# MAY EVERY PEOPLE WEAVE THE THREADS OF THEIR OWN HISTORY: JURIDICAL PLURALISM IN DIDACTICAL DIALOGUE WITH LEGISLATORS

## // QUE CADA POVO TEÇA OS FIOS DA SUA HISTÓRIA: O PLURALISMO JURÍDICO EM DIÁLOGO DIDÁTICO COM LEGISLADORES

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**>> ABSTRACT** // RESUMO

The article examines all the elements brought together by the author to build a contention for a Public Hearing at the Brazilian House of Representatives against the passing of a law criminalizing the presumed practice of infanticide by indigenous people in Brazil. It also includes the speech delivered at the Public Hearing. Critical of cultural relativism, the argumentation defends instead historical pluralism and proposes the idea of a *restitutive State*, devolutionary of communitarian rule and guarantor of community internal deliberation. Devolution of ethnic jurisdiction amounts to a devolution of command over indigenous own historical project. // O artigo examina todos os elementos que a autora considerou para construir sua arguição contra um projeto de lei de criminalização da suposta prática de infanticídio indígena apresentada em Audiência Pública reunida no Congresso Nacional. Inclui também a sua fala nessa Audiência Pública. Crítico do relativismo cultural, seu argumento defende, em seu lugar, o *pluralismo histórico*, e propõe a ideia de um *Estado restituidor*, devolvedor do foro étnico e garante da deliberação interna na comunidade. A devoluçao da jurisdição étnica equivale à restituição do controle sobre as rédeas da própria história.



**>> KEYWORDS** // PALAVRAS-CHAVE

Legal Pluralism; indigenous law; indigenous infanticide; "historical pluralism"; "restitutive State". //Pluralismo jurídico; direito indígena; infanticídio indígena; "pluralismo histórico"; "Estado restituidor"



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**>> ABOUT THIS ARTICLE** // SOBRE ESTE ARTIGO

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**>> EDITOR'S NOTE** // NOTA DO EDITOR

It is necessary to make a comment on the difference between the anthropological meaning of infanticide as used in the text and the technical meaning of the Brazilian criminal law, as laid down in article 123 of its Criminal Code: "To kill, under the influence of puerperal state, the own child, during childbirth or right afterwards". // É preciso fazer uma ressalva em relação a diferença entre o sentido antropológico de infanticídio, aqui empregado, e o sentido técnico do direito penal brasileiro, exposto no artigo 123 do código penal "Matar, sob a influência do estado puerperal, o próprio filho, durante o parto ou logo após".

## 1. SUPPORTS AND LIMITS FOR THE CONSTRUCTION OF A DIFFICULT ARGUMENT.

In August 2007, I was invited by the Human Rights Commission of the Brazilian House of Representatives to present an anthropological view on the issue of the infanticide supposedly practiced by some indigenous groups in Brazil. The Public Hearing represented a necessary step for them to take their positions before the imminent voting of a federal law criminalizing such practice. In this paper I will detail the set of considerations and data that informed the preparation of my argument, present the text with which I questioned the approval of the bill, and expose the theoretical conclusions that emerged in the process of its elaboration. In fact, as I will propose, to conclude the rhetorical exercise whose crafting I describe here, the categories of *people* and *history* emerged as the only ones capable of supporting the defense of a process of giving back the practice of justice to the indigenous community by the national State. When I received the invitation I realized I would have to build my considerations in a complex way, loyal to the principle which I had settled to guide my practice as an anthropologist: to remain responsive to the demands of those habitually in the position of being "studied"[1].

The first problem I faced was that I found myself divided between two contradictory discourses, both coming from indigenous women, and both being familiar to me. The first discourse was the rejection of the bill by the indigenous Gender, Childhood and Youth Subcommittee, manifested in the first Extraordinary Meeting of the newly established National Commission of Indigenist Policies - CNPI, that took place in March 12 and 13 of 2007[2]. The second one was the complaint expressed by one indigenous woman, Edna Luiza Alves Yawanawa, from the border between Brazil and Peru, in the state of Acre, who, during the Human Rights workshop for women which I advised and supervised in 2002 for the National Indian Foundation (FUNAI), described the mandatory infanticide of one of two twins among the Yawanawa as a source of intense suffering for the mother – therefore also a victim of the violence of this practice. This was, in her experience, one of the hardest cases to solve contradictions between the right to cultural autonomy and women's rights[3]. I had before me, therefore, the hard task of arguing against this law, but at the same time making a hard bet in the transformation of the indigenous custom.

Setting aside these two references – and at the same time contentions – for my argument, I should also build it in such a manner that it could be deemed acceptable by the Congress members of a national State of strong Christian influence, heir of a colonial State, formed in its large majority by white men, many of them landowners in regions with indigenous presence and, in the case of the law, represented by the aggressive group of evangelical members of parliament, well-articulated and active in Brazilian politics. It was precisely one member of the "Evangelical Parliamentary Front" – Henrique Afonso, member of the House of Representatives for PT (Partido dos Trabalhadores – the Labour Party) and member

of the Presbyterian Church of Brazil - who proposed the Bill 1057 (2007), debated at the Hearing.

If, on the one hand, I was backed by the Brazilian Constitution of 1988 and the ratification in 2002, by Brazil, of ILO's Convention 169; on the other, the defense of life presented itself as the inviolable limit of any attempt to relativize law. In fact, the Constitution of 1988, especially in its articles 231, 210, 215 and 216, recognizes and safeguards the existence of cultural diversity within the nation and the right to the plurality of particular forms of social organization. From this pluralist constitutional view in the cultural order, analysts such as Marés de Souza Filho[4] and Fernando Antônio de Carvalho Dantas[5] state that the Constitution of 1988 sets the grounds for the progressive exercise of indigenous communitarian justice in Brazil. The ratification of ILO's Convention 169 in 2002 was also a step forward in the path to the recognition of indigenous law. Yet, the customary indigenous norms – despite acquiring legal status by the incorporation of the Convention to Brazilian legislation – are still limited by their mandatory subjection to the norms of the "national juridical system" and to the "internationally recognized human rights." For reasons that I cannot fully analyze here, even though the Brazilian state encompasses approximately 220 indigenous societies and a total amount of 800.000 indigenous inhabitants (0,5% of the population), it is very far from a real institution of pluralism and even farther from the elaboration of agendas for the articulation between National State law and indigenous law, like the ones found in Colombia or Bolivia. Indigenous communities themselves do not demand from the Brazilian State the restitution of the right to exercise justice with the same effort as they demand the identification and demarcation of their territories, nor is there a clear idea of what this restitution, within the process of reconstitution of their autonomies, would mean. There is not enough research on the topic, but this underdeveloped field of indigenous justice could be explained by the inexistence, in Portuguese colonial law, of the figure of the indigenous *cabildos*, bearer, in all Hispanic America, of the administration of justice when the violation did not interfere with the interests of the metropolis or its representatives. There have been great advances in Brazil in the identification and demarcation of indigenous territories. However, these territories do not function as true jurisdictions, for the return of land has not been followed by an equivalent process of consideration and reconstruction of local instances of conflict resolution, increasing degrees of institutional autonomy in the exercise of local justice and gradual recuperation of the procedural practice. The image of tutelage, still operating in the "Indian Statute", despite its partial withdrawal from the new constitutional text, contributes to reducing every indigenous person, in their individuality, to the ambivalent regime of subordination/protection by the National State.

