

# RELICS OF THE PAST OR ASSETS FOR THE FUTURE? COMPARING INDIGENOUS TERRITORIES IN CONTEMPORARY BRAZIL AND THE UNITED STATES

**Francois Michel LeTourneau, Senior Research Fellow**

French National Centre for Scientific Research (CNRS)

1 place Aristide Briand - Bâtiment 1

92 195 Meudon CEDEX

francois-michel.le-tourneau@cnrs.fr

## Abstract:

Indigenous Territories (IT) are increasingly viewed as important assets in the context of climate change and erosion of biodiversity. In Brazil however, they are currently under intense pressure under the pretext of development. Comparing with the situation of the United States is a good benchmark for what might come to Brazil. In this perspective, we first present the historical processes that led to the recognition of IT, then contrast the structure of IT in both countries from a juridical, administrative and geographical point of view, and finally point out how issues related to economic development play out in both cases.

## Resumé:

On perçoit de plus en plus les territoires autochtones (TA) come d'importants atouts dans le contexte des changements climatiques et de l'érosion de la biodiversité. Cependant, au Brésil, ils se trouvent sous très forte pression, sous prétexte du développement. Un examen de la situation aux États-Unis constitue un bon indice de ce qui pourrait se produire au Brésil. Dans cette perspective, nous présentons en premier lieu les processus historiques ayant mené à la reconnaissance des TA, en second lieu faisons le contraste entre les deux pays en ce qui concerne la structure des TA des points de vue juridique, administratif et géographique, et en troisième et dernier lieu indiquons comment des questions liées au développement économique se déroulent dans les deux cas.

## Keywords:

Indigenous peoples, Brazil, United States of American, land, legislation, Indigenous history

Because of their natural resources and the fact that they are

among the best-preserved ecosystems and landscapes in the world, Indigenous Territories (IT) are increasingly viewed as important assets in the context of climate change and erosion of global biodiversity (Garnett et al., 2018; RRI, 2018). In Brazil however, the current government is putting them under intense pressure under the pretext that their current status is an impediment to their economic and social development. Such a statement is only a disguise to other interests, but it nonetheless points to a reality which is the lack of development and shocking social needs of Brazil's IT. But is their general opening a solution for those issues?

Comparing the Brazilian situation with another can help to assess the potential impacts of the measures that are sought by the Bolsonaro government and, more generally, to better evaluate the strengths and weaknesses of IT in Brazil. The United States (taking into account the 48 contiguous States only) stand as a perfect counterpart for this comparison. There, IT also have a rather large expanse, and their painful history shares a number of features with the Brazilian situation, especially the pressure they have been under by European migrants, followed by national societies, since the sixteenth century. US IT are however much more integrated in the market economy than Brazil's, and Indigenous peoples there have explored a diversity of ways of using their natural resources, sometimes with dire results. They could be a benchmark for what might come to Brazil if the current intentions are pursued.

In order to compare both countries, we will first present the historical processes that led to the recognition of IT, showing similarities as well as specific characteristics. We will then compare the structure of IT in both countries from a juridical, administrative and geographical point of view. Finally, we will point out how the issues related to economic development play out in both cases, and how the US situation can be used as a precedent for Brazil.

It seems important first to point out that the comparison is made between two continental-size countries, each encompassing hundreds of Indigenous societies and a variety of situations influenced by social and geographical contexts. A paper-size synthesis is therefore very broad and cannot go into detail on local situations. This does not mean the synthesis is incorrect, but it is important to stress here that the general lines summarize hundreds of slightly different narratives and cases.

### **I Similar processes of dispossession, different processes of recognition**

As IT are profoundly connected with the history of Indigenous peoples, it is important to start the comparison between Brazil and the US by remembering how they emerged within the two na-

tions as they were established by European migrants. What is striking in this history is that two European societies, faced with the same challenge (establishing colonial settlements in lands populated by Amerindian societies), tackled it very differently. The Portuguese and then the Brazilians opted for a mix of brutal conquest and assimilation, while the British and the Americans tried to claim lands through purchases and treaties, while remaining separate from the Indians. One common point though is that it wasn't until the mid-twentieth century that IT in both countries achieved a stable legal status and erosion was halted.

### **I.1 Colonial Brazil and the quest for 'Red Gold'**

As a colony, Brazil pre-empted the first Anglo settlements in the Northern part of the Americas by more than a century, having been discovered in 1500. During the first encounters, the relationship with the Indigenous peoples had mostly been cordial, but it became sour when plantations, which required a lot of labour, were installed. The colonists quickly turned to the Indians as a workforce, putting them into slavery since they would not freely accept the horrendous working conditions in the sugar mills. Until the import of African slaves became generalized, Indian forced labour was the main workforce of the new colony, its 'Red Gold' (Hemming, 1978).

The royal government officially considered the Indians free people, but acknowledged cases where slavery was legal, such as the "rescue" of war prisoners (more often than not taken by allied tribes preying upon other ones, incited by the Portuguese) or in situations of so-called "just wars". The Portuguese had thus a double-edged policy regarding the Indians, matching their vision of the Indigenous population in two categories (Perone Moises, 1992). On the one hand, allied "domesticated" tribes (*Índios mansos*) enjoyed freedom, even if they had to provide a certain amount of labour to the settlers. Frequently marrying Indigenous women, the Portuguese gradually assimilated them in a new local mestizo society. On the other hand, the "savage" Indians (*Índios bravos*) could be chased and had no protection from the authorities.

To control the relationship with pacified Indians, the Brazilian crown relied on missionaries, especially the Jesuits until their expulsion in 1759. They attracted Indigenous groups to their missions and organized their labour, as well as their evangelization. After 1757, the system was restructured, and the Indian villages fell under the control of civilian directors. By that time however, African slaves were used in most economic sectors, and the late colonial and newly independent Brazil lost interest in the Indians as a workforce.

