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**PARTICIPAÇÃO, DELIBERAÇÃO E RECONHECIMENTO TERRITORIAL INDÍGENA: OS CASOS DO BRASIL,
CANADÁ E DA ARGENTINA**

Área temática:

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**RESUMO**

Do extremo sul do Chile até o extremo norte do Canadá observa-se um grande número de populações indígenas (ou ainda aborígenes, autóctones e primeiras nações) distribuídos entre todos os países do continente, apresentando uma variedade de tradições culturais, línguas, organização social e política e com estratégias diferenciadas de interação com estados nacionais. Não obstante esta imensa diversidade dos diferentes grupos ao longo da região, não é um exagero considerarmos que todos apresentam, de alguma forma, uma reinvindicação constante, aos governos dos países em cujo território se encontram, de um reconhecimento juridicamente formalizado e institucionalmente efetivado dos territórios por eles ocupados tradicionalmente desde tempos imemoriais. Os *land claims* destes grupos aborígenes, no entanto, recebem formas diferenciadas de resposta por parte dos governos, em processos que podem variar desde aqueles que apresentam maior inclusividade e transparência até aqueles baseados quase que inteiramente em decisões políticas tomadas por agentes governamentais em nível estadual/provincial ou federal, passando ainda por modelos de respostas mais ou menos tecnocráticas. Baseando-nos na extensa literatura sobre a importância da participação e da deliberação dos grupos afetados por decisões que lhes dizem respeito, espera-se – e esta é a principal hipótese deste trabalho- que os processos de endereçamento da questão territorial aborígene que apresentem maior possibilidade de participação dos grupos indígenas cheguem a resultados considerados de maior qualidade referidos a alguns indicadores, a saber: 1. O tempo empregado para a obtenção do acordo de reconhecimento; 2. a presença/ausência de violência na relação entre grupos indígenas e habitantes não-índios (*settlers*); 3. A geração de benefícios econômicos; 4. A área efetivamente delimitada como de ocupação tradicional; 5. A geração de autonomia política por parte da comunidade aborígene. É o conjunto destes cinco indicadores que compõe a nossa variável dependente denominada "resultados dos processos das demandas territoriais indígenas". Esta variável, por sua vez, pode estar relacionada a algumas variáveis independentes, dentre as quais destacamos: 1. A judicialização dos processos de reconhecimento territorial indígena através de recursos a cortes provinciais/estaduais e federais; 2. O grau de mobilização dos grupos indígenas exercendo pressão sobre os atores governamentais envolvidos no processo; 3. A inclusão efetiva dos atores indígenas no processo de tomada de decisão sobre o reconhecimento de seus territórios; 4. A melhor divisão de tarefas entre agências e atores governamentais no processo de tomada de decisão. Para testarmos a validade de nossa proposição, procedemos à estratégia de estudos de casos paradigmáticos de reconhecimento territorial autóctone em três países do continente: Brasil, Canadá e Argentina. A escolha destes países decorre de nossa pressuposição de que países com reduzida extensão territorial e grande população indígena (caso, por exemplo, de Bolívia, Equador e Guatemala) apresentam uma forma de relacionamento com o estado sobremaneira distinta de países com grande extensão territorial e população indígena minoritária e geograficamente dispersa, tais como os países escolhidos para o estudo. Além destas características, estes países apresentam, em comum: 1. Economias fortemente baseadas em atividades extrativistas e de exportação de commodities; 2. Apresentam um sistema de governança federalista em que as províncias/ governos estaduais têm algum grau de influência sobre os processos em tela; 3. Os grupos aborígenes destes países destes países reivindicam largas porções de território a serem caracterizadas como de ocupação tradicional. Nosso estudo, portanto, se apresenta como uma investigação empírica de política comparada com foco na relação entre as populações ameríndias e os estados nacionais, baseando-se em estudos de casos em três países distintos. Este artigo, portanto, se dedica a apresentar os primeiros achados de nossa pesquisa de doutoramento.

**Palavras-chave: demandas territoriais; participação; povos indígenas; pesquisa comparativa**

This paper starts with a disclaimer. It is intended to be the presentation of the main argument of our doctoral dissertation rather than its findings, as stated in the abstract. The research design has changed over the last months and some substantial modifications were made. These changes can be summarized: 1. The exclusion of Argentina as a case that would be considered, since we were not able to find reliable data about native land claims in that country; 2. The dependent variable was restrained to three indicators instead of five; 3. The reduction from four to two independent variables (policy design and policy externalities), including an intervenient one (political organization); 4. The formulation of a more nuanced argument that connects participation and deliberation and policy design.

Thus, we present the new research design, the argument in a concentrate version – due the limits of scope- and an overview over the cases analysed. In the paper final remark, a diagram with the explanatory model can be found.