To the cautions presented so far, I should add that my argumentation here could not be concentrated on an analysis of the several cosmological, demographic, hygienic or practical reasons that apparently could lead to the continuity of the practice of infanticide in several different societies,

or to invoke the depth of the difference of such concepts as "person", "life" or "death" in Amerindian societies. The relativist paradigm in anthropology, in its century of existence, has not impacted the public consciousness, including that of members of Parliament, so as to allow the debate being held in these terms in the national juridical field. This placed me directly before the central question of my task: *with what arguments those of us who defend the deconstruction of a State of colonial roots can dialogue with its representatives and defend autonomy, when this entails practices as unacceptable as the killing of children?* We found ourselves, beyond any doubt, facing a extreme case for the defense of the value of plurality.

This difficulty was made worse by the amount of journalistic material of different kinds that religious organizations were broadcasting, about children who were saved from death – a strategy that culminated in the interruption of the Public Hearing to allow the entrance of ten people from these organizations. Some mothers and several people with special needs, in many degrees of gravity, gave tokens of gratitude to the organization that had saved them from death at the hands of their respective societies. "Atini, Voice for Life", a local evangelical NGO, but with international ramifications in radios and websites in English[6], was behind this surge of social communication and media power, and even produced a small guidebook called "The Right to Live". (Series "Os Direitos da Criança", chapter "O direito a viver"). The pamphlet, "Dedicated to MUWAJI SURUWAHA, the indigenous woman that confronted the traditions of her people and the outside world bureaucracy in order to safeguard the right to life for her daughter Iganani, who has cerebral palsy" (my translation), includes the following subtitles, representative of the cases in which several indigenous societies make use of the practice of infanticide: "No child is like another, but all of them have the same rights", "The right of the child is more important than their culture"; "It is the obligation of the community to protect their children"; "Twins have the right to live"; "Children with mental problem have the right to live"; "Special children, that are born with some form of problem, have the right to live"; "Children whose mothers do not want to raise them, or cannot raise them, have the right to live"; "Children whose father is from another indigenous group have the right to live"; and also informs about the current legislation for children's protection (The Convention on the Rights of the Child of the United Nations; The Statute of the Child and the Adolescent of Brazil; and the second clause of Article 8 of the ILO's Convention 169, that establishes limits to local customs).

Both news planted by this organization in newspapers and magazines of national circulation and the touching entrance of mothers and children into the Congress hall in which the session was taking place naturally produced an image of indigenous societies as barbarous, homicidal and cruel towards their own defenseless babies. Opposed to this image emerged a religious movement that claims to "save the children" from people who murder them. The legitimate defense of the life of each child and the desire of a good life for all thus turned into an anti-indigenous campaign voicing the need to increase supervision of life in indigenous

villages. The main claim was the supposed need to protect indigenous children from the cultural incapacity of Indians to care for life. From the particular aspects of each case there was a movement towards a general policy, from a Christian perspective, of vigilance of indigenous life and the depreciation of its standards and values, together with the cosmological bases that support them. The mission thus presented itself as indispensable to the wellbeing of these incapable "primitives" and the eradication of their savage customs – in other words, to their celestial and mundane salvation. The law that was thus proposed was the result of a project from churches that promoted themselves as "saviors of the indigenous child" (I intentionally paraphrase the ironic title of Anthony M. Platt's classic[7]).

In July 2008 the interests and forces represented by the evangelical parliamentary front were neither able to approve this act nor to stop the liberalization of other legislation concerning the management of human life. The legislative attacks against abortion, same-sex marriage, stem-cell research, etc. allow us to see the biopolitical dimension of the contemporary religious intervention in the public sphere[8]. As part of this biopolitical interventionism, Hollywood director David Cunningham (whose father Lauren Cunningham is one of the founders of the missionary institution Youth with a Mission / YWAM – JOCUM in Portuguese) released the film Hakani: Buried Alive – A Survivor's Story. This film offers the erroneous impression that it is a documentary record of the burial of children alive, already grown, by indians at a Suruwaha village. The film, interpreted by evangelized indigenous actors of the Karitiana society and shot inside a property of the Mission, is severely damaging to the image of indigenous people in Brazil, and to the Suruwaha in particular[9]. To the distress of its producers, the film, which was broadcasted in a variety of large audience Brazilian TV programs as if it were a documentary, was, at a Sunday evening program, watched by its very actors in their Karitiana village of the Rondônia State. They were shocked to discover that the script did not show them representing ancient indigenous life, as they were told by the production. Instead, they realized the film pretended to represent contemporary life of Indians burying children alive. They resorted to the Public Prosecutors of the Rondônia State, and sued the production. The process is still running. However, nothing less than the headquarters of the prestigious Order of Brazilian Lawyers (OAB), in Brasília, offered, in 2012, a course on the theme of indigenous infanticide during which, to my astonishment, the organizers showed, despite my voiced objections, the film Hakani as if it were a documentary.

## 2. THE BILL DRAFT, ITS INSPIRATION AND THE COINCIDENCE OF AGENDAS IN THE INTERNATIONAL SPHERE.

The authors of the law draft 1057 (2007) called it Muwaji bill, honoring a Suruwaha mother said to have saved her child with cerebral palsy from infanticide[10]I will not focus here on building a critique of the

proposed piece of legislation in juridical terms. It is enough to say that I have repeatedly indicated that this law "ultra-criminalizes" indigenous infanticide because, on one hand, it repeats the sanctions over actions already framed in the Constitution and the Penal Code and, on the other, includes in the accusation not only the direct authors of the act but all of the actual and potential witnesses, which is to say, the whole village in which the act occurs, and other witnesses such as, for instance, the representative from FUNAI (National Indian Foundation), the anthropologist, or health agents, among other possible visitors. The main arguments supporting the law came from Edson and Márcia Suzuki, a couple of active missionaries among the Suruwaha that appeared in written media and in high audience television channels for having rescued from death the girl Ana Hakani, sentenced to death due to a severe hormonal genetic dysfunction, and that now attends primary school in an elite private school in Brasília. In two consecutive full page articles in the main newspaper of the Brazilian capital (*Correio Braziliense*[11]), respectively entitled: "Hakani's second life" and "Hakani's laughter", several photographs showed the girl in her new environment and used her image as propaganda for missionary action. After an appalling manipulation of the story, the chronicler affirmed that Hakani's reception by her colleagues of primary school "throws away any suspicion of prejudice" as, according to the testimony of one of them, Hakani is "just like us. I don't even remember she is Indian" (my translation). The newspaper recounted what supposedly was the process of rejection suffered by the girl in the environment where she came from, but does not offer any kind of contextual information capable of turning the story comprehensible for the readers.