As opposed to the US where competition between other

European countries had been intense, Portugal's hold on Brazil was relatively quickly established and weakly challenged. It obtained a "treaty of limits" with Spain in 1750, confirmed in 1775, which basically gave Brazil its contemporary shape about a century before the US. This treaty played an important role in the overhaul of the Portuguese Indian policy of 1757 since it considered that Portugal and Spain could claim all territory "populated by their subjects" as theirs. So, turning the Indians into free men has been a way for Portugal to expand its reach dramatically, especially in the Amazon (Hemming, 1978).

Creating specific IT was never really considered by the colonial or the newly independent Brazil. If the official policy of Portugal considered the Indians allied to the Portuguese as "lords of their lands" (Perone Moises, 1992), no effort was made to delimitate the lands in question, so the statement remained essentially theoretical. Confronted with the relentless Portuguese conquest, Indigenous societies quickly retreated (or disappeared) from the coasts. When the Indigenous peoples (like the Bororo, the Xerente, the Kayapo, etc.) reacted, they were driven away by force. Also, both during the mission period and after, the mortality rate in the official Indian villages was extremely high due to epidemics and the destruction of their traditional way of life. Faced with such dire situations, many Indigenous groups retreated deep into the jungle.

So, until the nineteenth century, the dominant society's point of view of the "Indian question" in Brazil was not related to land but rather to the Indian's individual freedom. For the Indian societies, maintaining a land base was obviously a big issue, but they were also facing other survival challenges because of pressure by slave traders and widespread epidemics.

## **I.2 Worlds apart: the early US choice for separation and creation of reservations**

Just like Brazil, the US' initial relationship with the Indians oscillated between cooperation and war. In general, the King of England also claimed sovereignty on the new lands by virtue of the right of discovery, which stated that lands "discovered" by European explorers "pertained to no one" (*terra nullius*). The colonists however favoured formally buying the land over overt conquest (Banner, 2005). As they repeatedly duped the Indians with biased sales, potentially escalating into a generalized war, the British crown decreed a royal monopoly on land transactions with the Indians in 1763 and set the Appalachian Mountains as the limit between the colonies and Indian country, establishing the principle of a well-defined territory for the exclusive use of the Indians (Frantz, 1999). Scorched earth

campaigns did also happen however, with the purpose of eliminating Indian tribes (Dunbar Ortiz, 2015) like in Virginia and Massachusetts during the mid-eighteenth century (Banner, 2005: 49).

One important difference with Brazil was that Anglo colonists were migrating with their families and did not want to mix with the Indians. The principal "Indian question" during the colonial era was thus setting the boundaries between two mutually exclusive societies, the Indians on one side and the Anglo settlers on the other.

In the first years of their existence, the newly founded United States would keep the same system (Tyler, 1973). Dealing with Indigenous Nations was established as a federal prerogative by the US Constitution (Article 1, Title 8). After 1790, the Federal government opted for treaties in which Indians "voluntarily" abandoned more and more sections of their lands in exchange for payment or protection. The US Supreme Court however upheld the Discovery doctrine in 1823 and decided that the Indians did not own their territories but had a mere "right of occupancy". This paved the way for the removal policy adopted in 1830 under Andrew Jackson (Banner, 2005: 191), according to which Indians were deported West of the Mississippi where they were to live in a territory reserved for them. Dealing with Indian tribes became an increasingly important aspect of the US expansion on the continent, so a special administration was created in 1824, the Office of Indian Affairs. Originally under the Department of War, it fell under the Department of the Interior in 1849 and acquired its current name: The Bureau of Indian Affairs.

Although a continuous frontline of Indigenous population still faced the US colonization along the West of the Mississippi in 1840, the conquest of the Northern part of Mexico and the gold rush towards California precipitated the move West of this river (Hurt, 2002) reaching places that had not been conquered before, such as the Comanche and Apache countries (Singer, 2013). Wars were waged in order to force the Indigenous peoples into submission, generally concluded with treaties in which they retained only a fraction of their original territories. These "reservations" were often amended later to diminish them even further. After 1871, the United States even ceased to sign treaties. The federal government was by that time considered the natural owner of all the lands not yet appropriated and the President created Indian reservations by mere executive orders (which might then be revoked or altered unilaterally). The existing 371 treaties were however maintained.

By 1885, the US had conquered all Indigenous tribes in the conterminous States and confined them in reservations where they relied heavily on food rations provided by the US government. These rations created a dependency and were sometimes used as blackmail by the authorities to have Indigenous groups accept further alterations to the

treaties. From 1874 on, the Indians were expected to work in order to reimburse them (Levi, 2016: 31). Deemed too costly and contradictory to other efforts to turn Indians into self-subsistent farmers, rations were gradually eliminated in the early twentieth century.

### **I.3 IT in Brazil: a recent outcome, created under the paradigm of multiculturalism**

Until the twentieth century, Brazil never formalized land rights for Indigenous peoples. Their situation was quite paradoxical at the turn of the twentieth century. On the one hand, the latex boom in the Amazon and the development of cocoa and coffee plantations, especially in the Southern and Northeastern part of the country, destroyed most of the Indians' last havens. Until the 1920s the brutal destruction of Indigenous villages and communities by "Indian hunters" was still going on (Monbeig, 1952). On the other hand, the idea of Indians as an essential component of the "brazilianness" progressed sharply after 1850 (Schwarcz, 2006: 30). The creation of the "Indian Protection Service" was made possible by this movement, led by the iconic figure of General Rondon in 1910. From that moment on, official "Indian posts" were created throughout the country to "attract" still "unpacified" Indians and turn them into farmers (as if they had not been engaged in agricultural activities for centuries). The first step of the attraction process relied on generous distributions of industrialized goods (knives, machetes, pots, beads, etc.), which the Indians started to rely on. After a while they had to repay the goods by delivering agricultural or extractive products. The whole system evidently reminds us of the US rations...

It was only in 1934 that the rights of Indians on their lands was formally recognized by the Brazilian Constitution. It was nevertheless very restrictively applied at the time and only very small territories were allotted. Only in the 1950s did big tracts of land, such as the iconic Xingu Indian Park (27 000 km<sup>2</sup>), start being set aside as "Indigenous territories".

