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Introduction

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We are very pleased to present the newest issue of the Journal Direito e Práxis, the second number of our volume 14 for the year 2023 (Vol. 14, N. 2, 2023). In this issue, we have our traditional sections and a careful selection of unpublished articles.

The first section of this issue features articles that touch on the themes of Latin American constitutionalism, the materialist and Marxist legal theory, labor rights, migrations and decolonialism for a theoretical perspective for a critique of law. In addition, there are articles that present innovative research on the processes of financialization and environmental disasters involving mining projects, a theme that has been addressed in later editions of Direito e Práxis.

This issue's dossier is more than special: it features a set of eight articles by researchers who focus on the theme of the criminalization of indigenous peoples. The compilation of papers was organized by the guest editors Ana Carolina Alfinito, Caíque Ribeiro Galícia and Luiz Eloy Terena, and is published here under the title “Indigenous Peoples and the Latin American criminal justice system”. The team at Direito e Práxis would like to thank the editors for their excellent work in building bridges between the Journal and the *Articulação dos Povos Indígenas do Brasil* (APIB) and for making such a careful and committed selection of manuscripts. More information about the dossier and the initiatives that accompany the issue can be found in the editorial written by the guest editors themselves below.

Finally, the sections of translations and reviews bring articles in thematic dialogue with the dossier addressing works in the areas of human rights, decolonization, critical criminology, and the struggles of indigenous peoples. As always, we thank all those who

contributed to this issue of the Journal: authors, translators, invited publishers. Collaborative work is fundamental for the quality of our publication's Journal! We remind you that the editorial policies for the different sections of the Journal can be found on our website and that submissions are continuous and always welcome! We thank, as always, the authors, reviewers and collaborators for the trust placed in Direito e Práxis.

Enjoy your reading!

Direito e Práxis Team

Indigenous Peoples and the Latin American criminal justice system

Ana Carolina Alfinito[1]

[1] PhD in political sociology from the Max Planck Institute for the Study of Societies. Post-doctoral student in law (Direito FGV). Legal advisor to Amazon Watch and member of the *Observatório Sistema de Justiça Criminal e Povos Indígenas* of the *Articulação dos Povos Indígenas do Brasil* (Apib). Orcid: https://orcid.org/0000-0002-3924-3056

Caíque Ribeiro Galícia

[1] PhD in Criminal Sciences (PUCRS). Post-doctorate in Social Anthropology (UFMS). University Professor (UFMS). Associate Editor of the Revista Brasileira de Direito Processual Penal (RBDPP). Member of *the Observatório Sistema de Justiça Criminal e Povos Indígenas* of the *Articulação dos Povos Indígenas do Brasil* (Apib). Orcid: https://orcid.org/0000-0003-4306-5261

Luiz Eloy Terena

[1] Indigenous lawyer. Doctor in Social Anthropology (MN/UFRJ), Doctor in Legal and Social Sciences (UFF), Post-doctorate from the École des Hautes Études en Sciences Sociales (EHESS), Paris. Co-founder of the *Observatório Sistema de Justiça Criminal e Povos Indígenas* of the *Articulação dos Povos Indígenas do Brasil* (Apib). Orcid: https://orcid.org/0000-0001-9073-6086

1. Introduction

This dossier arises from the need to open a dialogue between recent works that investigate, from different perspectives and theoretical fields, the areas of violence, tensions and gaps that arise from the conflict between, on the one hand, indigenous peoples and, on the other, the normative rules, practices and meanings that constitute Brazilian criminal justice. This is a growing and plural research field, constituted by works that develop diverse critiques but that, as a whole, point in a unified manner to the need to profoundly transform criminal justice by looking at indigenous peoples and their relationship with the State.

Situated in the midst of this effusion and diversity, this dossier seeks to portray the plurality of diagnoses, methodologies and standpoints that constitute the field of

research on indigenous peoples and criminal justice while weaving threads of approximation and dialogue between them. This endeavor was conceived within the scope of the Articulação dos Povos Indígenas do Brasil (Apib), through the Observatório Sistema de Justiça Criminal e Povos Indígenas, created in March 2021.[1]

The current moment is marked by the growing visibility of the rights violations of indigenous people within the state's criminal justice system.[2] This visibility stems from multiple processes both nationally and internationally. We emphasize in the following paragraphs two of them, which we consider important in the contextualization of this dossier: the first is a normative process represented by the proliferation of normative rules that, since the late 1980s, have been transforming the criminal field by providing new rights to indigenous people in conflict with the criminal law; the second is a social process represented by the progressive increase in the production of data, investigations, and denunciations about indigenous peoples, the state's criminal system, and indigenous criminal jurisdiction. Both are crossed and leveraged by the political action of the indigenous movement.

