that the First Nations establish their justice systems and recommends a public investigation into the effects of Residential Schools. The report includes 440 recommendations for changes to be made in the relationship between indigenous, non-indigenous and all levels of government in Canada.	1996	The Decree nº. 1.775 establishes the contradiction right in the process of demarcation of Indigenous lands. As a result, the National Indian Foundation “receives a total of 419 resources that affect 34 territories. National and international public opinion is mobilized against the new decree; the European Parliament criticizes it in a resolution of February 15 of the same year. Finally, the Supreme Court declares that all responses are inadmissible, although 8 of the 34 areas in question are again analyzed by FUNAI due to lack of anthropological data. The Statute of Indigenous Societies (Law no. 2,057) is proposed to specify the rights guaranteed by the 1988 Charter. “The newest points (and which are not developed in the new Magna Carta) are recognition of jurisdiction. indigenous people (articles 52; 150), protection of intellectual property (articles 18 to 41), specifications on demarcation (articles 62 to 78) and environmental protection (articles 107 to 116). However, the proposal of the Statute of Indigenous Societies never prospers and is paralyzed in Congress without approval. Finally, in the context of Brazil's 5th Centennial, Fernando Cardoso's Government proposes two other versions (December 2000 and May 2001). There are counter-proposals from the indigenous peoples. In general terms, there seems to be unanimity on the need to abolish the tutelage of the former Statute of the Indian”.
		1998	Brazil recognizes the jurisdiction of the Inter-American Court of Human Rights.

1999	The Supreme Court of Canada rules that lower courts must apply traditional disciplinary practices when sentencing Indigenous Peoples. The Supreme Court of Canada unanimously decides to open elections for members of off-reserve *bands*, stating that their exclusion violates the Canadian Charter of Rights and Freedoms. The Supreme Court of Canada decides that the treaties of the 1760s guaranteed the Mi'kmaq's right to fish, hunt and shoot all year round. The House of Commons votes in favour of a bill that gives the Nisga'a the right to self-government. The band receives 2,000 km2 of land and $253 million. In return, they agree to pay taxes and waive future claims.	2000	The National Congress presents the Draft Constitutional Amendment No. 215, which proposes delegating exclusively to the National Congress the competence over the demarcation of Indigenous territories, as well as the ratification of a territory already approved.
		2002	The 169 Convention, of the International Labour Organization, is ratified by Brazil. Lula da Silva is elected President of Brazil and launches the "Commitment to the Indigenous Peoples
		2003	The New Civil Code comes into force, which affirms the legal capacity of Indigenous People to legally represent their interests. FUNAI and the Union are condemned to compensate the Panará People for 1.2 million reais, forcibly removed in 1973 for the construction of BR-163 The Special Secretariat for Policies to Promote Racial Equality, the Special Secretariat for Policies on Women and the Special Secretariat for Human Rights are created.
		2004	Through Decree 5,051, Brazil ratifies the International Labour Organization's Convention 169 on Indigenous and Tribal Peoples, which determines the recognition of the right of Indigenous Peoples to their traditional lands and provides for the adoption of measures to guarantee the protection of their traditionally occupied lands.
2005	The Kelowna Agreement provides for investments of $5 billion in health, education, social and economic services for Indigenous Peoples. The Agreement is not fully implemented by the new government.	2005	The Indigenous Missionary Council (CIMI) launches the "Manifesto against the Indigenous Policy of the Lula Government".

2007	The Indigenous Residential School Settlement Agreement offers financial compensation to survivors, including payments based on the number of years a school has attended. Reports of sexual and physical abuse are evaluated in independent processes.	2007	Decree 6,177 approves the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2001). The government of the Workers' Party (PT) launches the Growth Acceleration Program (PAC) with serious consequences in terms of human rights violations of Indigenous peoples in Brazil.
2008	The Department of Indigenous Affairs recognizes the Supreme Court's decisions on the "duty of the Crown to consult" on the extraction of natural resources that may affect the rights of Indigenous Peoples under the treaties. The Canadian government authorizes the Truth and Reconciliation Commission to document the truth about survivors and to inform all Canadians about what happened in the Residential Schools. Prime Minister Stephen Harper delivers a formal apology to former students, families and Indigenous communities for Canada's role in operating residential schools. Provincial and territorial apologies will follow in the coming years.	2008 2009	The genocide of the Guarani Kaiowá people gains national and international repercussions. The Supreme Federal Court (STF) rules for the continued demarcation of the Raposa Serra do Sol Indigenous Territory, in the state of Roraima, on the border with Venezuela.
2010	Canada's Truth and Reconciliation Commission holds its first national event in Winnipeg. Over the next five years, six more events will take place across the country, with a national closing ceremony in Ottawa.	2011	The construction of the Belo Monte Hydroelectric in the Xingu begins, with serious consequences for the Indigenous and riverine peoples of the region.
2012	Four women start the Idle No More national (and online) movement of marches for the right to self-determination and awareness of Indigenous rights	2012	The 1967 Figueiredo Report, containing over 7 thousand pages and 30 volumes, is rediscovered. The National Truth Commission of Brazil creates thematic subgroups to analyze crimes and human rights violations related to the struggle for land or committed against Indigenous peoples during the military dictatorship.

2014	The Truth and Reconciliation Commission releases the summary of its final report on the Residential School system and survivors' experiences, characterizing the Canadian treatment of Indigenous Peoples as “cultural genocide”. The report includes 94 calls to action aimed at correcting the legacy of residential schools and assisting the reconciliation process. The REDress Project, an art installation commemorating Canada's missing and murdered Indigenous women, calls for the donation of red dresses. The National Truth and Reconciliation Center at the University of Manitoba, Winnipeg, is opened, containing materials, documents and testimonies from survivors of Residential Schools, gathered by the Truth and Reconciliation Commission. The Truth and Reconciliation Commission launches its final report and the Prime Minister, Justin Trudeau, commits to implementing the 94 recommendations of the summary report, June 2015.	2014	The Final Report of the National Truth Commission containing the revelation of the crimes of genocide and human rights violations of indigenous peoples during the military dictatorship in Brazil is finally delivered to society.
2016	In a unanimous decision, the Supreme Court of Canada ruled that the constitutional definition of “Indian” includes the Métis and Indigenous without status, enabling the advancement of negotiations on land rights, access to education and health programs and other services. Minister of Indigenous Affairs Carolyn Bennett announces Canada's support for the United Nations Declaration on the Rights of Indigenous Peoples. Stephen Harper's government endorses the declaration in 2010, but with qualifications that give Canada “objeteria” status at the UN. In response to recommendations from the Truth and Reconciliation Commission, Ontario's Premier, Kathleen Wynne, formally apologizes on behalf of the provincial government for abuses committed against Indigenous Peoples in the Residential School system, and for past oppressive policies, announcing a $250 million investment in reconciliation initiatives.	2016	Stagnation of the processes of demarcation of Indigenous lands. End of the Dilma government and the “dialogue tables” with the Indigenous peoples.

2017	On National Aboriginal Day, Prime Minister Justin Trudeau announced that the Langevin block of the Parliament, which bears the name of the creator of the Indigenous Residential School system, would be renamed the Office of the Prime Minister and Private Council. Canada's Supreme Court rules that Indigenous Peoples do not have the power to veto development projects. While the government must consult with Indigenous communities, the National Energy Council (NEB) is the "final decision-maker". Implementing the recommendation of the Royal Aboriginal Peoples Commission (1996) to abolish the Indian Act, the federal government dissolves the Indigenous and Northern Canada Affairs agency (INAC) and creates two ministries: The Crown-Indigenous Relations and Northern Affairs; and The Indigenous Services. he federal government announces an $800 million agreement with survivors of the 1960s Sixties Scoop. Justin Trudeau apologizes to survivors of Newfoundland and Labrador residential schools, who were excluded from Harper's 2008 apology because the residential schools were not run by the federal government and were established before Newfoundland joined the Confederacy, in 1949.	2018	Sentence of the Inter-American Court of Human Rights declared the Brazilian State internationally responsible for violations of the right to judicial guarantee, for the violation of the rights of judicial protection and collective property, provided for in the American Convention on Human Rights, as a result of violations suffered by the Xukuru indigenous people, whose territory is located in the municipality of Pesqueira, in Pernambuco, in the Northeast region of Brazil (CIMI, 2020).
2018		2018	Start of the government of President Jair Bolsonaro and the process of deconstitutionalization of the rights of indigenous peoples in Brazil. CIMI launches the "Anti-indigenous Congress" Report that analyzes the policies in progress in the Brazilian Parliament and reveals the 50 congressmen (40 deputies and 10 senators) who act against the rights of indigenous peoples Joênia Wapichana is the first indigenous woman elected to the position of federal deputy.

2019	Bill C-369 proposes to make September 30 a "National Day of Truth and Reconciliation" holiday. The final report of the National Inquiry on Missing and Murdered Indigenous Women and Girls reveals that persistent human rights violations are the source of Canada's high rates of violence against Indigenous women, girls and LGBTQ2S people. The report makes 231 requests for justice from governments, police forces and institutions.	2019	Invasions in Indigenous Lands increase. The Articulation of Indigenous Peoples of Brazil (APIB) launches the campaign "Indigenous Blood, No Drop Less".

The didactic objective is to facilitate the location of events in time, so as to build logical thinking, marked both by correspondence and disparities that help us in the exercise of comparative analysis. The timeline also helps us to visualize the processes that in Brazil and Canada place these two countries in what we call in the title of this chapter as a situation of *brotherhood* in terms of colonialism and violence towards Indigenous Peoples. In chronological order, the first and second columns of the table highlight the events that have occurred in Canada that have most significantly affected the government of these populations. The third and fourth columns show the year and the description of the events that marked and defined important events for the indigenous population in Brazil. With the table we can visualize and understand, for example, that while Brazil overcomes the paradigm of assimilation after the inclusion of indigenous rights to land and self-determination in the Constitution, promulgated in 1988, what marks this rupture in the Canadian context is the decision of the Calder Case, in 1973.

According to Otis, the Calder Case has caused,

> (...) A profound transformation of the legal framework governing relations between the majority society and the country's indigenous peoples. With this historic decision, reinforced by the recognition and confirmation of the rights of indigenous peoples in the Constitution Act, 1982, Canada appears to have embarked on a path of breaking with a past of dispossession and cultural, economic and political marginalization of the first peoples (OTIS, 2005, p. 1) (my translation). [80]

[80] "(...) une transformation profonde du cadre juridique régissant les rapports entre la société majoritaire et les autochtones du pays. À la faveur de cette décision historique, confortée par la reconnaissance et la confirmation des droits des peuples autochtones dans la Loi constitutionnelle de 1982, le Canada semble s'être engagé sur la voie de la rupture avec un passé de dépossession et de marginalisation culturelle, économique et politique des premiers peuples" (OTIS, 2005, p. 1).

As can be seen, far from an equivalence between events in Brazil and Canada, the fifteen-year precedence of Canada over Brazil in matters of consolidation of the rights of Indigenous Peoples can be observed. At the same time, it is noteworthy that Canada – recognized worldwide as the vanguard of multiculturalism, civic equality and human rights – has been slow to overcome the assimilationist paradigm and to recognize the existence of aboriginal land titles as derived from pre-colonial legal systems and as rights distinct from the regime applicable to other citizens (OTIS, 2005, pp. 2-3). On the other hand, and emphasizing once again the difference with the Brazilian process, the decision in the Calder Case occurred nine years before the repatriation of the Canadian Constitution in 1982.

Throughout this chapter, we have seen that Brazil and Canada share a history of colonialism that makes them alike in many ways. This resemblance is not a coincidence. It is mainly due to countries being aware of what the others are doing, of how they "manage" the "Indigenous question". Unfortunately, the Canadian Indian Act was a reference for several countries to set up their segregationist and assimilationist policies and institutional frameworks. The national government is in contact through international institutions (such as the Organization of American States) and international documents negotiation. Sometimes, as was the UNDRIP and Convention 160 of the ILO, their strategy differs, and some countries are more prompt to adhere than others. However, in other cases, such as in some World Bank development policies, their interest and view on Indigenous peoples align much more.

During the military dictatorship, the United States and Canada mostly turned a blind eye to Brazilian policies regarding the Amazon and Indigenous peoples. They did so because it suited their strategic and diplomatic goals (i.e. fighting "communism" in Latin America) and the business opportunities these policies created for American and Canadian companies. These companies have developed procedures, strategies and Foucaultian *dispositifs* to manage their relations with Indigenous communities, and this "know-how" circulates from one context to the other through consultant firms and experts. In other words, the connexions between the two countries have a very concrete dimension on top of a parallel history of colonialism.

CHAPTER III

THE EMERGENCE OF THE RECONCILIATION 'AGENDA' WITHIN THE CANADIAN MULTICULTURALISM

Apologies are just hot air if you don't address the truth about racism in colonial establishments
Kim Wheatley's Facebook post, January 19th, 2020.[81]

The most important understanding that Canada's fieldwork has provided in the context of this dissertation is that there is a notable difference between Brazil and Canada in the discussion – theoretical and political – about possible projects aimed at reconciliation between the national state and Indigenous Peoples. This introduction is dedicated to clarifying, in a non-exhaustive manner, some of these differences, as without it, the comparison between Brazil and Canada on the payment of the historical debt owed to Indigenous Peoples cannot be followed up. Considering that Canada has made reconciliation a government priority, it is important to observe and to analyze how this country has sought to address its historical debt by not shirking its responsibilities – even though reconciliation, reparation, restitution and compensation are controversial, complex and take short strides.

As it was already said before, the idea of a comparative study on the payment (or erasure) of Canada's historic debt to its Indigenous Peoples was motivated by an attempt to understand how a policy of reconciliation for this segment of the population emerges in this country and what was the motivation for the Canadian society, and for Indigenous Peoples themselves, concerning a supposedly reconciling project. A second important understanding is that, contrary to what it may seem, it has been already demonstrated that the Canadian reconciliation project is not a governmental decision born out of the obviousness of the violence intrinsic to the process of colonization, self-awareness or the goodness of a political class facing a moral and ethical crisis with the past, whether liberal or conservative. Even conservative politicians, not liberals, favoured the exercise of

[81] Kim is an "Anishinaabe Ojibway woman, Miishikaan N'dodem, educated by amazing Traditional Teachers", as she describes herself.

indigenous voting rights from the 1960s onwards in Canada.

Suppose the reconciliation project was how the Canadian government found an 'agenda' to address the "Indian Question" within neoliberal Canadian multiculturalism. In that case, it is precisely this "political agenda" contour that bothers indigenous scholars, such as Taiaiake Alfred (2003, 2005, 2009b) and Jeff Corntassel (2009, 2012), among others. These topics will be addressed in this chapter.

3.1 The Reconciliation project in the core of the Canadian multiculturalism

The immersion experience in Canada for just over a year helped begin to put the reconciliation agenda into perspective. This effort was complemented by reading authors who criticize the Canadian myth of a friendly multicultural nation. It was also crucial for the research briefly to recover the work of classical scholars who have analyzed multiculturalism, such as Charles Taylor (1994), Will Kymlicka (1996) and Charles Hale (1994), who criticized them. Henderson & Wakeham (2013) contributions and Martin Hébert (2018) were equally pertinent because, to a great extent, I share their critical thought, and their work has already advanced meaningful discussions and understandings on the relationship between Canadian multiculturalism and reconciliation.

In a general sense, the term "multiculturalism" will refer to the coexistence of groups characterized by different cultures within modern societies and their respective nation-states and the coexistence of different ethnic, religious or cultural groups within the same society. Multiculturalism will also seek a project that promotes an alternative vision of the senses of "common good" and "justice." Canadians Will Kymlicka and Charles Taylor have dedicated themselves to the theme of multiculturalism and have written works that have become a worldwide reference: Kymlicka's "Multicultural Citizenship" (1996) and "Multiculturalism: Examining the politics of recognition "(1998) of Charles Taylor are notable examples.

For Kymlicka, the term multiculturalism encompasses "very different forms of cultural pluralism" (KYMLICKA, 1996, p. 25), each one with its particular claims. In his vision, the 'minorities' recognition issue is not incompatible with liberal democratic principles and does not clash with the ideals of equality and freedom of liberalism. Equality does not mean that all citizens should have equal rights. For this reason, Kymlicka believes that nation-states must respond to the demands of minorities by recognizing and promoting individual rights differentiated according to a group. To

understand its distinctive characteristics and claims is necessary to distinguish between two models of cultural diversity. The first one refers to “cultural diversity that arises from incorporating cultures that previously enjoyed self-government and territorially concentrated within a larger State” (national minorities). The second is related to “cultural diversity that arises from individual and family immigration” (ethnic groups) (KYMLICKA, 1996, p. 25).

Charles Taylor (1994) relates “multiculturalism” to the question of recognition, initially introduced by Hegel and resumed in the early 1990s by Axel Honneth and Charles Taylor. Honneth and Taylor published their works incorporating individual and collective demands theorizing the struggles and claims of excluded segments of national societies. Both discussed the conflicts within contemporary societies in terms of struggles for recognition. Based on the assumption that recognition of individual and collective identities is paramount for individuals and groups' emancipation in pluralist societies, Charles Taylor links the struggle for recognition to identity (TAYLOR, 1994, p. 45).

For Taylor, identity is a “vital human need” (TAYLOR, 1994, p. 46), defined and shaped through recognition or lack of it and includes the interpretation of our identity from other people, i.e., by the importance of “other-important” peoples (1994, p. 53). According to Taylor, identity construction occurs in the social sphere where dialogical formation assumes a prominent role, that is, “my own identity depends, decisively, on my dialogical reactions with others” (TAYLOR, 1994, p. 45). Dialogism is used to show how the constitution of identity operates based on continuous exchanges, through comparison and difference, exchange and interaction, where the existence of difference becomes apparent. Therefore, the valorization of difference is fundamental to identity construction (TAYLOR, 1994, p. 63).

The advent of liberalism as a universal policy extended the equal rights principle to all citizens (TAYLOR, 1994, p. 58). Thus, with the policy of equal dignity, what is established is intended to be universally the same, an identical basket of rights. On the other hand, the modern notion of identity has given rise to a politics of difference. Each individual or group wants their identity to be recognized. Taylor's criticism is that majoritarian cultures assimilate particular identities. For Taylor, a policy of proper recognition implies a capacity for state intervention favouring threatened cultures.

Unlike Taylor and Kymlicka's vision of multiculturalism, Charles Hale (2002, 2007) criticized multicultural and recognition policies due to cultural and political projects' diversity, where “multiculturalism” would be a new form of racism within the

cultural logic of global capitalism (HALE, 2002). By examining the relationship between the mobilization of Indigenous Peoples, the political and legal advances they have achieved, and neoliberalism in Guatemala, Charles Hale (2007) shows the "neoliberal multiculturalism" aspect of this relationship, which cannot be ignored. For Hale, "neoliberal multiculturalism" emerged as a response to Indigenous Peoples' demands for their collective rights, culturally oppressed and excluded, inaugurating a new political space characterized by concessions.

Neo-liberal multiculturalism is willing to approve the right to "recognition" and other linguistic, educational and rights against discrimination. However, for Hale, while economic and political actors intend to affirm cultural differences, neoliberal multiculturalism does so, preserving the prerogative of discerning between cultural rights consistent with the idea of democratic, liberal pluralism and antagonistic cultural rights to that idea. Thus the universalist ethics in defence of the neoliberal capitalist order are maintained, and those who could challenge the iniquities underlying neoliberal capitalism, as part of its activism for "cultural rights" are considered radicals, "anti-capitalists," "culturally intolerant," and "extremists" (HALE, 2007, p. 314).

Considering the Canadian context, reconciliation policies towards Indigenous Peoples emerged in the wakening of multiculturalism in the 1960s and got more robust in the 1980s. Canada was one of the world's first countries to officially adopt multiculturalism within a bilingual framework and create state agencies specifically focused on addressing ethnic and cultural differences (DAMÁZIO, 2008, p. 67). However, in a general sense, for Wong & Guo (2015), "Multiculturalism existed demographically in Canada at the time of Confederation when the country was formed in 1867" (WONG & GUO, 2015, p. 2).

According to Vallescar Palanca, since the creation of the Commission on Bilingualism and Biculturalism in 1963, Canada "*abrió un camino para la gestión oficial del pluralismo cultural, subrayando los derechos linguísticos y educativos*".[82] In 1969, Canada established English and French as official languages and as a means to "to build a non-territorial framework to solve the ethnic-racial problems that divided the country, reconstituting Canadian identity around the notion of citizenship" (VALLESCAR

[82] "It paved the way for the official management of cultural pluralism, highlighting linguistic and educational rights."

PALANCA, 2000, p. 123)[83] In this sense, "Multiculturalism in the Canadian case constitutes an "official doctrine", which integrates a series of public policies and practices aimed at the promotion and incorporation of ethnic-racial differences to integrally shape a political, social and symbolic order" (VALLESCAR PALANCA, 2000, p. 123). [84]

Already showing the signs of its style of multiculturalism, in 1971, the Government of Canada stated that,

> Such a policy should help to break down discriminatory attitudes and cultural jealousies. National unity, if it is to mean anything in the deeply personal sense, must be founded on confidence on one's own individual identity; out of this can grow respect for that of others, and a willingness to share ideas, attitudes and assumptions … The Government will support and encourage the various cultural and ethnic groups that give structure and vitality to our society. They will be encouraged to share their cultural expression and values with other Canadians and contribute to a richer life for all (CANADA, 1971, p. 1121).

It is elucidative the thesis of Fleras and Kunz (2001) and Kunz and Sykes (2007), summarized by Wong & Guo (2015), on the evolution of Canadian multicultural policy throughout the 1970s, 1980s, 1990s and 2000s:

> For the decade of the 1970s, multiculturalism policy was one of ethnicity multiculturalism with the focus on "celebrating differences," the reference point being "culture" and the mandate of "ethnicity." For the decade of the 1980s multiculturalism policy was one of equity multiculturalism with the focus on "managing diversity", the reference point being "structure" and the mandate of "race relations." For the 1990s it was civic multiculturalism, "constructive engagement," "society building" and "citizenship." And in the 2000s multiculturalism policy was one of integrative multiculturalism with the focus on "inclusive citizenship", the reference point being "Canadian identity" and the mandate of "integration". Using more colloquial terminology Canada's multiculturalism policy has evolved from song and dance in the 1970s, to anti-racism in the 1980s, to civic participation in the 1990s, and to fitting in in the 2000s (WONG & GUO, 2015, p. 4).