Coincidently, shortly after I was summoned to deliver my speech in the Public Hearing, I received an indignant message from my colleague Vicki Grieves, activist, anthropologist and aboriginal college professor. In her letter, Vicki tried to inform the international community about a new law promulgated in her country of origin, Australia, saying: "Dear friends: you are probably aware of the very offensive incursions in aboriginal communities of the Northern Territories under the disguise of 'saving the children'." The motto of the supposed salvation of children was simultaneously invoked in Australia, claiming the necessity of protecting them from abusive parents. We thus became aware that the intervention in the Australian Northern Territories was being justified in the name of fighting against a supposed epidemic of "child abuse". Precisely on August 17 of 2007, 19 days before the Public Hearing in which I took part, the Commonwealth Parliament "approved without restrictions a set of measures that implemented nationally the urgent response of the federal government to the *Ampe Akelyernemane Meke Mekarle*, the report 'small children are sacred'." The new legislation made all kinds of possible interventions in the territories, reducing rights and freedoms, and the suspension of customary law[12]. In an excellent conference address, Jeff McMullen reveals the flaws and interests behind the actions "in defense of the children"[13]:

> *This dramatic assault by the Federal Government on more than 70 remote communities that are property of the aboriginal people of the Northern Territory started with the wrong words and without consultation to their traditional owners. Every indigenous leader will affirm that it is one of the most serious forms of offense...*

The parallel between the interventionist alibi in Brazil and in Australia is revealing. The counter-arguments, therefore, will have to be of the same kind: the only possible solution is consultation, respect for the autonomies and the delegation of responsibilities to the peoples with the necessary means to solve the problems. In subsequent conversations with activists from that part of the world, we were agreed about the coincidences between the agendas attempting to open the indigenous territories, in both continents, to interventionist and colonizing States and State-allied corporate groups in the field of agribusiness and mining. A new surprise came when we discovered that the Brazilian bill, still in its condition of a draft law not yet approved, had been translated to English and was available on the Internet – something very unusual even for sanctioned current legislation[14].

## 3. BRIEF PANORAMA OF THE PRACTICE IN BRAZILIAN INDIGENOUS SOCIETIES.

I will take some information that allows us to understand the Hakani case, invoked by the Evangelical Parliamentary Front to publicize the bill, from the final essay to the UNESCO Chair of Bioetics at the University of Brasília presented by Saulo Ferreira Feitosa[15] (ex-Vice-President of the Missionary Indigenous Center– CIMI). In order to build their very elucidatory synthesis, the authors make use of studies that are probably the only bibliographical source on the matter in Brazil that look into the subject of indigenous infanticide[16]. According to these sources, the Suruwaha, from the Arawak linguistic family, that inhabit the Tapauá District, in the Amazon State, 1228 km away from the capital, Manaus, by the river, kept themselves in voluntary isolation up until the end of the 1970s. They had their first contact with Catholic missionaries of a team from CIMI ("Missionary Indigenous Council"), that realized they were "a people capable of assuring their sustainability and keeping their culture alive, as long as they remained free from the presence of invaders" understood that "they should adopt a strategy of no direct interference in the life of the community", just fighting for the demarcation and protection of their territory – which did not take long to happen. This team then limited itself to follow the group at a distance, keeping an inoculation schedule and respecting their voluntary isolation. But four years later, the YWAM Evangelical Mission of the Suzuki missionaries decided to settle among the Suruwaha permanently[17].

The group that suffered such intrusion from the two teams of YWAM missionaries had the following characteristics, succinctly: they had a

total population of 143 people; between 2003 and 2005 "there were 16 births, 23 deaths by suicide, 2 infanticides and one death due to illness"; "the average age of the population, in 2006, was 17.43 years old"[18]. The authors, expanding their synthesis, also inform us that, among the Suruwaha, "behind living or dying, there is an idea, an understanding about what life and what death is", which is to say, of which is the life "that is worth living or not". Because of this, citing Del Poz, they add: "the consequences of this thinking are perceived in numbers. 'The reason for mortality among Suruwaha are eminently social: 7,6% of the total number of deaths are caused by infanticide and 57,6% by suicide'"[19]. In that environment it makes sense to live when life is enjoyable, without excessive suffering, for the individual and for the community. That is why it is thought that the life of a newly born child with impairments or without a father to help the mother in their protection is one too burdened to be lived. In the same way, "in order to avoid future pain and abandonment in old age, the child grows up accustomed with the possibility of committing suicide".

With these references in mind we are able to comprehend that at the core of the issue there are local ideas about death among the Suruwaha, significantly different from the meanings ascribed by Christian thinking. We also apprehend that these ideas are conformed to a complex, sophisticated vision, of great philosophical depth, that is not lesser than Christianity, by any measure. An evidence of historical inefficacy of anthropology is precisely that it was not able to create, in the West, a convincing image of the quality and respectability of different ideas about fundamental issues[20]. For this reason, the ways in which this group is depicted by the missionaries in the media generates the impression of ignorance and barbarism, as well as the certainty that they are incapable of aptly taking care of the lives of their children.

