

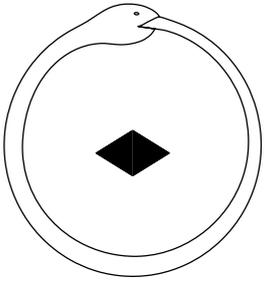


INVOCATION TO THE LAND  
Ailton Krenak's speech  
at the Constituent Assembly  
COMMENTED BY PEDRO MANDAGARÁ



notebooks  
SELVAGEM





## INVOCATION TO THE LAND

Ailton Krenak's speech at the Constituent Assembly

Mr. President, Messrs. Constituents, on this occasion, with the responsibility of defending a proposal of the indigenous populations to the National Constituent Assembly, I had initially decided not to speak, but to use part of the time guaranteed to me in a cultural manifestation of indignation – it could also express mourning - for the insistent aggressions the indigenous people have indirectly suffered by the false polemic that has been established around the fundamental rights of the indigenous peoples and which, although not being placed directly against the indigenous people, are aimed at seriously harming the fundamental rights of our people.

We have not just arrived at this House now. We had the honour of being invited to participate in the work of the Subcommittee on Blacks, Indigenous Populations, Disabled Persons and Minorities since the inauguration of the work of the National Constituent Assembly. This Subcommittee had the competence to deal with the indigenous issue and, later, we also had the opportunity to participate in the installation of the works of the Commission on Social Order.

During this period, the seriousness with which we have worked and the reciprocity of many of the Messrs. Constituents allowed the construction, the elaboration of a text that was probably the most advanced this country has ever produced in relation to the rights of the indigenous people. This text sought to point to what is most essential to guarantee the life of indigenous people. And many of those who were involved in this discussion process here, in the National Constituent Assembly, were touched to the extent of taking the work on indigenous rights beyond the limits of the walls of this House, as was the case in the visit to the area of the Kayapó Indians, in Gorotire. They could listen and get the impressions from the Indians who were in the village about what they feel, what they want for themselves, the concerns we, indigenous, have about owning a future, in the sense of having a perspective.

To ensure the indigenous populations the recognition of their original rights to the lands they inhabit - pay close attention to what I say: we are not demanding or complaining about any part of anything that does not legitimately belong to us and that is not under the feet of the indigenous people, under the habitat, in the cultural, historical, and traditional occupation areas of the indigenous people. To ensure this, to recognize the indigenous people's ways of manifesting their culture and their tradition, are fundamental conditions for the indigenous people to establish harmonious relations with the national society, so that there is really a prospective of the future for the indigeneous people's life, instead of a permanent and ceaseless threat.

The works carried out to result in the first draft of the Constitution meant to shed light on the stupidity and gloominess that has been the historical relationship of the State with indigenous needs. It advanced in the sense of pushing forward the prospect of a future for the indigenous people. And, at this moment, I insist; I had even chosen to be here and similarly to the manifestation of mourning for the loss – be it of a relative, be it of solidarity, be it of a friend and, above all, for the loss of a respect built by our work in here, the respect that we had for this House and that we could also identify in the people who were sensitive to this issue. We want to express our indignation with the attacks we are suffering and to alert this House that we are still the speakers, the indigenous peoples representatives, and that you do not confuse an eventual campaign and possible aggressions against the indigenous people with controversies that are built without our knowledge.

You Messrs. know, Your Excellencies know, that the indigenous people are very far from being able to influence the destiny of Brazil the way it has been suggested. On the contrary: We are perhaps the most fragile part in this process of fighting interests that has been extremely brutal, extremely disrespectful, extremely unethical. I hope that with my statement I am not attacking the protocol of this House. But I believe that you Messers. cannot remain silent, that will not be able to remain oblivious to this aggression driven by economic power, by greed, by ignorance of what it means to be an indigenous people.