[83] "(...) construir un marco no-territorial para solucionar los problemas etnoraciales que dividían al país, reconstituyendo la identidad canadiense alrededor de la noción de ciudadanía".
[84] "el multiculturalismo en el caso canadiense constituye una «doctrina oficial», que integra una serie de prácticas y políticas públicas destinadas a la promoción e incorporación de las diferencias etnoraciales con el fin de conformar integralmente un orden político, social y simbólico".

Ph.D. in Language Studies, Diego Barbosa da Silva (2018), clarifies that the term 'multiculturalism' was first enunciated in Canada in the 1960s through the academic discourse of sociologist Charles Hobart, of the University of Alberta, and a historian, Paul Yuzyk, of the University of Manitoba. A century earlier, in 1876, Canada passed the Indian Act, a law that brought all "Indian" lives under the control of the Federal Government and delegated responsibility for their education to the British Crown, enabling the implementation of Residential Schools as a national assimilation policy. The main purpose was to assimilate the natives into society's Eurocanadian model, as it was already explained. An estimated 150,000 indigenous children, including Inuit, First Nations and Métis, were taken from their families and communities to integrate schools across Canada, enabling some seven generations to grow up without ties to their identity and cultural roots.

Nevertheless, not only were children victims of this abusive educational system. A study conducted by the Indian Affairs in the 1950s showed that more than 40% of the teachers employed in the Residential Schools did not have adequate training to teach and faced long working hours, lower pay than teachers working in other institutions, and exasperating working conditions. The chances of a child dying in one of these institutions were 1 in 25, practically the same as a Canadian soldier dying in combat in World War II, which was 1 in 26 (CANADA, 1996). Other studies and statistics show that, in 1930, only 3 out of 100 indigenous children in the institution passed the sixth grade, with very few being considered prepared for life after school, outside or inside the reserves. Besides the already known and published reports of sexual abuse, more recent information shows that the children also suffered beatings, punishments for speaking their native language, eating spoiled food, confinement, forced labour, and water deprivation.[85]

By proclaiming its global role in the field of reconciliation, Canada immediately projects itself on the international stage as a nation committed to correcting what it has systematically called "mistakes" made by federal and provincial governments throughout its formation process as a national state (HENDERSON & WAKEHAM, 2013, p. 10).

However, Canada's concern to demonstrate a semblance of reconciliation was not a result of the country's supposedly pacifying vocation but a direct result of the First Nations' political mobilization to signal Indigenous People's inclusion in the scope of its multicultural integrative policies. It should be noted that the first recipients of apologies

[85] Retrieved from https://www.cbc.ca/news/indigenous/truth-and-reconciliation-commission-by-the-numbers-1.3096185

under a policy of reconciliation in Canada were not Indigenous People, but the immigrant communities that the country received throughout the 19th and 20th centuries and which also suffered discriminatory policies (HENDERSON & WAKEHAM, 2013, p. 6).[86] In the past, immigrants suffered several moral or physical violence related to their race and origin. The reconciliation politics in Canada, in this sense, is not an agenda exclusively focused on Indigenous Peoples; instead, it emerges from an attempt to repair violence and harm committed against the populations who immigrated to the country from the late 19th century and throughout the 20th century (HENDERSON & WAKEHAM, 2013).

For Indigenous Peoples, however, the reconciliation discourse and all the apologies that were made so far invoke restrictive and essentialist notions of "aboriginal culture" as a distraction from the demands for sovereignty, autonomy, and self-determination that these peoples demand and for leaving behind other "r" that could bring about real social transformation, such as redistribution and recognition (GREEN, 2016; ALFRED, 2009; HENDERSON & WAKEHAM, 2013, p. 7).

Working for more than twenty years on the subject of the place occupied by Indigenous Peoples in the management of natural resources, the reflection proposed by Prof. Hébert seeks to understand the meanings of the reconciliation process between Canadian society and Aboriginal peoples, considering the institutional order in which the latter live. At the heart of the issue that seeks reconciliation are challenges that include the pluralization of political, legal, economic, educational, health and cultural institutions and their capacity to become proper reconciliation places. Hébert's concern with the debate on institutional pluralization comes from the observation that these processes, empirically observable in the institutions of governance of natural resources in Quebec and elsewhere, have not succeeded in stopping capitalism's expansion.

Hebert starts from the rational and logical assumption that every institution seeks its reproduction. With its 'reproduction,' Hébert refers to the dynamics that always seeks to maintain its essential characteristics, that is, "the affirmation, protection and maintenance of its centrality in a field of social life" (HÉBERT, 2018, p. 5). As an example of this reasoning, Hébert notes the fact that the Supreme Court of Canada, even when it produces decisions contrary to the governmental interests and imposes the tone

[86] According to Census 2016, immigrants in Canada represent 20% of the total population. Between 2011 and 2016, the country received 1.2 million immigrants, and it is estimated that immigrants will be 30% of the population in 2036.

of respect for the rights of Indigenous Peoples, will hardly deliver a decision that weakens the hegemony of the same state over the Canadian territory.[87]

Thus, for Hébert,

> The pluralization of the Canadian state does not seem to reflect a profound transformation, but rather the new conditions of reproduction of institutions that govern us imposed by the context of neoliberal and multiculturalist ideologies. This openness to an increasing diversity of stakeholders significantly increases the social acceptability of the dominant institutions of our society, creating the impression of social progress and ultimately not affecting submission to capital and the imperatives of economic growth. The pluralization of our society's dominant institutions increases their social acceptability, contributes to the adherence to the diversity of people who are on their margins, and contributes to the pacification required by companies that want to operate in a stable and predictable social environment that benefits them (HÉBERT, 2018, p. 3).

Hébert is not positioning himself contrary to the institutional pluralization of laws, health practices, knowledge and epistemologies, which he recognizes as "essential steps towards reconciliation" (HÉBERT, 2018, p. 4). However, he points out that this is a utopian vision since institutional changes occur more in the superficiality field and cannot promote structural changes. According to his words, the Canadian "way to deal with the lack of inclusion, and therefore to reconcile with the colonial past, is to pluralize institutions without changing their basic logic. True reconciliation asks of us more" (HÉBERT, 2018, p. 7).

3.2 The Pre-Reconciliation Era in Canada

To address the reconciliation topic as a government' agenda' in Canada, it is useful to draw an imaginary line between two periods, which would mean a "before" and an "after" reconciliation truly becoming a governmental purpose. It should be noted that this division has only an imaginary character, it does not exist in practice, and its purpose is

[87] Not only the Supreme Court would not make such a ruling, but *it cannot make such a ruling*. Even though the Supreme Court has sometimes acted as a check on the federal government's power, it is still head of the judicial branch of the Canadian State and, as such, is obligated by constitutional law to uphold Canadian sovereignty. It cannot impinge on that sovereignty by transferring even part of it to Indigenous Peoples. It is what is called "radical sovereignty" in Canadian law. All powers are *delegated* by the Crown, never given away.

didactic. The events that I consider part of the “before” moment of reconciliation have paved the way for the measures that “after” have been officially included in the scope of reconciliation within an agenda with goals, political measures, apologies statements, and institutional structures, staffs, and budgets. The time from 1973 – with the Calder Case decision – until 2008, when the Royal Commission Report was launched, could be called the pre-reconciliation period. From 2008 on, with the launching of the RCAP, the era of reconciliation itself has begun.

Again, it is vital to situate that the Canadian government's indigenous-oriented reconciliation 'agenda' – First Nations, Métis and Inuit – emerges in parallel with the transition from a bicultural to an official multicultural policy, beginning in the 1980s under Prime Minister Pierre Trudeau, father of the current Prime Minister, Justin Trudeau. However, the events that contribute to establishing reconciliation as a governmental agenda goes far back in time.

The Canadian government established 1844 as the milestone of a policy for Indigenous Peoples when the Bagot Commission (1842-1844) was launched. The Bagot Commission, attempting to wrestle the many 'problems' of administering the Aboriginal population of British North America, recommended that a centralized administration be established for the colonies in North America and that native peoples be entitled to compensation for land 'surrendered' to settlers. The reserve lands set aside for “native” populations should be surveyed, and the “natives” on reserves should be given agricultural tools and livestock and taught European farming methods. The Canadian euro education should be introduced to the reserves to establish individual property ownership values in place of traditional communal landholdings.

However, as one can note, the Bagot era inaugurated the worst period for Indigenous Peoples in Canada, being an anti-policy and not precisely a policy. This is why the Calder Case is considered a turning point in Canada's relations between indigenes and settlers. The first common-law decision is to recognize the previous Aboriginal title as deriving from the traditional Aboriginal land occupation and use. The Calder Case also challenged the 1969 White Paper – that advocated uniform rights for all Canadians and questioned the differential status of Indigenous Peoples – beyond has introduced into the Canadian customary law a more profound recognition of indigenous rights, where indigenous cultures and traditions form the basis for evidence of rights and titles. The decision transferred the source of the Aboriginal title to custom and tradition, going beyond the Royal Proclamation of 1763, Crown concessions and government legislation.

The Calder Case decision impacts were yet extended in terms of legal instruments, such as the Settlement Agreement for Indigenous Residential Schools in 2006 to address collective damages against Indigenous Peoples (Indigenous Peoples Atlas of Canada, 2018).

Since the 1990s, the publication of data on the legal status of the Aboriginal population has intensified in Canada, reinforcing the need for the country to review not only its criminal justice system but to invest in the creation of indigenous legal systems to combat "the failure of the Canadian criminal justice system, in the face of an increasingly high crime rate among the Indigenous People who are over-represented in the prison system and, above all, at a disadvantage in the face of a justice system that is strange and inaccessible to them" (ZEMA, ARAÚJO, 2014, p. 3).

In 1990, Phil Fontaine, a former National Head of the First Nations Assembly and one of Canada's Indigenous leaders, spoke publicly for the first time about the abuses he suffered in a Residential School of the Manitoba Province. A few years later, the Truth and Reconciliation Commission (TRC) credited Fontaine for putting the issue of residential schools on the national 'agenda' when he spoke publicly about the abuses suffered during his residential schooling years.

In 1991, another remarkable fact for the 'reconciliation period' that was about to come happened when the Cariboo Tribal Council of British Columbia published a report named "Impacts of the Residential School," which served as a foundation for the work that later would be initiated by the Royal Commission for the Indigenous Peoples (RCAP) to investigate the crimes committed in these institutions. In this same year of 1991, responding to Phil Fontaine's statement, the Catholic Missionary Oblates of Mary Immaculate apologizes for the Residential Schools' abuses.

In 1996, and trying to change the very nature of the discourse that was not intending to eradicate the indigenous culture and traditions anymore, the launching of the Report of the Royal Commission on Aboriginal Peoples (RCAP) was considered a step toward expressing its desire to promote reconciliation between Indigenous Peoples and Canadian society. However, it never got close to accomplish its recommendations. The report began in 1991 by four Aboriginal, and three non-Aboriginal commissioners appointed to investigate and inform Canada's government on a specific question: What are the foundations of a just and honourable relationship between the Aboriginal and non-Aboriginal people of Canada? For 178 days, the Commission held public hearings, visited nearly 100 communities, consulted experts, commissioned studies, reviewed surveys and

reports. The five-volume conclusion of the Report of the Royal Commission on Indigenous Peoples (RCAP) was launched in 1996 and claimed a complete restructuring of the relationship between Indigenous and non-Indigenous peoples in Canada. The RCAP also identified many problems concerning land claims, self-government, and Indian status. The status issue is of particular importance as official definitions have denied its identity to many natives in Canada.

On January 7, 1998, the then Minister of Indigenous Affairs, Jane Stewart, read the 'Statement of Reconciliation' advocating a partnership characterized by daily relations with Indigenous Peoples and that the federal government should work with the Assembly of First Nations to define how and what steps towards the reconciliation agenda would be implemented, resulting in a third document, the Agenda for Action with First Nations. The Statement of Reconciliation recognized the mistreatment of Indigenous People throughout the contact period, including the destruction of indigenous cultures, the suppression of their languages and the erosion of existing political, economic and social systems. In her statement, Stewart said,

> The Government of Canada acknowledges the role it played in the development and administration of these schools. Particularly to those individuals who experienced the tragedy of sexual and physical abuse at residential schools, and who have carried this burden believing that in some way they must be responsible, we wish to emphasize that what you experienced was not your fault and should never have happened. To those of you who suffered this tragedy at residential schools, we are deeply sorry (Stewart, 1998).

Despite Stewart has recognized the ancient presence of indigenous peoples on the continent and admitted their contribution to European newcomers' survival and Canada's development as a nation, according to Corntassel and Holder (2008), several indigenous leaders considered the Statement not sincere. The Statement also failed because,

> Using very nondescript and guarded language, the statement laid out what it considered to be historic harms to indigenous peoples while failing to account for ongoing effects of residential schools on the survivors and their families. The statement also offered an explicit apology but only to those who suffered the 'tragedy of sexual and physical abuse at residential schools'—apparently the residential school policy itself or other cultural, political, social, economic, and psychological impacts did not warrant an apology (CORNTASSEL; HOLDER, 2008, p. 473).

As if that were not enough, “the Statement of Reconciliation did not form part of Canada's official parliamentary or legal record—it was merely posted on the Indian and Northern Affairs website” (CORNTASSEL, HOLDER, 2008). Following the Statement, in August of the same year, 1998, Canada's Government launched the Aboriginal Canada Action Plan – Gathering Strength, responding to the RCAP report, with four primary objectives:

> 1. To renew the partnerships that in Canada's colonial past characterized relations between Aboriginal peoples and invading European peoples, called newcomers;
> 2. Strengthen the governance of indigenous peoples, based not only on the recommendations of the RCAP Report but also on the management vision of the Department of Indigenous Affairs and Development of the North;
> 3. Develop a new and sustainable fiscal relationship through a more secure and modern legislative financial regime; and
> 4. Support communities, people, and economies that, based on the above elements, have sought to improve notably the quality of life of indigenous peoples (CANADA, 1998).

To demonstrate its reconciliation compromise, the Canadian government created The Aboriginal Healing Foundation (AHF), a non-profit organization ran by Indigenous people, intending to address the legacy of residential schools, especially those associated with survivors' health.

Four years later, by the end of 2002, the Government of Canada announces the Alternative Dispute Resolution Framework's creation to provide compensation for abuses in the Residential Schools and Can$ 172.5 million to preserve, revitalize and promote Aboriginal languages and cultures. Following these measures, in 2003, in a landmark agreement with the Anglican Church, the Canadian government agreed to provide 70% of financial compensation to victims of physical and sexual abuse in Anglican residential schools, with the church responsible for paying the remaining 30%, with the maximum amount of each compensation limited to Can$ 25 million. Simultaneously, the government and the church pledged to turn litigation claims into 'healing and reconciliation programs.' Former residential school students filed almost 12,000 claims against the government and the four churches that administered the schools. The Anglican Church was cited in 18% of claims. The agreement also provided that the Anglican Church would continue to engage in healing individuals and reconciliation with the parties, cooperating in resolving all claims of abuse, and creating a separate corporation

to establish a Compensation Fund for sexual and physical abuse survivors.

In 2005, meanwhile, Judge Frank Iacobucci was appointed by the federal government to lead discussions regarding the legacy of residential schools and their "resolution", the Supreme Court of Canada (SCC) establishes that the federal government was not entirely responsible for abuses in schools administered by the United Church, with the United Church responsible for 25% of the liabilities. For the SCC, the people who worked at the school were employed by the United Church of Canada, and the church should receive a share of responsibility for their actions. The judges understood that the government's presence did not guarantee the children's safety, particularly where, as in this case, the non-profit organization would have the day-to-day administration of the institution. The decision involved catholic and baptist churches that also managed residential schools for indigenes throughout the 20th century. Many religious organizations warned that the obligation to pay compensation would leave little recourse and be necessary to sell churches and restrict operations.

The government then signed the Agreement-in-Principle preliminary version of the Settlement Agreement for Indigenous Residential Schools, with legal representatives of the survivors, Assembly of First Nations, representatives of the Inuit ecclesiastical entities. In this context, the term "compensation" has been defined as "damages, costs, and interest as awarded or agreed upon payable to a claimant in an IRS Abuse Claim." The document also defined "An Indian Residential School Abuse Claim (IRS) as "a claim for Compensation for the mistreatment or neglect of a child arising from, or connected to, the operation of an Indian Residential School, other than a claim arising from the alleged loss or diminution of aboriginal language or culture (which is a continuing claim as defined for the IAP) that is founded on: one or more intentional torts such as physical or sexual assault, forcible confinement or the intentional infliction of mental suffering where the Government or the Church has or accepts vicarious liability" ("continuing claim as defined for the IAP, or outside the IAP, for maltreatment, or neglect, of a child arising out of or in connection with the operation of an Indian Residential School, excluding claims arising out of the alleged loss or diminution of aboriginal language or culture (which is a continuing claim as defined for the IAP), based on: one or more intentional offences, such as physical or sexual assault, forced confinement, or intentional imposition of mental suffering, for which the Government or the Church has had or accepted indirect responsibility"). It should be noted that, in this agreement, the church and the government exonerate themselves from any guilt regarding language and cultural

losses suffered by children in residential schools, such allegations not being accepted for financial compensation, but only those allegations of physical and sexual abuse considered valid.

According to Henderson and Wakeham (2009), although the settlement provided a way to expedite providing reparations to survivors, it generated criticism by establishing fixed amounts of tax compensation considered way too modest compared to what could be obtained through individual cases tried in court. Besides, residential education's intergenerational effects were not included in the compensation since family members were not considered eligible to receive payments on behalf of deceased students. According to the explanation of the authors, "The Independent Assessment Process's reliance upon a point-based scale that calculates monetary value via the reduction of traumatic experience to itemization within a clinical taxonomy of injuries has also raised questions about the 'reconciliatory' potential of such a juridical tabulation of suffering" (HENDERSON, WAKEHAM, 2009, p. 11). Beyond providing fiscal compensation, the 2007 Agreement also established a five-year term and structure for the Truth and Reconciliation Commission, which took effect June 1, 2008.

In this context, the federal government announced a Can$2 billion package designed to compensate *Indians* forced to attend residential schools financially. Some 87,000 people were considered eligible for compensation. Independent Assessment Cases were also implemented to address severe physical and sexual abuse cases and revealed that 50% of survivors alive had legitimate abuse claims within the residential school system. Of these claims, 21 percent were categorized as the most severe abuse levels and the most damage. Finally, in May 2006, the Government of Canada signed the Indian Residential Schools Settlement Agreement with survivors' legal representatives, First Nations Assembly, Inuit representatives and churches entities. It was the largest collective action agreement in Canadian history. In this same year, the Nunavut Court of Justice approved Can$2 billion for Aborigines who went to residential schools. However, for the decision to be valid and begin to be implemented, the courts of Ontario, Saskatchewan, Alberta, Manitoba, Quebec, British Columbia and Yukon, and the Northwest Territories, also needed to disclose their decisions in favour of the proposed settlement.[88]

[88] Common Experience Payment provided residential school alumni with Can$10,000 in financial compensation for the first year of residential school and an additional Can$3,000 per year thereafter. As part of the Common Experience Payment, alumni who were 65 or older as of May 30, 2005, were eligible to receive an advance payment of Can$8,000. The deadline for requesting advance payment ended up on December 31, 2006.

One year later, in September 2007, the Indigenous Residential School Settlement Agreement finally went into effect and the Government of Canada begun to receive payment requests in light of the common experience. The Common Experience Payment (CEP) is a component of the Indigenous Residential School Settlement Agreement that recognized the indigenous residential school admission experience and its impacts. [89]

3.3 The Reconciliation-Era and the advent of the Indian Truth and Reconciliation Commission (TRC)

The TRC was created in 2008 with a mandate to ascertain the history and the legacy of the Indigenous Residential Schools in Canada, documenting all indigenous survival experiences, whether before, during, or after the Residential Schools experience. The objective of the TRC was to collaborate to establish the basis for a new relationship between Indigenous Peoples and Canadian society based on the values of "mutual respect" and "understanding. The design of the Commission was inspired by models of Truth Commissions from South Africa and Latin America. One of their concerns was to prevent people from feeling intimidated to attend but to speak in the presence of lawyers, as this could create resistance from survivors. The TRC's mandate was established through a formal agreement, the "Indigenous Residential School Housing Agreement," which is established as a purpose,

> To reveal to Canadians the complex truth about the history and continuing legacy of church-run residential schools, fully documenting the individual and collective damage perpetrated against Aboriginal peoples, honoring the resilience and courage of alumni, their families and communities, guiding and inspiring a truth and healing process that leads to reconciliation within families and between Aboriginal peoples and non-aboriginal communities, churches, governments and Canadians generally (CANADA, 2008).

In 5 years, US$ 60 million were invested for routine TRC activities, and US$ 20 was used in projects and commemorative ceremonies. Considering that the courts approved in Canada collective action agreements, the claims have spread to nine jurisdictions in Canada. Of the approximately eighty thousand collective action members, about four hundred people chose not to participate. Had this number been equal to five

[89] Applications were accepted until September 2012. Available at: https://www.canada.ca/en/employment-social-development/services/aboriginal-common-experience-payment.html.

thousand, an interim settlement would not have been possible.

From 2009 to 2015, the TRC held hundreds of community hearings and events. Four-day national events were held in Winnipeg, Inuvik, N.W.T., Halifax, Saskatoon, Montreal, Vancouver and Edmonton, and regional events in White Horse and Victoria. The commission recorded nearly seven thousand statements during its term and accumulated nearly five million archives from the government and the church.

The official closing of the TRC took place in June 2015, with the final report's release containing seven volumes and the launch of 94 Calls to Action. In the final report, the TRC details how the Indigenous Residential School System has contributed to the over-representation of First Nations, Métis and Inuit Indigenous adults in prisons, children in adoption and correctional systems, child welfare systems, justice, inferior health services in indigenous communities, and the educational deficit, lack of land rights, lack of access to water, and the increase in the number of murdered and missing indigenous women and girls across Canada.