As I mentioned earlier, ethnographies dealing with the subject of infanticide are scarce, in the first place because reliable first hand reports are totally absent in literature, and there are no second hand reports of the practice in the last decade. In earlier times, the practice, when in fact occurred, was rare, never realized under the eyes of ethnographers and there was, apparently, a general consensus that the mere mention of the possibility of its existence could be damaging to the communities and expose them to police intervention and even more intense harassment on the part of greedy missionaries from several Christian churches. Nevertheless, it is known, from various ethnologists' oral reports, that, within the category "infanticide" there are a variety of practices which, when subjected to closer scrutiny, appear to be very diverse, both in their meaning and role within the group as in the meaning they could get in the field of Law and Human Rights. For example, in some societies, there is a rule derived from cosmology, which, when and if obeyed by the community, would determine the elimination of the newborn twins. In others, the community, the family or the mother, depending on the people in question, is in charge of the decision, subject to considerations on the infant's health, or the material conditions of the mother or the group to guarantee its life in the short or medium time span; or considering the absence of a

fatherly figure for physical and symbolic care in an environment where resources for subsistence are tight and there is no surplus. Anyhow, from the many testimonies gathered when I was preparing, in 2010, a report for UNICEF on the subject, it is possible to state that neither the cosmological rule nor any other of the supposed causalities properly determine obedience; that is, they do not produce effectively and in an automatic fashion the compliance with the execution of the practice. Recurrent reports convincingly lead to understand that there are maneuvers and strategies to avoid compliance with the rule, for example, by circulating the infant for its care by another family within the network of relatives, neighbors, acquaintances or wider community. For the reasons explored so far, we should therefore examine this subject having in mind, then, only the rule or prescription of infanticide – cosmological or related to the infant's health or to scarcity of resources –, leaving aside any consideration of effective practice, in case they do exist, always remembering that for no society the rule, as any norm, maintain a causal relationship with actual practices[21].Depending on who may hold the decision, the ways in which human rights can be summoned to intervene may change. If it is the community who decides, the mother may feel harmed in her right to preserve the child. When the decision belongs to the mother, the harm to individual rights may be perceived as concerning the child. In different societies, cosmological reasons or pragmatic considerations about the infant's or group's needs for survival judged by the mother or by close relatives guide the decision to welcome a new life. Let us observe some characteristics and meanings that affect the prescription of infanticide in two different societies that I was acquainted with by oral communication with two anthropologists.

In November 2005, during the Seminário Interamericano sobre Pluralismo Jurídico (Interamerican Seminar on Juridical Pluralism) that I organized in Brasília in collaboration with the Sixth Chamber of Minorities of the General Prosecutor of the Republic's Office (Procuradoria Geral da República) at the School for Advanced Studies of the Union's General Public Prosecutor (Escola Superior do Ministério Público da União – ESMPU), the anthropologist Iván Soares, acting then at the State Prosecutor's Office in Roraima, in the Northern frontier of Brazil, with large indigenous population, disclosed important details about Yanomami conceptions related to what we would understand asinfanticide. His goal was to answer one public attorney who was defending the application, in all cases, of the universal rule of Human Rights. With this objective, he shared that Yanomami women have a complete power of decision with regard to the life of the newborns. Birth happens in the forest, outside the village; in this secluded environment, outside the context of social life, the mother has two options: if she does not touch the baby, nor lift him in her hands, leaving him in the ground where it fell, that means that he has not been welcomed in the world of culture and of social relations, and, therefore, will not turn human, because, in the native's point of view, the "humankind attribute" is a collective construction, without which no organism may become human. Humanity, therefore, is no other thing

than the outcome of a humanization effort invested on the new being by the collectivity. Thus, in the native perspective, it is not possible to say that a homicide is in question, since that what would remain in the soil does not constitute a human life. As it becomes clear, among the Yanomami, biological birth is not, by itself, entrance to humanity, as, for this to occur, there will have to be a "postpartum birth", which is produced in culture and inside the social fabric. Such conception is found among many other first Brazilian populations[22], and allows us to oppose the Amerindian conceptions with the biopolitics of Human Rights, leading to dilemmas such as the ones examined by Giorgio Agamben in his work about the Homo Sacer[23].

A second example is what Patricia de Mendonça Rodrigues[24], ethnographer among the Javaé, inhabitants of the Bananal Island in the State of Tocantins, in Central Brazil, reported to me she believed was behind the prescription of infanticide in this group. For the Javaé, the newborn baby enters the world as a radical otherness, a non-human "other" that must be ritually humanized through care and nurture by his relatives. The baby arrives contaminated and with an open body as his matter is made of a mixture of substances from his parents. The social task is to humanize him, which is to say, to work so that his body is closed and may constitute him as a social and individual subject. In this sense, his extinction would not be understandable as a homicide.

> *The fact that he is born as a complete stranger, as I understand it, justifies the practice of infanticide. The Javaé don't say it openly, but everything indicates that the conscious justification for infanticide, in most cases, is that the baby does not have someone to provide for him (because the mother does not know who the father is, or because the father abandoned the mother, or due to another reason), not only to provide for him economically but above all to assume the responsibility of what is necessary for the long and complex rituals that would identify him again with his magical ancestors, giving him his public identity of a closed body. It belongs to the father, primarily, the social responsibility of the public transformation of the open-bodied son into a closed-body relative, that is, a social being. A child without a social father is the worst possible insult for a Javaé, and a perfectly acceptable motive for infanticide (from Mendonça Rodrigues, oral communication. My translation).*

We notice once more that it is not ignorance that hides behind the difference in treatment of the newborn life in aboriginal societies of the New World, but rather a different understanding of how and when it becomes human, and of what are the social obligations that shape the process of humanization. Even though we, anthropologists, by one way or another, have known this for a long time, when we engage in a dialogue with the State through its representatives, we cannot simply cite it. At some moment we will have to deeply ponder over the reasons for this, and over why other conceptions of life, in their radical difference and in the intelligence of their terms, do not enter the State mental horizon,

whose strategy of control falls daily into what Foucault calls biopolitics or biopower[25] and thus progressively distances itself from the indigenous and communitarian notions of human life.

Even though there should not be a lack of arguments in favor of human life as a social, not biological, responsibility, Esther Sánchez Botero assumes – and it could not be otherwise – that, when dealing with the State, it is necessary to speak the language of the State, since it does not open itself to radical difference. In her last work, *Entre el juez Salomón y el dios Sira. Decisiones interculturales e interés superior del niño*, she clearly identified the classical juridical strategy: it is necessary to deeply acknowledge the code of Law, in order to argue from the inside[26]. This impressive work, which brings favorable arguments to the preservation of indigenous jurisdiction in disputes that threaten it, extracts and systematizes the accumulated experience in an array of judicial cases under the light of a thorough conceptual discussion, both in the fields of law and anthropology.

The author confirms that it is not the juridical minimum – a strategy chosen by the Colombian legal system to confront the dilemmas of juridical pluralism – that must orient the judgment of what in the West is perceived as a breach of the principle of the "superior interest of the child", established by the International Convention on the Rights of the Child. For the author, this principle "is an extension of the principles of the West and does not necessarily constitute an achievable ideal in all cultures and for all cases", because the "superior interest" refers to the child as an "individual subject of rights" and does not encompass the "constitutional recognition of the indigenous societies as collective subjects of rights". For this reason, the "generalized, non discerning and mandatory application of this principle, besides being unconstitutional, can be ethnocidal, as it eliminates cultural values that are indispensable to the biological and cultural life of a people"[27].