In recent decades, the legal system has been progressively integrated by national and international legislation that establishes specific rights for indigenous people in the criminal field - including the right to the recognition of traditional forms of conflict composition and resolution. The pillars of this body of norms are Convention 169 of the International Labor Organization (ILO, 1989), the United Nations Declaration on the Rights of Indigenous Peoples (UN, 2007) and, more recently, Resolutions 287/2019 and 454/2021, both of the Conselho Nacional de Justiça (CNJ, 2019).

The Brazilian Federal Constitution of 1988 is also an important milestone in this framework since, by overcoming the legal paradigm of the protection (LACERDA, 2008; SOUZA LIMA, 2015; ELOY AMADO, 2021), it opened space for conflict situations between indigenous peoples and the criminal justice system to be thought beyond the paradigm

[1] The *Observatório Sistema de Justiça Criminal e Povos Indígenas* was supported by *Fundo Brasil Direitos Humanos* (Edital 2020 - Justiça Criminal e Direitos Humanos) and Hivos, under the program *Todos os Olhos na Amazônia* (TOA).

[2] Following Eloy Amado and Alfinito Vieira (2021), we understand the State criminal justice system as a complex of institutions and practices of the Executive and Judiciary powers located at all levels of the federation and which act in the prevention, investigation, and judgment of the commission of crimes, as well as in the application of sanctions. The criminal justice system includes the agencies of public security, criminal justice, and criminal enforcement. It is important to emphasize that, within a context of legal pluralism, as will be explored in the Articles that make up this dossier, the State's criminal justice system interacts, intersects, and composes with the indigenous systems of composition and conflict resolution.

of assimilation and ethnic invisibility.[3] Although, unlike other more recent Latin American constitutions (ARIZA, 2015, 2017; SCHAVELZON, 2015), the Brazilian Federal Constitution of 1988 does not explicitly provide for plurinationality or indigenous jurisdictions, it does recognize the right of indigenous peoples to their forms of social organization, beliefs and customs, expanding the legal space for the recognition of indigenous jurisdictions and courts (MOREIRA; ZEMA, 2019).[4]

In parallel, and especially over the last two decades, there has been an accumulation of research that, in strong articulation with the demands of the indigenous movement, names and denounces the zones of violence and exception created by the criminal prosecution of indigenous people both in the past and today. Such research have described, for example, the imprisonment and creation of criminal colonies for "insubordinate" indigenous people during the military dictatorship (CORRÊA, 2003; KEHL, 2014; ELOY AMADO, 2019)[5] and the use of CPIs as criminalizing instruments of indigenous leaders and indigenists (ELOY AMADO; ALFINITO VIEIRA, 2021), shedding light on the relationships between indigenous incarceration and mass incarceration by addressing the experiences of indigenous people imprisoned for so-called "common" crimes that crowd Brazil's prisons (BAINES, 2015; SILVA, 2015). Research developed over the last decade has also denounced the lack of enforcement of the rights of accused and sentenced indigenous people, such as the right to ethnic self-declaration, the right to the production of anthropological report in the criminal procedure and the right to an interpreter (CASTILHO; SILVA; 2022; STREIT VIEIRA; ELOY AMADO, 2021; ALFINITO VIEIRA et al., 2021).

As of 2018, the Fundação Nacional dos Povos Indígenas itself (former known as Fundação Nacional do Índio - Funai) began to criminalize indigenous leaders and organizations that opposed the interests and projects of the federal government,

[3] It is fundamental to emphasize the role that the indigenous movement and indigenous organizations played in the elaboration of Articles 231 and 232 of the Federal Constitution of 1988. On the subject, see Lacerda (2008) and Alfinito Vieira (2017).

[4] For an important review and analysis of the recognition of indigenous legal systems in Brazil and Latin America with a focus on criminal law and criminal procedure, see Oliveira and Castilho (2019).

[5] A well-known case that exemplifies the historical institutional forms of criminalization of indigenous people by the state is the Krenak Reformatory, a detention center established in 1969 at the Guido Marlière Indigenous Post on the banks of the Doce River in Minas Gerais, which placed indigenous people considered " misfits" and criminals under the custody of the Military Police - often those who had committed acts of insubordination, quarreled with the head of the Indigenous Post, left the Indigenous Reserve without FUNAI authorization, or consumed alcoholic beverages. Between 1969 and 1972, Indians from all over Brazil were taken to the Reformatory and detained arbitrarily, without trial (CORRÊA, 2003).

resuming and updating political persecution practices from the military dictatorship.[6] Indigenous organizations, researchers, and civil society organizations began to monitor and denounce the government's explicit use of the criminal system as a strategy of repression and silencing of indigenous struggles.