The Royal Commission on Aboriginal Peoples (RCAP) was a commission of inquiry set up by the Parliament of Canada in August 1991, a few months after the Oka Crisis, to investigate the evolution of relations between Indigenous Peoples, government and Canadian society as a whole. In its 5-volume final report published in 1996, 400 recommendations were made to improve relations between federal and provincial governments and the populations of Canada's 70 indigenous *nations*, including specific initiatives for education, child welfare and changes in the structural relationship of Indigenous Peoples with Canada. The report also calls for a public investigation into abuse cases in residential schools, bringing survivors' stories to the public sphere. As it was already said before, most of the recommendations have not been implemented.

The Residential School system was singled out as a particularly oppressive intrusion aspect into Aboriginal life, recognizing the physical and sexual abuse in these schools. The federal government reinforced the formal declaration of reconciliation with a commitment to work with all Indigenous Peoples, churches, and other related parties to redress the damage done under the residential school system's auspices. A Can$350 million healing funds for victims was established. The government has also created an additional Can$250 million funds to assist economic development, the establishment of self-government, job creation, and the delivery of social services. A specific commitment was made to the Métis in the promise to reassess Louis Riel's role in Canadian history. The “Declaration of Reconciliation” also included an explicit rejection of the long-

standing official assimilation policy of native peoples. Several indigenous criticized the limited nature of the declaration, demanding more comprehensive recognition of indigenous cultures and societies' attacks. Composed in consultation with the head of the Assembly of First Nations (AFN), Phil Fontaine, a man with a personal negative experience with the residential school system, the declaration won the official approval of the AFN. Others found it less satisfactory, and some indigenous activists criticized the limited nature of the declaration, demanding more comprehensive recognition of indigenous cultures and societies' attacks.[90]

The status issue is of particular importance as official definitions have denied its identity to many indigenes in Canada. Some critics also pointed out that the Can$600 million commitment offered in this statement was way below the royal commission's recommended spending levels. Other critics focused on the unilateral nature of the statement claiming that by focusing entirely on the residential school system's negative aspects, their 'positive contributions' to indigenous life were ignored. It was suggested that the statement's result was to exacerbate rather than narrow the chasm between indigenous and non-indigenous peoples. As a formal declaration of recognition and repentance, the Declaration of Reconciliation was a step toward renewal so emphatically demanded by the Royal Commission on Indigenous Peoples. However, it did not fully resolve indigenous grievances. The mixed reaction to the declaration indicates that many remain dissatisfied with the government's official response.

In August 2017, Justin Trudeau announced the dissolution of Indigenous Northern Affairs Canada (INAC) into two new departmental bodies: Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC). To justify his decision, the Prime Minister used the recommendations of the RCAP, 1996, arguing that it was essential to dissolve a colonial structure that arose to implement the Indian Act and did not collaborate in building nation-to-nation relations with Indigenous people,

> In particular, Indigenous and Northern Affairs Canada (INAC) – which serves as a focal point in the government's relationship with Indigenous Peoples – is charged with implementing the Indian Act, a colonial, paternalistic law. INAC was also not designed or conceived of to support and partner with Inuit and

[90] By "societies attacks," one can understand a constant critic of the Canadian white settler society on the indigenous ways of life, their basic cultural patterning, religion, language and colour, denoting an environment of systemic racism, in other words.

> Métis peoples, based on their unique histories, circumstances and aspirations. To put it plainly, the level of the ambition of this government cannot be achieved through existing colonial structures. Over twenty years ago, the Royal Commission on Aboriginal Peoples acknowledged that a new relationship with Indigenous Peoples would require new structures. It recommended that we dramatically improve the delivery of services while accelerating a move to self-government and self-determination of Indigenous Peoples. One mechanism to achieve this was the dissolution of INAC and the creation of two new ministries to facilitate this work. We agree with the Royal Commission that rights recognition must be an imperative, and that is why today we are announcing the dissolution of INAC. Over twenty years ago, the Royal Commission on Aboriginal Peoples acknowledged that a new relationship with Indigenous Peoples would require new structures. It recommended that we dramatically improve the delivery of services while accelerating a move to self-government and self-determination of Indigenous Peoples. One mechanism to achieve this was the dissolution of INAC and the creation of two new ministries to facilitate this work. We agree with the Royal Commission that rights recognition must be an imperative, and that is why today we are announcing the dissolution of INAC. [91]

3.4 The Canadian Apologies to the First Nations, Métis and Inuit

Every national reconciliation process involves offering formal apologies to victims of violence for past acts. Over the past 30 years, the various governments of Canada and Protestant and Catholic churches directly involved in the residential schooling system have begun to apologize publicly for what they classified as 'past mistakes.'

Before analyzing the effects of Canadian apologies on indigenous peoples, it is vital to understand the chronology of events involving its offering and the financial compensation to the victims of the residential school system. The events' chronology helps understand the itinerary that Canada has been following in terms of seeking 'reconciliation' with Indigenous Peoples and with the survivors of its assimilation policies. Equally, it is impossible to understand why the Canadian government delivered its most famous Apologies in 2008 without understanding how the indigenous movement acted behind the scenes to conquer their right to apologize.

In 1986, gathered in Sudbury, Northwest of Ontario, the United Church of Canada made its first apology to the First Nations for what it called a “broken relationship” with

[91] Retrieved from https://pm.gc.ca/en/news/backgrounders/2017/08/28/new-ministers-support-renewed-relationship-indigenous-peoples

Indigenous Peoples, committing to "healing" it. According to the very United Church data, from 1849 to 1969, the congregation was responsible for administering fifteen residential schools across Canada.[92]

In 1993, Archbishop Michael Peers of Canada's Anglican Church sent his apologies to the National Native Convocation held in Minaki, Ontario, on August 6. In his request, Peers cited the pain and sorrow experienced by Indigenous Peoples in the schools and said he feels ashamed and humiliated. In admitting the failure of the Anglican Church, Peers also recognized that the residential school system has forcibly removed children from their families in an attempt to remake them in its image and likeness, also recognizing the various types of abuse – physical, sexual, cultural and emotional – caused to children. Finally, he promised that his words would be accompanied by action. In response to the Anglican Church's apology, Vi Smith, of the National Native Convocation, expresses its acceptance of Archbishop Peers' apology, considering that it was done "from the heart and with sincerity, sensitivity, compassion and humility". (SMITH, 1993, n/n). [93]

In 1994, the Presbyterian Church issued a document entitled "The Confession of the Presbyterian Church in Canada," it recognized that the Canadian government had as declared policy "to assimilate Aboriginal peoples to the dominant culture and that the Presbyterian Church in Canada cooperated in this policy". The Presbyterian Church also recognized that the roots of the damage done lay in "the attitudes and values of Western European colonialism," and in "the assumption that what was not yet shaped in our image was to be discovered and exploited. The Presbyterian Church, unlike the others, confessed that,

> with the encouragement and assistance of the Government of Canada (...) it agreed to take the children of Aboriginal peoples out of their homes and into residential schools. In a scenario of obedience and acquiescence, there was an opportunity for sexual abuse, and some were so abused. The effect of all this, for the Aboriginal people, was the loss of cultural identity and the loss of a secure sense of self. (PRESBYTERIAN CHURCH OF CANADA, 1994, p. 1). [94]

[92] Retrieved from https://united-church.ca/social-action/justice-initiatives/reconciliation-and-indigenous-justice/apologies. Access on Jan 12, 2021.
[93] Response delivered by Vi Smith on behalf of the elders and participants Minaki, Ont., Saturday, August 7, 1993. Available at: https://www.anglican.ca/tr/apology/english/. Access on 04.18.2021.
[94] Available at https://presbyterian.ca/healing/. Accessed on Jan 11th, 2021.

In 1998, The United Church of Canada offered its second apologies, now for the specific role played in running the Residential Schools, and promised to engage in the work of the Truth and Reconciliation Commission of Canada (TRC). In this same year, the indigenous leaders accepted the United Church's apology and expressed the desire that the request is symbolic and words reflecting action, sincerity and guarantees of non-repetition.

Although this vast background of ecclesiastical apologies to Indigenous Peoples, the Canadian government has made four attempts to express their feeling towards the survival of its assimilationist politics applied in the past as an actual state project to eliminate the indigenous culture through the child. The most expressive one was the remarkable apology delivered by the Prime Minister, Stephen Harper, on June 11th, 2008. Before Harper finally did it properly, and despite the terrible words he chooses, three prior governmental attempts were made without achieving the expected result in terms of pleasuring the indigenous recipients.

The first was in 1991 when British Columbia's Cariboo Tribal Council organized its first conference to examine the impact of residential school abuse on indigenous lives. At the end of the conference, the then Assistant of the Minister of Indigenous Affairs, William Van Iterson, apologized to the audience “on behalf of public servants” but declined to refer to the thousands of abused and violated students at these institutions. He sought to minimize the number of inflicted students, using expressions such as “some of them” and “perhaps.” At the end of his speech, he paradoxically did not use the expected slogan, “We apologize” (TAGER, 2009).

In its second apology, delivered in 1998, Jane Stewart, Minister of Indigenous Affairs and Development, addressed the country's largest indigenous organizations' leaders directly, receiving extensive news media coverage. However, repeating the first apology problem, she did so on behalf of her chief of staff, Prime Minister Jean Chrétien, who neither signed the document nor attended the ceremony, so she had to explain later that the request was made behalf of the whole government. The apology did not clarify the extent of the government's responsibility for abuse in the residential school system, and many indigenous leaders considered the content inadequate (TAGER, 2009 apud DePALMA, 1998; O'NEIL, 1998).

The third request, made in 2007, which the Liberal Party deputy initiated, Gary Merasty, had the participation and was followed by the Minister of Indigenous Affairs, Jim Prentice. The third request's weight was more significant because the responsibility

for past abuses against survivors of residential schools was shared between two powers (TAGER, 2009 apud IVISON, 2007). Although the apology text was approved, it also did not receive adequate media coverage and, for an apology to be sufficient and achieve its goal of communicating remorse, it needs to receive a significant audience and be widely publicized and known (TAGER, 2009).

Finally ending the saga of the Canadians attempts to made its apologies valuable, comes to the scene, in 2008, the Prime Minister, Stephen Harper, who has already the chance to learn with his colleagues 'errors of the past'.[95] The speech was given at the Canadian Parliament both in English and French. The speech is considered a landmark apology discourse, but it had two avoidable mistakes that Harper did not work out to prevent. Sociological theories suggest that an apology is "a speech act, a sign, in dyadic interaction between the primordial social categories of Offender and Offended" (TAVUCHIS, 1991, p. 119-20), it was remarkable the fact that in the audience of the ceremony there was no indigenous survivors, nor their families. Also, Harper cushioned his words, calling the totalitarian policy of forced admission of indigenous children to residential schools a "sad episode" and a "sad chapter" of Canadian history. He also summarized more than a hundred years of an integrationist political project – whose slogan was "to destroy the Indian it is necessary to destroy the child" – to sporadic and episodic events (TAGER, 2009).

[95] Harper's speech is available at https://www.youtube.com/watch?v=aQjnbK6d3oQ.

Image 6: Statement of Apology

Statement of Apology – to former students of Indian Residential Schools

The treatment of children in Indian Residential Schools is a sad chapter in our history.

For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870s, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools. Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.

One hundred and thirty-two federally-supported schools were located in every province and territory, except Newfoundland, New Brunswick and Prince Edward Island. Most schools were operated as "joint ventures" with Anglican, Catholic, Presbyterian or United Churches. The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities.

First Nations, Inuit and Métis languages and cultural practices were prohibited in these schools. Tragically, some of these children died while attending residential schools and others never returned home.

The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language. While some former students have spoken positively about their experiences at residential schools, these stories are far overshadowed by tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children, and their separation from powerless families and communities.

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

It has taken extraordinary courage for the thousands of survivors that have come forward to speak publicly about the abuse they suffered. It is a testament to their resilience as individuals and to the strength of their cultures. Regrettably, many former students are not with us today and died never having received a full apology from the Government of Canada.

The government recognizes that the absence of an apology has been an impediment to healing and reconciliation. Therefore, on behalf of the Government of Canada and all Canadians, I stand before you, in this Chamber so central to our life as a country, to apologize to Aboriginal peoples for Canada's role in the Indian Residential Schools system.

To the approximately 80,000 living former students, and all family members and communities, the Government of Canada now recognizes that it was wrong to forcibly remove children from their homes and we apologize for having done this. We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions, that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.

The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever again prevail. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey.

The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.

In moving towards healing, reconciliation and resolution of the sad legacy of Indian Residential Schools, implementation of the Indian Residential Schools Settlement Agreement began on September 19, 2007. Years of work by survivors, communities, and Aboriginal organizations culminated in an agreement that gives us a new beginning and an opportunity to move forward together in partnership. A cornerstone of the Settlement Agreement is the Indian Residential Schools Truth and Reconciliation Commission. This Commission presents a unique opportunity to educate all Canadians on the Indian Residential Schools system. It will be a positive step in forging a new relationship between Aboriginal peoples and other Canadians, a relationship based on the knowledge of our shared history, a respect for each other and a desire to move forward together with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us.

June 11, 2008

On behalf of the Government of Canada
The Right Honourable Stephen Harper,
Prime Minister of Canada

Without disregarding the possible best intentions embedded in all these official Canadian apologies, Corntassel and Holder's analysis points out that they failed not only in transforming the colonial relationships with indigenous peoples but also "illustrate the dangers of co-opting the language of reconciliation without first establishing meaningful forms of restitution and group compensation" (2008, p. 483).

In English, the word *boondoggle* is widely used to qualify a project considered a waste of time and money, not to say fraudulent, yet it is carried out more for political motivations than for real gains it may generate. Indigenes frequently use that word to refer to the Canadian government's reconciliation 'agenda' and the apologies made in 2008 by Prime Minister Stephen Harper.

In a document published by the Aboriginal Healing Foundation (AHF), called "From Truth to Reconciliation: Transforming the Legacy of Residential Schools", it is possible to find an explanation to the complementary relationship that must necessarily exist between an apology and material compensation. The document says that, even when the apology request is sincere, it becomes insufficient if it is unaccompanied by an appropriate material and proportional reparation. As well explains Litwack,

> Ethics and courtesy are by no means the same, and it is a common error of relativists to assume that they are. It is likely that restitution, responsibility and making amends are notions to be found in all cultures, across historical and geographical boundaries. How these notions are expressed has varied and does vary. Keeping this in mind will allow us to discern whether collective apologies, state reparations, or a combination of the two is optimal in a particular political and historical context. However, beyond surface courtesies, the basic underlying moral motivation for actions of redress should remain the same: accepting historical responsibility for past wrongdoings, when appropriate, and making amends. Saying 'sorry' is not merely a question of getting a particular culture right, although local customs must be considered in style and policy. It is rather a matter of expressing an attitude towards history and a desire to make the future better than the past (LITWACK, 2008, p. 2).

As explained, the reconciliation project as proposed by the Canadian government towards Indigenous Peoples is better understood in the context of the emergence and adoption of an official multicultural policy of the country from the 1980s, which can also be interpreted as a measure of social redress that operates from the idea of overcoming the past, adjusting differences and "moving on." The other question to follow this first

one is: is the reconciliation project in Canada sincere? Was Harper's apology speech honest and meaningful? Both questions are complicated and tricky to respond to because, at the same time that the reconciliation as a goal seems to be very consistent, many factors collaborate for it rewinds many steps all the time.

It is essential to ask to what extent some political agents can or would apologize for facts that happened in the past. Long-delayed apologies raise ethical and moral issues of responsibility and reinforce impunity and losing value in terms of symbolic effectiveness (TAGER, 2009). Thus, the combination of time and accountability factors is crucial if reconciliation initiatives are not to become "policies of oblivion" (ANSARA, 2012). When victims of state violence and their perpetrators die, the "second generation memories" begin to operate that is the memories of people who were not directly involved in the violence but who in some way "related to the previous generation and adopted mnemonic aspects as their own" (TELES, 2010, p. 298).

In "Apologies to Indigenous Peoples" (2014), Michael Tager compares the effectiveness of apologies undertaken by Australia, Canada, and the United States. In the study, the equivalent for "historical debt" is expressed in terms of "human rights violations" and "historical injuries." According to Tager's literature review, for Torpey (2006), so-called "reparations policies" include apologies, criminal trials, truth commissions, material compensations, and the attempt to rebuild collective memory. For Nobles (2008), the excuses reflect a critical political process of negotiation to recover the sense of belonging of aborigines to national identity.

By comparing the apologies to indigenous peoples made by the governments of Canada and Australia, Corntassel and Holder's investigations point out that these statements have addressed human rights violations committed against these populations to a minimal extent, wasting a valuable opportunity to make these symbolic gestures less empty (CORNTASSEL, HOLDER, 2008). For proper recognition of indigenous peoples' human rights and self-determination, governments must deliver sincere apologies. However, even sincere, an apology alone cannot provide genuine reconciliation. It is necessary to combine the proper apology with a systematic re-examination of the past, initiate the process of territorial restitution, and hold both institutions and individuals directly involved in the practices of violations of human rights and self-determination accountable. Besides, however sincere, apologies cannot provide genuine reconciliation on their own and, more importantly: any discussions or gestures of reconciliation must be preceded by genuine restitution acts (CORNTASSEL, HOLDER, 2008).

Before concluding this topic, an analysis of scientific production from the 1990s to the 2000s reveals how involved the academy was with the socio-cultural legacy of Indigenous Residential Schools and Canadian public administration practices aimed at managing the so-called “Indian problem” (DYCK, 1991a). This period's academic production has been extensive and detailed in analyzing the policy and legacy of residential schools. Moreover, it is still a reference for any study of the Indian issue in Canada.

In 1991, Noel Dyck launched the book *What is the Indian 'Problem'? Tutelage and Resistance in Canadian Indian Administration* where he analyzed the administration of indigenous affairs by the Canadian state through the concept of coercive tutelage – designed to affect the social, economic and cultural transformation of aboriginal peoples and their communities – and the imposition of bureaucracies to ensure control over all aspects of indigenous life.

In 1991, Rosalyn Ing's paper “The Effects of Residential Schools on Native Child-Rearing Practices” addressed the negative interpersonal results of the Canadian assimilationist project on three indigenous survivors' lives and their home communities. Ing focused on the fragile indigenous self-image resulting from the acculturation process within residential schools and its effects on family relationships, particularly regarding the use of language and traditional cultural practices.

In 1999, John Milloy's intimate book *A national crime: The Canadian government & the residential school system, 1879 to 1986*, shares his own experience as a non-Indigenous child, spending three weeks in Indian residential schools in the Yukon and Northwest Territories during his involvement with church camps in the late 1960s,

> The experience was, for a middle-class, non-aboriginal child, shocking in the extreme. The combination of bland food, ridiculous regulations, an intense subculture of rule-breaking, constant supervision, a high level of prudishness (we had to shower in our underwear), and authoritarian nuns and school officials seemed intolerable after only a very short stay. The stay produced a new spark of rebelliousness and a strong disrespect for authority figures. For us short-timers, the experience was unusual and quirky; it was difficult to imagine how the hundreds of students in each of those schools survived the years that they spent in residence. (MILLOY, 1999, no number).

Medical and psychological anthropologist James B. Waldram, [96] has also undertaken many studies on residential schooling in the 1990s. In *Anthropology, Public Policy, and Native Peoples in Canada* (1993), along with Noel Dyck, Waldram have evaluated anthropology's involvement with public policies affecting indigenous peoples in Canada, and offer innovative solutions to the challenges faced by anthropologists working in this field. In *As Long as the Rivers Run* (1988), Waldram examined the politics of hydroelectric dam construction in the Canadian northwest, focusing on the negotiations and agreements between the developers and the Native residents. He shows the parallels between the treatment of Natives by the government of Canada in these negotiations and the treaty process a century earlier.

In the 2000s, Pamela O'Connor's study, "Squaring the circle: how Canada is dealing with the legacy of its Indian residential school's experiments," already provided a comparison between Canada and Australia on the social costs of policies to assimilate indigenous children in these two countries forcibly.

In this sense, far from moving away from the issue, the academy sought to reach out to survivors and their families to critically assess and compare the social, political and psychological damages caused by the residential school system.

3.5 Indigenous critique of Canada's reconciliatory 'Agenda'

Deconstructing the idea of an exemplary Canada and a reference country for Indigenous Peoples is the first necessary step in forming a critical and realistic understanding of the many factors that must act to shape a relationship with Indigenous Peoples in a new way. Scott Serson, referring to those who still believe that Canada is a caring and kind country for its natives, asks: why does the government insist on maintaining the 2% limit for investment in indigenous programs when this rate does not keep pace with inflation or the growth of the indigenous population? For Serson, the answer lies precisely in the fact that a large part of Canadian society is unaware of the reality of Indigenous Peoples, which means that "if Canadians knew more of the poverty in First Nations communities, they would demand action" (SERSON, 2009, p. 171-172).

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[96] Mentored by anthropologist Sally Weaver, Waldram established Saskatchewan's first Department of Native Studies, where he promoted indigenous people's hiring.

understanding of the many factors that must act to shape a relationship with Indigenous Peoples in a new way. Scott Serson, referring to those who still believe that Canada is a caring and kind country for its natives, asks: why does the government insist on maintaining the 2% limit for investment in indigenous programs when this rate does not keep pace with inflation or the growth of the indigenous population? For Serson, the answer lies precisely in the fact that a large part of Canadian society is unaware of the reality of Indigenous Peoples, which means that "if Canadians knew more of the poverty in First Nations communities, they would demand action" (SERSON, 2009, p. 171-172).

Indigenous poverty in Canada is directly related to the fact that, compared to non-indigenous citizens, this population has a lower life expectancy, higher suicide rate, lower *per capita* income, child mortality and prostitution, criminal detention, unemployment, inadequate water and sewage systems, abused women, and significantly lower educational and health levels: "A government study, using the United Nations Index on quality of life – the same index that ranked Canada number one in the world – determined that if Aboriginal people living on reserve were treated as a distinct country, they would rank 60th of 170 countries studied" (RUDIN, 2002, p. 1.406).[97] It means that if Canada were evaluated solely based on the human and economic development indices of Indigenous Peoples, its ranking on the United Nations scale would fall to 48th place. Still, Canada would be better placed than Brazil, which ranks 79 in the same ranking, when this dissertation was written. Although aboriginal peoples' living standards have improved in the past 50 years, in Canada they do not come close to those of non-Aboriginal people (CARINO, 2009, p. 24).