## 1. Introduction

From the south of Chile to the north border of Canada, we can observe a large number of aboriginal groups[1] distributed throughout countries, each one of them showing distinct features such as languages, customs, rituals, cultural activities, spiritual beliefs and political structures[2]. Nevertheless, it would not be an exaggeration to say that, supposedly all of them face threats regarding their relationship to the lands in which they live. Thus, "native land claims" will be considered, for the purposes of this study, as all claims for state recognition of a land traditionally occupied[3] by a country native group, in this case, in Canada and Brazil. It

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[1] In this study, we will use the terms "indigenous peoples", "native groups", "aboriginal" or "autochthones" groups and First Nations interchangeably, considering that those terms are used by those groups in both countries to define themselves and have no pejorative connotation to them. Considering that there is a controversy on what those terms could possibly mean, given the number of countries, we stick to the definition advanced by the United Nations System, which includes: 1. Self-identification as an indigenous person individually along with the acceptance by the community; 2. Historical continuity with pre-colonial and/or pre-settler societies; 3. Strong link to territories and surrounding natural resources; 4. Political, economic and social systems distinct to the settler society, as well as different culture, beliefs and language; 5. Are minority groups; 6. Aims to keep their traditional way of life and environment (UN, 2006).

[2] It is hard to state precisely the number of indigenous peoples around the world due the lack of confidence of many national records and the populations' growing rate. Nevertheless, a very comprehensive estimation of this number can be found in Bellier (2013, p.335), from which we draw: there are about 370 million indigenous peoples, over 5.000 natives groups in 70 countries. Canada had in 2010 around 1.142,815 autochthones, circa 3,6% of its population. Brazil, for its turn, had 817 000 indigenous persons, around 0,4% of its population in 2012.

[3] It is important to clarify, from the very beginning, that there is a whole debate about the concepts of "land" and "territory" whose complexities would not fit into the scope of this work. For the sake of the concision, we have opted for using both land and territory as long as the actors involved use them for their own purposes without losing sight of their symbolical and material dimensions. By the same token, we have opted for the term "traditionally occupied" in opposition to "immemorially occupied" to stress that the actual occupation and the mode of existence, production and culture is dynamic and lively rather than something frozen across the time. To a deepen discussion of all those aspects, see Gomes (2013); Marés (2003).

is important to highlight that it is aimed specifically the claims made by those groups to contrast them with the more general land claims made by peasants in the sense of land redistribution carried out by governmental agrarian reforms. This means that it is assumed that the native land claims have both symbolic and material components that are necessary to the very existence of a native group as a distinct cultural society[4].

In order to have a better understanding of the magnitude of the problem that it is dealt with in our thesis, it is useful to have a look at the figures involved in the debate. There is some impressive data regarding the pattern of land tenure recognition in American Continent.  The comprehensive global research *Who Owns the World's Land? A global baseline of formally recognized indigenous & community land rights* (RRI, 2015) states that, compared to other continents, Indigenous Peoples and local communities in Latin America own or control 23% of the land area, compared to 18% globally. Mexico, for instance, has astonishing 52% of its territory owned by aboriginal groups, and combined with Brazil, accounts for 67 % of the total land formally recognized in the region. In contrast, Argentina and Chile are the countries with less area under aboriginal control and ownership, accounting for, respectively, 2,93% and 3,12% of their territories. The data are no less striking when compared the United States of America and Canada because, regardless having territories with almost the same size, the former has only 1,95% of its land controlled by traditional groups, whereas the latter stand out with 43,86%. Land claims recognition deserves, doubtless, investigations considering their impact in the dynamic of some of the largest countries in the world.

Nation-states have developed different ways to deal with the land claims of those groups, aiming to address the historical inequity between the settler's societies and the autochthones (Scholtz, 2006). These processes may be clearly regulated by a national constitution and complementary laws or be more dependent upon presidential decrees, carried out by federal or provincial/state level agencies, be more or less participative and transparent as other ones could be designed in a more technocratic or paternalistic way. Despite its particular features, though, all of them are conceived as legal responses developed by national-states which are supposed to transform a legitimate territorial claim made by a native group into a concrete territorial recognition that is simultaneously legally regulated and institutionally effective. Those responses will be termed here as "land claims recognition processes".

The native land claims, as well as the land claims recognition processes may vary considerably, leading to outcomes that could be more or less satisfying for the aboriginal

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[4] It does not mean that we do not acknowledge that neither the claims made by native groups across the continent are usually much broader than territorial ones nor that they are often intertwined with claims for political autonomy. Still, we consider that this claim is the one that is common to all native groups on the countries under analysis.

peoples. To the purpose of this study it is considered as "outcomes of the land claims processes" the formal recognition and the effective implementation by a nation-state of a tract of its territory that will be considered for all the social actors concerned as a territory traditionally occupied by a national native group. This is the dependent variable of the present research.

Notwithstanding, some outcomes could guarantee higher degree of legal certainty, generate economic benefits and more political autonomy, while others do not prevent land invasions, violence or poverty. In other words, those outcomes will vary along qualitative aspects. Depicturing the two extremes of an imaginary scale, it is proposed that the outcomes of land claims processes will achieve higher quality if they: 1. Do not trigger or aggravate any conflict between the native and non-native actors; 2. Generate any sort of economic benefits to the native groups and; 3. Lead to a higher degree of political autonomy and self-governance.

On the contrary, the worst land claims processes outcomes will be the ones that: 1. Trigger or aggravate social conflicts; 2. Do not generate any economic benefit or even worsen local economy; 3. Do not show elements that may increase the political autonomy of the communities or even increase its dependency upon the government.