In parallel, and with the publication of CNJ Resolution 287/19, even more efforts were invested in mapping the invisibilized mass of indigenous people being prosecuted and incarcerated without any guarantee of rights (RAMOS, 2021; ELOY AMADO, 2020; SILVA and LUNELLI, 2020). More attention was given to the collective dimension and impacts of criminalization on native peoples as an articulation of an official and unofficial policy of eliminating these subjects.

There is still a significant deficit of research and information in this field, and the inexistence of public databases on relevant themes - starting with indigenous incarceration - is shocking.[7] Although some reports from both the Departamento Penitenciário Nacional (DEPEN) and the State Security Secretariats present certain data on indigenous incarceration, there are relevant questions about the methodology in the collection and processing of such data. The collection and processing of this information without the proper methodology and with many possibilities of falsification precisely fosters the invisibilization of the phenomenon of indigenous incarceration with a double consequence: denying their existence as individuals (since they are criminals) and as indigenous people.

Despite this deficit, over the last decade the gap between the national and international legal framework that deals with criminal justice and indigenous peoples - a progressively garantist framework, that recognizes the ethno-juridical diversity of criminal

[6] Between 2019 and 2020, the president of FUNAI, Marcelo Augusto Xavier, requested the institution of criminal investigations of indigenous leaderships who were denouncing the acts and omissions of the federal government in the context of the Covid-19 pandemic and its advance on indigenous territories. As a result of his requests, Police Investigations were instituted to investigate the actions of indigenous leaders and organizations, such as Sonia Guajajara and Almir Suruí (OBSERVATÓRIO JUSTIÇA CRIMINAL E POVOS INDÍGENAS, 2023).

[7] Thus, it is important not to over-inflate the centrality of research on indigenous rights and the criminal system within the legal field, where research on indigenous peoples remains relatively marginal. It is worth noting that officially recognized research production usually occurs as a product of research groups. A parametric search in the Capes directory of research groups using the keyword "indigenous" resulted in 20 records active today in Brazil applying the filter "Applied Social Sciences" and "Law". Just as a comparison, using the same parameters, the keyword "tax" results in 63 records. The comparison is only illustrative, but it demonstrates in part how little attention research in Law has paid to the indigenous issue. It is also important to expose that within the universe of 20 research groups, none of them contains the term indigenous in the title of the group, although it is known that within the group's menu there will certainly be a section that is related to the theme.

law and the specific needs of indigenous people in criminal proceedings - and the reality constituted by ethnic invisibilization in criminal proceedings, by the growth of the indigenous incarcerated population, by the criminalization of the indigenous political struggle, and by the systematic violation of the rights of indigenous people prosecuted by the criminal system, has become increasingly evident.

It was in this context that, in 2020, the Articulação dos Povos Indígenas do Brasil (Apib) founded the Observatório de Justiça Criminal e Povos Indígenas, an initiative that seeks to articulate indigenous organizations, students, researchers, and legal practitioners to promote research and debate on indigenous peoples and the criminal justice system, and to influence the transformation of this system. The Observatório, as well as the present dossier, emerged from the desire to move towards both the enforcement of indigenous rights in the criminal field and the decriminalization of indigenous existences, a process that, in our understanding, can contribute to processes of decriminalization that transcend the indigenous field.

The three co-editors of this dossier are members of the Observatory and, therefore, the editorial choices that underlie the publication are marked by the principles and guidelines of the Observatory and of Apib. The intention of this dossier is to associate the production of scientific knowledge with the questions, demands, and projects of political subjects involved in processes of struggle and social transformation, in the context of action-research and research "on demand," in accordance to the category developed by the anthropologist Rita Segato (2021). In our case, we think and work together with organizations, communities, and indigenous movement leaders. We strive to value and develop research methodologies and political action that involve these individuals at every step. In this context, the present dossier was thought and built with members of the indigenous movement in order to respond to part of their demands, resulting from experiences of criminalization and experiences within the communities. It was also generated by the union of individual and collective efforts of the editors and other members of the Observatório Sistema de Justiça Criminal e Povos Indígenas.[8]

We are currently going through a period of unprecedented transformations in the pillars that structure the relationship between indigenous peoples and the State. In 2023, the Ministério dos Povos Indígenas (MPI), was established, led by the indigenous leader,

[8] We would like to especially acknowledge the work of Maurício Terena, legal coordinator of Apib, Nathalie Munarini, and Victor Streit Vieira, all members of the *Observatório Justiça Criminal e Povos Indígenas*.

and now minister Sônia Guajajara. Luiz Eloy Terena, an indigenous member of the Terena tribe of Mato Grosso do Sul and co-editor of this special dossier, was appointed Executive Secretary of the MPI, and Joênia Wapichana, an indigenous leader from Roraima and former federal deputy, was appointed president of Funai. The indigenous representation within the federal government, in charge of managing indigenous affairs, opens the possibility of a rapprochement between indigenous and indigenist politics.

