Indigenous Territories in the USA and Brazil – Comparative Perspectives on Governance and Management Issues

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Abstract

The situation of indigenous peoples in the USA and Brazil, despite all obvious differences, has a number of interesting parallels seldom explored because of the divide between North and South. Indigenous peoples in both countries are many and diverse but usually rather small, making up only a tiny part of the national population (<1%). In contrast, their territories occupy a considerable portion of each country´s area (4.2% USA, 12.6% Brazil) and are of increasing economic interest because of their natural resources. Moreover, "Indian Reservations" (USA) and "Indigenous Lands" ("*Terras Indígenas"*, Brazil) are both areas claimed by the respective nation state as federal lands and held in trust by special federal agencies, but are reserved for the permanent and exclusive use by their indigenous inhabitants. They can thus be classified and analyzed as a specific type of commons.

Over the last decades, significant changes have occurred in the governance and management regimes of indigenous territories in both countries. In the USA, since the 1975 Indian Self-Determination Act, the keywords have been "tribal sovereignty" and "tribal self-governance", and new relationships between the Bureau of Indian Affairs (BIA) and the different tribal governments are being negotiated. In Brazil, the 1988 Constitution reconfirmed the responsibility of the state to demarcate and protect indigenous territories and recognized indigenous peoples´ rights to culturally specific forms of social organization. However, despite considerable advances in the legal recognition of indigenous territories, institutional arrangements for their protection and management hardly exist, indigenous peoples´ rights to most economic uses of their lands are not regulated, and the National Indian Foundation (FUNAI) has only recently started to reconsider its traditionally rather paternalistic role. The paper will report on first results of an ongoing comparative study on these issues, designed to provide inputs for Brazilian and other Latin American indigenist policies.

Key Words: *Indigenous peoples, indigenous territories, governance, management, USA, Brazil.*

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Introduction

This paper is a still preliminary part of a broader and long-term comparative study on land tenure, governance and management of "indigenous territories" in two regions of the world, the Amazon basin (especially Bolivia and Brazil) and the island of Borneo (mainly Indonesia), where I have done research as an anthropologist and/or worked as advisor for German Technical Cooperation (GTZ, *Gesellschaft für Technische Zusammenarbeit*). The intention is to better understand the current dynamics of "indigenous mobilization" and the complex relationships between indigenous peoples and the nation states in which their homelands are now located. The insights shall serve to improve GTZ´s work with and for indigenous peoples and government agencies and NGOs providing services to them in the two regions (therefore the brief "lessons" blocks at the end of each subchapter).

The comparison with a third region, North America (USA and Canada), was added because both "frontier expansion" into indigenous areas and reforms of government policies for indigenous peoples have advanced much further in these countries than in the Amazon and Borneo. Therefore, they provide an interesting perspective on future challenges and policy options especially for countries of similar continental dimensions like Brazil and Indonesia, although their location in the "Global North" (industrialized countries) puts some limits on the "transferability" of their experiences to the "Global South". Because of limitations of time and space, in this paper, I will focus on two of the mentioned countries only, USA and Brazil, the comparison of which is particularly interesting for reasons that will be discussed throughout. After giving a brief overview of the relations between indigenous peoples and the state in both countries, the paper will look in more detail at the definitions of indigenous peoples as political and legal subjects, land tenure security and integrity, the governance of indigenous territories, and natural resource management and economic development. Before entering into details, however, it is necessary to briefly state my position on two interrelated conceptual issues:

"Indigenous peoples" as analytical and political concept

In recent years, there has been considerable discussion, especially in anthropological journals, about the concept of "indigenous peoples" which is now widely used in the UN-system, by international development agencies, and by an increasing number of self-identified indigenous peoples all over the world. The only relevant legally binding international instrument is the 1989 International Labor Organization´s "Indigenous and Tribal Peoples Convention" or Convention 169 which defines its subjects the following way:

> *"1. This Convention applies to:*
> *(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;*
> *(b) peoples in independent countries who are regarded as indigenous on account of their descent from the population which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.*
> *2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply."*
> (ILO Convention 169, Article 1, download from ILO homepage, April 21, 2008)

Academic criticism comes mainly from social scientists working in Africa and Asia who seem to be surprised by and are concerned with the way the concept is being appropriated by local people and their supporters (one catalyst of the discussion was Kuper 2003). In the context of a broader "postmodern" trend towards "deconstruction of essentialism", the analytical and political usefulness of the concept, and ultimately the legitimacy of claims presented by groups of people identifying themselves as "indigenous" and employing what has been termed "strategic essentialism", have been questioned. The discussion reconfirms a long-standing key issue in anthropological and related research: "Whose interests do we choose to represent? With which faction or organization do we choose to collaborate? To whom are we accountable?" (Hodgson 2002:1045).

From my experiences in Indonesia, I understand the problems of using a concept which originated and applies best in the context of "white settler colonies" (Americas, Australia & New Zealand) in situations where most ethnic groups originate from the respective country. Nevertheless, this paper focuses on the Americas. Both the USA and Brazil acknowledge the existence of indigenous peoples and territories prior to the establishment of their respective nation states in their constitutions and legislation and have a lengthy history of "indigenist" policies and institutions. Therefore, the paper will utilize the terminology currently most accepted in these countries.

Indigenous territories in the USA and Brazil as "commons"

A second controversy related to indigenous peoples and territories that keeps resurfacing is "The Ecologically Noble Savage Debate" (Hames 2007), in which again analytical and political perspectives mix and often conflict with each other. While there seems to be agreement by now that indigenous peoples in their regions of origin, due to their dependence on often marginal and fragile ecosystems, have extensive knowledge about their natural environment, the debate about the existence or not of indigenous conservation ethics or intentions, and management strategies, and about the *de facto* sustainability of their pre- and post-contact land use systems continues. Since most indigenous movements and their supporters have incorporated aspects of the "noble savage image" into their discourses, this issue has become quite political.

Independent of the empirical validity of claims to sustainability, for centuries the focus of indigenous peoples´ struggle for their rights has been to maintain or recover collective control over land and natural resources, i.e. over what in ILO 169 and at least in the Latin American context are increasingly being called "indigenous territories" ("*territorios indígenas"*), as a precondition for their survival and self-determination.[2] Governments have reacted differently to these demands for

[2] "*Part II Land, Article 13.2.: The use of the term* ***lands*** *(…) shall include the* ***concept of territories****, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.*
Art. 14.1.: The ***rights of ownership and possession*** *of the peoples concerned over the lands which they traditionally occupy shall be recognised. (…)*
Art. 14.2.: Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to ***guarantee effective protection*** *of their rights of ownership and possession.*
Art. 14.3.: Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

recognition of indigenous "common property regimes" depending on the historical moment, the political situation, and the legal tradition of the country. In North America, both the USA and Canada (at the time still a British colony), which both maintained their Common Law legal tradition after independence, since the early 19th century established "reservations" or "reserves", i.e. federal trust lands set aside for the permanent utilization by indigenous peoples. In most Latin American countries, the current trend, after the constitutional reforms of the 1990s which occurred both due to internal democratization processes and changes in the international context[3], is towards areas held in collective (often termed "communal") ownership with a title. Interestingly, in Brazil, although it shares the Civil Law legal tradition of most Latin American countries, after some changes in terminology and responsibilities, since 1969 "*terras indígenas*" (TIs, indigenous lands) have been federal trust lands as well. Different from North America, in Brazil as in most Latin American countries, subsurface mineral rights are not included.

