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INDIGENOUS BRAZILIAN LIVING IN A CONSTANT ENVIRONMENT OF VULNERABILITY COMPATIBLE WITH THE KAFKIAN TOTALITARIAN STATE

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Abstract: This essay will be carried out based on a comparative analysis of the environment experienced by Josef K., the main character of the work “The Process” by the author Franz Kafka, in comparison with the environment historically experienced by traditional Brazilian peoples. In the plot of the aforementioned work, Josef K. is subjected to the strong anguish of living under the vulnerability caused by an environment of persecution from a Totalitarian State that suppresses his fundamental rights and guarantees. On the other hand, this environment of vulnerability and lack of realization of fundamental rights is historically experienced by the Brazilian indigenous population. The Brazilian State, whether omissively or commissively, provides its traditional people with the same anguish of having to live under the aegis of vulnerability and disrespect for their fundamental rights and guarantees. We will address this vulnerability experienced by Brazilian indigenous people, in different historical periods. There was a concern to demonstrate the degradation of the fundamental rights and guarantees of indigenous peoples in the period between 2019 and 2022. The work was developed through bibliographical research, using the inductive/deductive method.

Keywords: Indigenous Peoples in Brazil; Vulnerability; Kafkaesque Totalitarian State; Anti-Indigenous Foundation; Necropolitics and indigenous people in Brazil.

INTRODUCTION

A careful reading of the work “The Process”¹, by Franz Kafka, provokes us to reflect on the dark environment in which the entire literary plot unfolds.

The main character, Josef K., is being prosecuted by the State and lives in a suffocating environment of insecurity and

vulnerability in the face of jurisdictional persecution from a Totalitarian State that denies you the minimum information that guarantees you the right to dignity, life, full defense, presumption of innocence, among others. Josef K. knows he is being sued, he spends the entire development of the plot trying to discover more details of the legal action in which he is a defendant, however, without any success. During the reading it is possible to feel the anguish experienced by the main character who, at no time, was able to defend herself from unfair state persecution (KAFKA, 1992).

In another turn, when analyzing the historical situation of the indigenous population of this country, it is possible to draw a parallel with the distressing situation of vulnerability typical of the absence of guarantees of fundamental rights, typical of a Totalitarian State.

In fact, traditional Brazilian peoples never achieved recognition of their fundamental rights and guarantees, even with redemocratization.

We will develop this essay in order to demonstrate the context of a “Kafkaesque Totalitarian State”, in contrast to the Democratic State of Law and, in a continuous act, demonstrate the vulnerable environment of the Brazilian indigenous population, contextualizing it with historical periods related to Colonization, Dictatorship Civil/Military, Redemocratization and Government of Jair Messias Bolsonaro.

There is no intention of philosophically exhausting the concept of absolutism, totalitarianism and the Democratic Rule of Law, as well as the historical nuances of each period described above. The intention of this work is to carry out a reflection exercise in order to demonstrate the similarity of the anguish experienced by the character Josef K. and the anguish imposed on the Brazilian

1. This essay is the result of provocations, teachings, challenges, carried out by professor Dr. Pietro de Jesus Lora Alarcon, within the development of the discipline entitled “Human being, law and systemic crisis: the social being for fundamental rights and fundamental rights for the social being”, taught in the Doctorate Program in Law at ITE in Bauru.

indigenous people, both victims of the vulnerability caused by the lack of guarantee of fundamental rights and present limits of action in a Democratic State of Law, however, common vulnerabilities for Totalitarian States.

CONSTITUTIONALISM X "KAFKAESQUE" ABSOLUTIST STATE

Barroso (2009²), teaches that constitutionalism was a kind of victorious ideology of the 20th century, condensing and implementing some of the great promises of modernity, such as limiting the power of the ruler or the State, the dignity of the human person, fundamental rights, material justice, solidarity, tolerance and even happiness. Such achievements were fundamental for the reconstruction and overcoming of the totalitarian regimes of Nazism in Germany, Fascism in Italy, authoritarian socialist projects, as well as civil dictatorships in Europe and military dictatorships in Latin America and Africa.

Throughout history, constitutionalism has been improving, worth highlighting the Glorious revolution in England and the American and French revolutions, respectively in the years 1689, 1776 and 1789. Limitation of power mentioned, added to the recognition of fundamental rights and guarantees and, even, the recognition of the notion of the human person, of equality, that is, that we are all born equal, because born from the same Father, are important achievements for humanity in search of the fight against absolutism that was defeated in the aforementioned revolutions (SERRANO, 2020).

If the Liberal revolutions were extremely important for limiting absolutist power, the

2. It is important to note that Barroso, in a recent essay entitled "Populism, authoritarianism and democratic resistance: the constitutional courts in the game of power", updates the lesson cited at the heart of this essay, apparently in a less optimistic way, otherwise let us see: "Democratic constitutionalism was the victorious ideology of the 20th century, having defeated the alternatives that had been presented for decades: communism, fascism, Nazism, military regimes and religious fundamentalism. In these first decades of the 21st century, however, something seems not to be going well, in a situation that has been described as a democratic recession [...]" (BARROSO, 2022, p. 2). The less optimistic conceptual replacement was also the subject of discussion in the class of Professor Dr. Pietro de Jesus Lora Alarcon.

improvement of constitutionalism occurred with the mechanisms for developing the Social State and implementing fundamental and social rights and guarantees, including the improvement of Justice, perfecting the Law, fair and lawful,

In effect, the Rule of Law is the State of Justice. It is not merely a system of laws, because laws, according to the very learned lesson of Juarez Freitas, can be unjust. They can also be too severe, draconian, tyrannical, cruel. Laws that do not liberate, but oppress, as in dictatorships. Arbitration can corrupt and degrade the State of Laws and the State of Constitutions, but never the Just State, made precisely of respect for the law and the Constitution, legality and constitutionality.

The Law is Fair because it is legitimate; only the law can be unfair because it is not always legitimate (BONAVIDES, 2001, p. 219).

Historically, we have already witnessed, as previously mentioned, fascist, Nazi and dictatorship regimes that made extensive use of legal statutes to give apparent legitimacy to the notably anti-legal atrocities carried out by such totalitarian regimes.

The inconvenient reality is that the Nazi nightmare was not enough to secure the "promises of modernity" described above. That type of Democratic State "[...] fruit of post-war reflection, promised to impose insurmountable obstacles to discretion and the exercise of power – of any power. It didn't work [...]" (CASARA, 2018, p.10).