Since we are dealing here with a comparison, we can ask what the ranking of the indigenous peoples in Brazil and Latin America would be in these terms. It does not take much insight to know that Brazil would occupy an even more prominent place at the end of the line. A 2009 United Nations report on the welfare of indigenous peoples around the world shows that in Latin America, indigenous peoples face huge disparities compared to the non-indigenous population in terms of quality of education and health care, infant mortality [98], malnutrition, low literacy rates, as well as discrimination and lower employment and income rates (UN, 2009). These are precisely the conditions that

[97] "Um estudo do governo, usando o Índice das Nações Unidas sobre qualidade de vida - o mesmo índice que classificou o Canadá como o número um do mundo - determinou que se os aborígines fossem tratados como um país distinto, eles estariam classificados na posição 60 de 170 países estudados".

[98] According to the same report (UN, 2009), although this rate has decreased significantly, indigenous mortality among children is 70% higher than in the non-indigenous children Latin population.

make it possible to compare Brazil and Canada regarding the indigenous issue.

The colonial process on indigenous lives in these two countries was (and still is) practically the same. In this sense, the Canadian economy is one of the best positioned in the world and does not make a difference to the lives of the Indigenous Peoples in this country. Firstly, because it is not merely a socioeconomic issue but related to the results of a long-lasting colonial process in which systemic racism is a central and determining element of what Quijano theorizes and conceptualizes as the "coloniality of power," and which collaborates so that the order of things remains unchanged despite many positive efforts towards reconciliation.

It is necessary to understand the meaning of reconciliation as a political 'agenda' in Canada. The vocabulary used and placed in the context of the government's political 'agenda' aims to enforce a peacemaking function and express the recognition, forced or spontaneous, that many acts of violence have been committed and that their correction is, above all, morally necessary. Terms such as 'reparation,' 'reward,' 'reconciliation,' 'apology,' and other nouns that mean the act of feeling a lot are categories used synonymously but have different meanings in the context of Canada's payment and settlement agenda for its historical debt to Indigenous Peoples.

Canada's indigenous movements are incredibly critical of what they call the federal government's reconciliation 'agenda', but not only indigenous are critical. Canadians often express their criticism of these initiatives, sometimes for other reasons, that they consider being "a lot of talks and no action," as I heard from a young nurse with whom I shared a house in the town of Orillia for three months. In that same city, I heard from a man of about 50 years old that the Indigenous Peoples are not worthy of the policies that the government offers them because they are people who do not do as much for their communities as he does, for example, he defined himself as a citizen who works a lot and who also contributes to his community, neighbourhood, church and his family.

This makes us think of Sheppard's definition of the concept of reconciliation and to understand, in a way, the various criticisms and resistance of Canadian white society to this agenda,

> Reconciliation has emerged as an important concept in the struggle to secure harmonious relationships and to resolve historical and ongoing conflict between Indigenous and non-Indigenous Peoples. At this historical juncture in Canada, however, recurrent tensions can be observed between different approaches to reconciliation, and even the rejection of the

> possibility of reconciliation by some. An important starting point for understanding different conceptions of reconciliation is the recognition of divergent understandings of the nature of conflict between Indigenous and non-Indigenous Peoples. A narrower conception of reconciliation is often premised on the assumption that the conflict giving rise to the harm is over – that we are in a post-conflict situation, and that reconciliation requires an apology for past wrongs, acceptance of the apology, forgiveness, and adequate compensation. Pursuant to this vision, reconciliation often focuses more on the past and on individual apologies and forgiveness in interpersonal relations rather than the reshaping of collective relationships or redress for broader structural and systemic harms (SHEPPARD, 2013, p. 3-4).

Advancing in the field of criticism, in "The apologizers' apology", Eva Mackey warns that state-sponsored reconciling gestures, rather than creating new reciprocity, have helped restore the dominant moral prerogative by reproducing racializing stereotypes of "aboriginal life", exemplified by the categorization of "damaged" and "dysfunctional" that Canada's Truth and Reconciliation Commission has given to aboriginal survivors of detention policy (MACKEY, 2013, p. 47-62).

The temporal location of these "errors" in an already overcome colonial past will become a discursive political tonic. It will also become commonplace to issue official and semi-official public apologies and grant benefits to Indian statuses, such as fuel tax exemptions and the establishment of settlements to produce a semblance of reconciliation. In parallel, the Canadian government has acted to protect and not expose the identities of those responsible for the totalitarian policy of compulsory internment held at Residential Schools.

Furthermore, the Canadian government's messages of reconciliation are also criticized for being overloaded with theological, legal and political connotations. This means that the reconciliation messages contain disciplinary content about the violence committed in the past and being motivated by the desire to preserve the image of the country as a nation where multiculturalism has been effective, which is why a large part of the Aboriginal communities maintain a very critical posture to apologies and still consider themselves "irreconcilable" with the government.

When I was in Canada doing fieldwork for this dissertation, I spent much time alone at home, especially during winter. So, I thought it would be good to have a television to watch the news and get more familiarized with Canadian culture and language. Watching the news daily became a part of my routine, in any case. In the first

days doing so, I got surprised when I noticed that the reconciliation theme was a part of the news and other significant societal, economic, environmental, political, and others. Because of this, I understood that the “indigenous issue” is treated in a very different way by the media compared to Brazil. During nine months that I had the TV always available to myself, I could watch several ceremonies broadcasted live on the news, where Provincial Prime Ministers, Ministers of the Cabinet, or Justin Trudeau himself, were attending events to deliver apologies to Indigenous Peoples.

One of them occurred when the Prime Minister of Saskatchewan, Scott Moe apologized to survivors of the '60s Scoop Monday'. In front of about 200 people gathered at the legislature, he said, “On behalf of the government of Saskatchewan and behalf of the people of Saskatchewan, I stand before you today to apologize. I stand before you to say sorry. We are sorry for the pain and the sadness that you have experienced. We are sorry for your loss of culture and language.

Moreover, to all of those who lost contact with their family, we're so sorry.” The “60s Scoop Monday” refers to about 20,000 indigenous children seized from their families and relocated to non-indigenous homes from the 1950s until the late 1980s. Robert Doucette, a survivor and co-chair of Sixties Scoop Indigenous Society of Saskatchewan, said the apology was a highlight of his life and a step in the right direction. As I ran to reach a pen to take notes of his live speech, I could hear him say that he waited 56 years for the apology to come out, and he appreciated that the Prime Minister acknowledged the harms perpetrated on First Nations and Métis children.

The other remarkable moment that I could live watch on the TV was Justin Trudeau's attendance, amid pipeline protests at the British Columbia Province, to the First Nations Forum in Ottawa. Trudeau talked about the commitments made to Indigenous Peoples in his 2015 election campaign in his opening speech. He took a minute to assess what his government has already accomplished concerning the reconciliation 'agenda' and pointed out the actions that were still to be done, promising to deliver one by one and work on a nation-to-nation basis to re-establish the confidence and relationship with the Indigenous People of Canada. His presence at the Forum was not unanimous, on the contrary. Indigenous People mobilized outside the auditorium invaded the building where the event occurred, and the venue had to be moved to another site in a hurry. The unrest attracted enormous media attention, and the news resonated in practically every edition of all the TV news that day and the next.

The third televised event that caught my attention was the welcome offered to

Justin Trudeau in person by one hundred or so Inuit from across the four Inuit Nunangat regions, i.e., – the people of Inuit in Iqaluit – in order to hear his apologies for the federal government's mismanagement of tuberculosis (TB) epidemic among them, during the 1940s and 1960s. Trudeau said that the damage resulted from a “destructive” and “misguided” colonialist politics. Trudeau also condemned the shipping of Inuit to southern TB sanatoriums, from which many never returned.

Without using the right words to classify Inuit's shipping to Southern TB sanatoriums in the past, he classified these politics as “a shameful chapter in Canada's history” and promised to do better in the future. He also reaffirmed the government's commitment to eliminate the tuberculosis crisis across the North by 2030. Apologizing for the government's lack of respect and care for Inuit, in the end, he said he was sorry. He confirmed that the Can$640 million for housing previously announced by the government were guaranteed, including Can$240 million over ten years for social housing construction in Nunavut (announced back in 2017) and Can$400 million for social housing construction in other three regions of Inuit Nunangat, also over ten years.

What does reconciliation mean in the Canadian context? Some would say that it is an attempt of the government, the state and the British Crown to achieve what the treaty rights have not made possible in the past, which means to gain control over indigenous lands. This is possibly the answer that some indigenous scholars' critics of the reconciliation 'agenda' would respond, especially Taiaiake Alfred and Jeff Corntassel (2005).

Other indigenous critical thinkers have contributed with ideas on the reconciliation goal, such as Glen Coulthard (2014) and Leanne Betasamosake Simpson (2017). However, as they often emphasize, their contributions represent only a part of the indigenous movement's voices. Criticism from indigenous intellectuals arouses excellent interest. However, some care should be taken when approaching their thoughts. It is necessary to consider that Indigenous Peoples are involved in a constant political struggle, and, in this sense, the political character of their writings and thoughts cannot be underestimated but respected. Second, indigenous thinking is also based on millenary experiences and ancestral knowledge that seeks to account for colonial relations, the social suffering generated by them, and the ways to break the cycle of violence. Furthermore, knowing the indigenous political thought is essential if one wants to understand the fundamentals of their claims, traumas and suffering. This is the subject addressed in the next topic.

3.5.1 The critical thinking of Taiaiake Alfred on the Reconciliation Canadian 'Agenda'

Gerald Taiaiake Alfred – Ph.D., a former professor at Concordia University in Montreal and Victoria University in British Columbia – is one of *Turtle Island's* most important and well-known author, activist and thinker. Until 2019, he was the founder and director of the Indian Governance Studies Program. He received funding from the Canada Research Chair and was awarded the "Best Indian Columnist" by the Native American Journalists Association. He also received the "National Aboriginal Achievement Award". He was a member of the Mohawk Council of Kahnawà: ke and an advisor of the Royal Commission for Indigenous Peoples of Canada. He is a Mohawk of Kahnawá: ke. Kahnawà: ke, means in the Mohawk language, "place of the rapids", as the traditional territory is situated on the South Bank of the Saint Laurent River, in Quebec. Mohawk is the name given by the Europeans to the Kanien'kehá: ka, the "people of the stone".[99]

In an interview to the Radio Nuxalk, on June 21, 2020, he defined himself as a father, a hunter, a writer, someone who helps Indigenous Peoples in their strategies to re-conquer their lands. Alfred grew up amid the political struggles of the Mohawk community of Kahnawà: ke. In one of his conferences, he explains that his political awareness began in 1973, as a child, when he attended a series of First Nations uprisings on *Turtle Island*. Thus, his political consciousness begins with the discovery of what it meant to be an "Indian". At the same conference, he explains the influence of the 'Black Power' movement in the formation of the 'Red Power' one, a landmark in all his work, as well as references to Frantz Fanon and Vine Deloria Jr. In addition to these influences, his thought and writings are anchored in life experiences that go beyond the academic world. In Canada, Taiaiake Alfred has become known for his sharp criticism of the policy of reconciliation and his original vision of possible paths to true decolonization and self-determination for Indigenous Peoples.

He has published three books: *Heeding the Voices of Our Ancestors* (1995); *Peace, Power, Righteousness* (1999), and *Wasáse: Indigenous Pathways of Action and Freedom* (2005), as well as several articles and lectures. A constant subject of his writings

[99] The Kanien'kehá: ka, known as the "Guardians of the Eastern Gate", are the easternmost nation of the Haudenosaunee, the Six Nations of the Iroquois Confederation. Historically, they looked after the territory on both sides of the Mohawk River, from where they protected other parts of the Confederation.

is his call to Indigenous Peoples to return to their traditions and spirituality in the quest to recover their political structures or self-government. Throughout his work, there has been a constant criticism of colonialism and how the colonial narratives have been incorporated and are deeply connected, emotionally and psychologically, to the stories of all Indigenous Peoples, in the form of lies assumed as historical truths (ALFRED, 2011).

According to his thought, colonialism must be recognized as "a narrative in which the settler's power is the fundamental reference and assumption, inherently limiting Indigenous freedom and imposing a view of the world that is but an outcome or perspective on that power" (ALFRED and CORNTASSEL, 2005, p. 601). In a more comprehensive understanding, Alfred define colonialism as,

> (…) an irresistible outcome of a multigenerational and multifaceted process of forced dispossession and attempted acculturation – a disconnection from land, culture and community – that has resulted in political chaos and social discord within First Nations communities and the collective dependency of First Nations upon the state. This harm has resulted in the erosion of trust and of the social bonds that are essential to people's capacity to sustain themselves as individuals and as collectivities (ALFRED, 2009a, p. 601).

For Alfred, Canada's entire history has been built on lies at the root of what he calls "colonial mythology". This mythology today takes the form of constitutional premises and institutional structures (ALFRED, 2003). As an example, Alfred cites the creation of the legal apparatus of the "terra nullius", as well as the supposed presumption of the British Crown sovereignty as a strategy to acquire the territories traditionally occupied by Indigenous Nations since time immemorial, and which have never been "ceded" or "handed over" to the British Empire, as written in the numbered treaties. Another solid example can be found in the so-called "doctrine of discovery", which advocated that the legal title and "ownership" over Aboriginal lands in Canada belonged to the Crown. Through the concept of 'discovery', says Alfred, the European newcomers became the "owners" of the land, supported by their legal structures, while the indigenous inhabitants who were there since time immemorial were declared mere "usufructuaries" of it. In other words, the so-called "doctrine of discovery" consolidated the territorial expoliation of the original peoples.

To Alfred, a great imperative of colonialism as a mythical narrative founded on lies is the temporal framing of the damage and impacts of colonialism on Indigenous

Peoples' lives in a remote and distant past. From this perspective, widely spread from official Canadian state discourses, the "mistakes of the past" would already be overcome. Bringing the consequences of colonial lies to bear on the current scenario, Alfred highlights the condition of poverty and structural dependency that characterizes the situation of Indigenous Peoples in Canada, as if they were "Fourth World" citizens,

> (...) our people are living unhealthy lives, they are unhappy, they are dysfunctional, they are not perpetuating the kinds of things in their lives that lead to happiness, peace, good relationships and a sustainable relationship on a basis of respect among themselves, with the land and with other peoples (ALFRED, 2003).[100]

This is because the colonial narratives destroy the thinking of the dominated peoples, preventing them from living according to their cultural systems (ALFRED, 2003). The immediate consequence of the colonial lies for Indigenous Peoples are described by Alfred in terms of alienation, separation, and disconnection,

> Colonization is disconnection from the land, from ourselves, and from our culture. The felt manifestation of this disconnection is the alienation that we feel as a result of being caught between two worlds, not being able to live authentic lives. That is why it's absolutely necessary to continually remind ourselves: It is all about the land (ALFRED, 2018).[101]

The power of introjection of colonial narratives thus perpetuates alienation, separation and disconnection, shaping all forms of existence, memories, identities and political-economic relations of indigenous peoples. To show that the colonial narratives are constantly updated even today, Alfred advances to the Canadian government's reconciliation project. In his view, such policies do not correspond to honest initiatives for reconciliation between indigenous and non-indigenous peoples, they present themselves as "'politics of distraction' that diverts energies away from decolonizing and regenerating communities and frames community relationships in state-centric terms" (ALFRED; CORNTASSEL, 2005, p. 600).

Those politics would also be programmatic content agendas that are useful to bring relief to a whole colonizing society that still suffers from the moral weight of a past

[100] Transcription of a lecture given in 2003, available at https://www.tvo.org/video/archive/taiaiake-alfred-on-canada-and-its-indigenous-peoples.
[101] Transcription of a lecture given in 2018, available at https://www.yesmagazine.org/issue/decolonize/2018/04/09/dont-just-resist-return-to-who-you-are/.

based on the imposition of historical traumas that can never be repaired or materially compensated (ALFRED, 2018). This is in total accordance with the analysis of Verdeja (2009), for whom the apologies enable elites to mitigate their guilt and benefit way more those giving it than those recipients. However, as part of a wider multidimensional reconciliation process, although the apologies cannot entirely repair the past's historical relationships, they can act to promote the establishment of better relations between groups. Indeed, he concludes, refusing to apologize may deeper the conflicts by indirectly implying that the victims and their families are not worthy of the state's respect (VERDEJA, 2009).

In stating that the controversial sides of the apologies and reconciliation measures, Alfred does not oppose the payment of material compensation to the families. Like the apologies offerings, once it is honest, material reparations are part of the reconciliation process, even though they are not its main objective and do not represent a closure to the historical debts owed to the Indigenous Peoples.

For Alfred, the controlling narratives that made up the colonial power so strong need to be revealed for all these reasons. In his debates around the idea of reconciliation, Alfred always clarifies that this project must be intellectually and politically deconstructed as the guiding objective of the political and social struggles of Indigenous Peoples. By this, he means that not only is reconciliation a concept that allows the easy acceptance of a notion of justice that does nothing to help Indigenous Peoples regain their dignity and strength, but so far it simply leaves out of the debate the most important core of the issue for Indigenous Peoples: restitution. By restitution, Alfred means massive and collective devolution of the lands and federal and provincial transfers and all other forms of compensation for past damages and continuing injustices committed against them. Without this, he says, "reconciliation will permanently absolve colonial injustices and is in itself an additional injustice" (ALFRED, 2009b). Otherwise, until the pacifying nature of the discourse of reconciliation is removed from its recolonizing bias, it will not be possible to construct an idea of restitution as a step toward the creation of justice and moral society, which means that,

> Restitution, as a broad goal, involves demanding the return of what was stolen, accepting reparations (either land, material, or monetary recompense) for what cannot be returned, and forging a new sociopolitical relationship based on the Settler state`s admission of wrongdoing and acceptance of the responsibility and obligation to engage *Onkwehonwe* peoples in a restitution-

reconciliation peace-building process (ALFRED, 2011, p. 6).

Similarly, without recognition of freedom and self-determination, economic self-sufficiency and food sovereignty, reconciliation is nothing more than a “peacemaker's discourse” that works to ease the conscience of settlers and absolve governments' responsibility than to transform the relationship between indigenous people and the rest of Canada. The road to decolonization is arduous and full of obstacles, but necessary in the face of the real threats that colonialism still poses. For Alfred, the only way to ensure Indigenous Peoples' survival is “to recover their strength, wisdom, and solidarity by honouring and revitalizing traditional teachings” (ALFRED, 1999, p. 11). Alfred proposes what he calls self-conscious traditionalism, i.e., “An approach which sees culture as a dynamic process, and traditionalism as a constant referencing back and forth between what is remembered of the past and what is demanded by the exigencies of the present” (ALFRED, 1995, p. 75).

Overcoming criticism to think of strategies of action, Alfred calls on Indigenous Peoples to reconnect with their collective experiences of life because only these experiences can produce the knowledge that can be used to establish strategies of resistance to colonialism. If colonialism is a “narrative in which the power of the colonizer is the reference and fundamental assumption, inherently limiting indigenous freedom and imposing a worldview that is but an outcome or perspective of that power,” the colonial tools – such as their epistemology, language, and political structures – cannot be used to combat their lies. The fight against colonialism and domination imposed by the colonizer must be done through the incessant search for knowledge and deep and true reconnection with the land.

> The complex story of what went on in the past and the tangled complexities of the past`s impact on the present and future of our relationships are reduced to questions of `entitlements`, `rights`, and `good governance` within the already established structures of the state. Consider the effect of lengthening our view and extending society`s view. Considering 100 or 300 years of interactions, it would become clear, even to the Settlers, that the real problem facing their country is that two nations are fighting over questions of conquest and survival, of empire or genocide, and moral claims to be just societies (ALFRED; CORNTASSEL, 2009, p. 182).

To Alfred, hunger has become a persistent problem in virtually all of Canada's Indigenous communities, as well as a lack of access to clean water and basic sanitation infrastructure, which contributes to increasing rates of preventable infectious diseases. In

Alfred's words, “Indian reserves have become dangerous environments, not only in a physical sense but in a psychological sense as well; colonization has created double-barreled psychological effects” (ALFRED, 2009, p. 49).

3.5.2 Jeff Corntassel’s critics on the Canadian apologies

Ph.D. from the University of Arizona in 1998 and Associate Professor and Graduate Advisor in the School of Indigenous Governance at the University of Victoria, teacher, activist, and scholar Jeff Corntassel is Tsalagi, Cherokee Nation.

Jeff's first book, 'Forced Federalism: Contemporary Challenges to Indigenous Nationhood' (2008), examines how Indigenous nations in the US have mobilized as they encounter new threats to their governance state policymakers. His second book, “Power of Peoplehood: Regenerating Indigenous Nations,” co-edited with Tom Holm (to be launched), brings Canadian and US indigenous scholars to discuss contemporary strategies for revitalizing indigenous communities. In 2008 Jeff was awarded the Faculty of Human and Social Development Award for Teaching Excellence.

All of his twenty articles published between 1999 and 2014 focus on relations between indigenous peoples and national states in Canada, the United States, Australia, Latin American countries and the Caribbean, always debating colonialism, respect, racism, identity, resurgence, governance, indigenous social movements, self-determination, insurgent education, international law, sustainability, reparation, apologies, truth commissions, and reconciliation.

In “Who's Sorry Now? Government Apologies, Truth Commissions, and Indigenous Self-Determination in Australia, Canada, Guatemala, and Peru”, Corntassel and Holder (2008) argue that state-centred reconciliation mechanisms are intrinsically problematic for indigenous communities, as are apologies and truth and reconciliation commissions for failing to hold states accountable for past mistakes or transform intergroup relations. The comparative analysis effort made for four countries is conducted through the sociologist Nicholas Tavuchis and the political scientist James Tully, who identified traits for an apology to be considered authentic.

In his book “Unsettling Settler Colonialism: The Discourse and Politics of Settlers, and Solidarity with Indigenous Nations” (CORNTASSEL et al. l.; 2014), he focuses on colonial-settler studies to explore possible lines of solidarity, accountability, and relationality towards decolonization struggles on a local and global level, concluding

that without centering Indigenous peoples' articulations, and without paying attention to the conditions and contingency of settler colonialism, studies of settler colonialism and practices of solidarity run the risk of reifying settler-colonial and other modes of domination.