Thus we learn that each decision must comply with a "test of proportionality" and only "the ends admitted by the Constitution and recognized by the interpretation of the Constitutional Court as of a greater level could limit the fundamental right of the indigenous people" to being a people. In short: for the author, the rights of the child "do not prevail over the right of the indigenous people to be ethnically and culturally distinct"[28]. It follows that, in cases that entail a breach of the superior interest of the child, it is fundamental to consider and evaluate the rights that are placed in contradiction: the right to life of the individual subject and the right to life of the collective subject, as well as the right to life of the mother and the right to life of the newborn. Before these contradictory pairs, it will have to be decided which of the terms will be harmed, in favor of the greater right. If the mother cannot fulfil the responsibilities of protecting the new human life, as it happens in the medical field, priority must be given to the life of the mother instead of that of the baby, because other children also depend on her. In the same way, if the inclusion of a child in certain conditions puts at risk the survival of the community as such, it is the community that will have the priority, as

all of its members depend on its ability to continue existing. For Sánchez Botero, only the sociocultural context of each particular case allows this judgment to be made.

## 4. DECISIONS ABOUT THE STRUCTURE OF MY ARGUMENT.

Despite the fact that the reading of Sánchez Botero's work offered me certainties about the defensible nature of an extreme practice such as infanticide, always in regard to certain circumstances, it still did not solve the problem of how to argue about it before the legislators. In part because in Brazil there has not been yet an official debate about indigenous jurisdictions or autonomy that could orient my argumentation; in part because those to whom my arguments were addressed were not judges interested in solving cases of infraction of the interest of the child, but rather members of a House that found themselves on the brink of voting a general bill about the subject. Thus, I would have to take *sui generis* decisions that would allow me to deem convincing the central point of my lecture: that criminalizing indigenous infanticide, specifically, was in no way desirable to the Nation and its peoples.

Some data was necessary for the exposition, as well as finding a language that would make it efficacious: 1) the demographic growth of indigenous societies post-military dictatorship had been noticeable, and that proved the capacity of indigenous groups to care well for their children; 2) the State that attempted to frame indigenous societies in the law was itself, susceptible to framing and judgment[29]; 3) the penal efficiency and emphasis of the State on criminalization as form of control – resources to which the law appealed – had been questioned by respected specialists; 4) the law was not necessary because it legislated that which was already legislated; 5) by emphasizing the individual rights to life of the children, the law did not focus on considering the equally necessary respect and protection to the rights of the collective subjects – a result of many obligations contracted by Brazil in the field of Human Rights; 6) the National Congress had no legitimacy to vote a law of intervention in indigenous villages without the presence of representatives of the people affected by this deliberation – that was confirmed days later, on September 7, 2007, when Brazil became one of the signatories of the UN's Declaration of Rights of Indigenous Peoples[30]; 7) similar experiences showed that the pretension of legislating super-criminalizing infanticide and its witnesses, which is to say, the village and all of the people present in it, was dangerous, as the reaction, in a time beset by fundamentalist strategies, could be the transformation of this practice in an emblem of ethnic identity[31].

It was also fundamental to ponder carefully over what could be said about the role of the State, as well as to evaluate the options that could replace the examined law, since opposing its approval did not necessarily mean to approve the practice of infanticide – in respect to the complaint of the Yawanawa woman already mentioned. Despite the constant

demands of lands, health, education – among other things – by indigenous populations to the State, and considering the enormous unbalances brought by its disruptive, colonial action, it was not desirable the State to retire itself, leaving, for instance, internal powers inside the villages – in many cases inflated precisely by their role as mediators between villages and State institutions – to control the decisions about customs. On the contrary, the State would have to transform its role and focus on protecting and warranting internal deliberation in villages.

This was one among many tasks of retrieval that a reparatory State should ensure for indigenous people, within a pluralist national project. What would have to be restituted in this case, I concluded, was the capacity of each people to deliberate internally. *With the return of communal indigenous law and the institutional reformulation that this entails, naturally there would occur a retrieval of command over indigenous own history – because deliberation is nothing else than path, course, movement of transformation in time. With the devolution of history, the categories of "culture" (due to its inherent inertia) and "ethnic group" (that necessarily refers to cultural patrimony) would lose their centrality and give way to another discourse, whose subject would be the "people", as a collective subject of rights and collective author of a history – even though this may be narrated in the shape of a myth, that is nothing but a different style of decantation and condensation of the historical experience accumulated by a people.* I will show, next, the result of these considerations.

## 5. MY PRESENTATION IN THE HOUSE OF REPRESENTATIVES: "EVERY PEOPLE SHOULD WEAVE THE THREADS OF THEIR OWN HISTORY. IN DEFENSE OF A STATE THAT RESTORES AND GUARANTEES THE DELIBERATION IN ETHNIC FORUM (READ AT THE PUBLIC HEARING HELD ON SEPTEMBER 5, 2007 BY THE HUMAN RIGHTS COMMISSION OF THE HOUSE OF REPRESENTATIVES ON THE DRAFT LAW NO. 1057 (2007), PRESENTED BY REPRESENTATIVE HENRIQUE AFONSO, ON THE PRACTICE OF INFANTICIDE IN INDIGENOUS AREAS) [32].

Distinguished Representatives, ladies and gentlemen, advisers, and respected public:

**The State scene and the Indian scene.** From two scenes in visible contrast I begin this presentation. Two scenes compose a vignette of the nation where we live and reveal the State's role and meaning of the law. The first scene was selected from the newspaper I read every morning, *Correio Braziliense*, the leading journal of the Federal Capital, although it could have been found in the news in any other media, any day. This is the scene of the State, Public Health, Public Safety, protection and guarantees for life:

> *Brasília, Tuesday, August 28, 2007. Brazil Section:*
> *In five days, 11 infants dead in [the public maternity of] Sergipe.*

And today, as I wake up:

> *Brasilia, Wednesday, September 5, 2007. Holders and Cities Sections (referring to the cities surrounding the Federal District): Vera Lúcia dos Santos […] had two sons murdered. Still mourning the death of Franklin, 17, when the younger, Wellington, 16, was executed with two shots on the neck […] Nobody was arrested […] According to a research from the Police Office, none of the 41 murders of adolescents aged 13 to 18 years, occurred this year, has been resolved yet.*

The second scene is the scene of the Indian, taken from a book that I strongly recommend: *The Massacre of the Innocents. The child without childhood in Brazil*. The organizer of this work, José de Souza Martins, summarizes in the following emotional words the first chapter of the volume, "The Indians Parkatejê 30 years later," by Iara Ferraz:

> *[…] it was the white society, in its cruel and voracious expansion, who led to the destruction and death of the Parkatejê Indians of southern Pará. Not only physically eliminated a large number of people, but also sowed within the tribe social disaggregation, demoralization, disease, hunger, and exploitation - terms of unconditional surrender of the Indian to the "civilized" society. The white society brought demographic imbalance to the tribe, compromising their bloodlines and social organization. The Parkatejê heroically surrendered, giving their orphaned children to the white people, so that they at least survive as foster children. Later, when the tribe was reorganized, it went in search of the scattered children, now adults, spread to distant regions, so that they could return to the tribe and share the Parkatejê people's saga. Even those who were not even aware of their indigenous origin, because the white people had denied them this information, were caught in the middle of a day in foster homes, by the visit of an old Indian chief announcing that he had come to pick them up and take them back to the village and to their people, who were waiting for them*[33].