The indigenous people have a way of thinking, they have a way of living. There are fundamental conditions for their existence and to

manifest their tradition, their life and their culture which do not put at risk and have never put the existence of even the animals that live around indigenous areas, let alone other human beings. I believe that none of you could ever point to any acts, attitudes of the indigenous people of Brazil that may have put at risk either the life or the property of any person or any human group in this country.

And today we are the target of an aggression that intends, in essence, to hit our faith, our confidence that dignity still exists, that it is still possible to build a society that knows how to respect the weakest, that knows how to respect those who do not have the money to maintain an unceasing defamation campaign. A society that knows how to respect a people who has always lived off of all wealth. A people who lives in houses covered with thatched roofs, who sleep on mats on the ground, should not be identified, in any way, as a people who is the enemy of Brazil's interests, the enemy of the nation's interests or people who could jeopardise any development. The indigenous people have watered with blood every hectare of Brazil's eight million square kilometres. And you Messers. are witnesses of this. I thank the president of this house, I thank you Messers., and I hope that my words have not hurt the feelings of the gentlemen in this house.

4 September 1987

**AILTON KRENAK,**  
**INDIGENOUS VOICE IN THE CONSTITUENT ASSEMBLY<sup>1</sup>**

Pedro Mandagará (UnB)

1. THE CONSTITUENT AND INDIGENOUS PEOPLES

In October this year<sup>2</sup>, Brazil's Federal Constitution turned thirty years old. The Citizen Constitution is already one of the longest lasting texts in our constitutional history. The most enduring constitutions were the first ones: that of the Empire, of 1824, which was replaced by the first of the Republic, in 1891. This lasted until 1934, closing 43 years. The thirty years of the 1988 Constitution are hardly near to the Constitution of the United States, in force since 1789, or to the long history of English constitutionalism, which goes back to Magna Carta (1215), but it still represents a precious period in our history.

The duration of the 1988 Constitution, however, does not necessarily represent its stability. There is a constant attack, intensified in recent years, against the various guarantees of rights established therein. Free education, for example, is usually blamed for the Federal Government's fiscal crises, at least according to orthodox economists. Other principles, such as the social function of property, are under attack from social sectors linked to agribusiness and from neoconservative philosophers such as Denis Rosenfield. As a form of indirect attack, the brutal decrease in funding makes the rights to culture and sport practically empty words.

Part of this instability seems to come from the constitutional text political process of construction, negotiated under strong social pressure. It was only the accumulation of years of political pressure from the indigenous peoples and their collaborators that allowed Articles 231 and 232 of the Constitution to be among the most advanced, to date,

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1. Originally published in *Suplemento Pernambuco* n. 150, August 2018, with the title "Brazil, this is how indigenous people use their voice" (available at [https://suplementopernambuco.com.br/images/pdf/PE\\_150\\_web.pdf](https://suplementopernambuco.com.br/images/pdf/PE_150_web.pdf)).

2. This text was written and published in 2018.

with regard to the rights of this population. At that time, the indigenous peoples were coming from two decades of unceasing attacks which seemed to accelerate the genocidal process that accompanied the entire formation of Brazil. The military governments' development projects for Amazonia affected various peoples of recent contact or still isolated, completely unprepared for the introduction of new diseases, for the world of money and merchandise, or for confrontation with firearms<sup>3</sup>. The case of the Yanomami, targeted because of the minerals present on their land, was quite emblematic. Government irresponsibility between the late 1970s and early 1990s led to a gold rush in what is now Yanomami Indigenous Land, with the presence of tens of thousands of miners who brought diseases and weapons to the region, causing the death of around 20% of the Yanomami population (according to data from the NGO Survival International).