A recent review argues that both types of formal recognition – i.e. collective title and reservation - are covered by ILO 169 and may actually be equivalent in terms of the protection they provide, at least "from a legally formalistic viewpoint" (Ankerson & Ruppert 2006:756), since communally titled indigenous territories also have "limitations on alienability, severability, and use of land as collateral" which lands under private property do not have (ibd. 746). However, the authors also point to limitations placed on the "emerging international human right to communal property", the most problematic of which is "the ability of central governments to make resource-development or other decisions affecting the land of indigenous peoples without the consent of the 'owners'" (ibd. 750). The comparison of these and other land tenure, governance and management issues of "indigenous territories" or "indigenous common property regimes" in the USA and Brazil will be the main topics of this paper.

Relations between Indigenous Peoples and the State in the USA and Brazil

USA

„Only by abandoning many long-held … myths and fantasies are we likely to achieve a mutually productive modus vivendi with tribes that are destined to play increasingly important and self-determined roles on the national scene, and only then will we become able to shape a healthy national policy for peoples whose real life is far more complex, and interesting, than our persistent fantasies" (Bordewich 1996:20).

Brazil

"Brazil and the Indians have their destinies inexorably intertwined. The country would be unthinkable without its constructed Indian" (Ramos 1998:292).

The USA and Brazil, despite all obvious differences in terms of history, culture and their current situation in the North vs. South, have many similarities which facilitate a comparison of relationships between indigenous peoples and the state over time, and of current indigenist policies and institutions (see Table 1). Both are countries of continental dimensions which had sizeable indigenous populations at the time of "first contact" around 1500 (despite ongoing debates, certainly several million in both

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*Art. 15.1.: The rights of the peoples concerned to the **natural resources** pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.*"
(same download from ILO homepage; my emphases)

[3] In international law, the concept of "*terra nullius* as the legal basis for the dispossession of indigenous lands" (Ankersen & Ruppert 2006:713) was only rejected in 1975.

cases). Today, due to similar combinations of epidemics, violence and assimilationist pressures, indigenous peoples – while still highly diverse, consisting of hundreds of different entities – make up less than one percent of the respective national population. In both countries, from early colonial times on, African slaves were imported in large quantities, and after independence, immigration from various European and Asian countries was encouraged, adding to the complexity of the racial and ethnic composition of the national population. Indigenous peoples, however, do not identify themselves as one among many "ethnic or racial minorities", but insist on their specific situation and rights which derive from their status as descendants of the original inhabitants. Due to the history of "frontier expansion" in both countries, during which the economic activities of the expanding national society entered into direct competition over land and natural resources with the indigenous peoples and led to their increasing displacement, today, indigenous peoples are left with approx. 4% of the country in the USA and approx. 13% in Brazil. While indigenous peoples in the USA and Brazil are hardly a demographic factor in national or even most regional and local elections, their often romanticized images, the natural resources in their remaining territories, and their increasingly self-confident political actions command permanent public attention.

Table 1 – Overview of Basic Comparative Data

Issue	USA	Brazil
Size of Country	**9.6 million km2**	**8.5 million km2**
Number of Indigenous Territories	**350** (310 reservations and 40 "Indian Statistical Areas") (in the "Lower 48 States)	**611** "*Terras Indígenas*" (115 still in initial phase of recognition, 416 legally secured)
Size of Indigenous Territories	Approx. 100 million acres = **40,470,000 ha** (**4.2%** of the country)	Approx. **106,929,000 ha** (**12.6%** of the country)
Indigenous Population at Time of "First Contact"	**Approx. 1.9-2.6 million**	**Approx. 3-6 million**
Population of Country	**281.4 million** (2000 Census)	**169.9 million** (2000 Census)
Number of Indigenous Peoples	**562** "federally recognized tribes" plus **63** "state-recognized tribes"	Approx. **220** "*povos indígenas*"
Indigenous Population (% of total population)	**2,447,989 (0.87%)**[4] (2000 Census)	**734,127 (0.43%)**[5] (2000 Census)
Legal Tradition	British (Common Law)	Portuguese (Civil Law)
Type of State	Federation of 50 sovereign states	Federal presidential republic
Government Agency in Charge of Indigenous Affairs	**BIA (Bureau of Indian Affairs)** (founded in 1824; 10,665 employees in 2007)	**FUNAI (Fundação Nacional do Índio)** (founded in 1967, predecessor SPI in 1910; approx. 2,000 employees in 2007)
Federal Gov. Budget for Indigenous Affairs	US$ 3.7 billion (FY 2005)	R$ 540 million = approx. US$ 270 million (approved 2008 budget)
National Indigenous Umbrella Organization	National Congress of American Indians (NCAI, founded in 1944)	Currently none (informal network)

Sources: various (see bibliography); for Brazil also: FUNAI Database May 2007; IBGE (www.ibge.gov.br), April 2008 download of tables on the 2000 Census.

[4] People who *only* reported „American Indian and Alaska Native" as their "race". There were a total of 4.3 million people or 1.5% of the population who reported this and another category as their race (Ogunwole 2006).

[5] Self-identification choosing among the following options for the category „color or race": "white", "black", "yellow", "mixed" ("*parda*"), "indigenous" ("*indígena*") (IBGE homepage).

Governments and population in both countries have long realized that they cannot escape their historical responsibilities towards their first inhabitants. As was already mentioned, despite different legal traditions and historical processes, both the USA and Brazil found rather similar ways of dealing with "indigenous issues", setting aside specific federal trust lands reserved for but not owned by indigenous peoples, and creating specialized indigenist agencies, the BIA (Bureau of Indian Affairs) in the USA and FUNAI (*Fundação Nacional do Índio*/National Indian Foundation) in Brazil. Designing and implementing appropriate policies and services for indigenous peoples in and beyond their territories, attending their demands to be "equal but different", i.e. to be citizens with original, inherent special and permanent collective rights, has been and still is controversial in both countries, presenting fundamental challenges and ambivalences which will be highlighted throughout the following comparative analysis (for details on the history of the relations between indigenous peoples and the state in both countries, see Annex 1 and 2).

The Political and Legal Subjects of Indigenous Land and other Rights

USA

"Tribal nations and their individual members … have often suffered because of conflicting federal policies, which have vacillated between respecting the internal sovereignty of tribes and seeking to destroy tribal sovereignty in order to assimilate individual Indians into the American body politic" (Wilkins 2007:60)

Brazil

"Discussions of indigenous policy in that country entail discussions of the nature of the state, of its model of development, and above all of its treatment of the have-nots within the country." (Maybury-Lewis 2002:360)

Each country hosting "indigenous peoples" has its own anthropological and political-legal debates on "Who and how many?" are the subjects of individual and/or collective indigenous land and other rights central to this paper, and first of all, on "Who has the right to define them?".