The question to be answered in this dissertation is: what explains the qualitative variations of the outcomes of land claim processes observed among the countries analyzed? The differences observed among the outcomes may be affected by several factors, such as increased inclusion of native groups in the decision-making processes, the division of labour among state agencies, the intention of aboriginal groups that are ready to take direct actions such as demonstrations, marches and sit-in protests and the role of the courts during the processes. All of them shall be considered as "externalities" related to the land claims processes, which means, they may take part in it but they are not intentional consequences of the policy design.

More than explaining the qualitative variations of the outcomes of the land claim processes, the design of this research is framed to test hypotheses derived from a theoretical field with little empirical development to date, which is the systemic approach of deliberative democracy.

There is a small number of cases combined with a thick description of them that can lead to the development of an explanatory model for linking indigenous policy design, participation of native groups and quality of the policy outcomes that can be useful for the analysis of a larger number of cases. All researchers must face constraints of time and funding, which means that the cases selected here were the ones that we could provide thoughtful insights and carry out field research and data collection, regardless all other combinations that could have been made if we had the chance and the means to do so.

Finally, despite the shortcomings of a comparison of only two countries –Brazil and Canada- while virtually all countries in the Americas face some kind of challenge related to

their growing indigenous population, this investigation shall provide knowledge to international comparative studies in the field of relations between national governments and indigenous peoples. It will help to critically scrutinize an important aspect of the democracy in multinational societies: the relations between native groups and states focused on their policies to repair historical injustices concerning the expropriation of territories of the millions of peoples recognized as the original inhabitants of the American continent. The case for the participation of natives groups in territorial policies is the case for strengthening the citizens that suffered the historical burden of the colonial legacy in the "New World".

## 2. *Theoretical background*

Historically delegitimized as relevant social actors in the Americas, aboriginal groups of the continent could observe a growing international consensus on their rights related to, among many others, self-determinacy, political autonomy, political representation[5], hunting and fishing rights, education in their own language and to have some kind of formal recognition of their traditionally occupied lands by the national governments (OIT, 1989; ONU, 2008; Ramos, 2012). Recent scholarship on Amerindian native groups talks about a "fourth wave of indigenous mobilizations" (Trejo, 2006), especially in Latin America, where national movements supported by strong indigenous organizations were successful in electing the presidents of Bolivia (in 2006) and Ecuador (in 2007). In one hand there are also important advances of the aboriginal issues in countries of the region, regarding mainly the constitutional provisions that aim to be more protective of the indigenous rights. In North America, Canada policy toward native groups has shown some interesting steps, particularly in symbolic terms, after the spark of the national movement "Idle No More" in 2012.

On the other hand, the growing consensus on legislation at international level has not been translated into a strong commitment of the national states to push it forward on the level of domestic politics. As many scholars have noticed, aboriginal groups are usually socially vulnerable populations with high rates of extreme poverty and suicide, abuse of substances and alcoholism, precarious housing and sewage systems and less years of formal education (Brasil, 2010, 2012; Canada, 2013;). Their traditionally occupied lands constantly faces threats either by private mining companies and property owners or by the national governments themselves, due to the construction of huge projects such as hydro dams or roads. In such adverse scenarios, the aboriginal groups are forced to play "the autonomy game" (Blaser et al, 2010), which means, to engage in relationships with national governments to achieve their

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[5] To a comparative, although insufficient analysis, of indigenous political representation in Latin America, see Burks (2015).

goals within the framework of globalized market economies highly dependent on the exploitation of primary natural resources (Bellier, 2013; Murray Li, 2010).

Looking for a deeper knowledge of the actual context and the specificities of the native groups within the countries selected for this research, it will be approached the most recent body of literature that deals with native issues from the perspective of the field of political science. It casts especial attention to the studies that have their focus on land claims negotiations in multinational societies and the relationship between states and aboriginal peoples (Alcantara, 2013; Scholtz, 2006).

This relationship will be analysed from the perspective of the approach advanced by the theories of participation and deliberation in modern societies. The seminal work of Jürgen Habermas on the crucial role of the communicative interplay of social actors to coordinate political consensus and its emphasis on the citizen participation in shaping the political landscape of modern societies place the basic set of assumptions that underlies this study (Avritzer, 2000; Fraser, 1992; Habermas, 2014; Montambeault, 2015; Pateman, 2012). Following this path breaking research avenue Cohen (1997), Bohman (1996), Gutmann and Thompson (2004) and Dryzek (1990), to name but a few important authors, could be able to establish a whole theoretical panorama stressing the importance of the civic engagement in public deliberations regarding many public policies as diverse as health care, environmental protection and budgetary[6].

Further critical developments of those early works led to the more recent proposals on "democratic deliberations" (Parkinson, 2006; Goodin, 2008; Hendriks, 2006; Warren, 2012) and a prolific theoretical dialogue between the deliberative theories and the theory of recognition (Mendonça, 2011). Moreover, there is an important body of literature that deals with citizen participation related to public policy designs that can be more or less participative, therefore, enhancing democratic values and obtaining outcomes with a higher degree of political legitimacy (Ingram and Schneider, 1997; Fischer, 2003 ; Fischer and Gottweiss, 2012).