In the struggle and resistance process from the 1970s onwards, the current Brazilian indigenous movement was forged. One of its greatest leaders is Ailton Krenak. Born in 1953, Ailton comes from a history of centuries-old violence against the "botocudos", as the indigenous peoples of the *Rio Doce* region and surrounding areas in Minas Gerais, Espírito Santo and southern Bahia were called. The botocudos of the east ended up calling themselves Krenak, named after one of their leaders in the early 20th century, from the self-denomination krén, people (Paraiso, 2018). The people suffered a continuous process of attacks and displacement throughout the 20th century, including forced displacements and the confinement of members of the ethnic group in the Krenak Reformatory and the Guarani Farm, prison institutions for indigenous people during the military dictatorship that operated as concentration and forced labour camps. Only in 1997 did the Krenak people have a minimal part of their original lands demarcated. And less than 20 years later, in November 2015, their territory was affected by the biggest environmental catastrophe in Brazilian history, the destruction of the *Rio Doce* by the mud coming from a dam belonging to the mining company Samarco.

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3. The book *Os Fuzis e as Flechas: história de sangue e resistência indígenas na ditadura* [Rifles and Arrows: a bloody history of resistance in dictatorship], by Rubens Valente (2017), narrates this process, including the stories of various peoples from the whole country.

In the midst of the ongoing catastrophe affecting his people, Ailton Krenak acted as one of the leading names in indigenous rights organisations which emerged in the 1980s, such as the Union of Indigenous Nations. During the National Constituent Assembly, two popular amendments were filed referring to indigenous rights. Amendment 39, defended by the Conselho Indigenista Missionário (CIMI) [Indigenous Missionary Council] and other institutions, defined Brazil as a “Federative and plurinational Republic” (Popular Amendments, p. 36), which, despite being the truth of the facts, proved unacceptable for many nationalist constituents. The most immediate result was a smear campaign against CIMI carried out by the press, notably by the newspaper *O Estado de São Paulo* (Brand, 2008; Ricardo et alii, 1991, p. 48-50). Although it was quickly demonstrated that the documents against CIMI were fabricated, there was a risk of regression to an integrationist vision of indigenous peoples. It was in this context that Ailton Krenak spoke in the Constituent Assembly in favour of another proposal, Amendment 40, defended by the Associação Brasileira de Antropologia (ABA) [Brazilian Anthropology Association], the Coordenação Nacional dos Geólogos (CONAGE) [National Coordination of Geologists] and the Sociedade Brasileira para o Progresso da Ciência (SBPC) [Brazilian Society for the Advancement of Science]. Amendment 40 defined Brazilian society as multi-ethnic (Amendments, p. 37), which did not make it into the constitutional text, and defended the right to social organisation and traditional land occupation, which effectively entered the Constitution. At that moment, Amendment 40 and the proposed rights for the indigenous peoples were under media and political attack, and Ailton Krenak’s speech intervened forcefully in this discussion (Ricardo et alii, 1991, p. 23).

## 2. AILTON KRENAK E A RETÓRICA

The ancient Greeks and Latins defined four parts of rhetoric, that is, the art of arguing and convincing<sup>4</sup>. The first part was invention, the

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4. There are several good introductions to classical rhetoric. Here I use Olivier Reboul’s (2004) *Introduction to Rhetoric*, which is quite accessible. Of the original texts, Aristotle’s *Rhetoric* was the first to systematize the field. The *Oratorical Institutions*, by the Latin Quintilian, are particularly important for presenting the most detailed version of ancient rhetoric I know.

activity of discovering arguments for the defence or accusation in a judicial proceeding (judicial genre), for the defence of a certain political decision (deliberative genre) or for the praise or censure of someone or something (epideictic genre). With these purposes in mind - to defend or to accuse, to advise, to praise or to censure - the speaker could choose arguments within a rather elaborate technique. It would be necessary to use arguments within three types, already defined by Aristotle in his rhetoric: *ethos*, or the character that the speaker assumes, *pathos*, or the feelings one wants to have as a response from the audience, and *logos*, or the arguments that try to prove or disprove certain theses.