It is known that these transformations do not necessarily represent structural changes in a State that remains allied and supported by agribusiness, mining, and other sectors that are at the forefront of the threats to the rights of indigenous peoples. But they deepen and highlight contradictions within the government and allow indigenous voices and demands to be more directly present within a certain decision-making space in the federal administration for the construction of government and state public policies.

We propose to think of the present as a moment in which some possibilities for political change open up, among them, advances in the enforcement of indigenous peoples' rights within and outside the criminal justice system and the strengthening of areas of autonomy in the application of their own forms of conflict settlement and resolution. Recognizing the autonomy of the peoples and their own jurisdictions is a challenge posed to the State, which requires reformulating the ways and structures of dealing with native peoples. Such changes will only take place when public agents adopt positions of recognition and respect. It is not possible to imprint on the institutions dimensions that are not yet being observed by these agents.

The articles that make up this dossier point in these directions. For the purposes of this publication, we organized the articles into two thematic axes, which overlap and intertwine: the first is made up of research that explores the theme of legal pluralism within the criminal justice system, investigating indigenous courts, criminal autonomy and coordination between the state system and indigenous forms of conflict resolution; the second is made up of texts that deal with the patterns of violation of indigenous rights within the state criminal justice system. Both axes are crossed by the themes of decoloniality and interculturality in legal-criminal practices and epistemologies, necessary conditions to confront and deepen the themes in adequate complexity. We move on in the items below to a brief presentation of the articles.

2. From criminal justice to indigenous justice: frictions and coordination

To assert the right of indigenous peoples to their ways of life, their cultures, and to socio-political alterity in a dense and radical sense implies asserting that human coexistence can be guided and structured by these peoples' values, ends, conceptions, and practices of justice (SEGATO, 2007, p. 18). Some of the articles that make up the present dossier explore, based on case studies and ethnographies, the meanings, limits, and forms of the criminal autonomy of indigenous peoples in Brazil today, as well as the tensions and transformations that result from the friction between the ways developed by indigenous communities of understanding, composing, and unfolding social conflicts and state criminal justice.

To what extent have State laws and judicial practices made room for indigenous peoples' own codes, understandings, and rituals of justice? How can we understand and situate these plural forms of justice within the interethnic field? What are the categories, dynamics, and practices that have structured the encounter between State justice and indigenous justice in contemporary Brazil, and what are the limits of this encounter?

Unlike other Latin American countries, Brazil is not commonly seen and analyzed by legal researchers as a State with indigenous criminal jurisdictions. But the articles that make up this dossier demonstrate that, even in the absence of an explicit constitutional provision recognizing such jurisdictions, cases of friction, recognition and coordination between state justice and indigenous justice have proliferated in the criminal field and deserve greater attention from researchers of law and anthropology. It is important to highlight that the Brazilian constitutional text recognizes the organizational form of indigenous peoples (see Article 231), which in our view encompasses the political, economic, social, and legal systems of the original peoples. Therefore, in this provision we find the constitutional normative force that supports state legal pluralism, or as some prefer, *jusdiversity*.

As mentioned above, a series of normative changes over the last three decades have opened the legal field to the recognition of indigenous institutions, norms, and practices for conflict resolution that, for the State, would be located within the criminal field.

In Brazil, a first provision in this sense already existed, although in a weak, residual, and tutelary form, in Federal Law 6.001/73, the Indian Statute, which, in its Article 57, states that:

> Art. 57. The application by tribal groups, in accordance with their own institutions, of penal or disciplinary sanctions against their members shall be tolerated, provided they are not cruel or infamous, the death penalty being prohibited in any case (BRASIL, 1973).

In this formulation, indigenous legal forms are "tolerated", condoned, but there is no obligation and no value in their recognition. There is the discretion of the tutelary State and the Judiciary, who may or may not validate indigenous institutions at will. Within the tutelary logic, indigenous legal forms existed as reminiscences of disappearing worlds, and not as concrete manifestations of difference and otherness as a value or compass.