In the **USA**, "American Indian" or "Native American" are by now the most agreed-up cover terms used, both by the indigenous peoples themselves and the government. "Tribes" has become the legal category used for their land-holding entities, rather than "nations" which appeared in early treaties and is preferred by the indigenous movement. The key to understanding Indian/tribal-state relationships in the USA is the principle of sovereignty: since the beginning of colonization, when the first treaties were signed, indigenous peoples were recognized as political entities of independent international legal standing. The federal government assigned itself a special "trust relationship" towards indigenous peoples, a unique moral and legal duty to protect their sovereignty and property. This was upheld in the Constitution of 1789, more treaties until 1871, legislation and court decisions ever since, although the interpretation was downgraded by the Supreme Court in the 1830s to "domestic dependent nations". As a result, „in the United States, three types of governments have authority that is not delegated by another political entity: the federal government, state governments, and tribal governments" (HPAIED 2008:17).

This situation makes it all the more important to have control over the definition of "tribes" and tribal membership. Indigenous peoples in the USA as elsewhere claim the right to collective and individual self-identification (confirmed by ILO 169), and the US Bureau of Census uses this criterion in its statistics. However, in the USA there is a longstanding tradition of federal recognition (and de-recognition in the "termination" period during the 1950s and 1960s) of tribes either through treaties,

laws, or presidential action as collective landholding units and recipients of government services. Since 1978, this has been complemented by a complicated, slow and controversial BIA recognition procedure. Also, there is an increasing number of states that for different reasons recognize tribes so that currently, there are over 560 federally and an additional over 60 state recognized "tribes", with dozens of self-identified "tribes" still on the BIA "waiting list".

As to the question of "Who is an Indian?", i.e. of individual identity, in principle, "the decision rests with the tribal nations who retain, as one of their inherent sovereign powers, the power to decide who belongs to their nation" (Wilkins 2007:28). Only in 1924 did the American Indian Citizenship Act recognize all Indians as American citizens (ending their existence as "wards of the state" and especially the BIA), without the need to give up their rights as tribal members. Since the Indian Reorganization Act of the 1930s, most "tribes" have their own constitutions and membership rolls, often relying on the criterion of a minimum "blood quantum" (typically at least "one quarter Indian blood"). However, given the federal trust relationship with Indian tribes, the BIA and other agencies as well as Congress have issued dozens of "legal" definitions of who is Indian and as such entitled to government support, usually also stipulating at least "one quarter". As to indigenous demography and identity, since the population nadir of less than 250,000 around 1900, numbers have steadily increased to almost 2.5 million self-identified "single race" Indians in the 2000 Census. However, "diversity and uncertainty are the hallmarks of Indian Country, with more than half the indigenous population living off reservations and Indians outmarrying at increasing rates" (Wilkins 2007:43).

In **Brazil**, as in the USA, the terminology used by both the state and indigenous peoples has changed over time. While FUNAI, the outdated 1973 Indian Statute (Law 6001)[6] and the 1988 Constitution use "*índio*" (Indian) as the most generic term, the indigenous movement and their supporters today prefer to refer to "*povos indigenas*" (indigenous peoples) as collective actors, a term which also better articulates with international legal instruments and discussions. While Brazil has a long history of indigenist concerns and legislation, and FUNAI´s predecessor SPI (*Serviço de Proteção aos Índios*, Indian Protection Service) was founded in 1910, the procedures for defining and identifying indigenous peoples or individuals are less formalized than in the USA. The main criteria in the Indian Statute are rather generic: pre-colombian origin and both self-identification and identification by others as "an ethnic group culturally distinct from national society" (Art. 3, my translation). FUNAI has for some time now abandoned its procedure to officially recognize indigenous peoples, adhering to ILO 169 (self-identification) which came into force in Brazil in 2004, and its identity cards for indigenous individuals are gradually being replaced by standard Brazilian documents which, however, do not specify ethnicity.

Similar to the USA, the Brazilian state – here also most of the times the federal government - assigned to itself a specific responsibility for the indigenous peoples, the "*tutela*" (guardianship), an obligation to protect and assist indigenous peoples which used to combine federal trusteeship for their property, especially the indigenous lands, with a rather paternalistic guardianship over what were perceived as "relatively capable" child-like indigenous "wards". During the military regime in the

[6] The "*Estatuto do Índio*" has been in a complicated and controversial revision process in the Brazilian congress since mid 1991 under the title of "*Estatuto das Sociedades Indígenas*" (i.e. "indigenous societies", not "peoples"), with no end in sight.

1970s, there were attempts to rid the government of its obligations towards the indigenous peoples by their unilateral “emancipation” and assimilation into national society, but national and international mobilization helped to prevent this. The new democratic 1988 Constitution contains two key paragraphs recognizing indigenous rights to their own cultures and social organizations, lands and resources, and legal self-defense, making them – at least in the interpretation of the indigenous movement and their supporters - full citizens with special rights.

In the absence of an “official list” of indigenous peoples in Brazil, FUNAI, indigenous organizations and NGOs all maintain their own, currently listing approx. 220 “*povos indígenas*” ranging from a few individuals to a maximum of approx. 50,000 members. Brazil is unique in the world in that it is home to up to 50 groups of completely or rather isolated indigenous people in tropical forest areas whose protection places a specific responsibility on FUNAI (in the USA, the last “isolated” Indian was “contacted” in 1911). At the other end of the spectrum, there are increasing numbers of groups who after centuries of discrimination and assimilative pressures now “re-emerge”, reasserting their indigenous identities and rights. This dynamic may have contributed to the surprising results of the 2000 Census: after the population nadir of less than 100,000 in the early 1960s and previous estimates never exceeding 350,000, over 730,000 persons identified themselves as “*indígena*” – more than half of them in urban areas.

As this necessarily quick overview has shown, after centuries of depopulation, displacement and pressures to assimilate, indigenous peoples in both countries are recovering demographically and reasserting their collective rights. Lessons from the US experience to be considered in Brazil fall in the category of “what to avoid”: first of all, government “certification” for indigenous peoples, which after ILO 169 and its ratification by most Latin American countries, seems unlikely to return in Brazil. Second, for the indigenous peoples themselves, fixed racial definitions of their memberships (“blood quantum”), for which there also seems to be little risk in Brazil, given the rather flexible way in which indigenous peoples integrate children of mixed marriages into their communities.

Land Tenure Security and Integrity

In the **USA**, despite formal recognition of tribal sovereignty, the intensive settlement process and accompanying military confrontations led to frequent westward moves of the 1763 “Proclamation Line” drawn to “permanently” separate whites and Indians, which often implied violations of treaties and forced removals. A major blow to indigenous land tenure came under the 1887 General Allotment Act which split up reservations among their inhabitants into plots of a maximum of 160 acres (less than 65 ha), the “surplus” being made available to non-Indians. This and the fact that Indian landholders could sell their plots after 25 years led to a loss of two thirds of the initial reservation area in less than 50 years. Oklahoma´s statehood in 1907 ended the “Indian Territory” and attempts to create of an “Indian State” there. As a result, the remaining indigenous land base in the USA today is only about 100 million acres (44 million of which in Alaska), i.e. 404,700 km2 or approx. four percent of the country.

As an often temporary recognition of what land base indigenous peoples could defend at each moment in history, “reservations” were established by treaties since the 17th century, later also by congressional statute, presidential executive order, the

BIA or individual states. ”A reservation is an area of land – whether aboriginal or new – that has been reserved for an Indian tribe, band, village, or nation. Generally, the United States holds, in trust for the tribe, legal title to the reserved territory. The tribe … holds … an exclusive right of occupancy” (Wilkins 2007:34). This includes the rights to subsoil resources, since “in the United States … the title to subsurface minerals is vested in the owner of the surface” (Meredith 1993:135). Only nine of the about 310 reservations are larger than 500,000 ha.