*Disposition*, the second part of rhetoric, deals with the ordering of discourse. There are several versions of this order. The most classical one, according to Reboul (2004, p. 55) has four segments: the *exordium* or the *proem*, which begins the speech and must capture the audience's attention and benevolence; the *narration*, which tells a version of the facts being discussed; the *confirmation*, which brings evidence, arguments and counter-arguments; and the *peroration*, which closes the speech.

*Elocution*, the third part of rhetoric, deals with the style that is used – this is where the study of figures of speech takes place, to which all rhetoric is sometimes reduced. Finally, the *action* deals with the performance of the speech, body and voice of the speaker as part of the argumentative process.

Following this brief summary of some elements of the ancient art of rhetoric, I will now show how Ailton Krenak mobilises this art in his speech. Delivered on 4 September 1987, the speech responds most immediately to the substitute bill of the rapporteur Bernardo Cabral (PMDB-AM)<sup>5</sup> to the draft Constitution, which, by systematising the proposals of eight different thematic commissions, modified and disfigured the proposals related to the indigenous rights (Ricardo et alii, p.18-19). As a speaker, Ailton Krenak embodies the posture of an advocate. Even if the speech was of the deliberative genre, as it was a political discussion, elements of the judiciary genre can be seen, as Ailton defended indigenous peoples and their allies from attacks and accusations. The *exordium* to the speech is exemplary:

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5. Partido do Movimento Democrático Brasileiro - Amazonas PMDB-AM [Party of the Brazilian Democratic Movement] (T.N.).

*Mr. President, Messrs. Constituents, on this occasion, with the responsibility of defending a proposal of the indigenous populations to the National Constituent Assembly, I had initially decided not to speak, but to use part of the time guaranteed to me in a cultural manifestation of indignation – it could also express mourning - for the insistent aggressions the indigenous people have indirectly suffered by the false polemic that has been established around the fundamental rights of the indigenous peoples and which, although not being placed directly against the indigenous people, are aimed at seriously harming the fundamental rights of our people.*

In this first sentence of the speech, we see *ethos* or character and *pathos* or feeling being defined very clearly and effectively by the speaker. The character of the speaker is defined as a legitimate representative of the indigenous peoples. If the speaker is an “I” who has a certain responsibility, he is also part of an “our people”, with which the paragraph closes - and the passage from one to the other, from starting with an I and ending with a we, builds the speaker’s reliability as a representative. The character of the speaker is also defined by feeling, by being indignant or in mourning. This is the *pathos* - the indignation - that is intended to be conveyed to the audience.

Following the *exordium*, the speaker *narrates* the indigenous participation in the debates of the Subcommittee on Blacks, Indigenous Populations, Disabled Persons and Minorities of the National Constituent Assembly. He praises the “reciprocity of many Messrs. Constituents” to the seriousness with which indigenous people and allies worked, allowing “the construction, the elaboration of a text that was probably the most advanced that this country has ever produced in relation to the rights of indigenous people” (p. 33). And he lists, and discusses, the essential rights guaranteed by the text - the original rights to the land and the recognition of culture and tradition.

By discussing essential rights, he brings arguments for the justice of their inclusion in the constitutional text (*confirmation*):

*To ensure the indigenous populations the recognition of their original rights to the lands they inhabit - pay close attention to what I say: we are*

*not demanding or complaining about any part of anything that does not legitimately belong to us and that is not under the feet of the indigenous people, under the habitat, in the cultural, historical, and traditional occupation areas of the indigenous people. To ensure this, to recognize the indigenous people's ways of manifesting their culture and their tradition, are fundamental conditions for the indigenous people to establish harmonious relations with the national society, so that there is really a prospective of the future for the indigenous people's life, instead of a permanent and ceaseless threat.*

Both elements, territory and culture, had been disfigured and restricted by Bernardo Cabral's Alternative Bill. In his proposal, there would only be an original right to "lands of immemorial possession where [the indigenous people] are permanently located" (Ricardo et al, p. 18, First alternative bill, p. 47, my addition), which restricts the scope of the definition and disregards the history of forced displacements of different peoples. Against this definition, Krenak defends the complexity of belonging to a territory, which depends on cultural elements, history and tradition, and argues that the right is not only related to what is traditional or "immemorial", but to what is actually inhabited due to historical circumstances.