Finally, the so-called "systemic turn" on deliberative democracy studies highlights the complexities of decisions that could require the participation of an enormous number of actors who work with different time spans and are not immediately and physically connected to each other. It turns out, therefore, that it is important to consider that there are systemic features that must be taken into consideration if it is to judge a political process as a deliberative

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[6] There is a voluminous literature about participatory mechanisms both in Brazil and in Canada and we had already mentioned just a few above. However, most of it focuses on the cases that fosters participation of the poor (the case of Participatory Budgeting), in a sectoral policy (advisory committees, policy council or citizen assembly) or urban policy (as the Urban Planning Cells or City Masterplans). None of them focuses on the participation of ethnic minorities.

generated one (Mansbridge, 2012; Mendonça, 2013). The main theoretical framework that drives this research proposal is based on the references above mentioned.

It is suggested that natives land claims processes that present more participative opportunities that enable native peoples to actively engage on them and have a say on any part of the whole complex of decision-making stages, may generate outcomes that are more legitimate and performs better than the other ones that do not present such characteristics. In theoretical terms, it could be assumed that, from the perspective of the participatory politics and deliberative democracy, the more deliberative systemic features a process has, the more the outcomes will be satisfying to all parties involved in it.

However, whereas it does help us to understand to what we should expect in terms of outcomes, it falls short in explaining if this is true for the cases analysed here. Moreover, it is important to highlight the mechanisms through which the eventual participation of natives groups connect concretely to the features of the outcomes under scrutiny. In order to address these concerns it is needed the development of a more complex argument to explain the variations among the outcomes of land claims processes.

### 3. The main argument

The importance of civic engagement in general in public life of modern societies has been widely discussed among scholars in the last fifty years as the "*cornerstone of the democratic civic process*" (Fischer, 2003, p.205). From Pateman's classical *Participation and Democratic Theory* (1970) - that examines the role of participation on the theories of democracy that emerged after the Second World War and proposes the participation at workplace as a key to enhance democratic abilities on the citizens- to Benjamin Barber's *Strong Democracy* (1984) , a whole program of reshaping social life along participatory lines - a lot of conceptual and empirical work emerged. It has established itself as a sharp critic to the traditional emphasis put at the risk citizen participation offers to the stability of political systems and its inherent contradiction with the progressive specialization process of modern bureaucracies.

In this study, the focus is shifted from the most comprehensive theories of participatory democracy to stress its importance on a more "mundane" daily practice, which is the participation on public policies. It focus on the participation of native groups on the policies carried out by the nation-states designed to materialize the official acknowledgement of a land as traditionally occupied by them. It means that the intereste hereby is on the whole "land claim process", from its initial stage to its result. Does the participation of native groups have played any role on the achievement of the land recognition? In which ways have they participated, if they had at all? In case the native groups had had an active role on the process, would this participation had had any effect on the democratic quality of the outcome? Or, to put in

deliberative terms, could the participation of native groups on a decision that would affect them be linked to a presence of a more "normatively compelling outcome"[7]?

It is argued, following Ingram and Schneider (1997, p. 66), that "*policy design have significant consequences for democracy*" and therefore should be seriously analysed in all its constitutive dimensions: its stated goals and problems to be solved; the targeted populations; the agents involved in the policy delivery; the tools used to change behaviors as the result of the policy; the rules that provide the parameters of action to actors involved on the policy; the explanations and reasons used to justify it; and the explicit or implicit assumptions that connect its elements. The main idea here is that the more control citizens have in the public policy formulation, design, implementation and evaluation, the more democratic and legitimate the public good delivered by those policies ought to be (Fischer, 2003; Fischer and Gottweiss, 2012).

Concretely, the indigenous policies of Brazil and Canada share at least a common broader goal: to recognize some tracts of their state territories as traditionally occupied by natives groups. However, they have achieved it through completely different paths. The Canadian policy could be considered "a risky strategy" (Scholtz, 2006) because it is based fundamentally on the establishment of a negotiation process that involves the representatives of indigenous groups from the very beginning to its end. The Brazilian policy, for its turn, relies heavily on technocratic means and a bureaucratic process with many formal stages. The former ends up with the achievement of a Comprehensive Land Claim Agreement, while the latter is consummated by a presidential decree.

It is argued that this variation of the policy design – taken here as independent variable-across countries enables more or less opportunities for participation of the people affected by the decisions. Following the literature that it has been discussed so far, it could be said that the positive correlation between participation and political quality would be the expected outcome. However, this straightforward answer does not justice to the complexities of the issue and calls for a more nuanced discussion. Although we agree with the general participatory claim that proposes a connection between the fact of citizen participation and a more politically legitimate decision, the question has to be put in two times: Is there any convincing relation between the participation of native groups and the quality, as we have defined, of the traditionally occupied lands? If so, how has it worked out concretely?

In this dissertation, we are dealing with the political participation of a special kind of group – the ethnic one- in a *sui generis* policy – the policy of acknowledgment of traditionally occupied territories. The lack of specific literature that could provide more adequate hypothesis

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[7] We take this expression from Kohn's (2000, p.420) critique to deliberation.

to be considered forced the observance of more general ones originated from studies of participation in urban settings to the cases investigated.

The main hypothesis of this research states that the more participation of indigenous groups in land claims processes in Brazil and Canada leads to qualitatively superior outcomes compared to those that do not have this participation. Drawing on the deliberative systemic approach to political systems, we argue that not only the intensity of participation matter, but also the variety of opportunities for different styles of participation matters on the final quality of the land claim process.