Today, most reservations are a “checkerboard” of different Indian and often a majority of non-Indian holdings, which makes integrated management difficult and also creates problems with jurisdiction over non-Indian activities within reservation boundaries. Land tenure categories on a reservation may include

- “Trust land” held by the federal government for the benefit of the tribe or its individual members (note: these lands are not taxed, but Indians pay federal income as well as business and sale taxes);
- “Restricted fee land” which allows tribes or tribal members to hold the legal title to land but with legal limitations on use and transfer (suffers “fractionation” due to inheritance);
- “Fee simple land” (re-)acquired by the tribes, but difficult to add to tribal trust holdings;
- Non-Indian land, be it federal, state, or municipal government land, or fee simple land with private non-Indian ownership.

Overall, until the end of the “termination policy” in the early 1960s (which led to the “de-recognition” of over 100 “tribes” and the loss of yet another 1.3 million acres), indigenous peoples in the USA were faced with ongoing and severe loss of land – “a history of dispossession” (HPAIED 2008:95). Not much area has been recovered, since the Indian Claims Commission (1946-78) awarded US$ 818 million as reparation for land lost in the 285 settled cases but did not return land. The 1971 Alaska Native Claims Settlement Act, a type of negotiated “modern treaty”, resulted in the recognition of 44 million acres as “fee simple” land not recognized as “reservation” nor “Indian Country” (HPAIED 2008:101). Several cases remain pending, and some “tribes” invest part of their funds in land purchases. Since 1983, legislation has attempted to resolve or at least reduce the problems with Indian lands fragmentation, without much impact. Today, the lack of a consolidated land base is a serious impediment for many “tribes” in the USA: “Reclaiming alienated lands, as well as exercising influence over activities on non-Indian lands, will remain the paramount concern for Native nations across the country” (HPAIED 2008:107).

In **Brazil** or rather the two Portuguese colonies that preceded it until independence in 1822, as in the Spanish colonies in Latin America, there was no recognition of and treaty-making with sovereign indigenous nations.[7] Nevertheless, following the Spanish legal expert Francisco de Vitoria, indigenous original rights (“*direitos originários*”) to their land were recognized at least in principle since the early 17th century (doctrine of “*indigenato*”). However, indigenous resistance to subordination and settlement in mission villages provided the justification for “just wars” eliminating this “native title”, and overall, “Portuguese standards toward Indian policies were

[7] The only exception seems to be a treaty signed with the Kadiwéu in what is today Mato Grosso do Sul (1790), a stratified warrior society which also became an important ally of the Brazilian government in the War of Paraguay (1865-70) and had some of their land registered in recognition of their services (Gomes 2000:146-147).

devious, ambivalent, and casuistic. … The logic of conquest, colonization, defense of territory, and the inexorable need for labor demanded, in the Crown´s view, measures of extreme severity and inflexibility" (Gomes 2000:59). After independence, missionaries were invited back to continue the "civilization" of indigenous peoples. The land law of 1850 recognized colonial land grants, and, in principle, settler land rights derived from occupation and use ("*posse*") and previously granted indigenous land rights, but the requirement of registration led to much land loss. Especially in the Amazon, the territories of more isolated indigenous peoples were not recognized yet and included in the residual category of "*terra devoluta*" (unclaimed public lands, reverting to the federal government, after the first republican Constitution 1891 to the states). So far, I have been unable to locate an overview of indigenous land holdings in Brazil before the 20th century.

Somewhat more systematic creation of "*reservas indígenas*" only started after the foundation of the SPI in 1910 and the Constitution of 1934 which for the first time recognized indigenous "ownership" to their ancestral lands, mainly at the settlement frontiers or along the new telegraph lines where indigenous peoples where "in the way". According to the indigenist approach of the time that focussed on settling and incorporating indigenous peoples into the national society as agricultural producers, they resulted in small areas around the "*postos indígenas*" which today in most cases provide an insufficient land base for their inhabitants. Until its transformation into FUNAI in 1967, the SPI apparently only demarcated 54 indigenous areas with a total of somewhat less than 300,000 hectares (Oliveira 1998, see Table 2). At the beginning of the 1960s, several large parks and reserves were created according to a new concept giving them the double function of protecting nature and indigenous peoples. Under the military regime, the Constitution of 1969 converted Indian lands into inalienable Union lands, but with the Indians retaining exclusive possession thereof and indigenous rights superseding all other claims. The 1973 Indian Statute for the first time created a procedure for the regularization of different types of indigenous lands ("*terras indígenas*"/TIs), including their physical demarcation and legal recognition by presidential decree ("*homologação"*) and cadastral registration at national and local levels. Until about 1980, FUNAI had demarcated 13 million hectares, among them the Xingu Indigenous Park with 2.9 million hectares, and altogether listed more than 300 indigenous areas with more than 41 million hectares in different stages of legal recognition.

By 1988, after the intensive indigenous and indigenist mobilization which also led to the two already mentioned "indigenist paragraphs" in the new constitution, these numbers had reached 518 indigenous lands with a total of 74.5 million hectares (73.4 of them in the Amazon). However, only 14% of these TIs (65% of the total area) had been registered or at least recognized by presidential decree. Regulations for regularization changed several times over the last decades, the last time in 1996 when Decree 1775 streamlined the overall process but caused national and international concern because it introduced the possibility of contestation (*contraditório*) by non-indigenous landholders. Nevertheless, until 2007, another almost 100 TIs and more than 30 million ha were added, and most importantly, 68% of these TIs and 90% of the total area were legally recognized.[8] After centuries of struggle, indigenous peoples in Brazil nowadays have state-recognized claims to (so

[8] From 1996 to 2008, FUNAI – in the context of the multilateral Tropical Forest Pilot Program (PPG7), more specifically the Indigenous Lands Demarcation Project (PPTAL) - received financial and technical cooperation to both speed up and improve the quality of indigenous land regularization.

far) 12.6% of the national territory, more than three times the percentage of Indian lands in the USA. However, 99% of this area is in the still relatively thinly populated Amazon region which, according to the 2000 Census, hosts only about 37% of the indigenous population.

Table 2 – State of Legal Recognition of Indigenous Lands (TIs) in Brazil

Period	Number of TIs	Percentage of legally recognized TIs	Total identified area (will still increase)	Percentage of legally recognized area
SPI – until 1967	54	?	Approx. 300.000 ha	?
FUNAI – until 1980	308	?	41.0 million ha	?
Until 1988	518	14%	74.5 million ha	65%
Until 2007	611	68%	106.9 million ha	91%

Source: Oliveira 1998; FUNAI data base May 2007.

The legal terms used by the Brazilian state for indigenous lands have changed over time from "*reserva*" to "*área"* to "*terra indígena*" ("*território indígena*" still being a political term used mainly by the indigenous movement), but with the exception of a small number and size of individually or collectively owned areas, they remain federal lands ("*terras da união*"). According to Art. 231 of the 1988 Constitution, indigenous peoples have "permanent possession" and "exclusive usufruct" of these lands and "the riches of the soil, the rivers and the lakes existing therein", which are "inalienable", "indisposable" and "not subject to limitation". Another important feature of indigenous lands in Brazil is that non-indigenous occupants are systematically removed from the area. Since at least 1996, landowners whose claims are found to be legitimate ("*de boa fé*") receive a compensation for their investments. Depending on the location and history of the indigenous area, this resettlement may be the most complicated and slowest part of the process. More than 20 individual TIs in the Amazon have a size of more than 1 million ha (the largest being TI Yanomami with almost 9.7 million), and since several are adjacent to each other, the blocks of indigenous territory created reach more than 11 million ha on the Upper Rio Negro and more than 13 million ha in the case of the *Parque do Xingu* and adjacent Kayapó territories.