Also the recognition of indigenous culture had been disfigured in Cabral's Alternative bill, which defined "levels of acculturation" and the limitation of rights for supposedly acculturated indigenous people<sup>6</sup>. In opposition to this, Krenak says that there are forms, in plural, of indigenous cultures manifestations and that those should be recognized. "Harmonious relations with national society" are achieved not through assimilation or "acculturation", but through respect for different cultures.

With regard to *elocution*, Ailton Krenak's discourse uses several figures of speech and thought. Rather than enumerating them, I propose to follow two of these figures, which tie the text together - one in the

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6. Art. 305 - The rights stated in this chapter do not apply to indigenous people with a high degree of acculturation, who maintain a constant coexistence with the national society and who do not inhabit indigenous lands. (First Alternative bill, p. 47) The rapporteur's Second Alternative bill retained this article.

*exordium*, the other at the end of the peroration - and which give meaning to his performance, his *action*.

At the beginning of the text, the speaker uses a figure of thought that the rhetorical tradition calls *preterition* (Reboul, p. 134). This figure consists in saying that you are not going to talk about something which you, immediately, are already talking about. Thus, Ailton Krenak says that he had decided not to use his time with a speech, but with a cultural manifestation of indignation and mourning - but, even so he speaks. His later argument on behalf of the diversity of indigenous cultural manifestations and the value of this diversity for “national society” shows that the effect of this *preterition* does not end in the *exordium* and that this theme continues throughout the speech.

The truly genius part, which made Ailton Krenak’s speech one of the most memorable moments of the Constituent Assembly, is when the figure of thought becomes action. In order to reflect on this moment, I will refer to the video recording of part of the speech<sup>7</sup>.

The video shows Ailton Krenak speaking standing up, in a slow and steady voice, without reading from any visible paper. The complexity of the speech removes the possibility of improvisation, which leaves us facing the use of an excellent memory, a primordial faculty of action according to the ancient rhetoricians. Ailton has rather long hair and wears an impeccably white suit.

*You Messrs. know, Your Excellencies. know, that the indigenous people are very far from being able to influence the destiny of Brazil the way it has been suggested. On the contrary. We are perhaps the most fragile part in this process of fighting interests that has been extremely brutal, extremely disrespectful, extremely unethical.*

*I hope that with my statement I am not attacking the protocol of this House. But I believe that you Messers. cannot remain silent. You Messers. will not be able to remain unaware of this aggression driven by economic power, by greed, by ignorance of what it means to be an indigenous people.*

(Mr. Krenak begins the process of characterization - face painting).

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7. Available at <https://youtu.be/TYICw16HAKQ>

As the speech continues, in the same steady and slow tone, Ailton Krenak begins to paint his face black, removing, with his fingers, from a small can, the pasty paint he spreads all over his face, without letting even a drop fall onto his white suit and without ever interrupting his speech. The manifestation of indignation and mourning, announced at the beginning, happens at the same time as the speech - despite the preterition [the rhetorical technique of mentioning something by professing to omit it], nothing was passed over and both occur, mutually empowering each other. Besides the evident emotional function of catalysing ethos and pathos in a single ritual action, the painting also plays an argumentative function, demonstrating, by example, the type of relationship with the national society that indigenous cultures can bring.