The Federal Constitution of 1988 marks a rupture with this logic. Unlike the Estatuto do Índio (1973), the Federal Constitution was written with intense participation of the indigenous movement and indigenous organizations (LACERDA, 2008), and recognizes in Article 231 the right of indigenous peoples to their forms of social organization, customs, beliefs, and traditions (BRASIL, 1988). This article opens space for the recognition of indigenous jurisdictional systems, including rituals and systems of deliberation and application of sanctions. However, for a long time Article 231 was not understood or activated as an instrument for the realization of jurisdictional pluralism in Brazil.

International law was a pioneer in explicitly providing for the recognition of indigenous legal forms and jurisdictions. The ILO Convention 169 of 1989, ratified by Brazil in 2002,[9] states that indigenous and tribal peoples:

> Art. 8.2 (...) shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle (OIT, 1989).

In the following article, the same Convention states that, to the extent compatible with the national legal system and with human rights, the methods traditionally used by the peoples concerned to repress crimes committed by their members must be respected (art. 9.1). Also in accordance with ILO Convention 169, the authorities and courts called upon to decide on criminal matters have the duty (and not the option) to take into account the customs of the peoples concerned (Article 9.2).

[9] Brazil ratified ILO Convention 169 through Legislative Decree no. 143 of 2002, and it came into force in 2003.

These norms, of *supra-legal status*, require the recognition of and respect of indigenous criminal law systems, not only regarding punishment, but also regarding other aspects of the constitution of the offense - ranging from criminality to the rituals of guilt formation and the application of sanctions..

Such a conception of a broader pluralism is also provided for in the United Nations Declaration on the Rights of Indigenous Peoples, which, in its Article 34, states that:

> Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards (ONU, 2007).

It is important that, unlike ILO Convention 169, which refers to the *conservation* of indigenous customs and institutions, the UN Declaration refers to *promoting* and *developing* institutions, customs, and legal systems. Thus, it recognizes that these social and institutional forms are not immovable and crystallized, but rather emergent and historical, guided by the evolution of the communities and peoples that sustain them.

At the national level, CNJ Resolution 287/2019 provides on the subject in a non-binding manner, stating that the criminal accountability of indigenous people should consider the mechanisms specific to the indigenous community to which the accused person belongs (art. 7, caput), and that the judicial authority may adopt or confirm practices of conflict resolution and accountability in accordance with customs and norms of the indigenous community itself (art. 7, sole paragraph) (CNJ, 2019). On the one hand, the Resolution turns to the registry of permissiveness, since the judicial authority "may" confirm traditional practices of conflict resolution. On the other hand, it is a reaffirmation of legal pluralism and recognition of the legitimate coexistence of different legal orders and systems in the national territory.

The Brazilian judiciary has been and is resistant in recognizing this plurality. A survey of judicial precedents dealing with indigenous peoples' rights in the state of Maranhão, for instance, found no cases in which traditional criminal forms or sanctions had been recognized or validated by the Judiciary (ALFINITO VIEIRA et al., 2021). Perhaps the meager application of these norms is related, beyond the resistance and conservatism of the Judiciary, also to the absence of demand from lawyers, since Brazil is still generally perceived as a country without indigenous jurisdictions, even within the field of indigenism.

The articles that make up the present dossier, instead of denouncing the lack of recognition of indigenous legal-criminal forms by the Brazilian judicial system, present and analyze what happens on the margins, in the gaps, in the cases in which there was some recognition of indigenous criminal autonomy, which in some cases led to the establishment of coordination logics between the state and indigenous legal systems. They also explore, in a broader sense, the zones of contact, influence, and conflict that arise in the friction and encounter between the state and indigenous forms of conflict composition and resolution.

Focusing on the meanings and forms of conflict resolution among the Kaingang indigenous people of the Cacique Doble community in Rio Grande do Sul, the article *Controle social e resolução de conflitos em um território Kaingang: estudo sobre a cadeia indígena* by Marcelo Alves, Márcio Kaingang and Mariana Garcia explores how criminal law mechanisms circulated between the state and indigenous communities throughout the colonization process, and how, in this circulation, new meanings and practices linked to these mechanisms emerge. The text demonstrates how the colonization process also represented the imposition of modern punitive and criminal or state forms on the Kaingang indigenous people, some of which - such as the police, trunk, and prison - were absorbed and institutionalized by the community. But the process of imposition and absorption has also been marked by collective processes of giving new meaning to repressive instruments of punishment: the police among the Kaingang do not wear uniforms or carry firearms, they are not paid; the jail has a short-term custodial character, being a temporary resource used to intervene directly in problematic situations. Furthermore, the use of jail among the Kaingang is done in a situated way to coordinate the community and state justice systems. Within the indigenous land, the simplest cases are resolved by the captain, or else with community rituals of accusation, defense, and dialogue carried out in the presence of the Council of Elders. In cases perceived as more serious, an internal decision is made as to whether the occurrence will be resolved by Internal Law, which allows for sanctions such as counseling, service, and transfer, or whether the State justice system will be activated.