This comparison of indigenous land tenure security and integrity in both countries has so far focused on the *de jure* situation, i.e. on the legal recognition of indigenous territorial rights which for centuries was the focus of indigenous peoples´ struggle. In the USA, the process of land loss ended about 30 years ago with the end of the "termination era", but not much land will be recovered or added any more. In Brazil, despite the passing of several constitutional deadlines, the identification, demarcation and legal recognition of indigenous lands are far from finished. Although the cases of indigenous "reemergence" will still add to the claims FUNAI has to deal with, the total area will not increase much any more. In both countries, therefore, the current and future focus will be on preventing changes in their legal status, on their on-the-ground defense against encroachment, and their management for indigenous benefit. With regard to the first challenge, the experience of both countries shows clearly the importance of the national and international environment: "Communally titled lands, like reservation lands, are primarily protected by the political process: what price will the government pay for the effects it imposes on property occupied or used by virtue of a communal right? If the answer is that the government will pay no

political price either domestically or internationally, then communal property, whether held by title or under a reservation system, is at risk" (Ankerson & Ruppert 2006:756). Indians in the USA had the misfortune to face the settler frontier at a historical moment when the political price was low. Since the 1980s, indigenous peoples worldwide have gained much clout, so that hopefully, nowadays the price is too high for both governments to reduce indigenous territories.

Thus, lessons from the US experience to be considered in Brazil again fall more in the category of "what to avoid": First of all, frequent major shifts in indigenist policy ("the zigzag course of federal policy with respect to Indian affairs", McCarthy 2004:5) create land tenure insecurity. So far, Brazil also has presented itself "with a pattern of indigenist ideology and policies that is ambivalent and unstable" (Gomes 2000:10). However, based on the 1988 Constitution and the ongoing discussions of "infraconstitutional legislation", it has a chance to create a more coherent, stable approach. The second lesson is the importance of integrity of "indigenous lands", avoiding the problems of "checkerboard" reservations in the USA which again, both the Brazilian government and indigenous peoples are well aware of. Despite the recent intervention of the Federal Supreme Court in the resettlement of six large rice farmers out of TI Raposa Serra do Sol in the state of Roraima, the government (President, Ministry of Justice & FUNAI) are maintaining their position.

Governance of Indigenous Territories

USA

"Besides mismanagement, incompetence, and failure to fulfil the trust responsibility to tribes and individual Indians, the BIA has also been charged with being extremely paternalistic toward Indian peoples and their resources" (Wilkins 2007:95).

"Congress does not grant powers of self-government to Indian tribes. The tribes already have this. However, Congress retains the power to restrict sovereignty and the scope and structures of self-government through legislation" (Franks 2000:107).

Brazil

"In the last ten or so years FUNAI has been depleted to such a point that it retains very little of the spirit of loyalty and self-sacrifice that have characterized the work of action anthropologists and indigenists in general" (Gomes 2000:87).

"The procedures (for recognition of indigenous land rights, SW) are clear and there exists a state bureaucracy specifically dedicated to implementing laws regarding indigenous citizens" - (the major problem – as elsewhere in Latin America - is the) "weakness of the indigenous governing institutions" (Stocks 2005:97, 98).

After legal recognition of indigenous territories, major challenges remain with regard to their *de facto* protection against encroachment, the management of their natural resources, and ultimately their overall governance. Comparing these issues in the USA and Brazil will require looking at both the role of government agencies, especially the BIA and FUNAI, and the ever increasing role of indigenous institutions and organizations.

In the **USA**, as already mentioned, the federal government via the BIA until today maintains its "special trust relationship" with the "tribes", especially with regard to their lands and natural resources, which is, however, no longer to be interpreted as a "guardian-ward relationship". The BIA monopoly on Indian affairs was first challenged in 1955 with the creation of the Indian Health Service, followed by many other federal agencies. Since the so-called era of "self-determination policy" starting in the 1970s, in times of severe budget cuts for federal programs, more and more administrative responsibilities for on-reservation services have been transferred to the tribes first as "self-determination contracts", since 1994 as more encompassing

"self-governance compacts" to the point that the Supreme Court in 2003 questioned if "trust responsibility may be incompatible with Indian self-governance" (McCarthy 2004:10). The BIA, a massive bureaucracy with a staff of over 10,000 (nearly 90% of the Indian) and an annual budget of more than US$ 2 billion, has long been criticized for being paternalistic and inefficient. Since 1996, a law suit is pending on mismanagement of individual Indian trust funds, and tribal funds management seems to be problematic as well. However, considering the status of most Indian lands in the USA, there still seems to be a need for some kind of federal "sovereign trust in favor of Indian Self-Determination" (ibd. 23).

Due to the history of treaty-making, in the USA, "tribes" have long been recognized as political entities and "tribal governments" as in charge of their people and later reservations. However, they have suffered much pressure to adjust to new demands, particularly under the 1934 Indian Reorganization Act which stipulated tribal constitutions and charters, and a rather standardized form of tribal government (often one for several tribes which found themselves resettled on the same reservation). Until today, in many reservations, "traditional" and "government-recognized tribal governments" coexist. Due to the ongoing devolution of responsibilities, today, "most tribal governments exercise a plethora of governmental powers. These include, but are not limited to, a variable mixture of civil and criminal jurisdiction over their own members and nonmember Indians, and to a lesser extent over non-Natives;

- the power to define their membership criteria; …
- to administer justice via their own court systems; …
- to regulate domestic and family relations (e.g., marriage, divorce, child welfare); …
- to regulate, zone, exchange, purchase, and sell property; …
- to exclude nonmembers from tribal lands; …
- of extradition; …
- to regulate hunting, fishing, and gathering rights; …
- to regulate all economic activity; …
- to tax; …
- to negotiate with other governments; and …
- to provide social, health, housing, and educational services for tribal and nontribal citizens." (Wilkins 2007:160-161 – bullets added)

Tribal governments in the USA, while continuing to face the combined "politics of scarcity" and "politics of interference" of the federal government (ibd. 161), and despite much political and legal debate about their jurisdiction – e.g. with regard to non-Indians within reservation boundaries, and in relationship with state governments – often have well-established bureaucracies of their own (including technical services and tribal courts and police) which are a major source of on-reservation employment. Their budgets mix federal and non-federal resources. In 1982, the Supreme Court acknowledged that "the power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management" (cited in Meredith 1993:109), so that tribal governments nowadays, despite some legal interventions, raise a variety of taxes both from their members, and from non-Indian on-reservation businesses.