It means that it is considered a broader range of participative activities of native groups that are linked by the fact that they have all the same common goal: the achievement of the legal recognition of their land as traditionally occupied. This participation could assume a much institutionalized form, such as a round table of negotiation, or more informal, such as providing information to government officials in the field to help them to figure out the real extension of the land that should be acknowledged. Conversely, it can be more or less contentious, such as providing testimony at a court trial or blocking a road to express discontent over some aspect of the process. There is to say that only the variation of the policy design does not encompass all the possibilities of participation of the native groups during the process, which can assume different characteristics at any given time. All those opportunities for native groups to input their concerns that do not derive from the policy design are designated as "policy externalities", the second independent variable of this research.

It is proposed that the native land claims processes include not only a variable number of possibilities for direct participation of native groups, but also regarding the role of state agents during the negotiations. As Lipsky (1996) has argued, the street-level bureaucracy takes part on the shaping of the policy due to the decisions they may eventually make "in the field" and the relative autonomy to higher levels of the administration. The agents find themselves often in complicated situations that are hard to respond only with a formal protocol and must deal with face-to-face interactions where human sensitivity, trustworthiness and empathy is required. Police officers, lower-court judges, chief negotiators or anthropologists are examples of professionals that face moments were their expertise and educational background is as important as the experience of human relations accumulated during the daily routine of the policy implementation.

What ties all this different forms of participation together – "inside or outside" the policy design- is the concept of deliberative system, the most recent frontier of the scholarship on deliberative democracy. This seminal "systemic turn" makes the point of the importance of considering the complexities of political processes that can involve different forms of decision-making styles and includes a wide range of actors that perform different repertoires of action, even non-deliberative ones. What should be evaluated, claim their advocates, is whether the

whole process is deliberative or all its components function in that way, investigating the possibilities of connections of different spheres of discussion and argumentation and decision-making moments working in tandem with deliberative fora and other participatory institutions. In short, regarding the land claims processes from a systemic point of view can help better understanding all the moments when the natives groups were allowed – or forced the participation themselves- to participate and set forth their arguments.

It dialogues in this aspect with one of the findings of the Canadian political scientist Christopher Alcántara (2013) in his research about the factors that lead some native groups to reach a land claim agreement with the Canadian government and the factors that speed or retard it. Alcántara claims that the wide political participation of the community during the process make it slower and more expensive, while the negotiation between natives representatives and government officials in a more elite-negotiation fashion helps to speed it up. His claim that the broader participation of the native group can indeed retard the achievement of the agreement or decree of recognition of the land in not in question. Rather, it introduces a nuance on his argument, asking critically: is participation a price worth paying to achieve a better outcome of the negotiations?

The second part of the argument suggests that neither the possibilities of participation enabled by the differences of the policies designs are important, nor all other range of actions external to the policy design, but also the previous cohesion of the native group will play an important role on the achievement of a satisfying outcome. It means that those groups which have a previous political organization were more able to take advantage of the process in a meaningful way. They were more able to help to enhance a better quality of the land claim process providing information and being open to dialogue and negotiating, while the less organized groups could not do it. This will also be important to mobilize the group to use actions that are more contentious when the dialogue is for some reason blocked or unsatisfactory.

This claim is in accordance with theories of social capital that stresses the virtuous cycle between previously organized citizens and the quality of democracy (Putnam, 2000; Avritzer, 2002;; Montambeault, 2015). We argue that the *democratic effects of associational life* (Warren, 2000) can be observed also in the case of native groups that were able to keep a cohesive group of negotiators across the time. We approach this argument following the concept of group cohesion advanced by Alcántara (2013) that highlights the benefits of a more unified group around its leaders for the achievement of a land claim recognition. Therefore, it is expected that the groups that were more confident on its leaders and less divisive over political issues were more successful in their propositions and negotiations with governmental officials, whereas the groups less organized had more difficulties to do so and, accordingly, had relatively poorer results than the latter.

The analytic model is concise: it is contended that two independent variables shall help to explain the variations of the outcomes of land claims processes, keeping in mind that the previous political organization of the native group is an important intervening variable. What theoretically connects the previous political organization of the native groups, their participation exploring the chances provided by the policy designs and the broader range of actions carried out by them related to the land claim processes is the deliberative system framework. Through this theoretical lens, we can integrate into the same analytical model different moments and "styles" of participation over a long period, judging the political quality of the outcomes rather than trying to focus on individual events in itself. In other words, the deliberative systems approach help us to understand that even a highly complex political process can be permeated by several moments when people affected by a decision can input their visions, thoughts, concerns and arguments.

## 4. Research methodology overview

Since our research is framed as a cross-national comparison (Gazibo; Jenson, 2015), it is also necessary to spell out the methodological options that help us to comprehend the main prospects regarding this kind of study (Munck, 2004). It is important to emphasize that, even though our research is much more suitable to a qualitative approach, it does not mean that we are not "taking Gary King seriously" (Figueiredo Filho et al, 2012). In another words, we are concerned with issues related to the number of cases studied, the falsifiability of our propositions and the possibilities of replication of our analytical model, keeping in mind the specificities of such research design (Gerring, 2012).

There are two rounds of case selections in our study: 1. one related to the countries within which we will look for specific land claims processes and; 2. one related to the selection of those processes themselves.