Although sharing the assimilationist point of view adopted by Brazil since the end of the nineteenth century, the military government that took over after 1964 confirmed Indigenous land rights in its new Constitution and enacted a "Statute of the Indian" in 1973 which gave some protection to the Indigenous peoples. After a series of scandals, it also eliminated the SPI in 1967 and created a new administration responsible for the Indigenous peoples: The National Foundation for Indians (Fundação Nacional do Índio, FUNAI). However, the military dictatorship promoted development programs in the Amazon at the same time which led to the displacement of dozens of previously uncontacted tribes and resulted in devastating epidemics

(Hemming, 2003).

Brazilian Indians found new allies in left-wing activists during the 1970s and in ecologists a decade later (Albert, 1997; Conklin et al., 1995; Belleau, 2014). They were thus able to put their cause before a public opinion that was more and more sympathetic to it. In 1988, their voice was very strong during the debate around the new constitution (Ramos, 1998). The resulting text was utterly progressive, recognizing indigenous rights to "all the lands necessary for their cultural conservation" (including extensive hunting grounds, sacred places, etc.) and breaking with the assimilation policy by recognizing Brazil as a multicultural country. Based on the new fundamental law, the recognition of Indigenous territories skyrocketed in the 1990s (Figure 1), in part also because of financial aid from donors like the G-7 and Germany.

#### **I.4 From allotment to Indian sovereignty: radical changes in the US as well**

However diminished, Indian reservations still constituted important tracts of land in the 1880s and they were coveted by settlers. Under the pretext of empowering the Indians by the promotion of private property, the 1887 General Allotment Act (or Dawes Act) bolstered an additional dramatic loss of Indian lands. It granted a piece of land to each Indian family, then when all families had been served, the remaining reservation lands could be sold by the federal government. After 25 years, the allotments given to the Indians could also be sold. As a result, 348,000 km<sup>2</sup> or about 2/3 of the territories allocated as reservations were lost between 1888 and the 1930s. Of this surface, about 154,000 km<sup>2</sup> was taken from the reservations, while 89,000 km<sup>2</sup> was open for White settlement inside the existing reservations (see II.2). At first the former "Indian country" of Oklahoma and Nebraska was exempted from the Dawes Act, but in 1898 the Curtis Act reversed this policy. As a result, almost all the reservations disappeared in those two States. The consequences of both the Dawes and the Curtis acts should be considered today in Brazil before any change in the status of IT is acted.

In 1934, taking act of the catastrophic consequences of the previous policies, the Roosevelt government established a new Indian policy (Indian Reorganization Act – IRA) based on two principal pillars: the transformation of Indian institutions by the adoption of tribal constitutions (Tyler, 1973) and an effort to secure Indian lands, repelling the terms of the Dawes Act and rebuying former Indian lands whenever possible.

After the Second World War, Congress established the Indian Claims Commission in order to investigate violations to the treaties

signed by the Union. But this commission had no power to give back the lands. It offered monetary compensation, only awarded if tribes accepted to renounce any further claim (Dunbar Ortiz, 2015). \$ 1.2 billion were awarded and frequently used to rebuy lands, but some tribes consistently refused the settlements and continued suing the federal government, such as the Sioux who have never accepted the taking of the Black Hills.

During the 1950s, the "termination policy" which sought to emancipate tribes and dissolve their governments further eroded the Indigenous lands of the US (Fixico, 1986). 120 reservations were extinguished, among which the 239,000 hectare Klamat reservation in Oregon. In total, approximately 10,000 km<sup>2</sup> of land was lost (Frantz, 1999). From the 1970s on however, new policies started to insist on the sovereignty of the tribes (see II.3). Some lands were also bought or transferred to Indian tribes, but the total recovered after the IRA amounted to only 20,000 km<sup>2</sup> or less than 8% of the heritage lost up to the 1930s.

## **II The compared structure of IT in Brazil and in the USA**

If Indian lands are an important feature in the US and in Brazil, their relative importance and the way they are managed differ greatly between the two. Despite the late arrival of formal IT recognition, Brazilian Indians were able to retain about 13.8 % of the total area of Brazil whereas Native Americans, who signed hundreds of treaties with the Federal Government delimiting their lands, only own about 2.9 % of the US today. The status of IT is quite different in each country, but for both the issue of control by and autonomy from the Federal government is an important one.

### **II.1 Extension and distribution of IT in Brazil and in the USA**

Today, IT cover roughly 7 times more area in Brazil than in the United States (Table 1 and figure 2). Some IT in Brazil are huge, like the Yanomami territory (96,500 km<sup>2</sup>), the Vale do Javari (85,400 km<sup>2</sup>) and clusters like the Kayapo/Xingu region (~150,000 km<sup>2</sup>) and the Alto Rio Negro (~115,000 km<sup>2</sup>). In the US, the cluster formed by the Navajo and Hopi reservations (73,200 km<sup>2</sup>) is the only one of comparable proportion. The biggest individual territories are much smaller, such as the Navajo (64,400 km<sup>2</sup>), Cheyenne River (11,500 km<sup>2</sup>) and Tohono O'odham (11,200 km<sup>2</sup>) reservations. But in both countries, if huge territories attract a lot of attention, most IT are small or very small. Of the 326 US federal reservations, 85 (26 %) are under 1 km<sup>2</sup>, while in Brazil only 20 IT (4.1 %) are under 1 km<sup>2</sup> and 92 (18.9 %) under 10 km<sup>2</sup>, keeping in mind that the median size is quite small

(table 1). Such figures must be remembered when development issues are considered for IT: they are not all huge territories abundant in natural resources.

If Brazil's IT are much larger than in the US, its Indigenous population is considerably smaller. The 2010 census counted 896,917 Indian people, 57.7% of whom were living on IT, as opposed to the US where during the same period Native American population numbered 2,576,757 people, with only about 31% of them living on IT and the majority located in major cities. Non-Indian population on Brazil's IT is marginal at the moment, whereas in the US, Indians are a minority on almost all the most populated reservations (Frantz, 1999) which makes the determination of policies for those all the more complicated, another lesson that can be brought to mind should Brazil open its IT more widely.