According to Corntassel, the Canadian apologies' statements delivered so far have addressed human rights violations against indigenous peoples to a minimal extent, wasting an opportunity to make these symbolic gestures less empty (CORNTASSEL and HOLDER, 2008). According to Corntassel's perspective, an apology gesture is empty when it does not coincide with a systematic re-examination of the past, not to mention the need to restitute the lands and hold accountable institutions and individuals the practices of violations of human rights. In this sense, apologies cannot provide genuine reconciliation if reconciliation actions are not preceded by acts of restitution (CORNTASSEL and HOLDER, 2008).

As already shown along with this chapter, Canada - and all the governments that want to reconcile with indigenous peoples' - must deliver sincere apologies. Corntassel's analysis points out that the Canadian apologies failed to transform colonial relationships, being very illustrative of showing the dangers of using the reconciliation language without establishing compensation and proper restitution to indigenous peoples (2008).

3.6 Accountability of the Canadian state: the endurance of crimes and prejudice against Indigenous Peoples despite the apologies and the reconciliation 'Agenda'

According to specialist Tom Flanagan, of the Fraser Institute[102], and based on the analysis of Thierry Rodon, from Laval University, one of the significant reasons for Justin Trudeau's victory in the Canadian federal election of 2015 was the promise he made to advance the so-called reconciliation 'agenda'. The support and mobilization of Indigenous People throughout Canada were considered crucial to ensure his victory.[103]

In March 2016, the Trudeau office announced an investment of Can$8 billion for

[102] The Fraser Institute is headquartered in Vancouver, Canada, and has regional offices in Calgary, Toronto and Montreal. Fraser Institute produces research about government actions in areas that deeply affect Canadians' quality of life, such as aboriginal issues, education, economic freedom, energy, natural resources and the environment. Retrieved from https://www.fraserinstitute.org/about.

[103] Retrieved from https://www.fraserinstitute.org/studies/costs-of-the-canadian-governments-reconciliation-framework-for-first-nations#:~:text=The%20best%20overall%20estimate%20of,to%20something%20closer%20to%204%25 and from the "Toronto Star," available at https://www.thestar.com/politics/federal/2019/06/04/we-accept-the-finding-that-this-was-genocide.html. Accessed on 01/08/2021.

education, drinking water and infrastructure projects. In August 2018, the TransMountain Oil Pipeline Expansion project was judicially impeded as the government did not consult the communities involved before approving the project. In June 2019, the Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls classified the violence facing Aboriginal women and girls as a "planned genocide." "This is an uncomfortable day for Canada," said Prime Minister Trudeau, using the words "shameful" and "unacceptable" to describe the violence. In a speech in Vancouver, Justin Trudeau acknowledged the relevance of the accusation that the Canadian state acted in an omissive manner concerning the missing and murdered indigenous women and children. In other words, Trudeau publicly agreed with the report's conclusions and admitted that it was a crime of genocide. Because of these facts, in June 2019, Justin Trudeau became the first chancellor in the Canadian history to be officially investigated for the crime of mass genocide. The accusation fell on the fact that, as Prime Minister, the figure of Justin Trudeau personifies the Canadian state entity, and, in this sense, he became the very target of the investigation. He could even be held responsible for the crime of state omission in cases involving the thousands of indigenous women and children murdered and disappeared within the Canadian territory.[104]

The reasons why a Prime Minister chooses to incriminate himself explicitly in an election year is not here under scrutiny, even though it is notorious that Trudeau had the vote of the majority of the indigenous population for his election and that by taking responsibility for the genocide of women and children, he tried to keep their votes. Once again, Canada has gone down in history by having its chancellor investigated for the crime of mass murder by an agency of which Canada is also a member state, the Organization of American States (OAS).

The fact that the Prime Minister is not exempt from his guilt does not mean that there are no political, media or social sectors in this country that deny or are unaware of the existence of an immense liability towards indigenous populations, as demonstrated by the speech of the then Prime Minister, Stephen Harper, at the Group of 20 Meeting in Pittsburgh, 2009. On that occasion, Harper referred to Canada as a country "with no history of colonialism", triggering a harsh response from the First Nations Assembly. Also, in Trudeau's government, Bill C-262, which aimed to ensure that federal laws were compatible with the UNDRIP, was not passed by conservative senators, even though it

[104] According to information from the National Inquiry on Murdered and Missing Indigenous Women and Girls (2015), available at https://www.mmiwg-ffada.ca/final-report/. Accessed on 01/08/2021.

passed the House of Commons.

The UNDRIP, whose philosophical conception is based on European beliefs about the universal nature of the human condition (RAMOS, 1999, p. 3), is evident in recognizing the impacts of colonialism on Indigenous Peoples lives: "Indigenous Peoples have suffered historic injustices as a result of, among others, their colonization and expropriation of their lands, territories and resources, preventing them from exercising, in particular, their right to development according to their own needs and interests" (UNDRIP, 2007, p. 3).[105]

However, as explains Peter Kulchyski, the UNDRIP[106] is a fail tool because reflects the notion that Indigenous Peoples have been searching for human rights instead of specific indigenous rights and there are important differences between these two type of rights,

> Human rights, a product of the late 18th century enlightenment, and a long history of struggle, are rights and freedoms that human beings enjoy in as much as they are human. They tend to be used to protect individuals and tend to be invoked in urban contexts. Everyone, on principle, has access to them. They reflect a universalizing notion of humanity and involve equality rights and various freedoms that all humans should enjoy. This includes indigenous peoples, in as much as they too, are human. Aboriginal rights, by contrast, are rights that only certain people and peoples, indigenous peoples, have by virtue of being indigenous. In effect, aboriginal rights reflect a notion of cultural particularism: indigenous cultures have become threatened as colonialism left many indigenous peoples in the position of being a minority in their homeland (KULCHYSKI, 2011, p. 45-46).

The importance of looking at the reconciliation process that has taken place in Canada over the past 30 years lies in the fact that Canada is a privileged place to observe the many variables and contradictions intrinsic to this process. 'How a historical debt is paid off' was the issue initially designed to initiate research. Canada was chosen as a counterpoint to the Brazilian experience because it publicly admitted the existence of a

[105] Available at https://www.un.org/development/desa/Indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

[106] The UNDRIP includes the following rights: 1) Self-determination in existing states; 2) Protection against genocide; 3) Protection against ethnocide; 4) Protection of your own cultures; 5) Protection of their own governance institutions; 6) Protection of your special relationship with the land; 7) Protection of your traditional economic activities; 8) Representation in all organs that make decisions about Indigenous Peoples.

debt and because it produces, both academically and institutionally, a significant amount of materials, research, and publications on the subject.

Canada and Brazil have much in common, especially the less socially resolved and racist sides. However, unlike Brazil, Canada has the advantage of being willing to assume the existence of a debt and that such payment requires a constant process of redress. So it can be said that when it comes to discussing reconciliation and the payment of the historical debt owed to Indigenous Peoples, Brazil and Canada's differences become abyssal.

Today in Brazil, we have seen the growing denial of the historical debt owed to Indigenous Peoples and the attempt to step back with many collective rights won. While in Brazil, some population sectors still insist, either for lack of information or out of simple bad faith, on denying historical facts to defend the non-existence of a historical debt owed to Indigenous Peoples, in Canada, the broad and unreserved recognition that serious mistakes, injustices, violence and abuses were committed against these populations in the past (and in some cases still are) is not questioned, which would be considered offensive and abusive, to say the least, besides ignorance and great stupidity on the part of those who claim it.

However, even today, a significant number of Canadians are unaware of the history of Indigenous Peoples and ignore the conditions of poverty in which these communities find themselves today compared to non-indigenous sectors of society. Let us also remember that Canada – like the United States, Australia, and New Zealand - was one of the liberal democracies of the global North that, despite having led movements to internationalize the indigenous category to expand indigenous rights and promote greater equality, did not sign the 2007 UNDRIP, a political position that informs much about the limits of justice and equality in that country (MERLAN, 2009). Canada's support for the Declaration was ratified only in 2010, reaching full compliance in 2016 when the country issued a Declaration of Support for the document. In 2015, it determined that Canada began implementing measures to make it useful by adopting the term Indigenous Peoples to refer to these populations.[107]

[107] Even to this day, Canada cannot be said to be in full compliance of the UNDRIP in any sense of the term. It has ratified it and pledged to “harmonize” its laws and procedures, but it is still very far from that goal.

CHAPTER IV

LIMINALITY, RUPTURES AND CONTINUITIES IN THE TRUTH COMMISSIONS IN BRAZIL AND CANADA POST-ERAS

Reconciliation cannot happen without justice
Peter Yellowquill, Ojibway/Lakota Residential School survivor

This chapter will examine, through the lens of the critical studies of transition, the Truth Commissions of Brazil and Canada and their Recommendations and Calls to Actions, instituted as a means of addressing the debt related to indigenous populations. The primary goal is to point out that, in one hand, Indigenous Peoples' struggle for historical justice and reparation has gained visibility with the Truth Commissions' work in Brazil and Canada. On the other, both final reports ratified the Canadian and Brazilian states' responsibility for the genocide of thousands of Indigenous Peoples' members. Meanwhile, to enable these states to begin a reconciliation process, Brazil and Canada launched a series of recommendations to prevent the repetition of violent acts against Indigenous Peoples continue to occur. However, despite promises to transform colonial relations, these Truth Commissions have not satisfactorily addressed the past and the continuity of structural violence affecting Indigenous Peoples.

Before entering the comparison of both countries' Commissions and recommendations, it is worth revising some critical concepts and challenges that the literature on transitional justice scenarios has already explored and analyzed.

4.1 Critical Studies of Transitions

In classical Anthropology, liminality is a concept for studying ritual processes, demarcating the idea of passing from one peculiar stage to another or between a previous stage and its subsequent. Because it is transitory, the preliminary injunction refers to the indefinite and the change. It is something in between. It is no longer what it was, but neither has it reached what it wants to be (VAN GENNEP, 1977; TURNER, 1996).

Brought into the field of discussions about the (un)payment of historical debts, the idea of liminality also refers to a transitional state in which the desirable balance between

national states and Indigenous Peoples has not yet been ultimately reached. However, the violence and hostility that marked these relations in the past are no longer accepted. The work of making preliminary injunctions cease to be, for Indigenous Peoples, a condition between a past represented by trauma and violence, and a future where inter-ethnic relations will be based entirely on respect and recognition (TAYLOR, 1994) is, precisely, the effort translated by transitional justice and by the work developed by the commissions of truth and reconciliation.

Nevertheless, it is possible to talk about "transitional justice" in the Canadian context, considering that this country is not facing a political transitional scenario? Yes. Although the notion of "countries in transition," as a rule, presupposes the transition from an authoritarian political regime to a democracy inserted in the contemporary Global order, and yet Canada has not experienced a dictatorial political period, like several Latin American countries,

> (…)'the transitional paradigm' is now applied to historical experiences that are not necessarily described as "post-authoritarian" (CARROTHERS, 2002, p. 5) but where the same teleology continues to operate. Terms such as post-violence, post-genocide, post-dictatorship, post-conflict, post-war are some examples of the diversity of uses and applications." (CASTILLEJO, 2018, p. 14) (my translation).[108]

Truth commissions were conceived as investigative mechanisms to help societies that have experienced political violence, civil war, dictatorships, or serious human rights violations to face the past critically, intending to overcome the deep marks and trauma generated by this violence and prevent such facts from reproducing. A truth commission should seek to know the causes of violence, identify the parties in conflict, and inquire about human rights violations. In this investigation, it is possible to invoke the victims' memory, propose a reparation policy for the damage caused, and indemnify the victims or their families, preventing those who committed the human rights violations from continuing to assume public functions, for example.

The truth commissions are the expression of a new concept of justice, centred on forgiveness and reconciliation, which seeks to restore more than punish and believes in

[108] "(…) el "paradigma transicional" ahora se aplica a experiencias históricas que no son necesariamente descritas como "postautoritarias" (CARROTHERS, 2002, p. 5) pero donde la misma teleologia sigue operando. Términos como posviolencia, posgenocídio, posdictadura, posconflicto, posguerra son algunos ejemplos de la diversidad de usos y aplicaciónes" (CASTILLEJO, 2018, p. 14).

the therapeutic power of truth. This notion of justice is based on the belief that human rights violators should be aware and repent and that it is up to society to accept or not this repentance. One of the main objectives of transitional justice is society's pacification by eliminating tensions and animosities among political groups. As it appears idealized in the Truth Commissions, transitional justice does not presuppose the accused's arrest but suggests a dialogue channel for seeking forgiveness (RODRIGUES PINTO, 2007).

Many truth commissions came with requests for forgiveness from authorities. The purpose of the "policies of forgiveness" (LeFRANC, 2006) is to resolve the past problems and end the historical injustices still responsible for several social divisions today. This type of forgiveness is then placed as a political challenge for democratic societies that have sought the path of reconciliation. Political forgiveness refers to a set of political and institutional discourses and devices aimed at recognizing political actors who have suffered directly or indirectly from state violence and point to a duty of justice, reparation, material restitution, and reconciliation (LeFRANC, 2006). Reconciliation appears as a possible vector of the democratic transformations imposed and represents one of the social contract's reformulation engines. The clarification of the truth and the search for justice are considered necessary steps towards reconciliation.

In general, the debate around "transitional justice" has been based on these ideas of justice, truth, forgiveness, reparation and reconciliation. Based on these assumptions and their promises of social transformation, truth commissions have acted in various parts of the world. Considering the accumulated experiences and skepticism from various sectors and social organizations regarding the changes set in motion after the truth commissions, Alejandro Castillejo-Cuéllar proposed a Program for Critical Studies of Transitions (2014; 2017).

From an anthropological perspective, Castillejo moves away from the technical-juridical arsenal and the legal language that predominate in the transitional justice studies to bring a critical reading to what he calls "transitional scenarios." His concern is to understand the "transitional scenario" as a social and cultural phenomenon, a "liminal moment" in which "the promise of a new society" emerges through the multiple forms and mechanisms that the "social imagination of the future" assumes (CASTILLEJO, 2017, p. 6). Its focus is on the social relations generated in this context of "liminality" or "intermediality," which is the transition. Alejandro Castillejo-Cuéllar defines the "Transition Scenarios" as:

> (...) the social spaces (and their legal, geographic, productive, imaginary, and sensory devices) that are generated as a product of the application of what I generically call laws of unity and national reconciliation and which are characterized by a series of sets of institutional practices, specialized knowledge, and global discourses that intersect in a specific historical context with the objective of facing serious violations of human rights and other forms of violence (CASTILLEJO, 2017, p. 20).

In interpreting these socio-historical processes that constitute the "transitional scenarios," it is interesting to understand how the ideas of the past and the future are built from a "transitional (always) present." The emphasis is placed on the "dialectics of fracture and the continuity of various forms of violence," by the "decipherable and unspeakable that the paradigm of transition imposes and by the problematization of its foundational assumptions and the practices that concretely establish them" (CASTILLEJO, 2017, p. 19).

In order to avoid falling into the triumphalism of the "transitional paradigm," or into the naivety that surrounds the discourse of those who preach the "global gospel of forgiveness and reconciliation," Castillejo calls attention to the fact that, although "it is true that moments of transition present ruptures in certain registers of violence, there are others that are simply a continuity" (CASTILLEJO, 2017, p. 3). To think critically of "transition scenarios" in terms of continuity with the past is to question how these continuities can be identified and "how do they determine the fate of politics in the present? (CASTILLEJO, 2014, p. 63). Or yet, how can we talk about reconciliation if the violence and structural causes of conflicts are still present?

Castillejo refers to "structural violence" or "violence of long duration" as the violence to which a Indigenous People were subjected and enslaved people's descendants. These "long-term violence" constitute a "mode of victimization" that "lies outside the legal epistemologies that inform global debates on transitional justice" (CASTILLEJO, 2017, p. 17). In this sense, the question of what understanding of violence the truth commission adopts is plausible. Knowing what is understood by violence and what definition is to be used is necessary to have an objective understanding of the wound to be healed and a clear vision of the meaning of the act of reparation (CASTILLEJO, 2017, p. 17).

4.2 The National Truth Commission of Brazil and the Indigenous Peoples Fight for Justice and Redress

To analyze the Truth Commission in Brazil, the specificities of Brazilian political history during the recent re-democratization were considered, including the period of the military dictatorship, 1964-1985, characterized by the absence of constitutional rights. The process of transitional justice in Brazil, begun with the 1979 Amnesty Law, continued with enacting the Law recognizing political dead and missing persons, the Law condemning the crime of torture, the Law of Reparation, and finally, the Law of Access to Information.

Brazil's "transitional scenario," consolidated through the institution of a CNV, led to the rediscovery of several documents proving that indigenous peoples were victims of the military dictatorship and probably the most important and least reported victims of that period, given the violence suffered during development projects implemented by military governments.

The CNV was created in 2012 in response to a historical request from Brazilian society to investigate the grave human rights violations committed in Brazil during the period from 1946 to 1988. The main objective was to fill in the gaps in the country's history concerning that period and, at the same time, to reinforce democratic values. However, the CNV could not investigate the whole defined period (1946-1988) and focused on the military dictatorship from 1964 to 1985. It was essential for the indigenous peoples to respect the CNV's calendar since the grave human rights violations committed against them began long before the military dictatorship and did not stop with the end of General Figueiredo's mandate in 1985 (FERNANDES, 2015).

Among the documents found, the publication of the Figueiredo Report was fundamental for the CNV to realize that the conflict and persecution against Indigenous Peoples was a political issue and a development model based on the expropriation and theft of indigenous lands. The Figueiredo Report revealed many gaps in the history of indigenous peoples, not only in terms of the physical and moral violations they suffered but also in terms of their lands' expropriation. Supposedly destroyed in a fire at the Ministry of Agriculture, the report was found by Marcelo Zelic almost intact at the Museum of the Indian, Rio de Janeiro, April, 2013, with over 7,000 pages preserved. The Figueiredo Report contains the primary evidence of the many crimes committed "against

the person, honour and heritage of the indigenous people in Brazil," in addition to the crimes committed "against the public thing" by officials of the Indian Protection Service (SPI). Prosecutor Jader Figueiredo states that the charges presented are unsuspected and full of evidence; that the SPI was a "den of corruption indescribable for many years," which was incredible to have "in the administrative structure of the country a distribution that fell to such a low level of decency"; and that there were "public officials whose bestiality had reached such refinement of perversity" (BRAZIL,1968, p. 2). For him, "it seems unrealistic that there are men, supposedly civilized, who act so cold and barbarously" (BRAZIL, 1968, p. 3). For many post chiefs' wives, civil servants' mistreatment and inhumanity became notorious (BRAZIL, 1968, p. 3).

Not only the Figueiredo Report served as the basis for investigating crimes committed against Indigenous Peoples during the military dictatorship. In addition to it, Indigenous Peoples made other accusations to the National Truth Commission group about concentration camps, torture centres, and illegal prisons for Indigenous Peoples during the military dictatorship. Brazilian Indigenous Peoples were the target of clandestine arrests, torture, disappearances, and politically motivated arrests, as well as many others who suffered in the "basements of the dictatorship. Antonio Cotrim, a former employee of the National Indian Foundation (FUNAI), denounced the indigenous prison known as the Krenak Reformatory and resigned for not wanting to participate in the extermination of Indians (ZEMA, 2014, p. 201).

Other crucial documents collect by the CNV showed the creation, in 1969, of the Indigenous Rural Guard (GRIN), whose mission was "to execute the ostensible policing of the areas reserved for forestry." Three years after the graduation of the first class of the GRIN, a balance was made of their actions, and the conclusion was that "everything went wrong." There were many "reports of beatings, arbitrariness, insubordination and even rapes committed by the indigenous guards who returned to their communities." GRIN began to be demobilized in the late 1970s, but this would not be enough to extinguish their practices of violence (ZEMA, 2014, p. 203).

The CNV report showed that most of the crimes were related to development projects and that the different types of human rights violations committed by the Brazilian state against Indigenous Peoples during the period under study were centred on the central objective of forcing or accelerating the "integration" of Indigenous Peoples and colonizing their territories – considered strategic for the implementation of political and economic projects (BRAZIL, 2014, p. 251).

The CNV concluded that these serious violations of Indigenous Peoples' human rights were not sporadic, nor even accidental, but systemic, since resulted directly from the state's structural policies, both through its action and inaction. The apathy and violence of the Brazilian state, which has always accompanied indigenist policy, were highlighted when, for example, by protecting local authorities and private interests and by not controlling the corruption of its employees, the state ended up creating conditions conducive to the waste of indigenous lands (BRAZIL, 2014, p. 204).

The Brazilian state's responsibility is even more evident when one considers its deadly omissions in the area of health and the control of corruption, denounced throughout the 1960s and 1970s. The 8,350 indigenous people killed during the National Truth Commission period were killed through state agents' direct action and omission. However, this estimate includes only the cases investigated by the Commission. Many other cases will have to be studied to provide a more accurate picture of the number of Indigenous People's members killed during this period. Without a doubt, the number should be exponentially higher than the estimate presented by the National Truth Commission (BRAZIL, 2014, p. 205).

The 13 recommendations of the Brazilian CNV

Besides recognizing the responsibility of the Brazilian state for the expropriation of illegally occupied indigenous lands during the period under review and for other serious violations of human rights, the Brazilian CNV ended up recommending thirteen actions to the Brazilian State, as follows:

1) A public apology official statement for the squandering of indigenous lands;

2) Recognition that persecution of indigenous peoples constituted a politically
motivated crime;

3) Installation of a National Indigenous Truth Commission;

4) Promotion of national information campaigns to the population;

5) Inclusion of the theme of human rights violations against indigenous peoples between 1946-1988 in the official curriculum of the educational network;

> 6) Creation of specific funds to promote research and broad dissemination of serious human rights violations committed against indigenous peoples;
>
> 7) Meeting and systematization, in the National Archive, of all documentation pertinent to the investigation of serious human rights violations committed against indigenous peoples;
>
> 8) Recognition by the Amnesty Commission of the persecution of indigenous groups for colonization of their territories;
>
> 9) Creation of a working group within the Ministry of Justice to organize the instruction of processes of amnesty and reparation to indigenous peoples;
>
> 10) Proposal of legislative measures to amend the Amnesty Law, to contemplate amnesty and collective reparation to indigenous peoples;
>
> 11) Strengthening of public policies to improve health of indigenous peoples;
>
> 12) Regularization and disintrusion of indigenous lands as the most fundamental form of collective reparation for the severe violations; and
>
> 13) Environmental recovery of boiled and degraded indigenous lands. (BRAZIL, 2014, p. 253-254).