In **Brazil**, indigenous peoples – many of whom at the time of "first contact" were much larger and had a higher socio-political complexity than today - were historically almost never recognized as political entities. After heavy depopulation due to

epidemics and “just wars”, the colonial, imperial and republican governments considered them child-like wards under the guardianship of the state, a construct last codified in the not-yet-updated 1973 Indian Statute. For almost 100 years, first SPI, then FUNAI have been in charge of providing protection and services (“*assistência*”) to indigenous peoples and their property (“*patrimônio indígena*”). Only after the 1988 Constitution, based on several 1991 decrees, other government agencies became involved in indigenous affairs: health services have now completely been transferred to FUNASA, a foundation under the Ministry of Health, which installed a system of “Special Indigenous Health Districts” (DSEIs). Since 1999, FUNASA has been contracting with indigenous or indigenist organizations, or municipalities without, however, being able to guarantee satisfactory services. Education for indigenous peoples has become a shared responsibility between the Ministry of Education, state and municipal agencies, some NGOs and FUNAI and remains a challenge as well. More than ten other ministries or federal agencies have started to offer funding or services to indigenous peoples, creating the need for coordination which in 2007 led to the installation of a national commission (*Comissão Nacional de Política Indigenista, CNPI)* with 50% indigenous and 50% government participation. Some state governments are becoming involved in service provision for indigenous peoples as well, setting up their own specialized agencies, although historically they and municipal governments tended to be opposed to the recognition of TIs, i.e. federal lands outside of their control. This move is observed skeptically by some indigenists wary of what they perceive as a weakening of the special federal responsibility for indigenous affairs.

The 1973 Indian Statute foresees the category “*território federal indígena*” as “administrative unit subordinated to the Union” (similar to states) for areas in which at least a third of the population are indigenous. Apparently, the only region where its application was discussed was the federal territory of Roraima which, however, since 1988 has become the most anti-indigenous state in Brazil. Governance issues therefore apply to individual or adjacent groups of “*terras indígenas*”. The major difference to the situation in the USA is the virtual non-existence of formal indigenous governance structures in the TIs, beyond the “traditional authorities” (variously called “*cacique”, “tuxaua” or capitão”)* – and local FUNAI staff. The “*caciques*” position was often influenced or even created by the SPI and FUNAI, and their internal legitimacy and capacity to represent the communities towards the outside vary considerably. In principle, they can exercise jurisdiction over members of their communities within the TIs, but cases involving major crimes or outsiders complicate matters.

During the 1970s, and especially after the 1988 Constitution, hundreds of indigenous organizations have emerged at different levels (not necessarily following the ideal-type bottom-up sequence from local to regional to national to international), first mainly to struggle for land rights, later also or mainly to get access to project funds from different sources. For practical reasons (e.g. opening a bank account) most have been registered as “associations” with structures and procedures which make their articulation with the “traditional authorities” difficult. In some cases, these organizations have signed contracts on the implementation of healthcare and taken on at least the negotiation of other services for their constituencies, not necessarily taking TIs as territorial units (here as in the USA, many TIs are multiethnic, complicating their governance). Given their legal status, however, associations can hardly evolve into a form of permanent local government in the context of national

public administration. Different from some of the Andean countries where there is some experimentation with "legal pluralism" and indigenous municipalities or specific governance structures for indigenous territories, in Brazil, discussions about "Who will govern TIs, and how?" are still at a very initial stage. This complicates everything from the defense of indigenous territories against encroachments (not even FUNAI has police power and needs to call the federal police, the military or the environmental protection agency IBAMA) to the coordination of the increasing number of government programs and NGO projects being implemented within the boundaries of TIs.

In both countries, the much maligned indigenist agencies often became scapegoats for much more profound deficiencies in national policies. In any event, there is a clear trend towards ending longstanding BIA- and FUNAI-monopolies by distribution, decentralization, deconcentration and devolution of their functions, involving both indigenous institutions and other service providers. "The BIA´s role is likely to change considerably as tribes increasingly take over the functions that in once performed. For some time to come, it will probably remain the best source of technical support for smaller tribes that have neither the population base nor the funds to develop sophisticated administrations of their own. As it sheds its colonial habits as the administrator of one-size-fits-all federal programs, it could be reshaped as the tribes´ principal advocate within the federal government, consolidating proposals based on the needs of regional groupings of tribes … At the same time, the BIA might also serve as a mechanism to continue to monitor how public money is spent on Indian reservations, a function that will become more critical as more programs are taken over by tribal governments with little accountability either to Washington or to the people who elect them" – the latter a task resisted by many tribal governments (Bordewich 1996:341-2). Many of these observations are relevant for Brazil as well, where there is currently quite some dynamic in indigenist policy. A more detailed analysis of US "contracting" and "compacting" experiences, and of the evolving relationships between indigenous peoples and federal states – which is beyond the scope of this paper at this moment - could provide valuable inputs.

Natural Resource Management and Economic Development

"In the long run, the economic base of Aboriginal communities will be a more important determinant of the viability and success of an Aboriginal self-government than recognition as a sovereign nation" (Franks 2000:114; statement referring to Canada, but of general relevance).

In the **USA**, because of the rapid "development" of non-Indian society surrounding the reservations[9], and because of budget cuts for BIA programs, tribes have long faced pressures to utilize their natural resources for commercial purposes and design other income-generating strategies. Due to the "trust relationship", much of this "economic development" initially occurred through BIA-controlled leases and sales of energy, mineral, agricultural, forest, rights-of-way, and water resources which often produced limited benefits for the tribes and led to the 1996 lawsuit about mismanagement.

During the last 30 years, the situation has changed considerably, tribal governments taking an ever more active role in the negotiation of contracts and in the promotion of

[9] So far, I have not been able to locate information on procedures for environmental impact assessments and compensation payments in the case of infrastructure projects affecting reservations, an issue of current importance in Brazil.

Indian owned and run economic enterprises, the most famous or infamous of which certainly are the casinos and other "gaming operations". At this point, only a brief overview of the major natural resource management and economic development issues on Indian reservations can be given (based mainly on Wilkins 2007 and HPAIED 2008):

- Hunting, gathering & fishing: On reservations, wildlife is considered tribal property, and a compromise has been negotiated between the federal and tribal governments on the implementation of the Endangered Species Act. Interestingly, treaty rights often extended to extractive uses of the environment beyond reservation boundaries, but these were and are contested. In some areas, they had to be regained through protests like the "fish-ins" in the Northwest during the 1960s.
- Forestry: There are 5.3 million acres of timberland outside of Alaska, but since 1874 forests are seen as part of trust land, leading to BIA interventions in leases and management which are increasingly replaced by tribal enterprises.
- Agriculture: There are 44 million acres of rangeland and 2.5 million acres of cropland in Indian trust land, but they were often leased under unfavourable conditions. Tribes still have difficulty to start and operate viable agricultural enterprises.
- Minerals: Approx. 40 reservations contain economically interesting amounts of oil, gas, and minerals. "In 1990, more than 15 million barrels of oil, 135 million cubic feet of natural gas, and 27 million tons of coal were extracted from Indian lands" (Wilkins 2007:183). Leases under BIA supervision and management were often highly inequitable, leading to the foundation of the Council of Energy Resource Tribes (CERT) in 1974 which is active as lobbyist and service provider until today.
- (Hazardous) waste dumps for neighboring towns or enterprises are a new and controversial income-generating strategy for tribes with large reservations in remote areas.
- Tourism: The possible negative impacts of "reservation tourism" as an income-generating strategy continue to be debated, but in states like Arizona, the income both for the tribes and the state government is considerable.
- Gaming: Since the first initiative in 1979 by the Seminoles in Florida and regulated by a 1988 Act, there has been much increase in gaming establishments like casinos operated with exemption from state and local property taxes by tribal governments on reservations (legislation permits revenues only for tribal welfare or donations), resulting in considerable internal and external debate about the rather unequal distribution of benefits and negative impacts. In 2004, Indian gaming revenues reached US $ 19.5 billion; in 2005, 228 tribes were running 408 gaming operations in 30 states, supporting 539,000 jobs, not only for Indians (Wilkins 2007:172), but even the most successful tribes are trying to diversify their economies.