Reflecting on the history that shaped both countries, there is an enormous imbalance between the regions which were settled first and those conquered later. The former have very little IT left and they are small-sized, while the latter have Indigenous lands that still cover a substantial part of the territory (table 2). Fourteen US States do not have any Indian reservations, but only one in Brazil (Piauí) is totally devoid of IT, and three others each have only one very small reservation.

## **II.2 Land tenure of IT: two very different pictures**

IT in Brazil are governed by Title 8, Article 231 of the Constitution and by a number of complementary acts, in particular the Indian Statute of 1973. Their lands are owned by the federal government and Indigenous peoples have a collective exclusive usufruct right on them.

Most IT in Brazil were created on public lands, but some Indigenous lands were sold and settled. In those cases, later recognition as IT implies the expulsion of all owners. They are then entitled to financial compensation for the investments they had made on the property, but not for the value of the estate since the Indigenous claim is considered as preceeding any other. That is why some situations can evolve into open conflicts when the Indigenous land rights are acknowledged after decades of invasion, as was the case of the Marawaitsede IT case in Mato Grosso and the Raposa-Serra do Sol IT case in Roraima, and as could be the case now in Guarani-claimed areas in Mato Grosso do Sul.

"Resurgent identities", i.e. groups who have hidden for decades and are now starting to reclaim their ethnic identity and land rights, is another point of conflict with respect to land tenure for even if those groups are granted relatively small pieces of land in general,

there is a growing feeling in many parts of the Brazilian population that they are merely faking their "indianity" to take advantage of the Constitution. A similar reaction was observed in some parts of the US population regarding the acknowledgment of new Federal Tribes after the Indian Gaming Act of 1988, where they were accused of pledging an Indian identity only to be able to open gaming operations (Henson et al., 2007).

Land tenure for US tribes is markedly more complicated than in Brazil. Most of the lands effectively owned by Indians are under Federal trust, meaning that the Federal government owns them for the benefit of Indian tribes, a situation quite similar to Brazil's. However, because of the Dawes Act, an important proportion of land located inside US reservations is owned by non-Tribal members who bought it from the Federal government or from Indian individuals. Land still possessed by Indian people can also be placed under the private property regime ("fee simple"), under "restricted fees" (i.e. not transferable to non-Indians), or regrouped in trusts held by the tribes. Many of them tried to regain the lost parcels by rebuying them. Such plots can be owned in fee simple, placed into a tribal trust or incorporated to land held in trust by the Federal government. The Flathead reservation in Montana is a good example of the resulting configuration (Figure 3). Not only does it display the checkerboard configuration of most US IT today, but it also shows how parcels were allotted: most of the Indian land is located in mountainous areas, while the plains are under private non-Indian ownership.

Ascertaining the real breadth of IT in the US is therefore quite complicated. The combined size of the reservations is 272,000 km<sup>2</sup>, but only 83% of it (226,000 km<sup>2</sup>) is owned by Indians under the different statuses. Of those, 182,000 km<sup>2</sup> are under federal trusts and 44,000 km<sup>2</sup> under individual ownership or tribal trusts. To make matters worse, an important fraction of IT in the US is under lease for different types of uses (grazing, farming, mining...). Many of the leases were concluded under different amendments of the Dawes Act and have very long durations (up to 99 years). They are progressively phasing out but may still constitute a sizeable portion of some IT. For example, the Crow reservation in Montana had about 25% of its land lost with the Allotment Act and 65% under lease at the end of the 1980s (Frantz, 1999: 55).

The complexity of the land tenure situation of most US IT complicates its management since each status is bound with a particular jurisdiction regarding police, justice, taxes, etc. Also, when the lands are under Indian individual trusts, the heirship rules lead to the trust ownership getting more fragmented with each generation, leading to small parcels with hundreds of shareholders... Attempts to reform this system have eliminated very small titles and limited heir-

ship rights for non-Indians, but the situation is still far from satisfactory. This is a far cry from the Brazilian situation where IT are uniform and sometimes very extensive pieces of land which is a big advantage when environmental and development issues are considered.

In both countries, the fact that the Federal government retains land ownership is seen as a protection against fraudulent or forced purchases, but this bright side also has disadvantages when it comes to economic development. By not owning their lands, Indians cannot use them as collateral for credit. This is not a problem for the vast majority of Indigenous peoples in Brazil at this time because they haven't made their transition towards a market economy yet, but this is a recurring problem in the US.

### **II.3 Tribal sovereignty vs State paternalism**

The degree of autonomy Indigenous peoples have on their territories is an important factor when development issues are considered. Basically, today, Brazil continues to rely on State paternalism toward its Indigenous peoples (Wentzel, 2008). Despite some attempts to involve Indigenous leaders in providing the groundwork for a new Indian Statute (Le Tourneau, 2017), FUNAI has still the power to authorize and vet most activities taking place on IT, regardless of the views of local communities. The current government seems open to the idea of more autonomy, but only as a pretext to withdraw any protection to Indigenous lands and, if possible, reduce their area. However, it is worth looking at the US situation and see how the idea of tribal sovereignty is implemented and what issues are associated with it.

In the US, the sovereignty of Native nations was recognized as early as 1832, but in practice the Federal government, through the BIA, had pretty much all power until the 1970s. This attitude changed with the Indian Self Determination and Educational Assistance Act of 1975 which allowed the Tribal governments to act as contractors of the Federal Government (under "638 contracts"). Then, with the 1994 Tribal Self-Governance Act, they could negotiate compacts in which they redefined priorities and allocated resources in accordance with their own agendas (Henson et al., 2007), even if only 40% of the tribes actually operate under this status. In 1998 and 2000, the Clinton administration added two more executive orders stating that Indian nations should be consulted and associated to any law or regulation affecting the reservations. With this legislation and the regular confirmation by the Supreme Court of their sovereignty, Tribal governments have extensive authority on their lands, including the possibility to create and enforce their own environmental codes (Fixico, 2008). This has led to frictions with the States which are reluctant to accept

that the Tribal codes may be applied to entire reservations regardless of who owns the land for fear of losing part of their fiscal base (Silvern, 2002).