## 5.1 Why Brazil and Canada? Countries' selection

The first attempt in delineating more specifically our research object is the selection of countries for which we will look to analyze the process of land claims made by their traditional populations. In this sense, it is important to highlight some constant features that underline our choices:

1. First, we selected countries in the Americas with large territories, because we believe that these countries, supposedly, would have less difficulty in recognizing indigenous land rights due to the abundance of land that is not used for extractive purposes, for example;

2. Second, we selected countries with market economies strongly based on the extraction of natural resources, as these factors impact decisively the relationship between the state and indigenous communities;

3. The actual application of democratic regimes and rule of law, which provides a minimum constitutional framework of rights protection for traditional populations;

4. Countries whose indigenous population is minority (less than 4% of countries' populations) and fragmented (many different natives groups with distinct cultural features and social and political organization), because we believe that this means a more individualized relationship between the state and indigenous groups, a completely different approach from those related to countries with major indigenous population, such as Ecuador, Guatemala and Bolivia;

5. Countries that have a federalist political system, which means that the states or provinces also play a role regarding the land claims processes;

6. Finally, the selected countries must have indigenous groups who claim large tracts of their states' territories, which brings into play the question of territorial sovereignty of states in relation to demand constituency of lands traditionally occupied by the aboriginal groups.

### *5.2 Cases' selection*

Time (in years) spent to reach the treaty, agreement or official demarcation and the size of the area (in hectares) will be used as control variables to homogenize the sample, as much as possible, of outcomes of the natives land claims processes already settled. This means that we will look primarily for indigenous lands that have similar extension and were obtained after similar timespans processes between 1982 and 2014.

This research design will lead us to deal with a moderate number of cases as it is more likely to happen in comparative politics research, where the primary concerns are the exploration of the diversity of the variable of interest and its explanation through causal mechanisms (Satyro; Reis, 2014).

In our research, we are dealing with three major challenges: 1. To design a sample that, although not statistically representative, is composed by comparable cases that may provide reasonable ground for further generalization; 2. To measure and attribute value to the dependent variable; 3. To explain those variations looking at the actual mechanism of causation, which means a more refined approach that goes beyond the mere assertion of the eventual correlation between the dependent and independent variables.

To tackle the first challenge, we selected, among the 22 Brazilian indigenous lands with more than 1 million hectares, two cases: the *Menkragnoti* and the *Kayapó*. Both are located at

the Hydrographic Bay of Xingu River on the borders of Mato Grosso and Para states. On the Canadian side, out of 22 we selected the *Gwich'in Comprehensive Land Claim Agreement* and the *Council for Yukon Indians Umbrella Final Agreement*, both located in the adjacent Northwest and Yukon Territories. All of them have similar areas and populations, are located in adjacent states/territories and were settled on the early 90's[8] (see Table nº 1 below).

**Table nº1: Cases selected**

| INDICATOR/INDIGENOUS LAND | Menkragnoti | Kayapó | Gwich'in Comprehensive Land Claim Agreement | Council for Yukon Indians Umbrella Final Agreement |
|---|---|---|---|---|
| **Area (Hec)** | 4.914.255 | 3.284.005 | 5.700.000 | 4.143.900 |
| **Year of Settlement** | 1993 | 1991 | 1992 | 1993 |
| **Country** | Brazil | Brazil | Canada | Canada |
| **Province/state** | Para/Mato Grosso | Para | Northwest Territory | Yukon |
| **Population** | 984 | 4536 | 2500 | 6000 |

To take on the second issue, the measurability of the dependent variable, we propose a more creative approach rather than rely on a standard method. The main curb here is that the administrative acts of the national governments that officially recognize the indigenous lands are incomparable, as one takes the form of an extensive agreement full of political statements while the other is framed more technically.

Since our study is largely explanatory in its goals and we face constraints of time and lack of available data, the alternative is to do indirect measures through mainly: 1. the access of national census and other statistics related to the native groups in those countries; 2. official archives, documents and agency reports; 3. Case studies about the selected indigenous lands; 4. Reports of independent non-governmental organizations; 5. Narratives of the own members of the natives groups, collected on their websites (when it is available), press news or any existing database. After a careful consideration of these sources, we could be able to attribute a more reliable value to the outcomes of the native land claims processes here under scrutiny.

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[8] Since we are interested in territorial recognition of indigenous lands with large territories, the size of the area was the main criteria to select the cases, followed by the year of the formal settlement. As unintended, though appreciated feature, all cases are located at neighbours' territories/provinces, which may reduce the effect of regional differences that actually exists within the countries under analysis. The ultimate goal of the case impairment is to provide a more homogeneous sample on those characteristics that eventually show different values on the dependent variable of this study.

Finally, once we are able to highlight the variables that could be involved on the observed outcomes, we shall focus on the explanatory capacity of the model by getting into the details of the cases. To accomplish this goal we use the method of process-tracing.

Collier (2011, p.823) affirm that this tool of qualitative analysis can be viewed as "*the systematic examination of diagnostic evidence selected and analyzed in light of research questions and hypotheses posed by the investigator*" useful to describe and evaluate causal claims. To accomplish that goal is important to describe the cases – actually, the very processes that "caused" them- as detailed as possible, being the "careful description" an important foundation of the framework.

Tracking the chain of events in its inherent variability, thus, is the principle of process tracing methodology. The presupposition here is that once the events that eventually took part on the delivery of an certain outcome can be described and connected in a meaningful way, the investigator is able to strengthen causal inferences in small-n research designs. The main analogy of this kind of *demarche* is with a detective's work, an illustration actually used by Collier to explain it better.