The painting process ends along with the discourse. In one of the last sentences, there is a figure of speech, a metaphor, which amplifies the scope of the previous argument and the simultaneous manifestation:

*And today we are the target of an aggression that intends, in essence, to hit our faith, our confidence that dignity still exists, that it is still possible to build a society that knows how to respect the weakest, that knows how to respect those who do not have the money to maintain an unceasing defamation campaign. A society that knows how to respect a people who has always lived off of all wealth. A people who lives in houses covered with thatched roofs, who sleep on mats on the ground, should not be identified, in any way, as a people who is the enemy of Brazil's interests, the enemy of the nation's interests or people who could jeopardise any development. The indigenous people have watered with blood every hectare of Brazil's eight million square kilometres. And you Messers. are witnesses of this. I thank the president of this house, I thank you Messers., and I hope that my words have not hurt the feelings of the gentlemen in this house.*

In this final part of the peroration, the speaker builds an image of the indigenous people: they are the weakest, they are poor, they live in precarious conditions, and for this reason they do not represent a danger to national interests and development. On the contrary, it was upon these people that the nation was built. The blood of the indigenous pe-

oples has accompanied every moment of the incessant process of territorial expansion that forged Brazil. The blood, which is to say, the blood that was poured out, the death of the indigenous people, still fosters - has watered - the territorial and economic expansion - “watering” and “hectare” are terms used in agriculture. The metaphor, “watering with blood,” synthesises the indignation and mourning proposed as pathos for the discourse.

### 3. BODY AND ORATORY

The body was part of ancient rhetoric. The action part was always present and was, after all, essential for the success of speeches, especially judicial and deliberative ones.

However, it was precisely these genres that lost importance after a certain moment. With the transition from the Republic to the Roman Empire, deliberative discourse gradually lost its importance, as deliberation was increasingly centred around the Emperor. With the fall of the Roman Empire in the West, it was the time for the judicial discourse to be extinct, because there was no longer a Roman legal system. Rhetoric survived in the epideictic genre (eulogy, especially of rulers) and in scholastic exercises. In this process, rhetoric has become more text and less performance. The action portion was losing space in the textbooks and rhetoric lost the body. At a certain point, it became more of an analytical tool for identifying arguments and figures, rather than an art.

In other peoples outside Europe, however, the arts of speech continued, and continue, to be bodily arts. The anthropologist Pierre Clastres, in a classic text published in *Society against the State*, defines the role of oratory in indigenous leadership as follows: “(...) the oratorical talent is a condition and also a means of political power. There are many tribes where the chief must everyday, at dawn or dusk, reward the people of his group with an edifying speech (...)” (2003, p. 49). For the great Yanomami men, generally the fathers-in-law of a family unit, it is the hereamuu speeches that have this function. Delivered before dawn or in the early evening, they are “long speeches” in which the people are encouraged to “hunt and work their fields” and they evoke

“the first time when the ancestors became animals” (Kopenawa and Albert, 2015: p. 376).

The competence in a *hereamuu* speech is defined by the Yanomami shaman Davi Kopenawa in bodily terms. It is the image of the *kãokãoma* hawk that settles itself in the speakers’ chest and indicates to their throat how to speak well. Still it makes your tongue stay firm (p. 381). Good oratory, in *Hereamuu* discourse, is to speak well, a function of the throat, and to have a firm tongue. These are bodily functions, which make the voice return to its physical moment of execution.

For Pierre Clastres, the law in Amerindian societies is inscribed on the body, rather than written on paper (2003, p. 203-204). The Yanomami’s *hereamuu* dialogues, the voice that comes from the body transformed by a spirit, are a part of community’s law. They depend on having a firm tongue and a good throat, and on having a spirit on the inside.

#### 4. HERMENEUTICS AND RHETORIC

If the Middle Ages had no rhetoric worthy of the name, it bequeathed hermeneutics to us, through the practice of interpreting the biblical text. The medieval hermeneutic technique aimed to expand the biblical text beyond its literalness, encompassing the historical movement as prefigured by the creator’s plan. The allegorical interpretation or the theologians’ allegory (Hansen, 2006) became a way of expanding the biblical text into new realms. In the Renaissance and in later centuries the interpretive technique was merged with the ancient techniques of rhetoric. A particularly exemplary moment of this merger is the work of Father Antonio Vieira, who, when performing epideictic (or proselytizing) oratory, interpreted the world from parts of the Bible and interpreted the Bible from what was happening in the world.