The challenges of the relationship with the federal state are quite the same in both countries. Indigenous peoples have a tenuous path to follow, claiming autonomy and self-determination while at the same time obtaining the basic services that the governments are bound to provide to their citizens (which the Indians are also). In both countries, IT are more often than not situated in remote rural areas where the costs associated with basic services is high. As a result, they frequently have worse infrastructures, health services and educational options. It is complicated to calculate each country's federal investment in IT because many agencies might intervene and because programs which are not specifically targeted at Indigenous populations might encompass actions on IT. Table 3 clearly shows however that both countries underinvest. In Brazil for instance, the government spends 0.45 % of its budget on IT, whereas they represent 13.8 % of the country...

### **III Challenges and opportunities for ITs: a dialogue between Brazil and the US**

Indigenous societies in Brazil and in the US face a similar dilemma of development vs environmental protection, but not in the same terms due to the very different degree of integration of IT in the national economy. As with the other topics and probably even more here, the US case can serve as a predictor of the consequences of policies that are being considered in Brazil.

#### **III.1 Value enhancement of natural resources: examples and pitfalls**

IT in both countries are rich in natural resources: coal, minerals, oil and uranium in the US; gold, aluminium, rare earths and other metallic minerals in Brazil.

In Brazil, the exploration of those resources is not allowed for now. The Constitution gives ownership of subsoil resources to the Federal government, but compensation the Indians could be entitled to is to be defined in a special revision of the mining code (Le Tourneau, 2015) which has been in debate for 30 years and has still not been approved. This issue is very divisive. The Yanomami, for example, are strongly opposed to mining while other peoples are more open to this matter, like the Xikrin, having already received money as compensation for neighbouring projects. Also, thousands of wildcat gold miners (named *garimpeiros*) operate gold and diamond explorations on dozens of Brazilian IT, sometimes bribing Indigenous leaders

and sometimes using brute force to frighten nearby villages.

Just like Brazil, US IT harbor important mineral resources and, even if most tribes do not own the subsurface rights on all their reservation's territory, mining is one of the important economic activities. Results in terms of development are however mixed. For instance, coal and uranium mining within Navajo lands have created hundreds of jobs and been a staple for decades to an otherwise crippled reservation economy, but the environmental cost has also been extremely high in terms of groundwater pollution and depletion, pollution of streams (like the Rio dos Puercos, contaminated with radioactive waste) and health issues for the workers. It also created a dependency which appears clearly now that most of coal exploitation is halted due to its economic unfeasibility.

One of the main problems faced by Native nations in the US has been to bargain fair prices for their minerals, especially since the BIA, and not the tribes, has been in charge of the contracts under the terms of the 1938 Indian Tribal Mineral Leasing Act. From the 1970s on, with better information and the creation of the Council of Energy Resource Tribes (CERT), the situation improved, then the Indian Mineral Development Act of 1982 gave the tribes the opportunity to explore their resources autonomously. The Jicarilla Apaches, for example, have created their own oil company and manage about 3,000 wells. Oil and gas exploitation is also important for the Ute, as well as for the Osage.

Another very important resource of the US IT is water. Under the "Winters Doctrine", derived from a 1908 Supreme Court judgment, most US tribes are entitled to water rights even if they don't actually use it (Anderson, 2006). Today those rights can either be leased, which allows for substantial cash earnings (see the Tohono Ood'ham and the Ak'chin in Arizona), or be used to foster the development of irrigated perimeters (such as in the Gila bend reservation). In Brazil, water rights are not a hot topic right now, but the IT's role in providing fresh water to major rivers might arise and be compensated in the future. However, for the moment, the challenges linked to water in the Brazilian IT are more about stream and river pollution by the agro-industrial complex, especially in the State of Mato Grosso.

Forests are another asset that many IT in Brazil and in the US have in common. Forestry has been implemented in the US IT from 1900 on and remains in part under the supervision of the BIA. Despite an increasing participation in the management of their forests, US tribes witnessed a staggering crisis of their timber production in the 2000s, leading to the loss of 20 % of jobs and revenue. In Brazil, the potential for forestry is immense in the Amazon's IT, but it is difficult to materialize since most people think Indigenous peoples should protect the forest and not fell trees. Only high standard sustainable

exploitation is tolerated today and very few, if any, official projects are active. However, just like in mining, illegal loggers do operate, either bribing leaders or waging terror campaigns against opponents, as seen in the Awa-Guajá area (Le Tourneau, 2017).

Finally, agricultural activities occur in both countries' IT, but their objectives and scales are very different. In Brazil, most IT still have subsistence agriculture, based on traditional slash and burn systems. Very few tribes have developed activities with the goal of selling their production outside their territories. Exceptions which could be mentioned are the Macuxi of Roraima who raise about 30,000 heads of cattle, and the Satéré Mawé of Amazonas who sell their traditionally made guaraná at fair trade markets. But in both cases, the return is far from equalling other income sources. In the US, even though most of the tribes rely on industrialized and imported food for their subsistence, there are about 36,000 farms operated by Indian people. Their net income however is very low, about US\$ 6,600 against a national average of US\$ 37,500 (USDA, 2012).

### **III.2 The temptation of naturalizing Indigenous peoples**

If the exploitation of natural resources in the US IT is quite accepted, it is not at all the case in Brazil because Indigenous peoples there have capitalized on their image of guardians of the rainforest. They are therefore confronted with a double bind: facing the need for improving economic activity to cope with the challenges of their modernization while at the same time having to guarantee the environmental integrity of their lands (Le Tourneau, 2015). This pressure has increased since 2006 because Brazil's IT are now considered as "protected areas" and must follow the guidelines of a "national plan for protected areas" (adopted in 2007) and of a "national policy for the environmental management of Indigenous lands" (2012), both oriented towards environmental protection. There are different examples of how this might contradict local dynamics. One symbolic case is that of the Parecis of Mato Grosso who grow soybean on their territory and have repeatedly faced judicial processes and heavy fines because of it. Brazilian Indians face the risk of being "naturalized", that is amalgamated to the idea of nature and wilderness at the expense of their need for development.