Still with an eye to the interface between indigenous criminal justice and state criminal justice, but with a focus on the friction between criminal systems, the authors Fernanda Vieira, Mariana Trotta, and Ana Claudia Tavares compare two cases of homicide involving indigenous people in which the jurisdictional provision followed quite distinct

paths of interculturality and jurisdiversity. The first is the case of the Raposa Serra do Sol Jury Tribunal, which, despite having a Sentencing Council made up entirely of indigenous people, followed the ritual of the state justice system, including in the sentencing. The second is the case of Raposa Serra da Lua, in which, before any decision of indictment or not by the Criminal Justice of Roraima, the Council of the Indigenous Community of Manoá met with indigenous leaders from various communities and deliberated on the imposition of sanctions distinct from the criminal-prison logic. The text takes the look beyond the penalties that constitute the different understandings of justice, focusing on the importance of recognizing the rituals by which an occurrence is signified, framed, and forwarded from the normative point of view. Furthermore, the jurisprudence that, in the Raposa Serra da Lua case, validates indigenous jurisdiction, confers clear limits to the criminal jurisdiction of the state vis-à-vis the indigenous jurisdictional power. In this case, the courts of the State of Roraima understood that the State lost its right to punish the indigenous community because a) the author and the victim were indigenous; b) the fact occurred inside an indigenous land; and c) the indigenous community tried the fact. The State's right to punish, therefore, would be subsidiary, to be evoked if the indigenous community does not apply its jurisdiction. The decision was upheld on appeal, reinforcing the precedent. In the article *Entre (in)visibilidades e reconhecimentos: um caso emblemático sobre conflito entre indígenas em processo criminal no Pará*, Marjorie Paolelli and Assis Oliveira focus on the criminal proceedings arising from a murder case involving indigenous Kayapó and Munduruku people in the municipality of Altamira, a place deeply affected by the licensing process for the Belo Monte hydroelectric plant. In the case in question, the request made by the Public Prosecutor of the State of Pará for an anthropological report to be produced to provide input for the trial produced a change during the criminal procedure and opened a gap for legal reflection on the autonomy of indigenous communities in the resolution of criminal conflicts. The article discusses the paths that were opened by jurisprudence for the recognition of indigenous jurisdictions in Brazil, while criticizing the still assimilationist and tutelary tone that is lurking in the use of instruments such as anthropological expertise in the judiciary.

Still reflecting on legal pluralism and criminal justice, Fernanda Bragato, Marco Almeida, and Lais Martins presented research that compares the systems of Brazil and the United States of America. They expose the similarities and differences between the

systems and contribute with the display of judgments from both countries as a way to highlight the different perceptions within criminal justice..

As a whole, these texts bring important findings and point to directions for future research. Firstly, and in a unified manner, they reaffirm and demonstrate that Brazil, through both its national legislation and ratified international norms, recognizes the *jurisdiversity* and indigenous criminal autonomy, and that this recognition cannot be neglected by the Judiciary, nor by law practitioners or researchers. They also show that, despite the absence of legislation specifically dedicated to the topic, indigenous criminal autonomy, and the forms of coordination between indigenous and state criminal justice occurs mainly in actual cases and within important judicial precedents. To understand the frictions, tensions, and gaps that arise between different justice systems, it is important to focus on, and apply, actual cases and judicial precedents.

In addition, the articles, especially those of a more ethnographic nature, remind us that the forms of indigenous justice are as plural as these peoples and communities, that they are a myriad of systems and forms of conflict composition and resolution, systems that are constantly in transformation. In other words, it is fundamental that law practitioners, members of the judiciary, when integrating judicial processes involving indigenous people in criminal occurrences, be careful not to reify or crystallize forms of social organization that need to be recognized in their becoming and transmutation, including transmutations resulting from contact with state forms of justice.

Finally, the articles point to the potential that indigenous courts carry in the sense of opening gaps and paths towards the depenalization of society. Perhaps not in the sense of the abolition *tout court* of the criminal system, but rather in the sense of opening social spaces where the criminal law of the State does not enter, zones and territories of depenalization sustained through the collective organization of indigenous peoples. In this sense, in some of the cases analyzed in the articles, it has succeeded in removing the preference of criminal occurrences from the jurisdictional power of the state, and instituting such depenalization zones, based on indigenous criminal autonomies. This is a path to be better investigated and understood, including by the field of research and activism of penal abolitionism in Brazil, where the theme of jurisdiversity still occupies a very marginal place.