Even when using the techniques of rhetoric, hermeneutics or interpretation depends on a fixed point, much more fixed than the living, corporal oratory is capable of providing. The interpretation depends on a text, which will act as a reference to the game of analogies and associations that are proper to hermeneutics. It is in the gaps and remains of the text, in the ellipses, ambiguities and overlaps that interpretation

finds its fullest potentiality. It is also here that interpretation meets politics or what is usually called ideology.

The main place of hermeneutics, in contemporary national cultures, is occupied by the constitutional courts of the judicial systems. As I write, in July 2018, the whole world awaits in suspense for the nomination of the new US Supreme Court Justice, by US President Donald Trump, who will possibly seal a new conservative understanding of the US Constitution, with the possibility of lasting decades. Strictly speaking, this future judge and his eight peers will rule on the interpretation of a document of seven articles and twenty-seven amendments - very few pages. Nevertheless, interpretation, that is to say, the activity of filling in the gaps in this document, decides a great deal of the politics of the United States and the world.

Although the 1988 Constitution is much more analytical and longer than the US Constitution, there is still plenty to be decided by our Federal Supreme Court, as can be seen every day in times of judicial protagonism. Far from the bodily and vocal activity of ancient rhetoric and indigenous oratory, the decisions of the Brazilian Supreme Court take place in trials in which the ministers bring previously written votes, which are generally not altered by the oratory performance of lawyers and prosecutors, and which are read or summarised in plenary session. In this logic, the oratory loses its role of convincing - everyone already has their conviction ready and written down - and becomes an accessory part of the rite. It is the hermeneutic activity, the interpretation of the records and the Constitution, that holds the central place.

My thesis is that this takes its toll, sometimes it is an expensive one. I believe this is the case in the demarcation judgement of the Raposa Serra do Sol Indigenous Land, in Roraima, which had a favourable opinion from the rapporteur, Minister Carlos Ayres Britto, in 2008<sup>8</sup> In this vote, Ayres Britto introduced the following interpretation of the constitutional provisions regarding indigenous lands:

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8. On the Temporal Milestone thesis, I recommend the book *Direitos dos povos indígenas em disputa* [Rights of indigenous peoples in dispute] (2018), organized by Manuela Carneiro da Cunha and Samuel Barbosa.

I – **the temporal milestone [marco temporal]<sup>9</sup> of the occupation.**

Here, it is necessary to consider that our Major Law established a certain date: the date of its own promulgation (October 5, 1988) as an irreplaceable reference for the recognition, to Indigenous Peoples, of “the rights over the lands they traditionally occupy”. Lands that they traditionally occupy, please note, not those that they might come to occupy. Neither the lands already occupied at other times, but without sufficient continuity to reach the objective milestone of October 5, 1988. Objective milestone that mirrors the decided constitutional purpose of silencing the interminable discussions about any other temporal reference to the occupation of an indigenous area. Even if this reference had been written in a previous Constitution. In other words: **the verification date of the fact itself of land occupation is October 5, 1988, and no other.** This prevents at one and the same time: a) the fraud of the sudden proliferation of villages, including through the recruitment of indigenous people from other regions of Brazil, if not from other neighbouring countries, with the sole purpose of artificially expanding the boundaries of the demarcation; b) the violence of the expulsion of indigenous people to de-characterize the traditional ownership of their lands, at the time of the current Constitution. In a word, the implementation of the new Brazilian Fundamental Law is the X-ray plate of the indigenous issue in this delicate matter of the occupation of the lands to be demarcated by the Union for the permanent possession and exclusive usufruct of this or that aboriginal ethnic group. (Ayres Britto, p. 55-56).