In that sense, the first "place" where we will be in search of the "trails" left by the natives land claims processes under scrutiny is, naturally, the bureaucratic records of them. In order to do this, we will analyse the files related to four cases stored at the FUNAI and AANDC headquarters. Those records are the primary observable data used in our research.

However usually very detailed, the files cannot "tell" the whole "story" behind the whole process. There are many unclear gaps between the facts and events that must be explained and, more important, there is the real experience of the natives groups while negotiating their land claims that is certainly very rich and can provide crucial information about the research's subject. Moreover, the bureaucrats in charge to contact and "make the deal" with them have also their own way of analysing the cases. To accomplish this goal we will use the elite interviewing technique drawing "*a sample that includes the most important political players that have participated in the political events being studied*" (Tansey, 2007, p.2). It means that individuals from the four native groups and governmental agents of both countries that have had any important role on the processes will be interviewed either face-to-face or through e-mail.

## 5.3 Cases briefly description

### 5.3.1 Brazilian cases: Menkragnoti and Kayapo Indigenous Lands

A ethnic group with 8.683 members, the Kayapó nation lives in the borders of the states of Pará and Mato Grosso in Mid-West Brazil and controls, in practice, over more than 13 million

hectares of primary forest and savanna, about the same size of Austria. They are one of the most iconic native groups of Brazil, mainly due the international fame of one of its main leaders, Chief Raoni (Ropni) Metuktire. He have met with some of the most prominent political leaders and artists in the world, denouncing the destruction of the rainforest by illegal mining and logging, multinationals and by huge infrastructural projects of the Brazilian government.

Displaying traditional headsets made out blunt yellow feathers and elaborated body paintings, the Kayapó – who call themselves *Mebengokré*- are composed by the following subgroups living in seven different indigenous lands: Baú (Indigenous Land Baú); Menkrangnotire (Indigenous Land Menkragnoti); Kararaô (Indigenous Land Kararaô); Xicrin do Bacajá and Xicrin do Cateté (Indigenous Land Trincheira/Bacajá); Metuktire (Indigenous Land Capoto/Jarina); A'Ukre, Gorotire, Kikretum, Kokraimoro and Kubenkankêng (Indigenous Land Kayapó); the  Pu'Ro, Pituiaro and Ngra-Mrari are groups without contact with settler society (Pequeno, 2004).

Kayapó communities enjoy a considerable politically and economically autonomy and has been able to patrol their boundaries, keeping illegal mining and logging relatively away of their lands, regardless the surrounding deforestation and environmental degradation due the construction of the famous Belo Monte Dam. Combining armed struggle with more diplomatic negotiations, the Kayapó leadership was successful not only to advance their own interests, but also played an important role during the draft of the Federal Constitution in 1988, which was a hallmark on the rights of indigenous groups in Brazil.

The indigenous lands selected to our study are the TI's Menkragnoti and Kayapó, both located in the Xingu River Basin, close to the famous Xingu National Park. We can observe the scope and the geographical location of them on the Figures 1 and 2 below:

**Map 1: Indigenous Land Kayapó**

Source: ISA

**Map 2: Indigenous Land Menkragnoti**



Source: ISA

### 5.3.2 Canadian cases:

Both Canadian cases we dealt with in our research are located on the country's north, a vast area of polar climate. Four land claims negotiations were stablished in this huge area:

the Council of Yukon First Nations; of the Inuvialuit, in the western Artic; on the Mackenzie Valley, the agreement with Dene and Métis; and, finally, the Inuit of the eastern Artic The Yukon and the Northwest Territories are the homeland of the Dene people, allegedly the part of Canada continually ihabited for the longest period, over 4.000 years or maybe more(Morrison, 1992, p.167)..

The so called Yukon Umbrella Agreement (YUA) was signed in 1993, after 20 years of negotiation between the Federal Government and the former Council of Yukon Indians, the political representation of the fourteen native groups of the region.  The term "umbrella" means that the agreement was set out as the delimitation of the natives area as a whole, opening up the opportunities to the each nation negotiate their own agreement comprising specificities claimed by them.The YUA established the native control over 41.440 Km² (see Map 3 below), benefiting directly some 6.000 aboriginal citizens (Ballantyne, 2010).