Given the contrast of the scenes mentioned, confirmed by many others we know, I wonder and ask the audience: what State is this that now intends to legislate on how indigenous peoples should care for their children? What authority does this State have? What are its legitimacy and prerogatives? What credibility this State has to issue this new law that intends to criminalize peoples who where, here, weaving the threads of their history when they the greed and violence of Christians disrupted them and interrupted their path? In view of the evidence, which increases each day, of the absolute failure of the State in fulfilling its obligations and of its inability to perform what is nothing more than its own project as a Nation, I am forced to conclude that the only prerogative of this State is to be the custodian of the booty of conquest, the direct heir of the conqueror. We should, on the contrary, criminalize this same State that

intends to legislate today, and take it to court for the crimes of insolvency, default, omission and even homicide through the hands of many of its officers and agents vested with police power. When comparing the severity of its offenses, we have no choice but to acquit the people who are today criminalized here, and return the aim of Law toward the ones who try to blame them: an elite that each day demonstrates its inability to manage the Nation and sees dismantled in public its claim to moral superiority, the main instrument of all domination enterprises. The strength of that initial vignette speaks for itself. I could end here my presentation and it would already be convincing. However, much more needs to be said about the Bill whose discussion brings us here today. Starting with two clarifications that should be made before proceeding: the first one refers to what we are debating in this Hearing, as it should be clear that the discussion of the proposed law on infanticide in indigenous areas should not be focused on the individual right to life, which is already fully guaranteed by the Brazilian Constitution, the Penal Code and various Human Rights instruments ratified in Brazil. Instead of duplicating laws, already abundant, for the defense of individual lives, it would be more urgent to propose ways to enable the State to better protect and promote the continuity and vitality of the peoples that give so much wealth to the Nation in terms of diversified solutions for life. Children's lives depend on the welbeing of their societies!

The second clarification refers to the meaning of the expression "right to life". This expression can indicate two different types of right to life: the individual right to life, or the protection of the subject individual rights; and the right to life of the collective subjects, or the right to protection of life of peoples in their condition as a people. Precisely because the latter is much less developed in the Brazilian legal discourse and public policy, we should devote most of our efforts to reflect and figure out how to provide better legislative, legal and governmental protection to collective rights - the most vulnerable - such as promoting and strengthening collective and communitarian social fabric. I argue here that the priority is to save community where there still is community and to save a people where a people still persist. A fundamental right of every person is belonging to a people and to a community. The State needed to make this possible is not a predominantly punitive and interventionist State. It is a State able to return and restore the legal and material means, autonomy and guarantees of freedom within each community so that its members can deliberate about their own morality on a path of historical transformation, and build from within an idiosyncratic dialogue with the standards of Human Rights internationally established.

**A critique of the punishing State.** There are several authors, sociologists of violence and Law, jurists and political scientists who are concerned about the progressive intensification of the punishing aspect of the State, until the advent of an eminently criminalizing State, which concentrates its tasks and responsibilities on punitive efforts, relegating its other, higher priority obligations, to a second level. This law that we came here to discuss fits the profile, criticized and lamented, of a punitive State,

which restricts its activities to acts of force over and against those who should protect and promote. In his recent book *El Enemigo en el Derecho Penal*[34], the great Argentinean jurist Eugenio Raul Zaffaroni [...] examines the essence, the consequences and the sub-text [...] of the punishing State throughout history and especially in the contemporary context. What emerges is that, through criminal discourse, the idea of the enemy is designed – unfolding from the *hostile* category of Roman law. [...] (So) the criminal law profiles always inevitably [...] represent the figure of an alien who postulates, through the same maneuver, as the enemy.

In the case of the law that we debate today in this Public Hearing, the enemy of Criminal Law is each indigenous people, in the radicalism of their difference and in the right to build their own history, that is, the right to decide internally on the course of their tradition. This is clear, and would become evident for every inhabitant of Mars that, by a cosmic accident, landed here and read the text of the proposed law: it criminalizes the village and wants to punish the other for being the other. It cannot stand the idea of the existence of a community that chooses not to be a part of "us".

Therefore, this law is, first and foremost, anti-historical, since one of the central concerns of our time is to value and preserve difference and allow the reproduction of a plural world. This requires, unavoidably, the development of collective rights. Caring for such collective subjects' rights is also central because, despite the constant assaults suffered by communities in the course of these 500 years, these peoples not only survived by means of their own internal logic and strategies, but mainly because it is possible to imagine that they will surpass us in their future capacity to survive. Many of them refugees in places unreachable by what we pretentiously consider to be "Civilization", free from the greed to concentrate and accumulate, free from the heavy baggage that we carry, they will have, perhaps, an opportunity that we will not have, in a world that goes every day further in what many believe to be its final phase due to resource depletion.

**The meaning of legislation.** Julita Lemgruber, the prestigious Brazilian scholar on Public Safety and criminal efficacy, in her article "Truths and lies about the Criminal Justice System"[35], reveals the limited impact of Criminal Law not only among us, but also in the most scrutinized countries in the world. Using quantitative research on Public Safety in countries where monitoring is conducted regularly, the author warns that in England and Wales, in 1997, only 2.2% of the offenses had condemned those responsible, and in the United States, according to the 1994 survey, of all violent crimes committed - homicides, assaults, rapes, robberies, etc.., whose investigation, clarification and punishment seem more relevant - only 3.7% resulted in convictions. In light of these data, the author describes as a "First Lie" the assertion that the criminal justice system can be considered an effective inhibitor of crime. In Brazil, the reduced power of the law is even more extreme. In the state of Rio de Janeiro (as monitored by periodic surveys on violence) authors who conducted their research during the 90s as Ignacio Cano, Luiz Eduardo Soares and Alba Zaluar concluded, respectively, that

only 10%, 8% or 1% of all homicides reported to have reached some kind of conviction. In the words of Alba Zaluar: "In Rio de Janeiro only 8% of the investigations [...] are turned into processes and brought to trial. Of these, only 1% reach a verdict"[36]. These data lead us to wonder about the motivations that lawmakers could entertain when pushing for a law criminalizing indigenous peoples. Such punitive law, besides being contrary to ILO's 169 Agreement, fully in force in Brazil since 2002, hinders indian communities even further from restoring their own internal laws, ethnic rule and logics for the resolution of their conflicts and the promotion of internal deliberation... It should then be asked: if the law does not construct reality among us, how could it construct reality among other peoples who live in places hardly accessed by agents of the State? And if the law does not make it happen, then what would be the meaning of such insistence on passing this new bill by some lawmakers when, in fact, in addition to hinder a legitimated and legally validated right to difference, it enlarges, in redundant and unnecessary ways - because it enunciates rights already fully guaranteed in more than one article of the current legislation - the already too innocuous criminal law? Where does this legislative passion come from, this truly legislative fever that, once again, will only worsen the often criticized "legislative inflation"?