In this argument, Ayres Britto works from the gaps in the constitutional text. In fact, there are no temporal references in the constitution-

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9. The Temporal Milestone is a legal thesis that defends a modification in the demarcation policy of indigenous lands in Brazil. According to it, only the indigenous peoples who were already occupying the land at the time of the Federal Constitution promulgation on 5 October 1988 could claim rights to it. The Temporal Milestone is a strategy of agribusiness, ruralists and farmers to bar the advancement of demarcations of indigenous lands in Brazil [T.N.].

nal text, except the five-year deadline for the demarcation of indigenous lands, found in the Transitional Provisions, which has not been fulfilled. Ayres Britto's entire argument is based on the verb tense used in Article 231 of the Constitution: "the original rights over the lands they traditionally occupy" are recognized. From this use of the present tense, the minister concludes that the rights are valid for the time of the signature of the document, on October 5, 1988. From the usage of the verb, the minister concludes that there is a "decided constitutional purpose" to end the discussions about the temporal reference for the occupation of indigenous land. Not being a jurist - but understanding a little bit of language and a little bit of ideology - it seems to me that, if this were the "decided purpose" of the constituents of such a detailed Constitution, it would be expressed in more than a verb tense.

Nevertheless, even if the verb tense is accepted, the minister's argument is fragile. The paragraphs of Article 231 refer to "traditionally occupied lands", which extremely weakens at least part of the minister's thesis - that lands previously occupied by indigenous people, but not occupied at the time of the "X-ray plate" of October 5, 1988, would not be covered by the Constitution. Moreover, the mention of the myth of the "fraud of the sudden proliferation of villages" sounds like cruelty to anyone familiar with the issue. I recommend, as a vaccine, to study a little bit the situation of the Guarani-Kaiowá who have been expelled from land after land since the 19th century<sup>10</sup>.

This fragile argument, however plausible because it is anchored in grammar, had deleterious effects in the following ten years. A part of the ministers started to anchor their decisions in the "temporal milestone" thesis, which resulted in the annulment of some demarcations - that is to say, in the continuity of the oppression of the populations that live in these territories. It also resulted in a series of anti-indigenous decisions in other instances of the Judiciary. And it continues to be discussed, casting its shadow over all the indigenous lands that the economic stakeholders do not want demarcated.

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10, Vincent Carelli's documentary *Martírio* (2016) is particularly interesting for this discussion.

As in the Constitutional Assembly, it is the bodies that stand in the way of the fulfilment of ethnocidal desires<sup>11</sup>. The bodies of thousands of indigenous people who gather every year at the Acampamento Terra Livre [Free Land Camp] in Brasilia, who block roads in protest, who reclaim lands from which they had been expelled, who occupy spaces at the university even without adequate funding, who produce art, who write literature, who express their voices via social media. As in the Constituent Assembly, these bodies organise rhetorics of resistance that stand up to the constant advance of anti-indigenous forces.

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11. Como diz o título de uma matéria no *Jornal da Constituinte*, n. 50, de 12 de junho de 1988, “Índios ganharam no grito” (p. 14, disponível em [https://www2.camara.leg.br/atividade-legislativa/legislacao/Constituicoes\\_Brasileiras/constituicao-cidadada/publicacoes/Jornal%20da%20Constituinte/n-%2050%20-%2006%20a%2012%20junho%201988.pdf](https://www2.camara.leg.br/atividade-legislativa/legislacao/Constituicoes_Brasileiras/constituicao-cidadada/publicacoes/Jornal%20da%20Constituinte/n-%2050%20-%2006%20a%2012%20junho%201988.pdf))

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Transcription from the *Diário da Assembleia Nacional Constituinte and Índio Cidadão? - O filme*.

Watch [here](#) the video of Ailton’s speech recorded by TV Câmara.

The editorial production work of the *Selvagem* Notebooks is carried out collectively with the *Selvagem* community.

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