In **Brazil**, market-oriented natural resource management and in general, "economic development" among indigenous peoples are still rather controversial issues, and there is much concern that indigenous peoples might be "pushed into the market economy" without sufficient preparation and anticipation of potential negative impacts. This is a valid concern for remote regions of the Amazon but somewhat out of touch with the reality of indigenous peoples in the South and Northeast of Brazil, many of whom need to subsist on wage labor outside of their small areas, and even

in more accessible regions of the Amazon. The authors of the 1988 Constitution linked land rights to “traditional occupation” which has been interpreted by government officials in the sense that only “traditional uses” are allowed without the interference of national laws that apply elsewhere, like environmental laws and regulations on the extraction of timber and non-timber forest products including wildlife. Indigenous leaders and some of their supporters argue that indigenous peoples have the right to self-determination also in the sense of commercial use of their TIs without such restrictions.

FUNAI historically has been more involved in problematic agricultural development strategies, leasing Indian lands to commercial farmers or supporting mechanized agriculture, and permitting or even fostering deals between indigenous peoples and timber companies or gold miners. It manages a trust fund of undisclosed value with revenues from indigenous lands (“*renda indígena*”) and is in charge of the “indigenous component” of the environmental impact assessments necessary since 1986 before large infrastructure projects (roads, dams, power lines etc.) can start which may have a direct or indirect impact on indigenous lands. So far, negotiations about compensation payments are done on case-by-case basis, but FUNAI´s environmental department is currently trying to streamline the procedures, under much pressure created by the announcement in early 2007 of the PAC (*Programa de Aceleração do Crecimento*), a national program to speed up infrastructure development and economic growth which affects many TIs. Overall, FUNAI is currently in a process of defining a new approach to federal protection and promotion of indigenous peoples (“*proteção & promoção dos povos indígenas*”).

In practice, the few commercial enterprises involving indigenous peoples and forest products initiated so far, often with NGO support, have produced management plans along IBAMA requirements. Tourism in indigenous areas according to FUNAI´s interpretation of indigenist legislation is not permitted but occurring on an increasing scale and demanded as a legitimate income source by some indigenous peoples. Mining in indigenous areas is the most controversial issue right now: ownership of oil, gas and minerals is claimed by the Brazilian state, but after disastrous impacts of several large projects during the military regime, the 1988 Constitution made mineral exploitation on indigenous lands dependent on a specific law which has been debated in Congress as long as the Indian Statute. In April 2008, the government submitted a new version, which large parts of the indigenous movement and their supporters reject, demanding that the new Statute on Indigenous Peoples as overarching legislation be dealt with first. Others doubt that this will be successful strategy, and at least in the state of Amazons, some indigenous peoples see self-organized small-scale mining as an income source in their resource-poor TIs.

In both countries, the current debate focuses on the management of indigenous lands and their natural resources for the benefit of indigenous peoples. In this situation, land use planning for indigenous territories becomes important and needs to deal with internal land tenure issues, starting from the already mentioned fact that many indigenous territories are multi-ethnic: “Formal tenure systems have generally focused on defining the outside boundary of community tenure systems, resulting in a homogeneous polygon that is treated as communal property by the formal legal system. In fact, if one looks inside this polygon, most of these ‘communal’ tenure systems are a complex web of individual and shared rights that deal with the use and allocation of communal resources” (Ankersen & Barnes 2004:156). “As community tenure systems come under increasing pressure, internal as well as external, it will

be necessary for these communities to improve their local land administration capabilities and maintain more detailed tenure information if they are to be sustainable across generations" (ibd. 157). Some tribal governments in the USA have their own GIS-based land management units and could share their experiences with their Brazilian indigenous organizations and their supporters whose experiences so far have not gone much beyond participatory mapping. Similarly, a well-focused exchange about selected natural resource management experiences could be a useful input for ongoing discussions in Brazil.

Conclusion (to be expanded)

One way to evaluate the legal security and quality of governance and management of indigenous territories is to look at outcomes or impacts in terms of indigenous well-being, especially within reservation or TI boundaries (the complex topic of indigenous migrations to urban areas and their situation there cannot be dealt with here). In the USA, as of 2003, after three decades of "self-determination policies", and despite the much-discussed revenues from gaming operations, overall, almost a quarter (23.2%) of American Indians were still living in poverty (Wilkins 2007:164), a percentage similar only to Blacks with 23.7. "Indians and Alaska Natives continue to have a lower life expectancy than any other racial or ethnic group. And they have higher rates of diabetes, suicide, tuberculosis, and … alcoholism" (ibd. 164-165) as well as violent crime victimization, combined with lower quality of virtually all public services (HPAIED 2008). Nevertheless, the overall situation is improving, despite an overall and especially per-capita decline in federal budgets destined to indigenous peoples. Some tribes – with assistance not only from the BIA, but also their own organizations, NGOs, and researchers like those at the "Harvard Project on American Indian Economic Development" (founded in 1987) - against all odds have considerably improved their situation. "What emerges is a picture of Native nations that are, in the aggregate …, vibrant and in the midst of a renaissance" (HPAIED 2008:370).

Specialists on the situation of the USA reconfirm the importance of the devolution of power to the "tribes" which was and is at the core of the "self-determination policy" since the 1970s, without accepting its hidden intentions to alleviate the federal budget. This is an important insight for current debates about indigenist policies in Brazil where FUNAI is trying to redefine its mission and the indigenous movement still focuses more on demands for increased government funds and services than on a fundamental redefinition of roles and responsibilities with regard to the governance and management of the TIs which would give indigenous peoples more control over their future.

Annex 1

Overview of Relevant Historical Events, 15th – 19th Century, Part 1

Century	Year	USA[10]	Year	Brazil[11]
15th-16th	1497	"**First contact**" in North America in what is today Canada (John Cabot)	1500	"**First contact**" (Pedro Cabral)
	1581	First fur trade shipment to Europe	1530s	15 hereditary "*capitanias*" (land owned by the crown)
			1550s	Start of Jesuit missions
17th	1607	Foundation of Jamestown, Virginia => settlers, wars & peace treaties	1609	Doctrine of "***Indigenato***" (reconfirmed 1680), recognizing inherent indigenous land rights
	1615	First missionaries in the Northeast	1621	Creation of the "*Estado do Maranhão*", until independence a colony separate from the "*Estado do Brasil*"
	1636	Foundation of Harvard University, including education for the "Indian youth"	1686	Until 1755: missions as basic organization of indigenous affairs in the Amazon
	1638	First reservation in Connecticut		Various indigenous confederations resist Portuguese => punitive raids ("*guerras justas*"/just wars)
		Wars & treaties continue further west		
18th	1763	Royal Proclamation: First British Indian Policy, "**Proclamation Line**" separating settlers from Indians (line shifting further west until "end of the frontier" in the 1890s)	1750-1798	Pombal´s reforms ("***Diretório dos Índios***"): expulsion of Jesuits, missions converted to "*vilas*", (once more) end of Indian slavery, but labor services, assimilative pressure (Portuguese)
	1776	**Independence of the USA (13 colonies/states) – white population: approx. 1 million**	1777	**Treaty of San Ildefonso** (after 1494 Tordesillas and 1750 Madrid) consolidates boundary with Spanish America
	1786	First US Indian Ordinance, parallel to Land and Northwest Ordinances => westward expansion: more wars & treaties with "nations" or "tribes"		
	1789	**US Constitution** (amended until today) => Indian affairs federal responsibility		
	1794	Jay´s Treaty: Indians have right of free passage across US-Canadian boundary		

[10] This chronology leaves out the details of US territorial expansion and consolidation vis-à-vis France, the Netherlands, and Spain, unless they are of direct relevance for the situation of the indigenous peoples.