**Map 3: Yukon Umbrella Agreement**
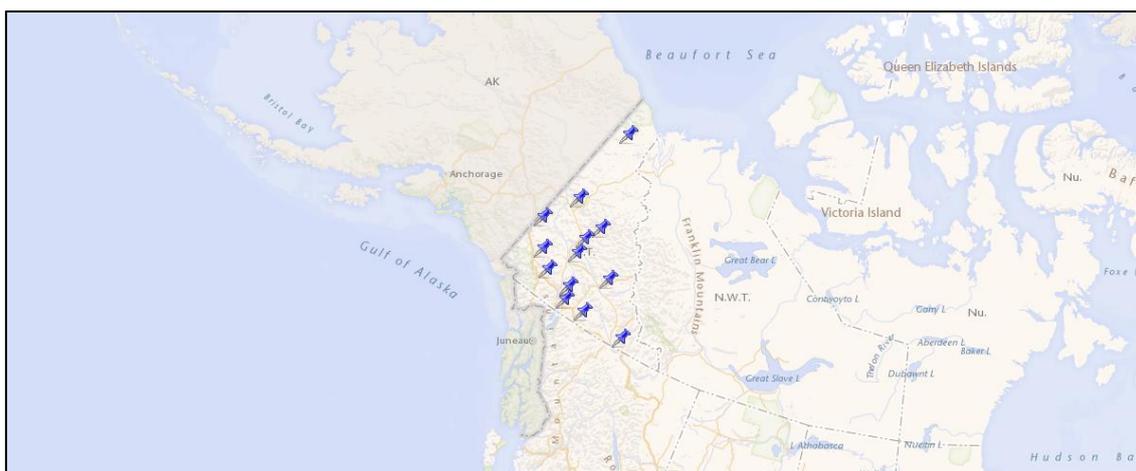


Source: Government of Canada


The Gwich'in Land Claim Agreement, for its turn, was signed in 1992, after the Canadian government insisted to negotiate with both the Dene Nation and the Métis of the region. This group had signed the treaty number eleven, but disagreements over the significance of aboriginal and treaty rights set up the need for replacement of it for a modern treaty.
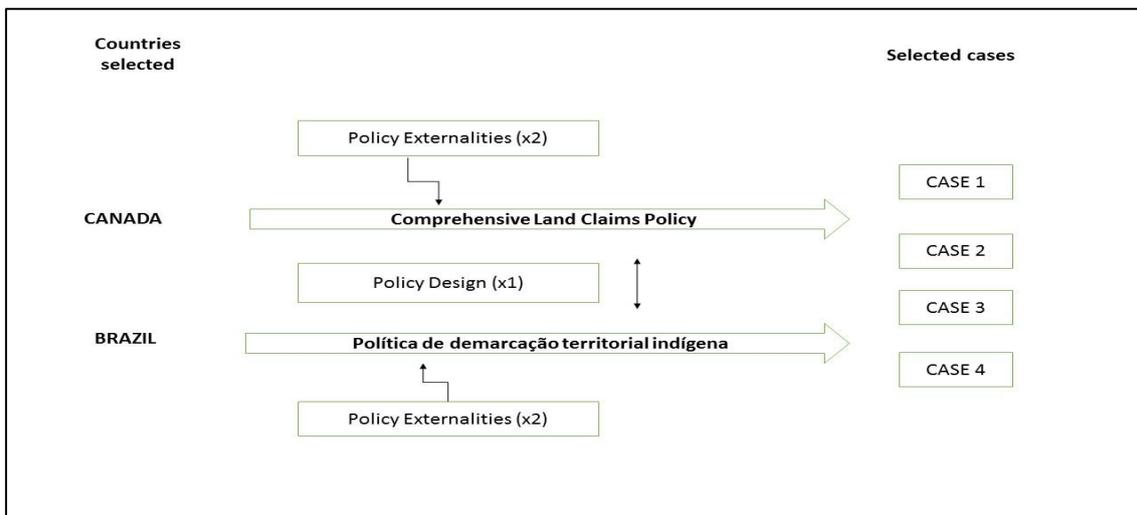

**Map 4: Gwich'in Land Claim Agreement**
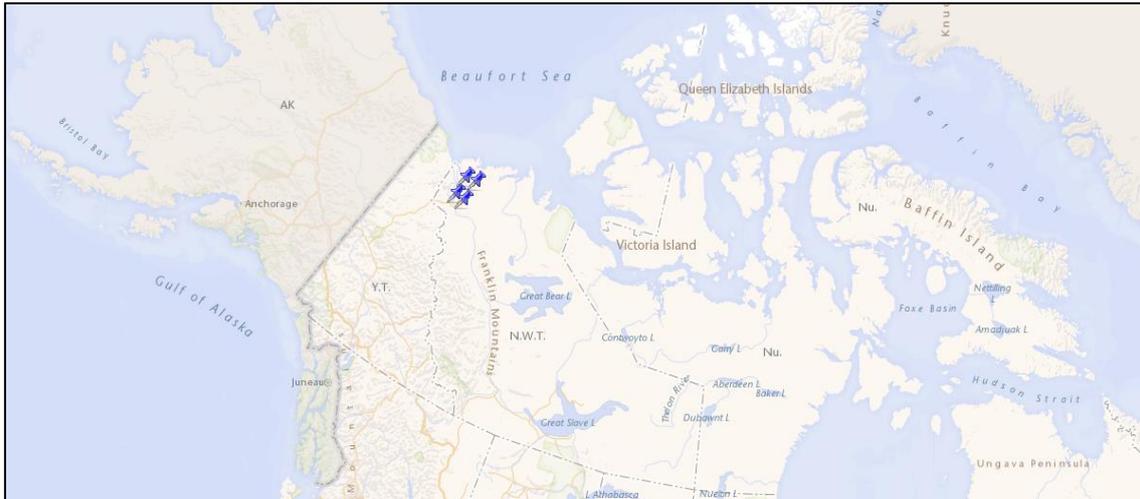
Source: Government of Canada

## 7. Concluding remark

Unfortunately, due to the scope of this paper we could not explain with richer details the points we have just proposed. However, to conclude, a general overview of the research design can be observed on the Figure 1 below:

**Figure 1: research general overview**



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