In practice, the legal limits of a Democratic State of Law must impose, as one of the main limits of power, on the Totalitarian State, respect for fundamental rights and guarantees, however, these limits were, little

by little, abandoned by the applicators of the law themselves. Law and disregarded by public agents and even citizens. What was observed is that, whenever political power identified itself with economic power, there was a situation of state abandonment of the interests of the majority and the population to place itself at the service of the market, large corporations and economic interest groups (CASARA, 2018). “Unlimited power, whether of the State or of individuals, generates oppression and arbitrariness, making any democratic claim unfeasible. In other words, the existence of limits to power is essential to democracy” (CASARA, 2018, p.12).

Kafka's Totalitarianism is a clear example of the imposition of injustices in the face of a citizen, Josef K, completely vulnerable, without any possibility of defense, with an absolute absence of limits to state power and the respective guarantee of rights to the main character. The unfolding of the plot described in the work “The Process” highlights the absence of fundamental rights and guarantees achieved from the Liberal revolutions, such as the presumption of innocence, the right to a fair process, to an impartial judge, and perfected in post-modern constitutionalism. War, such as the right to life, human dignity, information, among others (KAFKA, 1992).

In this sense, even with redemocratization, we will demonstrate that Brazilian indigenous peoples are in a constant process of vulnerability and lack of realization of their fundamental rights and guarantees. There are several legal, philosophical, political and sociological explanations to explain this phenomenon in which there is no full realization of the rights provided for in the 1988 Federal Constitution in a Universal way. As mere examples: “The lack of sensitivity caused by a kind of moral blindness in society in a liquid modernity”, theory by Zygmunt Bauman and Leônidas Donskis (2003). “Low Intensity Democracies”,

by Boaventura de Souza Santos (2002). “The Post-Democratic State and the control of undesirables” by Rúbens R. R. Casara (2017). The “Liquid Authoritarianism” of Pedro Estevam Alvez Pinto Serrano (2020). “Right-wing Populism and democratic recession”, by Luís Roberto Barroso (2022), among other theories.

As previously stated, there is no intention to address and develop such theories, but rather to demonstrate the contextualization and similarity between the anguish of living in a Kafkaesque Totalitarian State and the anguish endured by traditional Brazilian peoples at different historical moments.

COLONIAL PERIOD: INDIGENOUS “HAS A SOUL” AND “JUST WAR”, VULNERABILITY RAISED TO THE MAXIMUM, THE LOGIC OF “HOMO SACER”

The period of colonization is dominated by legislation with an assimilationist, integrationist aspect, which denied recognition of the culture and even dignity of the colonized in opposition to the dictates of Eurocentric culture.

At the beginning of the 16th century there was a famous discussion between the Dominican friar Bartholomew de Las Casas and the jurist Juan Ginés de Sepúlveda, seeking to answer the Catholic Church and the Spanish Crown whether or not the traditional peoples of the American continent possessed a “Soul”. For Las Casas, they would be human beings with dignity and a sense of humanity considered superior to that of the European people themselves, however, Sepúlveda denied the human condition to indigenous people by stating that they did not have a “Soul” (GONZAGA, 2021).

It turns out that it is possible to identify in the theories defended by Las Casas the

practice of a pacifist conception, aimed at deep recognition of the cultural diversity of the people existing on the American continent and the viability of peaceful and harmonious coexistence between colonizers and indigenous people. Las Casas, based on Natural Law and “Das Gentes”, defended the self-determination of different peoples (SOUZA FILHO, 2021).

In this sense, Las Casas recognized the full dignity of the human person for the indigenous people and, more than that, their self-determination, which would be capable of removing the American indigenous people from the auspices of absolutism. Unfortunately, as we know from historical facts, Sepúlveda’s theories actually prevailed.

In turn, for Sepúlveda, the indigenous people “lived in a state of idolatry”, which was a way of denying them their autonomy, the right to their beliefs, their culture and, even, their human condition because they were not considered Christians, so that Christian kings, legitimized by sacred scriptures, would have the legitimacy and, more than that, the duty to conquer these peoples (SOUZA FILHO, 2021).

“Officially, the current law recognized the truth of LAS CASAS in a brilliant decision by FRANCISCO DE VITÓRIA, despite the reality, since that time, being very far from the written law [...]” (SOUZA FILHO, 2021, p. 49).

Quickly, two antagonistic conceptions of indigenous people were established in Colonial America. The “good savages”, considered gentle and submissive to the interests of the colonizers, and the “bad savages”, considered hostile and resistant to the interests of the colonizers. The “bad savages” were subject to the “Just War”, which was the colonizer’s right to rebel against traditional peoples when they did not accept their purposes (GONZAGA, 2021).

This method of dehumanization of indigenous people, in a shocking way, was reused in the period from 2019 to 2022, which will be revisited and demonstrated in the last topic.

There was a consensus that the capture of indigenous people considered “savage” was fair and, in turn, those captured could be forced to practice servitude and slave labor. In fact, there was an attempt, through Freedom Laws in the years 1609, 1680 and 1755, to extinguish the distinction between “savage and enemy” indigenous people and “good and friendly” indigenous people, however, such legislation was not enough. to prevent the use of indigenous slave labor that was subject to the concept of “Just War” (GONZAGA, 2021).

Therefore, for Mbembe (2015, p. 129), the documentation of the extermination of the indigenous population in the colonial period served as a guideline for the Nazi experience since “[...] a number of analysts have argued that the material premises of the Nazi extermination can be found in colonial imperialism [...]”.

Mbembe, citing Arendt’s lesson, teaches that “[...] the colonial conquest revealed a hitherto unknown potential for violence. What is witnessed in the Second World War is the extension of methods previously reserved for “savages” by the “civilized” peoples of Europe (MBEMBE, 2015, p. 132).

Brazilian indigenous people lived in the colonial period with the maximum expression of absolutism and revived this environment in the period of exception (1946/1988), once again being positioned as the enemy of the State, a concept historically present in which the Romans used, to name it, the term “hostis” and which was conceptualized by Giorgio Agamben as “homo sacer”, that is, that part of society that could be eliminated, since, as an enemy, it was considered completely devoid of the minimum of recognition as a human being and subject to any arbitrariness (SERRANO, 2020).