In both the US and Brazil, the relationship between IT and protected areas can also be contentious. In the first case, the first National Parks were created by expelling local tribes, for instance the Blackfeet, using the pretext of preserving the wilderness (Kantor, 2007). Although some places have been handed back to the Indians, such as part of the Grand Canyon, there are still many former Indian lands under the supervision of environmental federal agencies. In

Brazil, the boundaries of many protected areas include a portion of IT. This poses an issue on which activities (such as hunting) should or shouldn't be authorized and who should be responsible for their management. Protected areas overlap about 10% of the IT in the Amazon, or 100,000 km<sup>2</sup> (RAISG, 2019).

Their exceptionally protected environment could however gain value through tourism and ecotourism. Recently, the FUNAI has adapted the legal framework to allow such endeavours. The number of IT where such activities are happening is small, but the potential for growth is important, even if the remoteness of most IT makes accessibility a huge challenge. Also, this highlights the difference of potential between the large and environmentally rich territories in the Amazon and the small ones located in other regions of Brazil.

In the US, tourism is quite developed in all major IT, especially since they harbour many natural wonders, like Monument Valley and the US road network makes them easily accessible. Some Indian tribes are also engaged in capital-intense leisure ventures such as ski resorts, like the Mescalero Apaches of New Mexico or the White Mountain Apache of Arizona. Many tribes are also keen to protect their heritage by engaging in environmental restoration and by managing and reintroducing endangered species, such as spotted owls and wolves. Species and game management have also become a source of income with the development of trophy hunt programs inside Indian reservations. As an example, trophy elk hunting trips in the White Mountain Apache reservation can sell up to US\$ 30,000. Ute, Navajo and Paiute tribes in the Four Corners area and a number of New Mexico's tribes also offer this type of program. Such cases can serve as examples for the diversification of IT economy in Brazil.

### **III.3 The challenge of developing inclusive economies on IT**

In both the US and Brazil, IT stand out for their low social indicators. The recurrent failing assistance of the Federal government is an important factor in both cases, but the difficulty of developing inclusive economic activities is another part of the equation (Mathers, 2012).

In Brazil, industrial or service activities on the IT are totally marginal. The US example shows how difficult the creation of economic activities outside the exploitation of natural resources can be. Frantz (1999) points out cultural obstacles such as the fact that most Indigenous societies favor equality among their members which goes against entrepreneurial mentality – the financial empire of the Seminole Indians of Florida being a stark proof that this rule must not be too generalized. Practical aspects should also be considered, such as the lack of capital and the fact that the Indians cannot use their land

as a guarantee to get credit. Also, the reservations face competition by outside businesses. In many cases, retail shops fail inside the reservations whereas supermarkets thrive on their perimeters. Only where IT are located near major cities can they develop attractive and high-level commercial activities such as shopping centres, as is the case of the Salt River reservation near Phoenix (Frantz, 2012).

Industrial activities in US IT is scarce, the Choctaw Indian industrial park being a rare example of success. Many development projects were financed but eventually failed: « The federal project approach to development failed in most places and has left Indian Country pockmarked with pride-destroying empty and/or dilapidated buildings that operated factory or motel or office park only as long as fickle funding lasted » (Henson et al., 2007: 113). When industrial parks are developed, most of the jobs, especially the skilled ones, go to non-Indians. Desperate to attract business, some tribes engage in ecological dumping, accepting activities on their lands which are shunned by neighbouring areas, such as tire recycling, racing parks, waste treatment plants, etc. (Frantz, 1999).

Unquestionably, the biggest economic activity today in the US IT is gambling. It developed quickly after the 1987 Supreme Court judgement in the California vs Cabazon Band of Mission Indians case (Ackerman and Bunch, 2012) which led to the Indian Gaming Regulatory Act of 1988. Now, about half of the tribes operate a little less than 500 gaming facilities, and the overall turnover of this activity is over US\$ 31 billion. However, the revenues are heavily concentrated. In 2016, the 33 biggest Indian casinos made 46.3% of the total turnover, and most Indian casinos were small or very small operations (National Indian Gaming Commission/ Gross Gaming Revenues 2012-2016).

The gambling economy has some effect on the IT engaging in it, especially providing jobs and giving the tribes extra-revenues which can then be invested in welfare or infrastructure improvement programs (Clay et al., 2011). However, it doesn't provide a silver bullet for all the issues faced by IT. First, it is only feasible when it is close to major cities or recreation areas, so it is less interesting for isolated or remote territories which abound in the US and in Brazil. Secondly, even with the help of this industry, the per capita income in the US IT is still far from the country's average.

## Conclusion

Due to their low indices of social wellbeing, US IT cannot be considered as examples to be followed when it comes to rethinking the legal framework for IT in Brazil. However, their case may serve as a beacon for Brazilian Indians, projecting light on possible success paths, but also on potential pitfalls at a moment when the current Bra-

zilian government is trying to undercut legislative and constitutional protections of IT in its country.

Several facts stand out from this comparison. The first one is that opening IT to external influences only results in loss of territory for Indigenous peoples and more complexity in land management. Indigenous societies in general have values which favour community-based ownership and decisions and those do not fare well under private property regimes. Avoiding the tragedy of the Dawes act in Brazil should be a top priority, and this implies maintaining the "collective exclusive usufruct" which was granted by the 1988 Constitution. The second is that natural resources exploitation seldom allowed Indigenous groups to be empowered. Even if there are cases of success, in most cases resources were sold for vile prices and the impact of their exploitation lasts much longer than the income they can bring in. Alternatives based on tourism and the valorisation of natural assets seem to give better results, but they imply important investments in education to last. Finally, history shows that Indigenous land has always been coveted by US and Brazilian societies. In this respect, the intentions of the current government in Brazil is only a new episode in a long saga, and the US example shows that law has frequently been ignored in order to favour encroachment, invasion and displacement. Brazilian Indians shouldn't therefore only count on the protection they enjoy under the 1988 Constitution. They will need national and international sympathy for their cause, which they are currently trying to attract by protests and marches.