I can only find one answer to this question: what this proposed law actually does, and does it very efficiently, is to affirm, publicize, make patent before the nation, who are the ones who write the laws, which are the sectors within national society that have access to the offices in which this task is performed. In fact, we should not forget that the Law speaks, first, about the figure of their authors. It undoubtedly contains a signature. Whoever wants to write a law, wants to leave his/her signature on the nation's most eminent set of texts. But this is certainly not a valid, sufficient or fully acceptable motivation in the eyes of everyone. Especially because, in this Congress, there are no seats for Indians nor any other type of reserved places that can guarantee the participation in the making of the laws of the many peoples that compose the great Nation.

**The future of the State.** What then could be the work of the State, in order to overcome a scenario as disheartening as I have just presented? It should be a *State that returns and guarantees ethnic rule* and communitarian rights in general. With that, I mean that in view of the disorder that European and Christian metropolitan elites imposed to the continent during the process of conquest and colonization, disorder which was later aggravated and deepened by the administration of an Eurocentric national elite that inherited the control over the territories, today we have an opportunity. And that is the opportunity to allow those people who up until now have not had the chance, to restore their internal institutional order and resume the threading of their own history. Perhaps it is indeed possible to redo what was undone in terms of the cultural, legal, economic and environmental orders within a Nation now conceived as plural. If there is no perfect law, instead of insisting on an increasingly remote perfection of a deficient legal system, we can pave the way for other models. I refer here to the project of juridical pluralism.

It is not, as has been the understanding of lawyers and anthropologists to date, to oppose the relativism of cultures to the universalism of Human Rights or the universal validity of the constitution within the Nation. What the project of a pluralist state and the legal pluralism platform propose is to draw the idea of Nation as an alliance or coalition of peoples, allowing each of them to resolve their conflicts and develop their internal dissent in their own way. In every human village, however small, divergence is inevitable, and when it comes to the prescription of infanticide, dissent is often present. In face of this, the role of the State in the person of their agents will have to be available to oversee, mediate and intercede for the sole purpose of ensuring that the internal process of deliberation can take place freely without abuse by the most powerful within society. This is not a defense of the withdrawal of the State, because, as evidenced by the multiple demands for public policies placed by the very indigenous peoples since the Constitution of 1988, after the intense and pernicious disorder installed by ultramarine and later republican colonial interventions, the State can no simply withdraw itself. It must remain available to provide assurance and protection when its intervention is demanded by members of the communities, provided that such intervention occurs in dialogue between its agents and the representatives of the community in question. Its role, in this case, cannot be other than to promote and guarantee the dialogue between the powers of the village and its weakest members.

Caution in regard to legislative activity and commitment to ensure the freedom of the group to internally deliberate and self-regulate itself are particularly wise and sensible gestures in a multicultural globalized world like the one we have today, in which there is a very large risk of appropriation of elements of tradition to convert them into emblems of identity by groups who see in the political culture and fundamentalist strategy a way to defend their greed for power and influence within society. They are many the practices that, far from waning, when reppressed by modernizing and westernizing legislation, get reaffirmed as banners of identity against authority envisaged as culturally alien. By remembering this possibility, we are convinced that further discussion of this law is impractical and even dangerous for two reasons that we must consider. First, because it can generate forms of reaction that, on the basis of fundamentalist notions of identity and culture, might transform the practice of infanticide, now in progressive disuse with the improvement of living conditions of indigenous peoples after the end of Brazilian military dictatorship and with the hopes brought about by the 1988 Constitution, into an emblem of difference crystallized as an icon in ethnic heraldic. Second, because the sanction of this type of law demands its quite unattainable application, which inevitably relies on the intrusion and interference of State Security forces within villages, obstructing their autonomy and intimacy. This could lead to disastrous consequences, in view of police's lack of training to work across boundaries of difference and from a pluralistic perspective.

***People and history*: fundamental categories to transcend the binomial relativism/universalism**. The most appropriate and efficient way to think about the set of problems that arise here is not to enter the minefield of unsolvable dilemmas posed by the opposition relativism – universalism. When confronted with the principle of pluralism, the idea of culture as crystallized customs should be avoided and replaced by the idea of histories in plural – the multiple histories running through our nations. All people dwell in the flow of historical times, in dynamic interweaving with others. Every nation contains this very engine of history that is dissent within, so that costumes are changed in the course of constant internal deliberation, which is nothing else than the fluent and constant dialogue among its members. The problem of the peoples of our continent is not to preserve culture as heritage crystallized - after all, culture is nothing more than the result of the constant and unrelenting sedimentation of historical experience – but, on the contrary, desintrude – or resign intervention – in the threading of their history, which was intersected and sectioned by the outbreak of colonization by the agents of European metropolitan powers first and of eurocentric autochthonous eleites in control of national States later. It is not, as often believed, the repetition of a past what constitutes and validates the identity of a people, but their constant task of joint deliberation. In that sense, many a people have already deliberated and abandoned the practice of infanticide. This happened, for example, with the people Kaxuyana-Tyrio, as reported by Valeria Paye Pereira, who preceded me in this Hearing.The idea of history itself moves in precisely the opposite direction of what the law debated here intends to do. This law endorses a State that makes decisions about the direction of all the peoples that constitute the nation, and does so through punitive intervention. Quite on the contrary, it should stress the principle of respect for the agency and deliberative capacity of each collective subject preserving its right to keep its historical course free flowing and differential. Therefore, *the fact that societies transform themselves, abandoning customs and adopting and installing new ones is precisely an argument against the law, and not in its favor.* By saying that societies change at their own will as a result of internal dissent and in contact with the epochal discourses that circulate around and across them – precisely such as the international discourse of Human Rights – we are saying that the State is not the agency to prescribe and enforce, through threat and coercion, outcomes for the plot of all people's histories within the Nation. His only role is to protect the unique historical route of each people in its idiosyncratic and particular unfolding, ensuring that it can flow without authoritarian impositions neither from internal groups - *cacicatos* - empowered by their role as mediators with the State and the so called national society, nor from external constraints, as the one coming from this law. *The devolution of justice itself is nothing else than the return of history itself.*