[11] Again, this chronology leaves out the details of Portuguese territorial expansion and consolidation vis-à-vis Spain, France, and the Netherlands, unless they are of direct relevance for the situation of the indigenous peoples.

Annex 1

Overview of Relevant Historical Events, 15th – 19th Century, Part 2

Century	Year	USA	Year	Brazil
19th	1824	**Establishment of the BIA** (Bureau of Indian Affairs) in the War Department	1822	**Independence of Brazil** as monarchy – approx. 3.6 million inhabitants (less than 30% white)
	1830s	Systematic forced removal of eastern "civilized tribes" to the "Indian Territory" (Oklahoma), but Wars & treaties continue further west	1845	***"Regimento das Missões"***: Directorate General for the Indians, missionaries invited back, Indian enrollment for public and military service (but no coercion)
	1869	Ely S. Parker first Indian to head the BIA	1850	**Land Law No. 601:** recognizes crown land grants, squatters´ & Indian rights, but requires registration; rest: "*terra devoluta*" (unclaimed public lands)
	1871	Congress declares **end to treaties**; Indians to be treated as wards of the state		
	1877	Matthew S. Quay (Delaware) first Indian Senator		
	1887	**General Allotment Act** => splitting up and loss of 2/3 of Indian land	1880s-1910s	**Rubber boom** in the Amazon => Indians displaced or enslaved
	1890	**Last military confrontation** at Wounded Knee, South Dakota	1889	**Republic** with federal constitution

Annex 2

Overview of Relevant Historical Events, 20th Century[12], Part 1

Decade	Year	USA	Year	Brazil
1900s	1900	**Population nadir: 237,000** (Census 1900)		
	1902	First oil and gas leases on Indian lands in Oklahoma		
1910s	1911	Foundation of **Society of American Indians**, first organization of indigenous intellectuals	1910	Establishment of the **SPI** (***Serviço de Proteção aos Índios***) in the Ministry of Agriculture
	1911	Ishi (**last "wild" Indian**) contacted in California	1916	**"Código Civil"**: Indians are "relatively incapable"
	1912	Statehoods of New Mexico and Arizona complete consolidation of the "lower 48 states"		
	1914-18	WWI: 8,000 Indian soldiers		
1920s	1924	**American Indian Citizenship Act:** Indians are citizens without losing rights as tribal members		
1930s	1934	**Indian Reorganization Act:** repeal of allotment, tribal governments & constitutions	1934	First of several **constitutions** defining a state monopoly on indigenous affairs & recognition of indigenous land rights; objective: "incorporate the forest dwellers into the national community"
	1938	**Indian Mineral Leasing Act**		
1940s	1939-45	WWII: 25,000 Indian soldiers	1943	Creation of federal territories in border areas: Acre, Amapá, Rondônia and Roraima
	1944	Foundation of **National Congress of American Indians (NCAI)**		
	1946	**Indian Claims Commission**: until 1978, 285 cases settled, US $ 818 million paid		
	1947	Start of **termination policy** (de-recognition of tribes, relocation of individuals & families to cities)		
1950s	1955	Creation of **Indian Health Service** (first non-BIA agency working with Indians)		
1960s	1961	American Indian Chicago Conference => Declaration of Indian Purpose	1960s	**Population nadir:** less than 100,000
	1964	Pres. Johnson´s "War on Poverty": start of **contracting of BIA programs** with tribal governments, involvement of other federal agencies	1961	Creation of the "***Parque Indígena do Xingu***", first large indigenous area (campaign since late 1940s)
			1964	**Military government:** road construction, large projects and settlements in the Amazon
	1966	Congress establishes right of tribes to bring suit in federal courts	1967	SPI replaced by **FUNAI** (***Fundação Nacional do Índio***)
	1968	Foundation of **American Indian Movement (AIM)**	1969	Constitution: indigenous territories become "***terras da união***" (federal lands)

[12] During the 20th Century, starting with a trip to the League of Nations in Geneva by a Cayuga (Iroquois) chief in the early 1920s, national indigenous affairs have become increasingly influenced by international movements and events. This aspect cannot be covered here.

Annex 2

Overview of Relevant Historical Events, 20th Century, Part 2

Decade	Year	USA	Year	Brazil
1970s	1970	Pres. Nixon announces **"Policy of self-determination"**	1973	***"Estatuto do Índio"*** (Law No. 6001): maintains FUNAI´s guardianship ("*tutela*")
	1975	Indian Self-Determination and Educational Assistance Act => contracting with tribal governments	1974-78	Attempt at Indian "**emancipation**" fails after national and international protests
	1975	Foundation of Council of Energy Resource Tribes	1974	First church-supported regional meetings of indigenous leaders
	1978	BIA creates Branch of Acknowledgement and Research		
1980s	1982	**Indian Mineral Development Act** => more active Indian involvement	1980	Foundation of ***UNI (União dos Povos Indígenas)***, dissolves by the late 1980s
	1988	**National Indian Gaming Regulatory Act (NAGRA)**	1983-86	Mario Juruna first indigenous congressman (PDT-RJ)
			1986	First national conference on indigenous health, process that leads to the creation of a "differentiated" health care system
			1988	**New Constitution**: indigenous rights to land, culture & legal defense; creation of last state of Roraima
			1989	Foundation of ***COIAB*** *(Coordenação das Organizações Indígenas da Amazônia Brasileira)*
1990s	1994	**Tribal Self-Governance Act:** tribal governments directly negotiate "compacts" with Congress	1990	FUNAI moved to Min. of Justice
			1991	**Decrees 22-26**: FUNAI back in charge of land issues, but health and education handed over to sector ministries
	1996	Lawsuit against BIA and Treasury because of mismanagement of Indian trust funds	1991	Start of ongoing parliamentary revision of the Indian Statute
	1996	**Exec. Order 13084** "Consultation and Coordination with Tribal Governments" for all federal agencies	1996	**Decree 1775** changes procedures for land demarcation ("*contradictório*")
			1999	Decree 9836 reforms indigenous health care: contracts between FUNASA and indigenous organizations, NGOs or municipal agencies
2000s	2004	**American Indian Probate Reform Act** to consolidate reservation land	2002	President "Lula" campaigns (also) with a package of promises for indigenous peoples
			2006	First National Indian Conference (as input to indigenist policies)
			2007	First meeting of the National Commission on Indigenist Policy (**CNPI**)
	2007	USA votes against UN Declaration on Rights of Indigenous Peoples	2007	Brazil votes in favor of UN Declaration on Rights of Indigenous Peoples

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