In this same sense,

The impression one gets is that the value of indigenous human life was not the same as the value of the lives of their oppressors. In this process of cultural colonization, European ancestors possibly inherited the archaic Roman concept of *homo sacer* by consecrating certain men to the gods and making them “killable” [...] (GONZAGA, 2021, p. 89/90).

Mbembe (2015) defines necropolitics, the politics of death, in short, as the maximum expression of those who have the power to define who lives and who dies. This “legitimacy” to determine who must live or die is typical of totalitarian states, such as the “Kafkaesque Totalitarian State” experienced by the character of Josef K.

In view of what was exposed in this essay, up to this point, it is important to draw attention to the fact that, having overcome the issue of the human condition, that is, that indigenous people had a “Soul” and were subject to the recognition of rights, there was a whole effort by the legal bureaucracy of the time to find subterfuges to continue, in fact, denying dignity to traditional American peoples, subjecting them to maintaining a state of vulnerability and lack of guaranteed rights.

The indigenous people experienced a climate of complete vulnerability and insecurity in an absolutist legal regime administered, especially, by the Portuguese and Spanish troops who were conquering the territories and indigenous peoples of the American continent. This environment of vulnerability, in which the citizen is surrendered “to the wills” or interests of a State or sovereign, without any restrictions or recognition of effective rights, is characteristic of absolutist regimes. In the work “The Process”, Josef K., as previously mentioned, is constantly immersed in this environment of complete vulnerability and imposition of the will of a Totalitarian State. Keeping the due proportions

between the historical facts of the colonial period and the plot of the aforementioned work, what is intended to demonstrate is the parallelism that exists between the citizen who lives in a “Kafkaesque Totalitarian Regime” and indigenous people, who did not even have recognition, in fact, of their human condition, subjected to the dictates of an absolutist monarchical regime in different European countries (KAFKA, 1992).

CIVIL/MILITARY DICTATORSHIP: THE RETURN TO COMPLETE BARBARISM AND VULNERABILITY OF THE INDIGENOUS PEOPLE

If constitutionalism has as important characteristics the limitation of the power of the State or sovereign, the recognition of human dignity and respect for the fundamental rights and guarantees of the citizen, the Totalitarian or Absolutist State is the classic example, as the name itself says, of the total absence of these limits and widespread disrespect for fundamental rights and guarantees.

In Brazil, the reality of our traditional peoples, as well as that of black people brought as slaves, was marked by a permanent policy of marginalization, guided by the denial of the dignity of said individuals throughout centuries of colonial oppression, determined by the practice of real violence and symbolic, through the exploitation of forced labor, through the denial of identity, causing deleterious effects to the social organization of these people. It was believed that, over all these years, the indigenous people would be assimilated, integrated into the colonizer’s Eurocentric culture and that they would disappear. That didn’t happen. Traditional people did not accept this situation (ARAÚJO JÚNIOR, 2018).

This resistance described in the previous paragraph has taken its toll throughout history,

as we saw in the period of colonization, a toll that will continue to be taken to this day. It is important, at this point, to highlight some information regarding the period between 1946 and 1988, the Vargas dictatorship and the Civil/Military Dictatorship, which translated into a scenario of true horror imposed against Brazilian indigenous people who were considered by the State to be an obstacle to “national development”. There are two important official documents that recorded the horrors of a recognizably totalitarian period in relation, to the point of interest for this essay, to indigenous peoples. These are the Figueiredo Report (1968) and the Report of the National Truth Commission (2014). In addition to these government reports, there are many others, including, as a mere example, the reports produced by the Indigenous Missionary Council.

The Report of the National Truth Commission (2014), in the specific item that deals with serious violations of the rights of Brazilian indigenous people, already begins with the resounding complaint that indigenous peoples have suffered serious violations of their human rights and that such violations do not were sporadic and, much less accidental, they were “[...] systemic, insofar as they resulted directly from structural State policies, which are responsible for them, both for their direct actions and their omissions” (CNV, 2014, p. 204).

As stated in the first topic of this essay, a genuine characteristic of a “Kafkaesque Totalitarian State” is exactly the lack of limitation of power of the State, or of the sovereign, the absence of recognition of fundamental rights and guarantees of its people, an evident consequence of the denial of the human condition of his subordinates, in complete opposition to what would be the Constitutional State of Law.

Indigenous Brazilians were able to witness the full virulence of the Brazilian totalitarian State and were subjected to horrors typical of the most creative films in the horror genre. Some facts discovered by the Figueiredo Report and the Report of the National Truth Commission will be presented in order to denounce such horrors and serve as a warning regarding the effects of totalitarianism, at a historical moment in which totalitarian values that were believed to have been overcome return to haunt humanity, including countries such as Great Britain, the United States of America and Brazil, which we will see, especially, in the last topic.

The first volume of the Figueiredo Report (1968) begins with the disturbing denunciation of the distortion of the former Indian Protection Service to the opposite of the objectives of its creation: “The Indian, the SPI’s reason for being, has become the victim of true criminals, who imposed a regime of slavery on him and denied him a minimum of living conditions compatible with the dignity of the human person” (FIGUEIREDO, 1968, p. 2). Unfortunately, the distortion of the indigenous protection body, as we will see in the last topic, will be put into practice again, without any shame from government authorities.

Figueiredo (1968, p. 2) was literally amazed at what he classified as public officials with the lowest standards of decency, acting with a high degree of perversity. “[...] Defenseless children were sold to serve the instincts of inhuman individuals. Torture against children and adults, in monstrous and slow tortures, in the name of administering justice”.

There was documentation of the practice of cruel physical punishments, considered natural in the Indigenous Posts of the former Indian Protection Service. Among the documented punishments, the following can be reported: a) beatings which, not occasionally, led to

disability or death; b) crucifixion; c) the abject practice of forcing people from the same family to impose physical punishment on their family members, so that the son was forced to beat his own mother, the brother was forced to beat his sister; d) the use of the “trunk”, which consisted of the literal crushing of the victim’s ankle, characterized by the punishment applied to the aforementioned region of the body that was placed between stakes driven into the ground, at an acute angle, with the ends connected to pulleys that had the function of crushing the member; e) forced labor to which even parturient women were subjected immediately after giving birth, among other punishments (FIGUEIREDO, 1968, p.3-7).