During the CNV's period of investigation, debates over the punishment and accountability of torturers and the need for legal action against those who tortured or committed murder gained some prominence and media attention. The responsibility of the torturers is one of the axes of transitional justice, but as the recommendations of justice and reparation for crimes committed against indigenous peoples demonstrate, many other elements must be taken into account for historical justice to take place: a formal apology (recommendation nº. 1), the strengthening of differentiated public health and education policies, and the amendment of the Amnesty Law so that indigenous peoples can be repaired, both individually and collectively (ZEMA; ZELIC, 2020).

However, it is worth to say that, differently from Canada, none of the recommendations even started to be implemented by any Brazilian government, since 2013. Nor even the easiest one, the formal and official apology statement. Two unofficial apologies were made in two instances. The first, on April 19, 2005, when Brazil celebrates the “Day of the Indian”. On this occasion, the Minister of Justice, Márcio Thomaz Bastos, asked for forgiveness for the deaths of *Indians* throughout Brazilian history. Bastos was

speaking after commenting on a similar request made by President Lula to blacks, for Brazilian slavery. Bastos said: “We are also asking forgiveness from the indigenous nations for the situation of violence, of crushing and brute force that was raised against them,” he said. In his speech, the minister refuted criticisms from agribusiness sectors that the Indians have too much land, and noted, considering anthropological studies, that the relationship of the *Indian* with the land involves mythical and cultural issues.[109] The second request was made by Paulo Abrão, President of the Amnesty Commission, to fourteen Aikewara-Suruí Indians, violated during the military dictatorship and granted amnesty by the Brazilian state. Using physical and psychological violence, the military used the indigenous people to fight in the so-called Araguaia Guerrilla War, especially to enter dense forest regions and to serve as support in the persecution of guerrillas fighting the dictatorship. The Aikewara-Suruí were the first indigenous people to prove the guilt of the Brazilian State in its actions during the military regime.[110]

Recommendation nº. 3 suggested creating a National Commission on Indigenous Truth to follow up on the study of serious human rights violations against indigenous peoples that were not mentioned in the study conducted by the CNV's particular group from 2012 to 2014, but this recommendation was never implemented (ZEMA; ZELIC, 2020).

Recommendation no. 7, which provided for the collection and systematization in the National Archive of all relevant documentation for the investigation of serious human rights violations against indigenous peoples for broad public dissemination, was partially accomplished thanks to Marcelo's efforts Zelic. After the CNV, he dedicated himself to the creation of a Virtual Indigenous Reference Center (CVRI), where thousands of pages of archive documents and diverse collections, as well as films, documentaries, and publications on indigenous peoples, are available on a free and universal access portal (ZEMA; ZELIC, 2020).

The recommendations stress the importance of guaranteeing the right to land, truth, and memory in order to promote reconciliation and appeal to the country's leaders to ensure that the limits of indigenous lands, still under analysis, are defined, that invaded lands are unoccupied or, as provided for in the legislation, unintruded, and that the recovery of degraded indigenous lands is guaranteed. These recommendations confirm that the violence inflicted on Indigenous Peoples yesterday and today directly relate to

[109] Source https://terrasindigenas.org.br/pt-br/noticia/36128.
[110] Source https://www.facebook.com/trabalhoindigenista/posts/697653760322723/

their expropriation lands. Finally, the most crucial aspect of achieving historical justice in Brazil is the change in the state's conduct. A change in conduct can directly affect the indigenous population at present. Nevertheless, none of this has been done (ZEMA; ZELIC, 2020).

In 2014, the 1st National Conference on Indigenist Policy (CNPI) was convened by Presidential Decree No. July 14 July 24, 2014, with the theme “The relationship of the Brazilian State with Indigenous Peoples in Brazil under the paradigm of the 1988 Constitution”, with the following objectives: To evaluate the Brazilian State's indigenist action, reaffirm the guarantees recognized to indigenous peoples in the country and propose guidelines for the construction and consolidation of the national indigenist policy.

The 1st CNPI was conceived as a necessary space for dialogue between a direct representation of indigenous peoples and State agents in order to: strengthen the dialogue and joint action of the Federal Government with the more than 300 indigenous peoples of Brazil, contribute to the advancement of the rights already recognized by the Federal Constitution of 1988 and to the realization of policies for indigenous peoples in a state that, in fact, values and protects their ethnic and cultural diversity, and raise awareness and sensitize the different governmental actors and sectors of national society about the historical process of denial of the rights of indigenous peoples (CNPI, 2015, p. 1).

The 1st CNPI was a “propitious moment for the self-evaluation of the indigenous movement and the review of its historical process concerning indigenous policies” in which the need for “the construction of policies for the reparation of human rights violations committed by the State against indigenous peoples” was highlighted. During the CNPI, six axes of the debate were defined for the proposal of indigenous policies: 1) Territoriality and territorial rights of indigenous peoples; 2) Self-determination, social participation and right to consultation; 3) Sustainable development of indigenous lands and peoples; 4) Individual and collective rights of indigenous peoples; 5) Cultural diversity and ethnic plurality in Brazil; and 6) Right to memory and truth (Base Document, 2015, p. 1).

At the end of the conference, 216 proposals for indigenous policies distributed among the six thematic axes were approved and also approved, through Decree No. 8,593 of December 17, 2015, the National Council of Indigenist Policies – CNPI under the Ministry of Justice as a permanent space for consultation and debate on indigenous policies.

In its Notebook of Methodological Orientations for the Local Stages that took place before the 1st CNPI, published in May 2015, suggestions and orientations were presented as a roadmap to “organize 'at the base'“ and offer work possibilities for each thematic axis.

For axis number six on the Right to Memory and Truth, which defines the entire indigenist policy as a comprehensive reparation effort, some questions were established to guide the discussion. The group's main objective gathered in axis six was to broaden the understanding of the notions of human rights and reparation for the grave violations of indigenous peoples' rights in the last 500 years.

Reiterating what was recommended in the Final Report of the National Truth Commission (CNV), these violations of indigenous peoples' human rights are systemic, as they result directly from structural policies of the State, which is responsible for them both by its direct actions and its omissions. The group's objective that met in Axis 6 was to take up the experiences and memories of the past to establish reparation actions and seek to reflect on the following questions:

> - Is it possible to think of a structured indigenist policy as a form of reparation and an effective mechanism for the non-repetition of past violations even in the present?
> - How do these violations continue to occur, and what consequences do they generate in indigenous communities? (1st CNPI, Methodological Guidance Notebook, 2015).

The group also discussed the importance of recording and systematizing testimonies that present an overview of these violations. Creating a collection of indigenous memory in historical and cultural conservation institutions would be an essential tool for reparation that could be the object of pedagogical and educational use in schools and universities about indigenous histories. The Methodological Guidelines for the 1st CNPI also encouraged the group to think, based on a collective and commented reading of Article 28 of the UN Declaration on the Rights of Indigenous Peoples, about what is meant by reparation and how it can be achieved (1st CNPI, METHODOLOGICAL GUIDELINES, 2015).

By considering the serious human rights violations that indigenous peoples have suffered in Brazil since the beginning of the colonial project, by recognizing the negative consequences that development, integration, and national security policies have had on indigenous peoples, as well as the participation and responsibility of the State in such

policies, and by including the right to memory and truth as one of its thematic axes, the 1st CNPI stressed the need for an integrated reparation effort to be included in all Brazilian indigenous policy. In its final recommendations, the 1st CNPI admitted that the struggle for land was and continues to be the central axis of serious human rights violations committed by the State and pointed to the need for individual and collective reparation that would guarantee

> 1. the demarcation of all Indigenous Lands in Brazil as an originary right, with the retaking of the territories dispossessed, in particular by dispatching the technical procedures already completed at the different levels of the Executive Power, and by ending the policy of flexibilization and adjustment of indigenous peoples' rights - as also proposed by article 28 of the United Nations Declaration on the Rights of Indigenous Peoples;
> 2. the re-composition and regeneration of the environmental conditions of these territories, often degraded or devastated by years of predatory occupation, to allow indigenous peoples the full expression of their good living in them; and,
> 3. a broad public campaign of historical portrayal, directed to non-indigenous society, through the press, in schools and universities, about the rights of indigenous peoples established in the Constitution, allowing universal and unrestricted access to all Brazilian citizens to available documents, funds, collections, holdings and archives, for educational use, as a pedagogical stimulus to respect for cultural and ethnic diversity (Base Document, 2015, p. 38).

The way the 1st CNPI was thought and carried out shows the effort of its organizers (Presidency of the Republic, Ministry of Justice, Funai and National Organizing Commission with the participation of representatives of indigenous peoples) to overcome the "colonial values and practices for the reaffirmation of a relationship of respect for diversity concerning indigenous peoples," enabling "differentiated formats of dialogues" and "considering the indigenous worlds themselves" (BARRETO FILHO, 2018, p. 89).

It was evidenced the need for the impacts of historical violations on native peoples, the historical ethnocide that resulted in the drastic reduction of their population, the low rates of their quality of life, high rates of violence of which indigenous peoples are still victims, and the complex recognition of the territories they still occupy (TUKANO, 2018, p. 33). To this end, the 1st CNPI demanded the "broad indigenous participation in the public construction of the truth, demanding the documentation and dissemination of the living histories of indigenous peoples" and verified the need for

collaboration between academia and Brazilian educational institutions, which would guarantee the return of research and studies produced to indigenous communities, as a means of reparation of memories (TUKANO, 2018, p. 33).

4.3 The Truth and Reconciliation Commission of Canada (TRC)

Differently from it appears to be, the process of establishing a TRC in Canada was not consensual, but controversial. In its 1998 response to residential schools' abuses, Canada's government rejected the recommendation to establish a Truth and Reconciliation Commission, opting instead to implement a Royal Commission on Aboriginals Peoples (RCAP) to focus on a set of policy recommendations designed to end its legal responsibility record to survivors of these schools. With this purpose in mind, in 1991, four Aboriginal and three non-aboriginal commissioners were appointed to investigate and report to Canada's government on a question: what needs to be reconciled and what are the foundations of a just relationship between the Aboriginal and non-aboriginal people of Canada? These questions also bring up together the different meanings and connotations for reconciliation as a concept, a project, a process, an idea, a goal, considering the government, churches, society and Indigenous Peoples themselves. For 178 days, the RCAP members held public hearings, visited nearly 100 communities, consulted experts, commissioned studies, reviewed surveys and reports. The five-volume conclusion, "Report of the Royal Commission on Indigenous Peoples," was launched in 1996. When the TRC was finally implemented in 2008 – with a mandate to ascertain the legacy of the Indigenous Residential Schools in Canada and documenting all indigenous survival experiences – it advocated offering apologies as the first necessary step in re-establishing a path to renew the relationship between Indigenous Peoples and Canadian society.

As it was already analyzed in the third chapter, on January 7, 1998, the Minister of Indigenous Affairs, Jane Stewart, published The "Declaration of Reconciliation" with an explicit rejection of the long-standing official assimilation policy of native peoples, formally recognizing the historic and ancient presence of the First Nations on the continent and admitting their contribution to the development of the nation. It also recognized the mistreatment of Indigenous Peoples throughout the contact period,

including the destruction of their cultures, the suppression of their languages and the erosion of existing political, economic and social system.[111]

The year 2005 was a milestone for indigenous rights in Canada. The government signed a Political Agreement with the First Nations to promote policies that would create new and improved governance and training opportunities for the First Nations. The Supreme Court of Canada also recognized that reconciliation with Aboriginal peoples is a fundamental objective of Section 35 of the Constitutional Act, 1982.

Seeking to identify the requirements for an apology to be considered authentic, Corntassel and Holder (2008) distinguish two forms of reparation: the affirmative and the transformative. In affirmative reparation, centred on the state, the focus is on the mistake made and not on the relationships that shaped it and allowed it to continue. Transformative reparation, instead, seeks to adopt sustainable initiatives to enable the restoration and construction of justice for Indigenous Peoples (CORNTASSEL; HOLDER, 2008).

In 5 years, US$ 60 million were invested for routine TRC activities, and $20 million was applied in projects and commemorative ceremonies. Considering that in Canada, collective action agreements must be approved by the courts, the claims have spread to nine jurisdictions in Canada. Of the approximately eighty thousand collective action members, about four hundred people chose not to participate. Had this number been equal to five thousand, an interim settlement would not have been possible. From 2009 to 2015, the TRC held hundreds of community hearings and national events in Winnipeg, Inuvik, NWT, Halifax, Saskatoon, Montreal, Vancouver and Edmonton. Regional events took place in White Horse and Victoria. The Commission recorded nearly seven thousand statements during its term and accumulated nearly five million archives from the government and the Church.

In a document published by the Aboriginal Healing Foundation (AHF), called "From Truth to Reconciliation: Transforming the Legacy of Residential Schools," it is possible to find an explanation to the complementary relationship that must necessarily exist between an apology and material compensation. The document says that, even when

[111] The federal government reinforced the statement with a commitment to work with all indigenous peoples, churches and related parties to redress the damage done under the auspices of the residential school system. A $350 million healing fund for victims was established. The government created an additional $250 million fund to assist economic development, the establishment of self-government, job creation, and the delivery of social services. A specific commitment was made to the Métis people in the promise to reassess Louis Riel's role in Canadian history.

the request is sincere, the apology becomes insufficient if it is unaccompanied by an appropriate material and proportional reparation. In other words, “Without some form of reparation, apologizing for a historical wrong is an empty gesture. Repentance without compensation serves only to make the apologizer feel good while minimizing benefits for the victim” (JOSEPH, 2008, p. 220).

The Assembly of First Nations of Canada sought lawyers' advice and commissioned international research to endorse reparations to the survivors of the Residential Schools, including their due financial compensation. The idea of reconciliation is the second component of the Truth and Reconciliation Commission's mandate.

According to TRC, “There is a vast body of specialized literature on the impacts of colonialism on Indigenous Peoples of the Americas that highlights the continuity of systemic racism, the condition of sub-citizens of these individuals within the states in which they are inserted, high rates of homicide and other types of violence against these populations, underemployment and low schooling, so that this is not a matter exclusive to poor countries” (TRC, 2008).

In a general sense, the Canadian TRC was considered a mechanism with restorative qualities, but not fully restorative to their primary audience, the survivors (PETOUKHOV, 2011). There was criticism concerning the imbalance between its member's interests. Even though all parties affected by the Residential School system were able to contribute to its activities, “the TRC at times appeared to be the object of a competition for control between the AFN and the federal government, rather than primarily serving the interests of survivors (…) In the context of the TRC negotiations, the voice was given to the federal government, the AFN, and the churches, and to a lesser extent, survivors” (PETOUKHOV, 2011, p. 92). It is not too much to remember that this is contrary to restorative practices, which aim to include all parties' perspectives (PETOUKHOV, 2011, p. 92).

The Commission's mandate was to gather evidence, to learn the truth and inform Canadians about what happened in the past spent in residential schools. It has collected thousands of documents and narratives, including records kept by those who exploited and funded the residential schools, testimonials from representatives of the institutions, and the survivors and their families’ experiences (TRC, 2008).

A model agreement was signed with some First Nations to advance a partnership to promote policies and opportunities for the communities involved (AFN, 2005). In

2006, the United Nations General Assembly passed a resolution to make 2009 the International Year of Reconciliation in the world. In 2008, the Federal Government of Canada expressed its apologies regarding the Residential Schools policy. It installed the Truth and Reconciliation Commission to investigate violence and abuses committed in the face of this policy.

The official closing of the TRC took place in June 2015, releasing the Honouring the Truth, Reconciling for the Future – Summary of the Truth Commission Final Report and reconciliation in Canada. The TRC final report details how the Residential School System has contributed to the over-representation of First Nations, Métis and Inuit Indigenous adults in prisons, children in adoption and correctional systems, child welfare systems, justice, inferior health services in Indigenous communities, and the educational deficit, lack of land rights, lack of access to water, and the increase in the number of murdered and missing Indigenous women and girls across Canada. The report calls on all Canadians and Canadian women to participate in a reconciliation process and is launching several Calls to action.

The Commissioners views reconciliation as an individual process and permanent collective that requires all persons affected by the residential school experience, including students and former students, families, communities, groups of former employees, the government and the Church, former of non-Aboriginal Canadians,

> For the Commission, reconciliation means establishing and maintaining a relationship of reciprocal respect between indigenous peoples and non-indigenous peoples in this country. To do so, we must become aware of the past, acknowledge the harm that has been done, atone for the causes, and act to change behaviours. We are not there yet. The relationship between Indigenous and non-Indigenous peoples is not one of mutual respect. However, we believe it can be done, and we believe it is possible to maintain such a relationship. Our ambition is to demonstrate that we can. In 1996, the Report of the Royal Commission on Aboriginal Peoples urged Canadians to embark on a national reconciliation process that would set the country on a bold new course, radically changing the very foundations of Canada's relationship with Aboriginal peoples. Much of what the Royal Commission said was ignored by the government; most of its recommendations were never implemented. Nevertheless, the report and its findings opened Canadians' eyes and changed conversations about Aboriginal peoples' reality in this country (TRC, 2015a, pp. 7-8)

In August 2017, Indigenous Northern Affairs Canada (INAC) was dissolved and in its place, two new departments were created: Indigenous Services Canada (ISC) and Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC).

The Canadian 94 "Calls to Action"

The TRC recommendations to the Canadian government have been called Calls to Action and cover eighteen major thematic sub-areas, all related to promoting reconciliation between Indigenous and non-Indigenous people, which can be grouped as follows: (1) legacy and child welfare, (2) education, (3) health, (4) justice, (5) Canadian Governments and the UNDRIP, (6) Settlement Agreement Parties and the UNDRIP, (7) Equity for Aboriginal People in the Legal System, (8) National Council for Reconciliation, (9) Church Apologies and Reconciliation, (10) Youth Programs, (11) Museums and Archives, (12) Missing Children and Burial Information, (13) National Centre for Truth and Reconciliation, (14) Commemoration, (15) Media and Reconciliation, (16) Sports and Reconciliation, (17) Business and Reconciliation, and (18) Newcomers to Canada.

The first group related to 'child care' was a calling for federal, provincial, territorial and Aboriginal governments to commit to reducing the number of Aboriginal children in care by monitoring and evaluating neglect investigations, providing resources to enable Aboriginal communities and child care organizations to keep Aboriginal families together and keep children in culturally appropriate environments, and ensuring that social workers and other child welfare professionals are educated about the history and impacts of residential schools. This first group of recommendations also calls for the federal government, provinces and territories to produce and publish annual reports regarding the number of First Nations, Inuit and Métis children in care compared to the number of non-Aboriginal children, without waiving the reasons for apprehension, spending on prevention and care by child welfare agencies, and effectiveness of interventions. This first group of calls also asked all government's levels to fully implement the Jordan's Principle and was designed to enact Aboriginal child welfare legislation with national standards for apprehension and custody cases, noting the right of Aboriginal governments to establish and maintain their child welfare agencies; that all child welfare agencies and courts consider the legacy of the residential school in decision-

making processes and establish a requirement that temporary and permanent care of Aboriginal children be culturally appropriate.

The second group of callings – related to education – was made to the federal government to act on eight broad topics: to create a strategy to eliminate educational gaps between Aboriginal and non-Aboriginal Canadians; to eliminate the discrepancy in federal Education funding for First Nations children being educated on reserves and those First Nations educated off reserves; to prepare and publish annual reports comparing funding for the education of First Nations children on and off reserves, as well as educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people; to draft new Aboriginal education legislation with the full participation and informed consent of Aboriginal peoples, to include a commitment to Providing sufficient funding to close identified educational achievement gaps within one generation; to improve education attainment levels and success rates; to develop culturally appropriate curricula; to protect the right to Aboriginal languages, including the teaching of Aboriginal languages as credit courses; to enable parental and community responsibility, control, and accountability, similar to what parents enjoy in public school systems; to enable parents to fully participate in the education of their children; and to respect and honour Treaty relationships.

The second topic on education called the federal government to provide adequate funding to end the backlog of First Nations students seeking post-secondary education. The third one called the federal, provincial, territorial, and Aboriginal governments to develop culturally appropriate early childhood education programs for Aboriginal families. The fourth and fifth topics, related to Language and culture, called up the federal government to acknowledge Aboriginal language rights. For this to occur, it asked to enact an Aboriginal Languages Act that recognizes Aboriginal languages' value to Canadian culture and society, providing sufficient funds for Aboriginal-language revitalization, preservation and strengthening of Aboriginal languages and cultures – best managed by Aboriginal people and communities. The sixth topic on education called the federal government to appoint, in consultation with Aboriginal groups, an Aboriginal Languages Commissioner that should help promote Aboriginal languages and report on the adequacy of federal funding of Aboriginal-languages initiatives. The seventh call upon post-secondary institutions to create university and college degree and diploma programs in Aboriginal languages. Finally, the eighth call on education claimed all levels of government to enable residential school survivors, their families and communities, to

reclaim names changed by the residential school system by waiving administrative costs for five years for the name-change process and the revision of official identity documents, such as birth certificates, passports, driver's licenses, health cards, status cards, and social insurance numbers.