*From this anthropological and legal perspective that I propose, the State's role is therefore to restore to the peoples the material and legal means for them to recover their usurped ability to weave the threads of their own*

*history, and assure that the internal deliberation can occur in freedom, in accordance with legal guarantees of jurisdiction or ethnic forum.* Accordingly, the kind of *garantism* invoked here refers to the legal commitment assumed by the national State to fulfill the demands of collective subjects and collaborate with the effort they invest in reproducing their existence. *The principle of protection of a history of their own is opposed to the relativist classic perspective, since this latter will never get to avoid referring indigenous internal law to a conception of culture as crystallized, a-historical and timeless. To affirm and oppose history instead of culture is the only efficient way to guarantee the progress of justice in the life of peoples through internal deliberation and the constant production and revision of their own logics and systems of legality. Such deliberation is no other thing than the engine of historical movement and transformation, in its own course and in constant dialogue with other peoples.*

## 6. SEVEN COROLLARIES

Seven corollaries follow from the argument presented here in support of the agenda of the Right to Difference and the values of pluralism against the limiting case that indigenous infanticide represents to Legal Pluralism:

1. It is more appropriate to the purposes of the defense of rights, to speak of "people" instead of "ethnic group", because people is a living collective and a dynamic subject, while ethnicity is a objectifying category, which serves the purposes of classification and anchors the group to a ethnicity based on a fixed cultural heritage.
2. *People* is the collective that is perceived plotting the web of a common history, coming from a shared past and going to a common future, including the drama of conflicts surmounted along the way. The loom warp of this tapestry collectivelly weaved is continuous, though it presents tears and ruptures in some of its threads; the design of its weaving reveals consensus and dissent among the people threading such fabric of history.
3. It is more appropriate to speak of "history" than of "culture, because, unfortunately and unavoidably, the idea of culture, due to the inherent inertia of its conception, often involves the removal of custom from historical flow - even well -intentioned actors condemn cultures to a museum-like existence. Culture is nothing else than the sediment left by the historical experiences of a collectivity, while myth and customs are the result of the condensation and symbolization of this historical process.
4. A good State should have a replacer/returner/restoring profile regarding justice, among other features to be reinstated.
5. To restore justice, that is to say, to restore internal law or ethnic rule is to promote the repairing of community tissue - the return of the territory is necessary but not sufficient for this purpose.
6. To restore inner rule also means giving back to the community the

reins of their history, since deliberation in inner ethnic jurisdiction of their own and the consequent unfolding of inner discourse inherent in the very practice of doing justice within the community constitute the engine pushing the historical path of a collective subject.

7. Yet, the State cannot withdraw suddenly and completely, due to the disorder installed in communities as a result of the long intervention of the white world over them. Its role, nevertheless, should be to ensure internal deliberation when hampered by established powers - *cacicatos* - within communities (usually men, elders and rich members, political leaders) whose power gets fed from outside the group, either as a reactive effect resulting from external interpellations or or due to alliances with segments of the national society (traders, agents of the State, politicians, farmers) that reinforce or even originate internal powers within communities.

## >> ENDNOTES

[1] Segato, 2006: 228.

[2] "[…] a draft law dealing with the practice of infanticide in these communities is in discussion in the National Congress, and two hearings have already been held without the participation of indigenous women that are being criminalized. There is also a national campaign against infanticide and the Subcommission can take a position and demand participation in the hearings" (Ministry of Justice, FUNAI, 2007:35. My Translation).

[3] Segato, 2003: 31.

[4] Marés de Souza Filho, 1998.

[5] Carvalho Dantas, 1999.

[6] See <http://voiceforlife.glorifyjesus.com>.

[7] Platt, 1969.

[8] Segato, 2008.

[9] According to information sent by David Rodgers to the list <http://br.groups.yahoo.com/group/Nuti_Pronex>, this film can be downloaded through the page <http://www.hakani.org/en/premiere.asp> and the trailer is loaded in <http://br.youtube.com/watch?v=RbjRU6_Zj0U>.

[10] To read the bill, see the webpage <http://www.camara.gov.br/sileg/MostrarIntegra.asp?CodTeor=459157>.

[11] Wednesday, October 3rd, 2007 and Thursday, October 4th, 2007, <http://www.correioweb.com>.

[12] Davis, 2007: 1.

[13] McMullen, 2007: 4.

[14] See <www.voiceforlife.blogspot.com/>.

[15] Feitosa *et al*, 2006.

[16] Kroemer, 1994; Dal Poz, 2000.

[17] Feitosa *et al.*, 2006: 6; my translation.

[18] Feitosa *et al.*, 2006: 6.

[19] Feitosa *et al.*, 2006: 7. Dal Poz, 2000: 99.

[20] See, on the complexity of differences that surround infanticide practice and a critique of the very name "infanticide", Holanda, 2008.

[21] Segato, 2010.

[22] Viveiros de Castro, 1987.

[23] Agamben, 1998.

[24] Mendonça Rodrigues, 2008.

[25] Foucault, 2000, 2006 and 2007.

[26] Sánchez Botero, 2006.

[27] Sánchez Botero, 2006: 156.

[27]

[28] *Idem*: 170.

[29] Abdullahi Ahmed An-na'im, in his search for points of convergence between the Human Rights discourse and the Islamic perspective on rights, noted that, though cruel to the Western eyes, "Coranic law requires that the State fulfills its obligations of assuring social and economic justice and guarantees a decent life standard for all citizens before it applies punishments (to offenders). (1992:34. My translation).

[30] Two days after my presentation, exactly on September 7th of 2007, the adoption of the Declarations on the Human Rights of Indigenous Peoples by the General Assembly of the United Nations came to confirm this line of reasoning: "Article 18 – Indigenous peoples have the right to participate in the decisions of matters that could affect their rights, by means of

representatives elected by themselves in accordance to their own methods, as well as to maintain and develop their own institutions for the reaching of decisions".

[31] Segato, 2007.

[32] I appreciate the cooperation of Esther Sánchez Botero, Xavier Albó, Patrícia Rodrigues de Mendonça, Ernesto Ignacio de Carvalho, Saulo Ferreira Feitosa, Rosane Lacerda, Eli de Lima Passos, Leia BezerraWapichana, Suzy Evelyn de Souza e Silva, Marianna Hollanda and Danielli Jatobá.

[33] Martins, 1991: 10.

[34] Zaffaroni, 2006.

[35] Lemgruber, 2001.

[36] Cano, 2005; Soares, 1996; Zaluar, 2002.

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