There was also documentation of the practice of the crime of genocide against several indigenous tribes. The attempt at ethnic elimination took place in different ways, some of which can be presented as a mere example: a) the smallpox virus was inoculated among indigenous people so that their lands could later be distributed to influential people in the region; b) there was the use of launching dynamite from planes over indigenous villages; c) poisoning by strychnine added to the sugar that was given to the indigenous people; d) the use of extermination groups that hunted indigenous people with machine guns; e) the brutal practice of dividing the bodies of indigenous people who survived machine gun fire, which consisted of tying the living indigenous people, upside down, with their legs open and, in a continuous act, having their bodies divided with machete blows to the pubis towards the head (FIGUEIREDO, 1968).

“Hunger” and extreme malnutrition were also extensively documented in the Figueiredo Report:

Lack of assistance, however, is the most efficient way to commit murder. Hunger, plague and mistreatment are taking down brave and strong people. The current conditions of the Pacáas Novos are miserable, while the proud Xavantes are reduced to a shadow of what they were until their pacification.

The Commission saw scenes of hunger, misery, malnutrition, plague, external and internal parasitism, scenes that would revolt the most insensitive individual (FIGUEIREDO, 1968, p. 07).

State abandonment and lack of assistance were carried out as a strategy to eliminate indigenous peoples in all historical periods due to their efficiency in terms of their objective. “In Guarida (IR-7-RGS), for example, following a family that was hiding, we found two little children under a bush, their little heads almost completely rotted from horrible tumors caused by botfly, a bovine parasite (FIGUEIREDO, 1969, p. 07-08).

The accusations contained in the Figueiredo Report were capable, during that period, of horrifying Brazilian society and the international community to the point of causing the extinction of the former Indian Protection Service. Unfortunately, as we will see in the last topic, state lack of assistance was widely used in the Government of Jair Messias Bolsonaro and images of seriously malnourished children, young people and adults, as well as victims of the Nazi holocaust who were found in the concentration camp, are in the press worldwide. We will return to the topic in due course.

In the name of “national development” in what became known as the “March to the West”, the National Report of the Truth Commission brought countless documented reports of indigenous people who went through the process of expulsion, forced removal, compulsory settlement in small indigenous reserves. “The policy of expulsion

of Indians from their territories carried out by the Brazilian State in the period 1946-1988 can be exemplified, initially, through what happened in Mato Grosso do Sul and western Paraná with the Guarani-Kaiowá and Ava Guarani Indians (CNV, 2014, p. 214).

The indigenous people of the State of Mato Grosso do Sul were affected so significantly in the aforementioned period of exception that the report makes a point of recording the situation of the Guarani Kaiowá people as paradigmatic. From the specific item of the National Truth Commission Report entitled “Expulsion, Removal and Intrusion of Indigenous Territories”, 07 (seven) of the 09 (nine) pages of the aforementioned official document address the Guarani Kaiowá (CNV, 2014).

The Report of the National Truth Commission also documented: a) cases of social disintegration and extermination; b) high rates of deaths and massacres; c) arrests, torture, ill-treatment and forced disappearances; d) persecution of indigenous movements; e) usurpation of indigenous labor, confinement and abuse of power; among other crimes committed by the Brazilian State, its agents, in an omissive or commissive manner. There is a specific volume entitled “Text 5 – Human Rights Violations of Indigenous Peoples”, composed of more than a hundred complaints extensively reported on 62 pages (CNV, 2014).

It was determined and verified that the Brazilian dictatorship that began in 1964 caused the death of more than 8,000 (eight thousand) indigenous people, due to the aforementioned “March to the West” and the implementation of large projects, such as the Transamazônica Highway, the construction of the Itapu Hydroelectric Power Plant, construction of the North Perimetral Highway, the use of indigenous labor and the expropriation and sale of indigenous assets. The Report also

states that quantifying the actual deaths of indigenous people is impossible to estimate, and, as we will mention later, there is a need for new specific investigation work in relation to traditional peoples (CNV, 2014).

Appropriately, before moving on to the period of redemocratization, it is worth noting that the National Truth Commission (2014) concluded, given the enormous amount of reports and accusations of serious violations of the rights of traditional peoples and, also, given the immense plurality and ethnic diversity of these peoples, it is necessary to create a National Indigenous Truth Commission, which, the Federal Public Ministry of Minas Gerais, through an official letter, called for a public hearing to be held in October 2022, with no until the moment this test is completed, further information regarding its installation (MPF, 2022).

REDEMOCRATIZATION: INDIGENOUS PEOPLE STILL LIVE WITH VULNERABILITY

With the redemocratization that occurred with the promulgation of the Constitution of the Federative Republic of Brazil in 1988, it was expected that the promises of constitutionalism, discussed in the first topic of this essay, could have promoted a significant change in the destiny of the indigenous population of our country, which, unfortunately, it did not materialize.

In this sense, despite the lesson of Manuel Aragón (2008) regarding the genuine characteristics of a Constitutional State of Law, with emphasis on the limitation of power and imposition of law aiming to ensure political freedoms and fundamental rights, which would be diametrically in conflict with opposition to the “Kafkaesque Totalitarian State”, since the character, Josef K. lives in a permanent state of legal vulnerability, just like Brazilian indigenous people, or, despite the lesson

of Miguel Carbonell and Ricardo Guastini (2003) regarding to a constitutionalized legal system with a strongly invasive constitutional system in the sense of conditioning political actors to respect and enforce fundamental rights, which would have guaranteed respect for fundamental rights and dignity, whether for Brazilian indigenous people, or for the character Josef K, or, finally, regarding the lesson of Barroso (2009) regarding constitutional law having gone from being unimportant to the center of the Brazilian legal system in just one generation that “[...] We have overcome the chronic indifference that, historically, was maintained in relation to the Constitution. And, for those who know, it is indifference, not hate, the opposite of love” (BARROSO, 2009, p. 380), therefore, there is no compatibility between constitutional law and the abandonment of a citizen to his own fate, as well as, of an entire people, what we intend to demonstrate, in this essay, that, unfortunately, for some segments of Brazilian society, historically excluded, in this specific case, the indigenous people, this indifference and even, often, hatred, were capable of preventing and ensuring the implementation of full guarantees and fundamental rights even in the period inaugurated by the 1988 Federal Constitution.

If in the period of exception discussed in the previous topic of this essay, as demonstrated, especially in the Figueiredo Report (1968) and the Report of the National Truth Commission (2014), there was a Totalitarian State project that sought to remove indigenous populations due to consideration them an obstacle to the “developmental” interests of the government and also of the private sector, after redemocratization, the practice of methods of apparent respect for very similar fundamental rights and guarantees was observed.