The third group of calls was made on Aboriginal Health with seven specific demands: the first one is for the federal, provincial, territorial, and Aboriginal governments to acknowledge that the current state of Aboriginal health in Canada is a direct result of previous Canadian government policies, including residential schools, and to recognize and implement the health-care rights of Aboriginal people as identified in international law, constitutional law, and under the Treaties. The second health demand is a call for the federal government, in consultation with Aboriginal peoples, to establish measurable goals to identify and close the gaps in health outcomes between Aboriginal and non-Aboriginal communities, publishing annual progress reports and assess long-term trends.[112] The third calling on health was designed for Aboriginal people living off reserves, asking the federal government to recognize, respect, and address the distinct health needs of the Métis, Inuit, and off-reserve Aboriginal peoples. The fourth health calling is to the federal government to provide sustainable funding for existing and new Aboriginal healing centres to address the physical, mental, emotional, and spiritual harms caused by Residential Schools and ensure that the funding of healing centres in Nunavut and the Northwest Territories is a priority. The fifth call on health calls the Canadian health-care system to recognize the value of Aboriginal healing practices and use them to treat Aboriginal patients in collaboration with Aboriginal healers and Elders where requested by Aboriginal patients. The sixth call on health is oriented to all government levels to increase the number of Aboriginal professionals working in the health-care field; ensure the retention of Aboriginal health-care providers in Aboriginal communities; provide cultural competency training for all health-care professionals. The last call on health to medical and nursing schools in Canada asked all students to take a course dealing with Aboriginal health issues, including the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, and Indigenous practices.[113]

[112] Such efforts would focus on indicators such as infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services.
[113] The skills-based required are training in intercultural competency, conflict resolution, human rights, and anti-racism.

The callings on justice are in total of eighteen. In order to sum up them, they were classified according to the levels of governance responsible for their implementation. Eight of them are federal government's responsibility, as follows:

- To establish a written policy that reaffirms the Royal Canadian Mounted Police's independence to investigate crimes in which the government has its interest as a potential or real party in civil litigation;
- To the Federation of Law Societies to ensure that lawyers receive appropriate cultural competency training in the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations;
- To work collaboratively with plaintiffs not included in the IRSSA to have disputed legal issues determined expeditiously on an agreed set of facts;
- To amend the Criminal Code to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences;
- To eliminate barriers creating additional Aboriginal healing lodges within the federal correctional system;
- To provide more supports for Aboriginal programming in halfway houses and parole services;
- To develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization;
- To appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls, that should include the investigation into missing and murdered Aboriginal women and girls and links to the intergenerational legacy of residential schools (CANADA, 2015).

The others calls on justice are mixed responsibilities – federal, provincial, territorial, and law schools – as follows: to review and amend law schools' statutes to ensure that they conform to the principle that governments and other entities cannot rely on limitation defences to defend legal actions of historical abuse brought by Aboriginal people; to require all law students to take a course in Aboriginal people and the law;[114] a commitment to eliminate the over representation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so; to provide sufficient and stable funding to implement and evaluate community sanctions with realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending; to recognize the need to address and

[114] Which includes the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations. This will require skills-based training in intercultural competency, conflict resolution, human rights, and antiracism.

prevent Fetal Alcohol Spectrum Disorder (FASD), and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner; to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD);[115] to provide culturally services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused; a commit to eliminating the over representation of Aboriginal youth in custody over the next decade; to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms; to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the Constitution Act, 1982, and the UNDRIP, endorsed by Canada in November 2012.

Concerning the implementation of the UNDRIP, the calls to action claimed to the federal, provincial, territorial, and municipal governments to fully adopt and implement the UNDRIP as a reconciliation framework; to develop a national action plan, strategies, and other concrete measures to achieve the goals of the UNDRIP, Royal Proclamation and Covenant of Reconciliation, and on behalf of all Canadians, to jointly develop with Aboriginal peoples a Royal Proclamation of Reconciliation to be issued by the Crown.[116] Still concerning to UNDRIP, but specifically addressing the Settlement Agreement Parties, there was a call upon church parties and all other faith and interfaith social justice groups who have not already done so, to formally adopt and comply with the principles, norms, and standards of the UNDRIP as a framework for reconciliation.[117] At least on the

[115] This call should provide increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD; enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD; community, correctional, and parole resources to maximize the ability of people with FASD to live in the community; and adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

[116] The Royal Proclamation of Reconciliation would repudiate concepts used to justify European sovereignty over Indigenous peoples, such as the Doctrine of Discovery and *terra nullius*; to adopt and implement the UNDRIP as the framework for reconciliation; to establish Treaty relationships based on mutual recognition, mutual respect, and shared responsibility for maintaining those relationships into the future; to reconcile Aboriginal and Crown constitutional and legal orders to ensure that Aboriginal peoples are full partners in Confederation, recognizing and integrating Indigenous laws and legal traditions in negotiation and implementation processes, as Treaties, land claims, and other agreements.

[117] This would include ensuring that institutions, policies, programs, and practices comply with the UNDRIP; to respect Indigenous peoples' right to self-determination in spiritual matters, including the right to practise, develop, and teach their own spiritual and religious traditions, customs, and ceremonies, consistent with Article 12:1 of the UNDRIP; engaging in ongoing public dialogue and actions to support the UNDRIP, and to issue a statement no later than March 31, 2016, from all religious denominations and faith groups, as to how they will implement the UNDRIP.

UNDRIP topic, there was a call to all religious denominations and faith groups to repudiate concepts used to justify European sovereignty over Indigenous lands and peoples, such as the ‘Doctrine of Discovery’ and ‘terra nullius’.

Concerning equity in the legal system, in keeping with the UNDRIP, there was a call upon the federal government to fund the establishment of Indigenous law institutes to develop, use, and understand Indigenous laws and access to justice under the unique cultures of Aboriginal peoples in Canada. A specific call on the Canadian federal government's fiduciary responsibility was issued to develop a policy of transparency by publishing legal opinions and actions regarding the scope and extent of Aboriginal and Treaty rights. Still, on equity, all the government and courts would recognize that Aboriginal title claims are accepted once the Aboriginal claimant has established occupation over a particular territory at a particular point in time and, once Aboriginal title has been established, the burden of proving any limitation on any rights arising from the existence of that title shifts to the party asserting such a limitation.

The next call to action refers to the Parliament of Canada in collaboration with Aboriginal peoples to establish a National Council for Reconciliation as an independent, national oversight body with membership jointly appointed by the Government of Canada and national Aboriginal organizations. The National Council should consist of Aboriginal and non-Aboriginal members, and its mandate would include monitor, evaluate, and report annually to Parliament and the people of Canada on the Government of Canada's post-apology progress on reconciliation to ensure that government accountability for reconciling the relationship between Aboriginal peoples and the Crown is maintained in the coming years. Also, monitor, evaluate, and report to Parliament and Canada's people on reconciliation progress across all levels and sectors of Canadian society, including the implementation of the RTC of Canada's Calls to Action. Still, develop and implement a multi-year National Action Plan for Reconciliation, including research and policy development, public education programs, and resources; and promote public dialogue, public/private partnerships, and public initiatives for reconciliation. The National Council for Reconciliation has to be provided with multi-year funding to ensure that it has the financial, human, and technical resources required to conduct its work, including the endowment of a National Reconciliation Trust to advance the cause of reconciliation. The National Council for Reconciliation should request annual reports or any current data of

all government levels to report on the progress towards reconciliation.[118] Concerning the Prime Minister of Canada, he would formally respond to the National Council for Reconciliation report by issuing an annual "State of Aboriginal Peoples" report, outlining the government's plans for advancing the reconciliation cause.

On the subject of Professional Development and Training for Public Servants the calls to action asked for federal, provincial, territorial, and municipal governments to provide education to public servants on the history of Aboriginal peoples, including the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations.[119]

Considering the role that churches played in the conduct and administration of the Indian Residential Schools, many demands were made on the churches, including apologies. The Pope has explicitly been asked to apologize to survivors, their families, and communities for the role the Roman Catholic Church played in the spiritual, cultural, emotional, physical, and sexual abuse of First Nations, Inuit, and Métis children. The requested request should be similar to the request made in 2010 to Irish victims of abuse and could not take more than a year to make, considering the date the TRC Report was released. The church parties were also urged to develop ongoing education strategies to ensure that religious congregations are aware of each church's role in the settlement, history, and the legacy of residential schools. A request was made to leaders integral to the Settlement Agreement and other religions, theology schools and religious training centers to develop and teach the curriculum to student clergy and professionals working in Aboriginal communities on the need to respect indigenous spirituality, the history and legacy of residential schools and the roles of church parties in the history and legacy of religious conflict in Aboriginal families and communities, and the responsibility churches have to mitigate such conflicts and prevent spiritual violence. The church parties to the

[118] The reports would include: i. The number of Aboriginal children in care, compared with non-Aboriginal children, the reasons for apprehension, and the total spending on preventive and care services by child-welfare agencies; ii. Comparative funding for the education of First Nations children on and off reserves; iii. The educational and income attainments of Aboriginal peoples in Canada compared with non-Aboriginal people; iv. Progress on closing the gaps between Aboriginal and non-Aboriginal communities in a number of health indicators such as: infant mortality, maternal health, suicide, mental health, addictions, life expectancy, birth rates, infant and child health issues, chronic diseases, illness and injury incidence, and the availability of appropriate health services; v. Progress on eliminating the over-representation of Aboriginal children in youth custody over the next decade; vi. Progress on reducing the criminal victimization rate of Aboriginal people, including data related to homicide and family violence victimization and other crimes; and vii. Progress on reducing the over-representation of Aboriginal people in the justice and correctional systems.

[119] This will require skillsbased training in intercultural competency, conflict resolution, human rights, and anti-racism.

Settlement Agreement were also asked to permanently fund Aboriginal people in healing and reconciliation projects, cultural and linguistic revitalization projects, education projects, and regional dialogues for Indigenous spiritual leaders and youth to discuss Indigenous spirituality, self-determination, and reconciliation.

Under the theme education for reconciliation, calls were made to the federal, provincial and territorial governments to make the curriculum on treaties and historical and contemporary contributions of Aboriginal peoples to Canada a mandatory education requirement for students in Kindergarten to Grade 12. Along with this, governments should provide the necessary funding to post-secondary institutions to educate teachers on how to integrate indigenous knowledge and teaching methods into classrooms; provide the funding to Aboriginal schools to utilize indigenous knowledge and teaching methods in classrooms, and establish senior-level government positions at the deputy or senior deputy minister level dedicated to Aboriginal content in education. The Council of Ministers of Education Canada was urged to maintain an annual commitment to Aboriginal education issues by developing and implementing Kindergarten to Grade Twelve curriculum, learning resources on Aboriginal peoples in Canadian history, and the history and legacy of residential schools, sharing information and best practices on teaching curriculum related to residential schools and Aboriginal history, developing students' capacity for cross-cultural understanding, empathy and mutual respect, and identifying teacher training needs related to the topic.

All government levels that provide public funds to denominational schools were asked to require schools to provide education on comparative religious studies, including a segment on Aboriginal spiritual beliefs and practices developed in collaboration with Aboriginal Elders. The Federal Government's Social Sciences and Humanities Research Council and the National Centre for Truth and Reconciliation were invited to establish a national research program with multi-year funding to understand reconciliation better.

On youth programs, the federal government was asked to provide multi-year funding for community-based youth organizations to offer reconciliation programs and establish a national network for sharing information and best practices.

Canada's museums and archives were urged to fund the Canadian Museum Association to undertake a national review of museum policies and best practices, determining the level of compliance with the United Nations Declaration on the Rights of Indigenous Peoples and make recommendations. In collaboration with Aboriginal peoples and the Canadian Museum Association, the federal government was urged to

mark the 150th anniversary of Canadian Confederation in 2017 by establishing a national funding program dedicated to commemorative projects on the theme of reconciliation. Library and Archives Canada was asked to adopt and implement the UNDRIP Principles and the United Nations Joinet-Orentlicher Principles related to the inalienable right of Aboriginal people to know the truth about what happened, and why, concerning human rights violations committed against them in residential schools; ensure that its records related to residential schools are accessible to the public. The federal government was urged to provide funding to the Canadian Association of Archivists to collaborate with Aboriginal peoples, a national review of archival policies and best practices and produce reports with recommendations for the full implementation of these international mechanisms as a reconciliation framework for Canadian archives.

On Missing Children and Burial Information, chief coroners and provincial statistics agencies were called to provide their records on the deaths of Aboriginal children in residential school authorities' care to make these documents available to the National Centre for Truth and Reconciliation. The federal government was asked to allocate sufficient resources to the National Centre for Truth and Reconciliation to develop and maintain the National Residential School Student Death Register established by the Truth and Reconciliation Commission of Canada. The federal government was also asked to work with churches, aboriginal communities, and former residential school students to establish and maintain an online registry of residential school cemeteries, including, plot maps showing the location of deceased residential school children. This last action includes working with the churches and Aboriginal community leaders to inform the families of children who died at residential schools of the child's burial location and respond to families' wishes for appropriate commemoration ceremonies and markers reburial in home communities where requested. Develop and implement strategies and procedures for the ongoing identification, documentation, maintenance, commemoration, and protection of residential school cemeteries or other sites at which residential school children were buried.

All the parties engaged in the work of documenting, maintaining, commemorating, and protecting residential school cemeteries were asked to adopt strategies respecting the Aboriginal community most affected; considering that information shall be sought from residential school Survivors and other Knowledge Keepers in the development of such strategies; and that aboriginal protocols shall be

respected before any potentially invasive technical inspection and investigation of a cemetery site.

Concerning the call to action on the National Centre for Truth and Reconciliation, the provincial, territorial, municipal, and community archives were called to work collaboratively to identify and collect copies of all records relevant to the history and legacy of the residential school system, and to provide these to the National Centre for Truth and Reconciliation. Also, the Government of Canada was invited to commit to making a funding contribution of $10 million over seven years to the National Centre for Truth and Reconciliation, plus an additional amount to assist communities to research and produce histories of their own residential school experience and their involvement in truth, healing, and reconciliation.

Regarding actions on Commemoration, the federal government, in collaboration with Survivors, Aboriginal organizations and the arts community, were invited to develop a reconciliation framework for Canadian heritage and Commemoration. These actions would include amending the Historic Sites and Monuments Act to include First Nations, Inuit, and Métis representation on the Historic Sites and Monuments Board of Canada and its Secretariat; revising the policies, criteria, and practices of the National Program of Historical Commemoration to integrate Indigenous history, heritage values, and memory practices into Canada's national heritage and history; and implementing a national heritage plan and strategy for commemorating residential school sites, the history and legacy of residential schools, and the contributions of Aboriginal peoples to Canada's history.

The federal government was called to establish, as a statutory holiday, a National Day for Truth and Reconciliation to honour Survivors, their families and communities, ensuring that public Commemoration of the history and legacy of residential schools remains a vital component of the reconciliation process. Also, to commission and install a publicly accessible Residential Schools National Monument in Ottawa to honour Survivors and all the children lost to their families and communities. In collaboration with Survivors and their organizations, the provincial and territorial governments and other parties to the Settlement Agreement were exhorted to install a publicly accessible Residential Schools Monument in each capital city to honour survivors and their communities. Finally, on Commemoration, the Canada Council for the Arts was demanded to establish a strategy for Indigenous and non-Indigenous artists to undertake collaborative projects and produce works that contribute to the reconciliation process.

Concerning the relation between Media and Reconciliation, the federal government was asked to restore and increase funding to the CBC/Radio-Canada to enable Canada's national public broadcaster to support reconciliation and be appropriately reflective of the diverse cultures, languages, and perspectives of Aboriginal peoples, including increasing Aboriginal programming with Aboriginal-language speakers, increasing equitable access for Aboriginal peoples to jobs, leadership positions, and professional development opportunities within the organization and to provide dedicated news coverage and online public information resources on issues of concern to Aboriginal peoples and all Canadians, including the history and legacy of residential schools and the reconciliation process. The Aboriginal Peoples Television Network was asked to support reconciliation by providing leadership in programming and organizational culture that reflects Aboriginal peoples' diverse cultures, languages, and perspectives. Finally, on this topic, Canadian journalism programs and media schools was called to require education for all students on the history of Aboriginal peoples, including the history and legacy of residential schools, the UNDRIP, Treaties and Aboriginal rights, Indigenous law, and Aboriginal– Crown relations.

On Sports and Reconciliation, five calls to action were made: (1) the all levels of government sports halls of fame and relevant organizations were asked to provide public education on the national story of Aboriginal athletes in history; (2) to ensure long-term Aboriginal athlete development and growth, and continued support for the North American Indigenous Games, including funding to host the games and for provincial and territorial team preparation and travel; (3) the federal government was asked to amend the Physical Activity and Sport Act to support reconciliation by ensuring that policies to promote physical activity as a fundamental element of health and well-being, reduce barriers to sports participation, increase the pursuit of excellence in sport, and build capacity in the Canadian sport system, are inclusive of Aboriginal peoples; (4) to ensure that national sports policies, programs, and initiatives are inclusive of Aboriginal peoples, including funding and access to community sports programs that reflect the diverse cultures and traditional sporting activities of Aboriginal peoples and anti-racism awareness and training programs; and (5) officials and host countries of international sporting events would ensure that Indigenous peoples' territorial protocols are respected and local Indigenous communities are engaged in all aspects of planning and participating in such events.

On Business and Reconciliation, the Canadian corporate sector was invited to adopt the UNDRIP as a reconciliation framework and apply its principles, norms, and standards to corporate policy and core operational activities involving Indigenous peoples, their lands and resources.[120]

The last call to action was oriented to newcomers in Canada. It called upon the federal government to revise the information kit for newcomers and its citizenship test to reflect an inclusive history of the diverse Aboriginal peoples, including information about the Treaties and the history of residential schools.[121]

Finally, the TRC emphasized that all Canadians would participate in the reconciliation work, mobilizing to meet the challenges facing the world through the "I care" campaign. Therefore, it is incumbent on schools and their staff to be well informed about these Calls to Action, to learn what they can do to improve the relationships between children, youth, parents and staff so that they can be free of racism (CANADA, TRC, 2015).

To assess how far the Canadian government and society have progressed in fulfilling the calls, it would be necessary to conduct a study aimed specifically at this purpose. However, social researcher Thierry Rodon, Professor in the department of political science at Laval University, provided a good picture of government execution of the calls to action on an interview conceded to La Presse, on Octobre 15, 2019. [122]

Regarding investments in education, health, infrastructure and clean water, Rodon analyzes that the Trudeau government has invested $21 billion in indigenous policy services over four years in office. In announcing the latest budget, the government gave itself six more years to spend $1 billion on land claims, $1.2 billion on health care and social services for children, and $739 million to improve the quality of drinking water on

[120] This call would include commit to meaningful consultation, building respectful relationships, and obtaining the free, prior, and informed consent of Indigenous peoples before proceeding with economic development projects; ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector and that Aboriginal communities gain long-term sustainable benefits from economic development projects; provide education for management and staff on the history of Aboriginal peoples, including the history and legacy of residential schools, the UNDRIP Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations.

[121] The Government of Canada would then replace the Oath of Citizenship as following: "I swear (or affirm) that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Queen of Canada, Her Heirs and Successors, and that I will faithfully observe the laws of Canada including Treaties with Indigenous Peoples, and fulfill my duties as a Canadian citizen."

[122] Retrieved from https://www.lapresse.ca/elections-federales/2019-10-15/la-grande-reconciliation-avec-les-autochtones-a-t-elle-eu-lieu?fbclid=IwAR2KdAcm5ee5QU4J5U0wPITApslQbaQ5SgGDuYj3iIFrW_ymcOk_uyh6mF4#. Access on 04.17.2021.

reserves. On improving First Nations relations, Justin Trudeau's government promised to implement all the TRCs calls to action. Nevertheless, after four years in office, Rodon explains that only a few recommendations have been fully implemented, such as revealing the names of 2,800 children who died in federal residential schools run by religious communities. Most of the recommendations do not depend exclusively on the federal government and involve several agencies (RODON, 2019, n/n).

Upon establishing a commission of inquiry to look into indigenous women and girls' disappearance, the promise has been fulfilled. The inquiry was launched in 2016, and in June 2019, it presented over 200 recommendations to improve relations between Aboriginal people and police forces, among others. Justin Trudeau has committed to developing a "national action plan" to respond to the recommendations. The implementation of that plan has not been tracked.

One of the calls to action that appears across the board concerns the demand for full implementation of the UN Declaration on Indigenous Peoples' Rights. Liberal politicians signed onto Bill C-262, introduced by Romeo Saganash and passed in 2019, to ensure that Canada's Government would make federal laws consistent with the United Nations Declaration on the Rights of Indigenous Peoples. However, the bill was blocked in the Senate by Conservative politicians and had no progress after that. Justin Trudeau has promised to reintroduce the bill if the Liberals were re-elected in October.

For the promise to adopt a framework for recognizing and valuing indigenous rights, in February 2018, the government promised a "government-wide change" to remove First Nations from applying the Indian Act of 1876 and allow for the creation of indigenous governance structures. However, communities did not approve of how the government went about the project, which was left without continuity. "Only First Nations can determine the path forward to achieve decolonization and reconciliation," said Perry Bellegarde, National Chief of the Assembly of First Nations, in November, adding that "We all want to move beyond the Indian Act, but that will take time" (BELLEGARDE, 2018).[123]

On building nation-to-nation relationships between Ottawa and Indigenous peoples, Rodon assessed that the Department of Indigenous Affairs and Northern Development's division of responsibilities represented a breakthrough for eliminating the

[123] Retrieved from https://www.netnewsledger.com/2018/09/14/we-all-want-to-move-beyond-the-indian-acts-control-afn-national-chief-bellegarde/. Access on 04.17.2021.

Indian Act in 2017. However, " The decision was met with caution by Native chiefs; some, including Ghislain Picard of the Assembly of First Nations of Quebec and Labrador, pointing out that they were not consulted before the announcement."[124]

Recently, Manitoba's school divisions have been required to develop or renew some form of diversity statement or guideline and authorize clubs or social justice groups in their schools. Many also have policies or programs aimed at fighting racism, prejudice and homophobic discrimination. It is notable that during the conversations and formal interviews conducted for this research, none of the Indigenous people mentioned the complete fulfillment of the TRC Calls to Action as a synonym for reconciliation to occur between Indigenous people and the rest of Canadian society. This means that reconciliation, from an Indigenous perspective, is not directly related to the completion of the Calls to Action, despite its importance in making Canadian society better and more equal. The next topic addresses some of Lac Seul's and Xavante's perspectives on reconciliation and reparation.