3. Violations and enforcement of indigenous rights in the state criminal justice system

In addition to the difficulties in correlating criminal dogmatics that incorporate the indigenous issue, especially regarding the different forms of punishment and the extent of criminal accountability, it is necessary to restructure legal practices within the Brazilian criminal justice system. It is already recognized, through various norms (the Federal Constitution of 1988, Convention 169 ILO, and CNJ Resolution CNJ 287/2019, for example) that it is essential to adapt the practices of the official criminal justice system by recognizing the specificities present in criminal cases involving indigenous peoples, which demands an effort by public authorities, academia, and civil society as a whole, relying on the direct participation of indigenous.[10]

It is known that the criminal issue is not dissociated from the cultural, political, economic, and legal context, therefore, the scientific field is also a space of dispute about what is produced and what is discussed[11] (BOURDIEU, 2011). For this reason, assuming, in line with what Zaffaroni (2011) argues, that the punitive system still functions with the same premises as in the Middle Ages (verticalized, of direct coercion, with a colonizing and racist structure) allows us to better understand the tensions between the state model of punishment, the processes of criminalization and the indigenous peoples' own experiences.

The punitive state of expansive tendencies and lethal outcomes (ZAFFARONI, 2011), as well as criminological studies, guide the practices of the global South from a vertical integration of uncritical acceptance of the knowledge organization.[12] Therefore, the construction of a knowledge proper to our reality needs to challenge the

[10] In fact, this was already a latent concern since the 1970s, when anthropological scholars got together and constructed what became known as the Barbados Declaration (1971), stating that "It is necessary to keep in mind that the liberation of indigenous populations is either accomplished by them or it is not liberation. When elements foreign to them claim to represent them or take the direction of their liberation struggle, a form of colonialism is created that deprives indigenous populations of their inalienable right to be protagonists of their own struggle." (BARBADOS, 1971).

[11] For Bourdieu, "the legal field is the site of competition for the monopoly of the right to say the law, that is, the good distribution (nomos) or the good order, in which agents endowed with a competence that is both social and technical, which essentially consists in the recognized ability to interpret (in a more or less free or authorized manner) a corpus of texts that consecrate the legitimate, just vision of the social world". (BOURDIEU, 2011, p. 220)

[12] In this sense, Lilia Schwarcz (1993) exposes the formation of the bureaucracy of the Brazilian State reflecting on the formation of bachelor jurists in the Law Schools of São Paulo and Recife who perpetuated much of the knowledge coming from Europe.

"epistemological dominance of metropolitan thinking" (CARRINGTON, HOGG; SOZZO, 2018) to refocus and broaden the gaze on the structure of the justice system.

This is the origin of one of the demands made concrete in the present dossier, confronting the structure and legal practices put in place by institutions and people who ignore the specificities of indigenous peoples. We are even more concerned with exposing the legal practices that involve this zone of intersection between criminal procedural law and criminology insofar as they represent the reflections and actions related to limiting the action of the State in relation to indigenous individuals.

Therefore, to research the criminal question and the indigenous question is to confront not only the criminal normative framework, but to delve into the cogs of the criminal justice systems themselves. To this end, one of the challenges begins with the reflection on an epistemology that takes into consideration the specificities and experiences with conflict resolution that already exist among indigenous peoples (CARRINGTON, HOGG; SOZZO, 2018).

These ideas are also aligned with departures and approximations with respect to the notion of *collective* and *individual*. After all, modern criminal law has its bases precisely in the construction of criminal responsibility focused on the ideal of the individual (European model) and the protection of legal goods individually considered based on liberal precepts (DIAS, 2012; ZAFFARONI; BATISTA, 2013). This idealized model is imported to the colonized countries as a result of the "evolution" and "security" of the functioning of punishment practices, but in forensic practice it is assumed as an instrument of social control of vulnerable populations, since it normally guides the protection (and maintenance) of class, gender, race, and ethnic privileges.

Here we have the importance of the construction of criminal justice designed for the specificities of colonized countries, which need counterweights to insert into the procedural dynamics, instruments to open up the notion of *collectivity* in the scope of criminal responsibility and the forms of conflict resolution (ZANOIDE, 2022).