In this sense, the State of Exception of the 21st Century does not abruptly and violently

interrupt the democratic routine with the use of army troops and tanks in the streets, on the contrary, there is coexistence with the democratic routine, a *de facto*, permanent coexistence, with a justification discourse very similar to that of the period of exception (1946/1988), that is, the extermination and combat of a specific enemy that threatens state survival. This enemy, in the case of Latin American countries, has a common trait that “[...] identifies with the “bandit”, the agent of violence, the one who wants to destroy society and who, necessarily, is confused with black, poor, living on the outskirts [...]” (SERRANO, 2020, p. 212).

Serrano (2020), also teaches that under the justification of fighting this “mythical bandit”, this internal enemy that supposedly threatens security and social integrity, measures of a police state are adopted to govern the poor peripheries, when they are suspended the fundamental rights and guarantees of the inhabitants of these socially and economically excluded spaces.

In this sense, what is observed in practice is that the edition of constitutional norms, especially arts. 215, 216, 231 and 232 were not able to bring about the theoretical rupture, and cause the consequent overcoming of the Coloniality of Knowledge imposed over the last 500 years, a system that denied autonomy to traditional peoples and the recognition of their fundamental rights (ALMEIDA, 2018).

In other words, redemocratization was unable to interrupt the long secular period of systematic disrespect for the fundamental rights and guarantees of traditional peoples. As in the previous topics, we will cite some historical facts and events to demonstrate the climate of vulnerability and lack of recognition of fundamental rights that traditional peoples experience, typical of a “Kafkaesque Totalitarian State”.

In 2018, the United Nations Special Rapporteur

for the rights of indigenous peoples, Victoria Tauli Corpuz (2018) reported that, despite the 10-year anniversary of the United Nations Declaration on the Rights of Indigenous Peoples, the situation is completely disrespectful, “[...] There are no laws that are actually being applied that can guarantee that the rights of indigenous peoples are fully respected. These agreements contain these measures, but many of these pacts between indigenous people and the government have been violated” (TAULI-CORPUZ, 2018).

In this same sense, it is worth highlighting that Brazil was condemned by the Inter-American Court of Human Rights in the case “Xucuru vs. Brazil”, with the determination, among other recommendations, for the immediate demarcation of the lands of this people and the removal of non-indigenous people, in addition to compensation for intangible damages resulting from the delay in demarcating the lands (CORTE INTERAMERICANA DE DREITOS HUMANOS, 2018).

The territorial issue is fundamental so that the Brazilian State can enforce fundamental rights and guarantees and resolve the enormous violence and abuses that are committed against Brazilian indigenous people, and in 2011, the Deputy Attorney General of the Republic warned that, “[...] the problem of indigenous communities is closely linked to insufficient land and emphasizes that the situation in Dourados, in addition to being unworthy, is the greatest known global tragedy in the indigenous issue” (DUPRAT, 2011, p. 24).

There has been a significant worsening of the situation of Brazilian indigenous people at the time this essay is being written, which will be the subject of the next topic. For pedagogical reasons and due to the quality of the diagrammed data, we will cite some facts and information that were published

in the Report of the Indigenous Missionary Council of the State of Mato Grosso do Sul, corresponding to the period from 2003 to 2010 (CIMI, 2011).

“The numbers are frightening, the cases horrifying, the humiliation outrageous. The most serious case of violence and disrespect for human rights against the indigenous people of Brazil. Who commits it? Progress, development, agribusiness, the law [...]” (RANGEL, 2011).

In the period of 8 (eight) years, between 2003 and 2010, more than 4,000 (four thousand) indigenous children suffered from malnutrition in the State of Mato Grosso do Sul. In 2003, the mortality rate due to malnutrition was 93 children for per 1000 births, while, in the following year, it reached the rate of 63 children per thousand births. In 2005, the region witnessed a historic outbreak of mortality due to malnutrition (RANGEL, 2011).

In the same period (2003 to 2010) the number of murders of indigenous people in the State of Mato Grosso do Sul was higher than the rest of the country, with 162 in MS to 106 in Brazil. In 2007 alone, there were 53 murders in MS compared to 39 in the rest of the country (RANGEL, 2011). “[...] In the Indigenous Land of Dourados, where 14 thousand indigenous people live, 16 murders occurred, out of the 34 that occurred in the MS in 2010, according to police data [...] A true war situation [...]” (Rangel, 2011, p. 20). A comparison between the number of murders per hundred thousand inhabitants shows that in the Indigenous Land of Dourados there were 145 murders per 100 thousand people, while in Iraq there were 93 murders per 100 thousand people. In relation to the Brazilian average, the number of deaths occurring in the Dourados Reserve is an alarming 495% higher than the national average. On the national average, there were 24.5 murders for

every 100 thousand people, as opposed to the data already reported above (RANGEL, 2011).

Another very relevant and extremely serious factor is related to the number of indigenous suicides, especially those occurring among young people from the Guarani and Kaiowá people of MS. In the period between 2003 and 2010, the State of Mato Grosso do Sul recorded 83%, in contrast to 17%, of indigenous suicides registered in the country (RANGEL, 2011).

The appalling data, a translation into numbers of the absolute violence and vulnerability to which the indigenous people of the State of Mato Grosso do Sul are subjected, typical of a “Kafkaesque Totalitarian State”, have their origins in colonization and, especially, in the aforementioned “March to the West” described in the previous item, an occasion in which these original peoples suffered brutal state policy of dispossession and expulsion from their lands, as well as confinement in small delimited areas. “[...] It can be seen that, in this process of territorial spoliation, the demarcation of so-called indigenous reserves, by the Indian Protection Service “[...], constituted an important strategy for liberating indigenous territories for colonization, in complete contravention of current legislation [...]” (BRAND, 2011, p. 42).

Indigenous people were affected by structural violence, both during the period in which their lands were expropriated and the violence experienced today, let's see:

[...] How to explain that the SPI and the National Indian Foundation itself, FUNAI, maintained in Mato Grosso do Sul, their policy of compulsory release and eviction of indigenous lands, even resorting to violence against the Indians, as attested the countless documents and reports from the Indians, until the 1980s, remembering that the Indian Statute itself dates back to 1973? Yesterday, as today, the only option offered

to Indians in the region was and is to engage as labor in regional economic enterprises (BRAND, 2011, p.42).