Considering the global erosion of biodiversity and the destruction of natural ecosystems, it is not only in the Indian's interest, but also in Humanity's, that mistakes made in the US not be repeated in Brazil, and that environmentally preserved IT in both countries not be considered as outdated relics of the past, but as important assets for the future.

### References:

- Ackerman, W. and Bunch, R. (2012) 'A Comparative Analysis of Indian Gaming in the United States'. *American Indian Quarterly*, 36(1): 50-74.
- Albert, B. (1997) 'Territorialité, ethnopolitique et développement : à propos du mouvement indien en Amazonie brésilienne'. In: C. Gros, ed. *Amazonies indiennes, Amazonie nouvelles. Cahiers des Amériques Latines*, 23: 177-210.
- Anderson, R. (2006) 'Indian Water Rights and the Federal Trust Responsibility', *Natural Resources Journal*, 46(2): 399-437.
- Banner, S. (2005) *How the Indians lost their lands. Law and Power on the Frontier*. Cambridge: Harvard UP.

- Belleau, J.-P. (2014) *Le mouvement indien au Brésil. Du village aux organisations*. Rennes: Presses universitaires de Rennes.
- Clay, T.J., Wilde, D. & Stanley R.E. (2011) 'Reservation gaming: a catalyst for self-governance for the tribes in Arizona' ' in: K.H. Hansen, K.H. & T.S. Skopek, T.S. eds. *The new politics of Indian gaming*. Reno: University of Nevada Press, pp. 57-73.
- Conklin, B. A. & Graham, L. R. (1995) 'The Shifting Middle Ground: Amazonian Indians and Eco-Politics'. *American Anthropologist*, 97(4): 695-710. doi: 10.1525/aa.1995.97.4.02a00120
- Devine Guzman, T. (2013) *Native and National in Brazil: Indigeneity after Independence*, Chapel Hill: UNC Press.
- Dunbar Ortiz, R. (2015) *An Indigenous people's story of the United States*, Boston: Beacon Press.
- Fixico, D. (1986) *Termination and reconciliation. Federal Indian policy, 1945-1960*. Albuquerque: University of New Mexico Press.
- Fixico, D.L. (2008) *American Indian in a modern world*. New York: Altamira Press.
- Frantz, K. (1999) *Indian Reservations in the United States. Territory, Sovereignty, and Socioeconomic Change*. Chicago: University of Chicago Press.
- Frantz, K. (2012) 'The Salt River Indian Reservation: land use conflicts and aspects of socioeconomic change on the outskirts of Metro-Phoenix, Arizona'. *GeoJournal*, 77(6): 777-790.
- Garnett, S. T, Burgess, N., Fa, J. et al. (2018) 'A spatial overview of the global importance of Indigenous lands for conservation'. *Nature Sustainability*, 2018(1): 369-374. doi:10.1038/s41893-018-0100-6
- Hemming, J. (1978) *Red Gold: The conquest of the Brazilian Indians*, Harvard: Harvard University Press.
- Hemming, J. (2003) *Die If You Must: Brazilian Indians In The Twentieth Century* (v. 3), London: Macmillan.
- Henson, E.C. et al. (2007) *The State of Native Nations: Conditions under U.S. Policies of Self-Determination*. Oxford: Oxford UP.
- Hurt, D.R. (2002) *Indian frontier*. Albuquerque: University of New Mexico Press.
- IFMAT/Intertribal Timber Council. (2013) *An assessment of Indian forests and forest management in the United States*. Portland: ITC.
- Kantor, I. (2007) 'Ethnic Cleansing and America's Creation of National Parks'. *Public Land and Resources Law Review*, 28: 41-64.
- Le Tourneau, F.-M. (2015) 'En marge ou à la marge : les populations amérin-

diennes dans le Brésil contemporain', *Espaces, Populations et Sociétés*, 2014/2-3, doi: 10.4000/eps.5859

- Le Tourneau, F.-M. (2015) 'The Sustainability Challenges of Indigenous territories in Brazil's Amazonia'. *Current Opinons on Sustainability*, 14:213-220, doi:10.1016/j.cosust.2015.07.017
- Le Tourneau, F.-M. (2017) 'Le Brésil et ses Indiens : une réconciliation impossible ?'. *EchoGéo*, 41: 15027, doi:10.4000/echogeo.15027
- Levi, T. (2016) *Food, control and resistance. Rations and Indigenous Peoples in the United States and in Australia*. Lubock: Texas Tech. University press.
- Mathers, R. (2012) 'The Failure of State-Led Economic Development on American Indian Reservations'. *The Independent Review*, 17(1): 65-80.
- Monbeig, P. (1952) *Pionniers et planteurs de São Paulo*. Paris: A. Colin.
- Perone Moises, B. (1992) 'Índios livres e índios escravos: os princípios da legislação indigenista do período colonial (séculos XVI a XVIII)'. in: M. Carneiro da Cunha, M. org. *História dos índios no Brasil*. São Paulo: Companhia das Letras, Secretaria Municipal de Cultura, FAPESP, pp. 115-132.
- Pinto de Medeiros, R. (2011. ) 'Concessão de títulos nobiliárquicos às lideranças indígenas na luta contra invasores estrangeiros e formação de uma elite militar nas capitânicas do norte da América Portuguesa (sécs. XVII e XVIII)'. *Anais do XXVI Simpósio Nacional de História – ANPUH*, São Paulo, julho 2011.
- RAISG (2019), *Amazon Indigenous Territories and Protected Areas*, São Paulo: RAISG
- Ramos, A. (1998) *Indigenism Ethnic Politics in Brazil*. Madison: University of Wisconsin Press, 336 p.
- Robertson, L. (2007) *Conquest by Law: How the Discovery of America Disposessed Indigenous Peoples of Their Lands*. Oxford: Oxford University Press.
- RRI, WHRC, WRI, EDF, AMAN, MAPF & COICA (2018) 'A Global Baseline of Carbon Storage in Collective Lands : Indigenous and Local Communities Contributions to Climate Change Mitigation', Wahsington: WRI
- Schwarcz, L.M. (2006) 'A Mestizo and Tropical Country: The Creation of the Official Image of Independent Brazil'. *Revista Europea de Estudios Latino-americanos y del Caribe*, 80(25).
- Silvern, E. S. (2002) 'Tribes, States, the EPA and the territorial politics of environmental protection", ', in B. Bays, B. and E.H. Fouberg, E.H. eds. *The Tribes and the States. Geographies of Intergovernmental interactions*. Lanham: Rowman&Littfield, pp. 119-139.
- Singer, J. W. (2013) 'The Indian States of America: Parallel Universes & Overlapping Sovereignty'. *America Indian Law Review*, 38(1): 1-33.