For the Yellowhead Institute, which analyzes compliance with calls to action through the Beyond 94 Project, nine calls have been delivered by the federal government:

> 13: Federal acknowledgement of Indigenous Language Rights
>
> 41: Missing and Murdered Indigenous Women's and Girls Inquiry
>
> 48: Adoption of UNDRIP by Churches and faith groups
>
> 49: Rejection of the Doctrine of Discovery by churches and faith groups
>
> 72: Federal support for the National Centre for Truth and Reconciliation
>
> 83: Reconciliation agenda for the Canada Council for the Arts
>
> 85: Reconciliation agenda for the Aboriginal Peoples' Television Network
>
> 88: Long-term support from all levels of government for North American Indigenous Games
>
> 90: Federal support for Indigenous sports programs and athletes.

[124] Retrieved from https://www.lapresse.ca/elections-federales/2019-10-15/la-grande-reconciliation-avec-les-autochtones-a-t-elle-eu-lieu?fbclid=IwAR25dHbE_L887PwyXCMe_S0Q-6Dr5TSPFcEuhRRRRtSlR2Li1qU0LX6qYXc. Access on 02.14.2021

The Institute's evaluation of each Call to Action is done on an individual basis, that is, by researching and checking each Call to Action individually. A Call is classified as complete if all steps for its implementation are completed. As a methodological example, the Institute took Call number 17 defined as incomplete because while some provincial governments, such as Ontario, have put processes to expedite survivors' names, not all levels of government have done so.[125] Another observation made by the Yellowhead Institute about how a call to action is evaluated is that procedural gestures or budget promises cannot determine its completion, but specific actions that have or not been taken to produce meaningful structural changes to improve Indigenous Peoples' lives in Canada.

For Yellowhead, the Calls to Action that have seen the least progress are the ones that ask for policies and institutional changes on a foundation of anti-indigenous racism: "not only has the federal government refused to repudiate the Doctrine of Discovery as outlined in Call to Action #47, but this legal fiction continues to be the basis of Canadian claims to sovereignty on unceded Indigenous lands—a position which the courts have upheld despite its racist origins as a tool of European imperialism." [126]

> Our analysis of Canada's progress towards completing the TRC's 94 Calls to Action suggests that—as was the case in past years—progress has been limited and the number of completed Calls to Action has moved from a total of 8 in 2018 to 9 in 2019. (By way of comparison, Beyond 94 found no change in 2018 and 2019, with the number of completed calls to action coming in at 10 in total). This is a remarkably low completion rate, especially given the scale of commitments from the federal government. If the current pace holds (2.25 Calls a year) it will take approximately 38 more years before all of the Calls to Action are implemented. Reconciliation in 2057? (...) This is not to say that significant movement has not been made on a number of important calls to action. We could easily see, for instance, the conditions for Calls to Action #15 being met in the coming year given progress already made towards the creation of an Indigenous Languages Commissioner as part of the recently passed Indigenous Languages Act. There is also progress on #53 and #54 with the recent announcement of funding for the creation of a National Council for Reconciliation following the

[125] "We call on all levels of government to allow residential school survivors and their families to recover names changed by the residential school system by waiving administrative costs for five years for the name change process and the review of official identity documents such as birth certificates, passports, driver's licenses, health cards, status cards, and social security numbers".
[126] From Yellowhead Institute – Calls To Action Accountability. https://nationtalk.ca/story/yellowhead-institute-calls-to-action-accountability-a-status-update-on-reconciliation

> 2018 final report of the Interim Board of Directors (YELLOWHEAD INSTITUTE, 2019).

Yellowhead's conclusion is that the Calls to Action demanding transparency and annual reports from different levels of government on issues such as child welfare, education, indigenous languages, health, criminalization, treaties and reconciliation are, so far, all incomplete. Such reports, if they had been released, "would only reinforce the negative impact of structural racism on the rights of Indigenous Peoples in almost every area of Canadian society."

In the concluding remarks, comparisons will be made between the truth commissions of Brazil and Canada. How the transliteration of moral debt into financial resources is perceived by the Xavante and the Anishinaabeg will also be addressed.

CONCLUDING REMARKS

The dissertation analyzed and compared what we called 'reparation indigenism' in Brazil and Canada – actions and policies that evolved from previous forms of indigenisms that prevailed in the 19th and 20th centuries – assimilationist, integrationist, social indigenism – designed to address the historical colonial injustices committed against Indigenous Peoples of Brazil and Canada.

The comparative study on settling the historical debt to Indigenous Peoples was an attempt to understand how a policy of reconciliation emerges in the Canadian context concerning a supposedly reconciling project towards Indigenous Peoples and what would be the specific and general characteristics implicated in such policy that we could recognise in comparison with a Brazilian case. Reviewing the Canadian case was a way to better understand the reconciliation framing of this historical debt. As such it was considered important because Canada has gained worldwide recognition in this topic in recent years.

The Xavante of Marãiwatsédé (Brazil) and the Anishinaabeg of First Nation Lac Seul (Canada) cases were brought into comparison to show how Brazil and Canada are alike in maintaining the marginalization of Indigenous Peoples even when reconciliation/reparation measures are taken. The comparison of these two cases allowed us to appreciate and reflect on crucial issues concerning reparation indigenism and its intent to address and redress violent practices from the colonial past.

On the methodological path, we sought the theoretical and conceptual formulation of the object to understand how Brazil and Canada have been accumulating discussions and decisions, organizing legal and administrative structures, and operationalizing the payment of historical debts to Indigenous Peoples in their respective national contexts. The comparative methodology of exploring (ethno)survival allowed us to establish generalizations on reparation policies and to understand how sophisticated the Canadian indigenism became since this country has successfully projected itself worldwide as the ultimate benchmark in redress and reconciliation policies, despite the constant criticism of Indigenous Peoples and activists in this country.

In chapter 1, we described the historical contexts of violations of human rights during colonial periods in Brazil and Canada, discussing the “distant-experience”

concepts of *historical depth*, *historical injustices*, *wrongs of the* past, and so on, to show that Brazil and Canada have committed the same type of violence against Indigenous Peoples that caused a persistent situation of impoverishment and marginalization of these populations. Considering that an 'experience-distant' concept (GEERTZ, 1997) is used to achieve scientific goals, in this dissertation's case, I started from the 'experience-distant' concept of *historical debt* and its variations to capture the 'experience-near' ones, operated by our Indigenous interlocutors in Brazil and Canada.

The 'experience-distant' concept of *historical debt* was defined as the cumulative result of the long-standing colonization process that acted to classify, evangelize, enslave, exploit and despoil Indigenous Peoples of themselves and their territories in a situation of impoverishment, marginalization and structural dependence. In this sense, the *historical debt* concept refers to the injustices and violence of all kinds committed on a large scale by the state and that remain unresolved from these very peoples' perspectives.

By doing this, it was possible to observe that the 'experience-near' concepts of the Anishinaabeg of Lac Seul are best described in their 'survival' narratives in terms of *disrespect*, *imposition of laws* and *violence*. Those Anishinabeg 'experience-near' concepts are similar to those used by the Xavante of Marãiwatsédé, described in terms of *trapping*, *suffering*, *deal*, *bad joke*, *bad taste play*. As we showed, none of the indigenous interlocutors used the category *historical debt* to refer to the violence they suffered.

The Anishinabeg categories used to describe the violence allowed us to observe that the suffering dimension is continuously updated, acting on the construction of an expectation over the future anchored in the idea of *restitution* and, maybe, *reconciliation*. In the Brazilian context, the Xavante of the Marãiwatsédé people expect a material compensation to come soon, which is directly related to a moral value, i.e., a great offence was done in the past, and someone needs to take care and pay for it.

The forced removal of the Xavante from Marãiwatsédé was just one of many episodes of violence perpetrated by the civil-military dictatorship to populate demographic vacuums. The objective of freeing up land for colonization or construction of infrastructure works led the state to deny indigenous peoples' existence in certain regions.[127] This fact was exemplified by the FUNAI certificate attesting to the non-existence of indigenous people in the Marãiwatsédé region, as showed in Chapter 1. The

[127] Brazilian National Truth Commission Report, vol. 2, p. 223.

Public Civil Suit for reparations to the Xavante people seeks to condemn the Union, FUNAI, the State of Mato Grosso, Liquigás Distribuidora, the heirs of Ariosto da Riva, Hermínio Ometto and Orlando Ometto, to repair the material and moral damages of a collective nature suffered by the Xavante people of the Marãiwatsédé, due to their forced removal in the 1960's.

An important observation from the Lac Seul case regarding the idea of hindsight can be made based on the Xavante reparatory action. Hindsight is an essential element of judicial reparation because it seeks to determine the actual losses and opportunities lost in light of the violation and aims to restore the community to the place it would be in if the violation had not occurred. It is the community's right to have its property restored or its value restored in its place, even if that value is more significant than it was at the time of the violation. This means that, based on the benefit of hindsight, the Xavante's losses should be assessed based on what was foreseeable, not at the time of the removal, but on the date of the judgment. In the Xavante case, who have had their territory cut off by roads and invaded by bad faith occupants, restoration of the territory and compensation are more than desirable. Not to mention the apology owed, never delivered and never expected to occur.

By understanding indigenism as an "ideology of domination" (TEÓFILO DA SILVA, 2012a) it is possible to affirm that the Canadian reconciliation-oriented policies are constructed and practiced from the perspective of the "coloniality of power" (QUIJANO, 2005), implying a symbolic dimension of interethnic violence that still operate under the status of racial control and goes beyond what is expressed in formal reconciling principles. Even though Canada has officially established a broad reconciliation 'agenda' aimed at Indigenous Peoples, with no parallel in the Brazilian context, the same reasoning applies to Brazil.

State violence against Indigenous Peoples in Brazil came to the fore at the end of the 20th century, after the military dictatorship, the reestablishment of democracy, and the legal-normative recognition of Indigenous Peoples' rights in the Brazilian Federal Constitution of 1988. In unprecedented acts, newly democratized Latin American states began to face social demands for the prosecution of crimes, accountability of guilty parties, symbolic restitution, and material reparation for damages resulting from their direct or indirect actions. The creation of the Brazilian Amnesty Commission in 2001, the installation of the National Truth Commission (CNV) in 2011, and the release of the Jáder de Figueiredo Correia Report were relevant, as showed in Chapter 4. Despite these facts,

indigenous movements still resist and claim for justice for the atrocities committed in the past, pushing Brazilian governments to establish and maintain what is seen as the ultimate form of reparation –demarcation and preservation of indigenous territories.

As shown in Chapter 2, in the Brazilian case, the adoption of indigeneity regimes and legislative and institutional practices of tutelary-assimilationist nature has contributed to keeping indigenous populations under control and submission over the centuries. The indigenous laws and policies developed since the republic was established maintained coloniality in the exercise of power and were clearly an expression of indigenism as an ideology of domination. It was against this state of things that a new orientation aimed at apologising, repairing and reconciling with Indigenous Peoples was formulated and put into play. Whether or not they are being symbolically effective and redistributive was the topic of chapter 3.

We revisited the discussion around apologies throughout chapter 3 and brought the critical perspectives on reconciliation from Canadian indigenous intellectuals and activists. This chapter's focus remained on the Canadian reconciliation and reparations standards, which can be considered positive because Canada indeed has made reconciliation a government priority. Canada is the country that has most complied with the protocols of a reconciliation agenda. Even so, as discussed in Chapter 3, it is precisely this "political agenda" to address the "Indigenous Issue" within neoliberal Canadian multiculturalism that bothers indigenous scholars (ALFRED, 2003; 2005; 2009b; CORNTASSEL, 2009; 2012).

Chapter 4 was based on the Critical Studies of Transitions approach and it described transitional scenarios in Brazil and Canada that culminated in the establishment of truth commissions. Some critical concepts and challenges of the literature on transitional justice were also explored and analyzed in Chapter 4. To guide the comparative analysis of the truth commissions' final reports and their "Calls to Action" and "Recommendations", we started from the question of to what extent the truth commissions in Brazil and Canada have contributed to transforming inequalities and ending the structural violence that has long characterized relations between Indigenous and non-Indigenous Peoples.

Despite promises to transform colonial relations and the fact that both final reports ratified the Canadian and Brazilian states' responsibility for the genocide of thousands of indigenous peoples, these Truth Commissions were not capable of satisfactorily addressing the past and of putting an end to the continued structural violence that affects

Indigenous Peoples so much. It is also possible to affirm that there is a notable difference – both theoretical and political – between Brazil and Canada in the discussion on transitional justice and truth commissions for Indigenous Peoples.

The Critical Studies of Transitions theoretical proposal favours a keen perspective, drawing attention to the existing dialectics between the fractures and continuities of transitional processes. Thinking about transitional scenarios paying attention to this dialectic necessarily leads us to question the idea of fracture that the transitional mechanisms sustain, emphasizing continuities and works to allow continuity (CASTILEJJO, 2017, p. 19).

A first point to note when comparing the two commissions is that the Canadian TRC was established not to address all the historical injustices committed in Canada against indigenous peoples during colonial times. The Canadian TRC was established to specifically investigate the crimes, abuses and violence committed against the First Nations, the Métis and the Inuit people within the Residential Schools context.

In Brazil, the CNV was created to investigate crimes committed by the military dictatorship, focusing on the dead and missing and on crimes of torture committed against political prisoners. The Brazilian indigenous movement questioned the human rights organizations involved in the CNV's work because they were not included in the investigations into the victims of the dictatorship. After this claim, a specific working group was created to deal with violence and crimes against Indigenous Peoples.

Another point is that the participation of an Indigenous People in the Canadian TRC was not limited, as in the Brazilian case, to depositors' and witnesses' roles. In Canada, the TRC was presided over by three indigenous persons: Ojibwe Judge and Senator Murray Sinclair; Chief Wilton Littlechild, a lawyer and member of the Maskwacis; and Marie Wilson, an indigenous woman from Yellowknife in the Northwest Territories.

All of this allows me to say that Canada has officially established a broad reconciliation agenda for Indigenous Peoples of which there is no precedent in Brazil. Even though indigenous intellectuals and survivors highly criticize the reconciliation agenda and the legacy of the TRC, the Canadian effort to implement the ‘94 Calls to Action’ is at a more advanced stage than that of Brazil with its 13 recommendations, and with a higher investment in terms of budgets, human and technological resources applied by the federal government to this end.

Regarding the apologetical dimension of the policy, there is another crucial difference between Brazil and Canada concerning the symbolic initiatives to show regret for the historical injustices committed by the Crown and civil society against Indigenous Peoples. Over the past 30 years, the various Canadian governments and Protestant and Catholic churches directly involved in the residential school system have begun to apologize publicly. Brazil has not done nothing similar to demonstrate its regret.

However, for the Indigenous Peoples in Canada the apologies have worked as "policies of distraction" to the demands for recognition of the sovereignty, autonomy, and self-determination they claim (CORNTASSEL; HOLDER, 2008). The Canadian apologies also left behind the other "r's" that could bring about real social transformation, such as restitution, redistribution and recognition (ALFRED, 2009; GREEN, 2016, HENDERSON; WAKEHAM, 2013). The Canadian government has made four attempts to express its sentiment toward survivors of residential schools. The most significant one was the apology of Prime Minister Stephen Harper on June 11, 2008. Before Harper finally did so, three government attempts were made without achieving the expected result.

As an act of discourse, an apology seeks to promote interaction between offender and offended (TAVUCHIS, 1991). But in the Harper's 2008 apology, there were no indigenous survivors or their families at the ceremony. Harper called the residential schools policy as a "sad episode" and "sad chapter" of the Canadian history, summarizing more than a hundred years of integrationist political project in sporadic events (TAGER, 2009). Without disregarding the best intentions embedded in these official excuses, Corntassel and Holder's analysis points out that they failed to "illustrate the dangers of co-opting the language of reconciliation without first establishing meaningful forms of group restitution and compensation" (2008, p. 483). Even when the apology is sincere, it becomes insufficient if it is not accompanied by proportional reparation.

Although responsibility for the damage caused was officially written and accepted, none of the Canadian apologies was assertive enough to transform the colonial relations with indigenous peoples. Despite concrete ceremonial measures and widespread publicity, none of them morally involved the perpetrators, nor were they seen as sincere by the indigenous survivors. To be authentic, an apology must name the errors in question; it must include non-repetition commitments, not demand forgiveness in return; and ensure sincerity (JAMES, 2013).

To make these symbolic gestures less empty, an apology must be combined with a systematic review of the past, to hold institutions and individuals directly involved in human rights violations accountable, and recognize self-determination, not to mention that any discussions or gestures of reconciliation must be preceded by real acts of restitution (CORNTASSEL; HOLDER, 2008).

In Canada, the confession of responsibility by the Canadian state coupled with the logic of neoliberalism, accountability mechanisms, laws and public policies converged to create a political and economic climate in which spending on reparations, though viewed as morally necessary, was in shock from the legacy of the economic recession that marked the late 1990s. In exchange for the reparations policies that began to be offered at that time, indigenous peoples should demonstrate their adherence to the neoliberal citizenship Canadian model (GREEN, 2016). In this sense, the Canadian government reconciliation initiatives were used to restrict indigenous demands for land, jurisdiction, and most importantly, restitution.

In Brazil, as the CNV has proven, the military dictatorship had tragic effects on indigenous peoples, to such a point that they are seen as the greatest victims of this period in history. More indigenous people died because of decisions of the dictatorship than political prisoners. With the CNV, indigenous peoples were included in the official debates on reparations, the State's responsibility for historical injustices began to be established, and some violations were recognized by the courts, such as in the Aikewara People case.[128] However, this process of holding the state to account was abruptly interrupted in early 2015 by the political crisis generated by the likely re-election of President Dilma Roussef. With her impeachment in 2016, there was an interruption in the reparation process, a resumption of anti-democratic actions, and a return to the practices of violence against indigenous peoples in the form of state violence pointed out by the CNV.

The CNV was expected to provoke a more open public debate on crimes committed by the military dictatorship in Brazil. However, this did not happen. Shortly after the final report was published with thirteen recommendations for reparations to Indigenous Peoples, they quickly fell into oblivion by the public authorities, and the

[128] The Aikewara people received an official apology from the Brazilian State after the trial that recognized the State's repressive and exceptional action against the indigenous community.

matter also disappeared from the press. None of the thirteen recommendations were implemented by the Brazilian state.

Institutional racism and structural violence against Indigenous Peoples have not ceased since then in Brazil. The indigenous movement denounces the genocide that is underway and accelerating in these pandemic times. The similarity of the acts and crimes committed by the Brazilian State under the military dictatorship have been denounced in virtual and alternative media. The Brazilian indigenous movement has declared that it is experiencing "the most serious and imminent offensive against Indigenous Peoples' rights since the 1988 Federal Constitution was promulgated. This offensive is orchestrated by the three branches of the Republic, in collusion with national and international economic oligarchies, to usurp and exploit indigenous peoples' traditional territories (APIB, 2020). The Bolsonaro Government promoted the return of an integrationist and tutelary policy similar to that of the military dictatorship responsible for the ethnocide and genocide of these peoples, directly affronting their right to self-determination, autonomy and dignity, expressly guaranteed by the Federal Constitution (ZEMA; ZELIC, 2020).

Regarding the difficulties encountered in implementing the 13 recommendations issued by the CNV for ensuring reparation for indigenous peoples in Brazil, we have resorted to the notion of historical justice. First, we emphasize that hegemonic society still encourages Indigenous Peoples' historical invisibility and propagates racist and discriminatory views and behaviour against them. There is a kind of prohibition on the memory of crimes committed against indigenous peoples throughout history. This forbidden memory encourages the perpetuation or repetition of acts of violence and barbarity already observed in the past. Second, we observe a general difficulty in understanding indigenous peoples' human rights violations, which leads to indifference and to a total lack of respect for the victims. There is also a refusal and abstention when it comes to assuming historical responsibility for the barbarities of the past, which are then repeated regarding violence. The denial of historical justice and reparation to Indigenous Peoples prevents the construction of true reconciliation (ZEMA; ZELIC, 2020).

Another important point to be compared is that truth commissions in Brazil and Canada have investigated crimes for a limited period, yet violence against indigenous peoples is a long-standing process. They began before the limited period of activity of each Truth Commission and have never ceased. In both cases, instead of rupture with the

state violence and institutional racism, there is a continuity with the past in terms of violence against Indigenous Peoples.

Even though the Canadian reparation effort is at a much more advanced stage than in Brazil, even in rich countries like Canada mechanisms such as the recommendations of the truth commission, the human and technological resources invested, and the increased budget for social policies and services did not represent a real possibility of changing the structural asymmetries between indigenous and non-indigenous populations. There is no country in the world, no matter how rich and progressive its government is, in which interethnic relations are close to reaching symmetry. I have not observed this in Canada. On the contrary, as the Canadians themselves say, there is still "a lot of talk and no action."

Besides the fact that, by definition, every historical debt is irreparable, two issues stand out when it comes to the Xavante and Lac Seul cases. As an aggravating factor of the historical debt itself, both survivors emphasize that apologies and judicially determined compensation take a long time to be received and experienced by the beneficiaries. The survivors, through their testimonies, reiterate the desire to have the opportunity to receive the apology and financial compensation during their lifetime.

The violence against the Xavante and Anishinaabeg – their removal and flooding events – has prevented their lives from taking their usual course, and the prospect of some financial resource that will make it possible for them, to carry on with their lives is not something reprehensible in itself. In the perception of the Indigenous People of Lac Seul, the compensation of $30 million for Canada's illegal activities was felt to be a much smaller amount than they expected to receive and, in this sense, it was considered unsatisfactory by the survivors. In the Xavante case, the perception of a possible financial compensation is still a possibility seen with hope by the elderly survivors.

What is reprehensible is when only financial compensation and apologies are given, but no change in the way policies related to indigenous peoples are conducted. When apologies and indemnifications operate as "distraction policies", it is reprehensible. No matter how official, formal, and media-friendly, no apologies that can ameliorate a historical depth, and there is no financial indemnity or compensation that portrays it.

The political processes of reconciliation and reparation for Indigenous Peoples in Brazil and Canada are directly associated with each country's economic and ideological contexts. However, even though Canada has established itself worldwide as a benchmark in reparation policy for Indigenous Peoples, the global and neo-liberal capitalist logic

prevails in this country, regardless of its multicultural nature, seeking the economic inclusion of excluded segments of the population under the paradigms of an idea of citizenship aligned with these values and principles. In these two points, Brazil and Canada are unfortunately entirely aligned. What is important to remark is that symbolic reparation, financial compensation and restitution are fundamental, with or without *reconciliation*.

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