In turn, Pereira (2011), teaches that the compulsory imposition of coexistence in overpopulated reserves, with lack of land for planting, lack of alternative income, forced coexistence between different indigenous ethnicities and even historical political disaffection, without any favorable environment for The practice of rituals necessary to promote harmonious coexistence contributed to the emergence of numerous social problems that increased the violence suffered by these people and the conflicts of today.

The same author also highlights that the aforementioned people suffer from what can be identified as “information terrorism” produced by the press linked to agribusiness and which ends up causing a huge amount of misinformation and prejudice, in a constant feeding of structural racism against indigenous people (PEREIRA, 2011).

Concluding this topic, as said before, without intending to even exhaust a report of violence against the indigenous peoples of Brazil, a mission that would be impossible, due to the enormous amount of documented facts and crimes, it is opportune to demonstrate the lesson of Mbembe (2015), regarding the use of racism as a weapon to control the supposed “enemy”:

That “race” (or, in fact, “racism”) has a prominent place in the rationality inherent to biopower is entirely justifiable. After all, more than class thinking (the ideology that defines history as an economic class struggle), race has been the ever-present shadow over Western political thought and practice, especially when it comes to imagining the inhumanity of foreign peoples – or dominating them (MBEMBE, 2015, p. 32).

The author adds: “[...] By a biological

extrapolation on the theme of the political enemy, in organizing war against its adversaries and, at the same time, exposing its own citizens to war, the Nazi State is seen as the one that paved the way for a tremendous consolidation of the right to kill [...]” (MBEMBE, 2015, p. 32).

Unfortunately, there is no difficulty in finding, with relative care in comparisons, a disturbing similarity in the method of action of the Nazi totalitarian regimes in Germany, Fascist in Italy, with what was experienced by the indigenous people, whether in the colonial period or in the period of exception. Brazilian society, whether during the period of redemocratization and, as we will see below, today, with the rise to power of a ruler who, at no time, hid in his actions, speeches and practices, that the indigenous people would go through a period of enormous difficulty, to say the least.

GOVERNMENT OF JAIR MESSIAS BOLSONARO

To better understand how the important deterioration of the fundamental rights and guarantees of traditional Brazilian peoples occurred during the government of President Jair Messias Bolsonaro (2019-2022), it is necessary to understand a phenomenon that some authors are calling “democratic recession” caused by right-wing populist regimes. There is a populist, extremist and authoritarian wave reaching many parts of the world, such as Hungary, Poland, Turkey, Russia, Georgia, Ukraine, Belarus, the Philippines, Venezuela, Nicaragua, El Salvador, the United States of America, Great Britain, Brazil, among other countries (BARROSO, 2022).

A common characteristic in all the examples cited is that the erosion of democracy does not occur through a classic coup d'état, under the arms of a general and his subordinates, but, rather, through democratic subversion

that takes place at the hands of presidents and prime ministers who were initially elected by popular vote and who, gradually, begin to produce measures towards authoritarianism, measures that can be identified through the concentration of powers in the Executive, persecution of opposition leaders, changes in rules electoral elections, restriction of freedom of expression, weakening of the supreme courts with the appointment of submissive judges, use of new constitutions (BARROSO, 2022).

For Barroso (2022), it is necessary to draw attention to three distinct phenomena that are ongoing in different parts of the planet, namely populism, extremism and authoritarianism, phenomena that cannot be confused with each other, however, which can overlap. Populism would be the technique of manipulating the population's fears, needs and desires, with the promise of simplistic solutions to complex problems that end up meeting immediate demands and charging a high price in the future. Extremism would be characterized by intolerance, the unacceptance of what is different and the rejection of political pluralism with the frequent use of threats of violence. Authoritarianism would involve the brutal repression of opponents, the intimidation or co-optation of control institutions and the large-scale use of censorship, enabling authoritarian rule.

In turn, Pires (2021) teaches that authoritarian regimes can be achieved in a variety of ways, with special emphasis being given to the main legacies related to the 21st century, populism, neoliberalism and states of exception. “[...] Populism is a political-social form of authoritarianism; neoliberalism is a political-economic form of authoritarianism; states of exception are a political-legal form of authoritarianism [...]” (PIRES, 2021, p. 69).

Authoritarian, historical totalitarian regimes, fascism in Italy and Nazism in

Germany, all relied, in some way and to some degree, on populism, and, regarding the political and legal link, they developed as a state of exception. For example, in Latin America, populism was important for the dictatorships of Juan Domingo Perón, in Argentina and Getúlio Vargas, in Brazil, however, populism was not a dominant characteristic in the Brazilian Civil/Military Dictatorship, however, all of them, without exception, were states of exception. Regarding neoliberalism, although it had not been classified, ideologically and scientifically, many dictatorships were and there are, in the recent past, the dictatorship in Chile, under General Augusto Pinochet, in the present, the dictatorship in Hungary under Viktor Orbán, it must be noted that all neoliberal regimes need states of exception to make their projects viable (PIRES, 2021).

The reader may be wondering why this topic was introduced? It's simple, it turns out:

“[...] The populist cannot support the diversity, plurality, tensions and contradictions inherent to democracy. There is no space to accommodate different views of the world [...] It is no coincidence that in Brazil in 2019, the federal government systematically dedicated itself to confronting education; sometimes by imposing rigid discipline with the purpose of confronting dissenting voices [...] sometimes by attacking universities [...] or even in the aggressive and disrespectful speech of the president of the republic himself who called protesting students “useful idiots ” and “imbeciles” (PIRES, 2021, p. 72).

The populist also works excessively with hate speech and political affections, the idea of the enemy, as previously mentioned. “[...] The president of the republic, still on the subject of the environment, confronted the structure of the State itself, [...] threatened to summarily dismiss the Funai board [...] because the president defends mineral exploration in indigenous lands (PIRES, 2021, p.128). “In

its third year, Jair Bolsonaro's government maintained the directive to halt the demarcation of indigenous lands, a complete omission in relation to the protection of lands already demarcated [...]” (CIMI, 2022, p. 08).

The Government of Jair Messias Bolsonaro, from the point of view of indigenous Brazilians, represented the worsening of a scenario that was already very violent and terrifying, as previously explained. For the sixth consecutive year, there was a drastic increase in possessory invasions, illegal exploitation of natural resources and considerable damage to the heritage of traditional peoples. In 2021, the Indigenous Missionary Council recorded the occurrence of 305 cases of invasions, 226 of which were in Indigenous Lands (TÍs), and in 2020, 263 cases of invasions were recorded, 201 of which were in (TÍs), which represents a number three times higher than that recorded in 2018, when 109 cases of invasions were recorded (CIMI, 2022).