Tyler, S.L. (1973) *A history of Indian policy*. Washington: DOI/BIA.

US Department of Agriculture (2012) *Census of agriculture*

Wentzel, S. (2008) ‘Indigenous Territories in the USA and Brazil: Comparative Perspectives on Governance and Management Issues’. Conference paper in *Governing Shared Resources: Connecting Local Experience to Global Challenges, the Twelfth Biennial Conference of the International Association for the Study of Commons*. Cheltenham (UK), July 14-18, 2008.

**Table 1: IT characteristics in Brazil and in the US**

|        | IT # | IT extension                                   | IT%       | IT Median Size       |
|--------|------|------------------------------------------------|-----------|----------------------|
| USA    | 326  | 272,000km <sup>2</sup> /226,000km <sup>2</sup> | 3.5%/2.9% | 17.8km <sup>2</sup>  |
| Brazil | 486  | 1,174,000 km <sup>2</sup>                      | 13.1%     | 104.1km <sup>2</sup> |

(The double count in the US situation refers to the difference between reservation extension and Indian-possessed lands inside the reservations, see II.2; regarding Brazil the number depicts IT which have completed the whole administrative process, and does not include the 228 territories in the process)

**Table 2: regional disproportion of IT in Brazil and in the US.**

| Region               | % Country Surface | % IT Lands | % IT Territories | % Indigenous Population |
|----------------------|-------------------|------------|------------------|-------------------------|
| Amazon               | 58.8%             | 98.3%      | 58.6%            | 54%                     |
| 15 Western US States | 49.6%             | 96.3%      | 75.7%            | 64.75%                  |

(the 15 Western States are: California, Oregon, Washington, Idaho, Nevada, Utah, Arizona, New Mexico, Colorado, Wyoming, Montana, North Dakota, South Dakota, Minnesota and Oklahoma)

**Table 3: Federal budgets targeted to Indigenous populations in Brazil and in the US.**

|                                      | USA (\$)          | Brazil            |
|--------------------------------------|-------------------|-------------------|
| BIA (2018) / FUNAI (2017)            | 2,500,000,000     | 548,000,000       |
| HIS (2018) / SESAI (2017)            | 4,100,000,000     | 1,700,000,000     |
| Total Agencies in IT                 | 6,600,000,000     | 2,248,000,000     |
| US Government / BR Government        | 4,100,000,000,000 | 1,316,000,000,000 |
| Proportion Agencies / Government     | 0.16%             | 0.17%             |
| Proportion of Indigenous Populations | 1.3%              | 0.45%             |
| Proportion iT / Country Size         | 2.9%              | 13.8%             |

**Figure 1: homologation of IT in Brazil (source of data Instituto Socioambiental).**

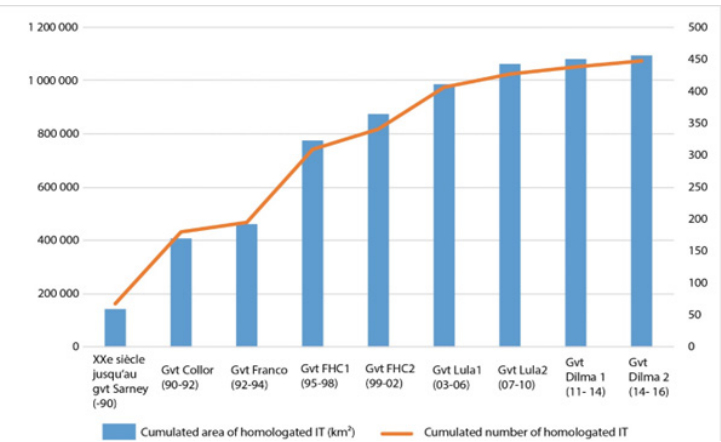


Figure 2: Indian lands today in Brazil and in the US.

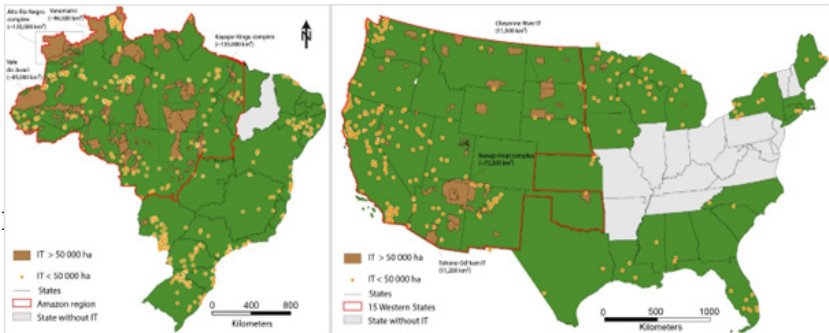


Figure 3: land tenure in the Flathead reservation in Montana.