From this perspective, it is important to highlight the role of the anthropological report (CNJ Resolution 287/19) in the reconstruction of the criminal case, broadening the view of the specificities of each case and complementing the field of law. It is made known that as an empirical knowledge, Anthropology has already detached itself from classical science in the separation object-researcher to follow the dynamics of participant observation (LAPLANTINE 2007), therefore, the "anthropological work presupposes the

relativization of established truths, while the legal work through them is reproduced, and this methodological contrast is a significant obstacle to the dialogue of these fields" (LIMA; BAPTISTA 2014: 09). And it is precisely in this intersection between Law and Anthropology that the anthropological report develops and contributes to criminal justice.

While the idealization of European justice is based on the premise of "blindness" as a positive value that is close to neutrality or impartiality, in practice, it is known that it ends up being a mechanism that favors the maintenance of unequal treatment among people submitted to the scrutiny of the judiciary. In Brazil, social inequality places jurists in a position of privilege and distances them from the "reality" of most people who are subjected to criminal justice. In this context, "blindness" ends up becoming a justification for perpetuating practices of social exclusion and the denial of the subjectivity of indigenous peoples [4].

Just as the anthropological report seeks to open "space in the blindfolds of justice," the guarantee of an interpreter (Article 5, CNJ Resolution 287/2019) allows the judiciary to hear the indigenous individual submitted to the rite of criminal procedure. The dissonances and multiple manifestations of language are present in forensic practice and generally communicate that the courts are a sacred space: the buildings, the vestments, the lingo.

In this sense, ensuring that an indigenous person is accompanied by an interpreter can allow for fewer flaws in the communication process between the parties so that the reconstruction of the case can be as reliable as possible. This right is guaranteed not only for those who do not speak Portuguese, but for any indigenous person who requests the assistance of an interpreter, since even if one understands some linguistic codes and the possible articulation of speech, it is known that some meanings are lost when we are not in front of our "mother tongue"..

The opening of the criminal procedure to incorporate these instruments does not annul the ethnocentric and excluding practices, but helps in the construction of a space of better reception of the indigenous peoples to reduce the inequalities of procedural treatment.

The studies published in this dossier were developed by problematizing experiences and disputes over norms of national and international law in the context of investigations and criminal proceedings involving indigenous peoples, including international experiences, as in the case of Colombia. Thus, there is a contribution to the

field in that, besides producing research results, they open space for new research agendas in this area.

Facing the possibilities surrounding Resolution 287/2019 and Resolution 454/2022, both of the Conselho Nacional de Justiça, Tédney Silva and Roberta Monteiro exposed the difficulties surrounding the effectiveness of the right to an interpreter in criminal proceedings involving indigenous people. The work presented a rich literature review that dialogues with the international level to build the idea of the native language as a human right, which is fundamental to produce criminal justice. They argue that it is fundamental, in cases involving indigenous people, that the procedural relationship should also be guided by the ethno-cultural look to allow understanding between groups that are in sociopolitical asymmetry.

Sonia Guajajara, Carolina Santana, and Isabella Lunelli presented the results of research on the processes of criminalization of indigenous leaders, directly related to the configuration of culpability and criminal accountability in the Brazilian system. They support their work in the presentation of the category "integrated Indian" and "acculturated Indian" as a parameter to deny or not identity and, consequently, rights. They argue that the "indigenous person, even when sharing some signs of the national society may still not understand the illicitness of an act or even not be able to avoid the illicitness due to cultural reasons".

Contributing to an international view, Ginna Rodríguez analyzed the processes of judicialization from an ethnographic reading of the Colombian experience of the Arhuaco indigenous people of the Sierra Nevada de Santa Marta, Colombia. The research focuses on the Arhuaco community's quest for justice for the detention, torture, and murder of three indigenous authorities in 1990, and develops the concept of intersectional justice to point to the confluence zones of diverse epistemologies and practices that problematize state judicial conceptions and procedures from the processes of indigenous political mobilization.

In this context, but focused on the experiences of the Kaiowá and Guarani in southern Mato Grosso do Sul, Felipe Johnson and Simone Becker researched the case of Leonardo de Souza, arrested in 2018 in what became known as the "Massacre of Caarapó" in a context of land conflict. The extensive research tackles the theme developing between Anthropology and Law discussing the multidimensionality of imprisonment and violence in the daily lives of indigenous communities.

Based on these proposals, the dossier presents and represents a plural space for ideas, reflections, and proposals to rethink the tensions between the Brazilian criminal justice system and indigenous peoples. Without any pretension of closure, the studies published here are open to promote further studies and the creation of different research agendas based on the provocations that may connect with different realities of ethnic groups, for example. In line with the dialogue between Fernando Birri and Eduardo Galeano (GALEANO, 2001), we worked on the construction of this dossier so that it may signify, in the face of so many open veins (GALEANO, 1982) and spilled blood, one more step on the long road to utopia...

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