There was a record of a quantitative increase in cases of Indigenous Territories affected by the illegal actions of miners, loggers, hunters, fishermen and land grabbers, among other species of invaders, which represented the intensification of violations of indigenous territories, the intensification of violence rates and brutality towards the population. It is estimated that in the Yanomami Indigenous Territory there are more than 20,000 (twenty thousand) invaders dedicated to the illegal practice of mining, who began to carry out systematic armed attacks against the indigenous community, spreading, in turn, a true climate of terror with serious developments in deaths, including those of children (CIMI, 2022).

Furthermore, regarding the situation of the Yanomami, there is a complete omission from the Bolsonaro Government, insofar as, “Criminal attacks, with heavy weapons, were repeatedly denounced by the indigenous

people – and ignored by the federal government, which continued to encourage mining in these territories [...] (CIMI, 2022).

This information is corroborated by an article published by *The Intercept Brasil*, written by journalist Carol Castro (2022, p. s/p): “The Bolsonaro government ignored 21 letters requesting help from the Yanomami. Funai, the Army, the Federal Police and the Federal Public Ministry have received dozens of reports of attacks by miners and requests for increased security.”

Furthermore, Oliveira (2022) clarifies that the adoption of a true anti-indigenist policy was observed in practice, which, through countless normative instructions, opinions, resolutions, ordinances, internal guidelines in which the “[...] “New Funai”, which no longer sees the body as protecting indigenous rights [...]” (OLIVEIRA, 2022, p. 13).

In the same sense, journalist Bittencourt (2023) denounced that there was a complete dismantling of the mechanisms for protecting indigenous lands with the clear political interest of pleasing agribusiness and illegal mining, so that the tragedy that befell the Yanomami indigenous people, with Images that, very easily, remind us of the horrors of the Nazi concentration camps, must be considered a consequence of the criminal behavior of the Bolsonaro government (BITTENCOURT, 2023, p. s/p).

“[...] Funai, the official indigenous body, became a regulatory agency for criminal business in demarcated or demarcated territories. The Bolsonaro government naturalized the violence committed by invaders [...]” (RANGEL; LIEBGOTT, 2022, p. 17). There was a huge increase in rates of widespread disrespect for indigenous human rights and violence as oversight and protection bodies literally changed their objectives and became real intermediaries and guarantors of criminal businesses on indigenous lands.

More than that, employees who expressed opposition to this strange situation were dismissed from their duties (RANGEL; LIEBGOTT, 2022).

For Rangel and Liebgott (2022) there is no doubt that under the federal administration of the Government of Jair Bolsonaro, violence and impunity against indigenous peoples were naturalized. These authors draw attention to the facts found in the Annual Violence Report of the Indigenous Missionary Council, referring to data from 2021, which demonstrated that the said government adopted “[...] the idea that indigenous people are not subject to rights like other beings humans, prevailing the logic of the “savage” who, as such, can be attacked, attacked, expelled or killed [...]” (RANGEL AND LIEBGOTT, 2022, p. 17).

The concept of an “enemy” that must be fought, as we have seen, is a method of totalitarian regimes and, more than that, the concept of “savage”, someone who is not recognized as a human being, devoid of dignity, rights and fundamental guarantees, was widely adopted in Brazilian territory in the different historical periods discussed here.

The environment experienced by Brazilian indigenous people, as demonstrated so far and as we will demonstrate with some more data referring to the year 2021, perhaps, it is not an exaggeration to say, far surpasses the environment of anguish and vulnerability experienced by Josef K. in the plot of “Kafkaesque Totalitarian State” explored in the work “The Process” (KAFKA, 1992).

Regarding heritage, it was found that in 2021 there was a predominance of hate speech against indigenous peoples, a speech used to maintain the anti-indigenist policy that encouraged the denial of rights for these people, whether through premeditated omission or through negligence by bodies for protection, inspection and execution of actions and services in indigenous territories. The

suspension of new demarcations, a campaign promise fulfilled by Bolsonaro, followed by the encouragement of invasions by miners, loggers, ranchers and land grabbers caused serious insecurities and health, nutritional and cultural vulnerability (CIMI, 2022).

It is worth highlighting that the federal government's action, as in the Brazilian exception period, was deliberate and without any concern for disguise in relation to its objectives, “[...] While, on the one hand, the demarcations remained paralyzed, on the other hand, administrative measures continued to be adopted, through resolutions and normative instructions, aimed at liberalizing territories for speculators to request certification and title over indigenous lands [...]” (CIMI, 2022, p. 53).

Regarding murder cases, Cimi (2022) found that, in 2021 alone, 176 murders of indigenous people were recorded, with the majority, 118, or 67%, victimizing indigenous people between the ages of 20 and 59., with a large number of murders of indigenous people up to the age of 19, which reached the mark of 39 cases (CIMI, 2022).

Still in relation to murder cases, two femicides were recorded that had national repercussions due to the severity and cruelty of the crimes that involved sexual violence against a child and an adolescent. The 14-year-old girl, Daiane Griá Sales, was raped and killed, and according to the Public Prosecutor's Office, the crime also involved racial issues as the rapist planned the crime in front of an indigenous woman, believing that there would be fewer repercussions and a greater possibility of impunity. In her turn, a child named Raíssa Cabreira, just 11 years old, was forced to drink alcohol, in a continuous act, was raped and murdered (CIMI, 2022).

In this contextualization of the vulnerability of a typical “Kafkaesque Totalitarian State”, in which our traditional peoples are immersed,

it is important to record, as a very serious indication, at the very least, of omission by the Brazilian State, the data regarding infant mortality calculated for the year 2021. 744 deaths of indigenous children aged 0 (zero) to 5 (five) years old were recorded (CIMI, 2022).

Finally, at the time this essay is being written, the entire planet is horrified by the situation of the Yanomami, with strong evidence of the practice of the crime of genocide against these people. According to an investigation by Agência Brasil journalist, Pedro Rafael Vilela (2023), a Police Inquiry was ordered to be opened by the Minister of Justice, Flávio Dino, who stated as follows:

We have a law on genocide in Brazil, which is very old, sanctioned by Juscelino Kubitschek, in 1956. This law is still in force and provides for various types of genocide practices, which involve killing, but also violating physical and mental integrity, and actions and omissions that lead to the extermination of a certain ethnic group. With what I saw, with what society saw, I have no doubt that there was, unfortunately, not only negligence, but also a certain intentionality, which will be investigated by the Federal Police”, said the minister during an interview with the program *A Voz of Brazil*, produced by Empresa Brasil de Comunicação (EBC) and broadcast by Rede Nacional de Rádio.

Vilela (2023) also reported that the investigations will target those who committed crimes directly in the region and also those who were responsible for the abandonment of health and assistance to indigenous people.

The period from 2019 to 2022, understood by the administration of Jair Bolsonaro's federal government, is proving to be, with many data still being collected, probably the worst period of vulnerability for indigenous peoples since redemocratization. Appalling practices, with an enormous degree of horror, that were practiced in the period of exception (1946/1988) and extensively documented in

the Figueiredo Report (1968) and the National Truth Commission (2014) are again witnessed in the aforementioned period.

The “Kafkaesque Totalitarian State”, in a degree of vulnerability certainly higher than that described in the work “The Process”, has imposed itself, once again, before the traditional Brazilian peoples with society still having to assimilate all the horror that is being denounced, to cite just one example, regarding the issue of the Yanomami people.

FINAL CONSIDERATIONS

The objective of this essay was to carry out an analysis of the reading of the work of author Frans Kafka, *The Process*, and, based on the analysis of the plot experienced by the main character, Josef K., using the inductive/deductive method, determine that the character experienced all the anguish caused by the vulnerabilities of what we call the “Kafkaesque Totalitarian State”. The characteristics identified in the mentioned literary work to identify the totalitarian environment can be enumerated, especially with the state jurisdictional persecution, the complete lack of information regarding the reasons for the Judicial Process in which Josef was indicted, the absence of mechanisms related to the procedural principles achieved, especially, from the Glorious, French and American Revolution, being able to cite, as a mere example, the principles of presumption of innocence, due legal process, dignity of the human person, legality, contradictory, broad defense, duration reasonableness of the process, among others.

From this analysis of the plot of the aforementioned work, with the consequent conclusion of the environment experienced by Josef K.'s character of anguish and vulnerability typical of a Totalitarian State, we begin to demonstrate the similarities between the vulnerabilities experienced

by the aforementioned character with the vulnerabilities experienced by indigenous people Brazilians in different periods.

In this sense, in the first topic an effort was made to demonstrate the main characteristics and differences between a Democratic Constitutional State of Law and a Totalitarian State.

In the second topic, facts related to the historical period of colonization were explored and the effort to demonstrate how indigenous Brazilians were able to witness all the horrors of a Kafkaesque Totalitarian State, and, with due care, in all historical moments covered in this essay, it is possible to affirm that the vulnerability of our traditional peoples exceeded the limits of totalitarianism demonstrated in the work *The Process* since they went far beyond procedural issues and guarantees, resulting in the horrors demonstrated in all periods, specifically in relation to the period of colonization, it is worth highlighting the division between “good savages” and “bad savages”, the latter being subject to the complete absence of fundamental rights and guarantees and all the horrors of the State.

In the third topic, facts related to the Brazilian period of exception (1946/1988) were explored, demonstrating that our traditional peoples were subject to all the vulnerabilities of a classic Totalitarian State, typical of the Nazi regimes in Germany and Fascist regimes in Italy. Once again, it is worth clarifying that the environment experienced by indigenous people goes far beyond the environment of anguish and vulnerability of the “Kafikian Totalitarian State”, since in the plot of the work *The Process*, the absence of limits to fundamental rights and guarantees are, in good measure, limited to procedural principles, whereas, in the Classic Totalitarian State, such as Civil and Military Dictatorships, indigenous people were elevated to the status

of “enemies of the State”, considered an obstacle to economic development, lost their human condition and, consequently, were subjected to the horrors of an ethnic elimination project that had as its technique the use of extermination groups, poisoning, launching dynamite in villages, the dissemination of pathogenic agents, such as smallpox viruses that were disseminated in children’s toys and children’s clothing. children and adults, use of cruel physical punishment, expropriation of territories, among many other horrors.

In the fourth topic, the concern was to demonstrate that, despite redemocratization, with the inauguration of the Federal Constitution of 1988, with specific provisions to protect the rights of indigenous peoples, unfortunately, whether for this specific population or for other excluded people Brazilians, what was observed in practice was that there was no universal access to fundamental rights and guarantees, with two environments being installed, very clearly identified. An environment of a Constitutional Democratic State of law in which fundamental rights and guarantees are enforced, for upper middle class and rich people, as opposed to a State with the absence of fundamental guarantees of rights, for the excluded in general, black people, poor, from the periphery, indigenous people, among others. For this second group, there is complete identification of the typical vulnerabilities of what is called in this article the “Kafkaesque Totalitarian State”.

Finally, in the fifth topic, our efforts were aimed at demonstrating the serious deterioration of the fundamental rights and guarantees of Brazilian indigenous peoples, which, as previously mentioned, far surpass the vulnerabilities of the “Kafkaesque Totalitarian State”, so that the Brazilian indigenous people were hit hard, similar to what happened in the period of exception (1946/1988), by a

government project that had no shame in trying to disguise its anti-indigenist policy, with the rescue of the concept of “homo sacer”, the concept of the “savage” who is not recognized as a subject of law, and, as a result, devoid of any state guarantee and all kinds of horrors typical of a Classic Totalitarian State, such as those documented in Nazi Germany and Fascist Italy. There was a concern to identify the phenomenon of ultra-right populism and authoritarianism to demonstrate how it was possible, in the 21st century, for a politician to advance a totalitarian agenda to the point of acting, in the open, to seek the elimination of a certain people, as was the case, evidenced very clearly, at the beginning of 2023, with facts and images of Yanomamis dying from malnutrition, children and adults, emaciated, which caused enormous commotion in Brazil and the world.

It is concluded that the anxieties experienced by Josef K., in the plot of the work “The Process” are caused by the absence of fundamental rights and guarantees typical of what we call in this essay the “Kafkaesque Totalitarian State”. However, we draw attention to the fact that the anxieties endured by Brazilian indigenous people, in the different historical periods covered in this essay, even in the period of redemocratization, due to the horrors to which they were or are subjected, reach a higher degree of severity. and vulnerability of rights.

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