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Research Paper

# Multicultural Citizenship: Justice and Recognition of Difference for Indigenous Peoples in Brazil

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**Abstract:** The fundamental rights recognised in Brazil's Federal Constitution seek to guarantee all individuals a life with dignity. It turns out that such rights have been marked by a process of transformations based on social relations, which today incorporates the recognition of the differences between different peoples and cultural diversity. The objective of this work is to analyse how Kymlicka's multicultural citizenship proposal manages to extend the protection of justice and fundamental rights for indigenous peoples by combining the guarantee of individual rights with collective rights. A theoretical approach was used, supported by secondary sources, and, as a methodological procedure, bibliographical, documentary, and descriptive research. Given the framework presented, it is found that multicultural liberalism promotes the implementation of fundamental rights of Indigenous peoples, with the protection of minorities and differentiated rights, but within state political barriers and without ignoring individual responsibility, and placing the discussion within a broader context.

**Keywords:**

1. Multicultural citizenship
2. Indigenous peoples
3. Fundamental rights
4. Justice

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## 1. Introduction

Brazil's Federal Constitution guarantees fundamental rights, which can be understood as the minimum set of rights to which an individual is entitled simply because they are human – be they Brazilian, a foreigner residing in Brazil, or even if it is just passing through the national territory.

Some limits are drawn, as in the case of non-resident foreigners, who do not have the legitimacy to file a class action but still maintain the fundamental right to life and physical integrity. However, it is necessary to understand that the Constitution constitutes a comprehensive document which establishes public social policies within society, which extends from the field of health through social security and education, reaching even the right to an ecologically balanced environment and a healthy quality of life (Outeiro & Nascimento, 2020). There are many ways to interpret these rights, but as it is written - as the minimum set of rights

to which an individual is entitled – they tend to be understood inside a framework which emphasises the idea that all should have enough and that is unjust that someone falls below some threshold. Still, we do not know what resources (internal and/or external), capabilities or even utilities. Therefore, the discussion on the level of state responsibility for implementing fundamental rights can range from direct provision by public entities to regulating the private sphere and/or creating incentive/penalty systems for civil society (Outeiro et al., 2016).It turns out that a conservative view prevails regarding the legal treatment of indigenous peoples in Brazil. There is constitutional recognition of a series of rights, accompanied by duties that limit their citizenship (Beltrão & Oliveira, 2010). The constitutional rights of these people can be associated with the set of basic rights so that they can have a dignified life, but which tend to restrict their right to cultural diversity. In this sense, considering cultural diversity, the question arises: Is it possible to recognise differentiated fundamental rights in a comprehensive theory of justice?

With this issue as its guiding principle, we address the problem from the perspective of Will Kymlicka's theory (1995), as a conception of liberal justice based on multicultural citizenship. The objective is to analyse how Kymlicka's multicultural liberalism, by combining the guarantee of individual rights with collective rights, manages to extend the protection of justice and fundamental rights to indigenous peoples (Kymlicka, 1995; 2006; 2014).

Many works discuss the poverty rates among indigenous peoples in Brazil (Menezes-Filho et al., 2021) or propose a decolonial perspective (Ferreti, 2024; Pereira, 2024) with roots in critical theory that sometimes fails to provide rational standards for political action. I argue that this study offers new perspectives on this topic by combining other key elements of a conception of social justice.

This work is divided into three stages. Section 1 brings concepts of liberal justice, which are within a theoretical current called egalitarian liberalism (Gargarella, 2008), which includes John Rawls (1999), Amartya Sen (1995; 2011), Ronald Dworkin (2002) and Kymlicka (1995). Section 2 shows Kymlicka's multicultural justice, in which the liberal perspective is made compatible with the protection of minorities. The third section examines Brazil's constitutional provisions in light of the theoretical framework in order to ensure moral equality between different people and groups, such as members of the political community, in which the value of fundamental rights will depend on how issues involving the application of justice are treated.

A theoretical approach, a methodological procedure, and bibliographical, documentary, and descriptive research were used. Without intending to exhaust the debate, I hope to contribute to the discussion on protecting fundamental rights, placing it in a broader context involving justice and minorities in Brazil.

## 2. Liberal Justice

Fleischacker (2006) discusses that social justice involves the distribution of wealth among the members of a society, and this dates back to classical antiquity with Aristotle. In this vein, Kymlicka (1995) aims to build an impeccable liberal theory. But why within the liberal framework? At the very least, there are communitarian[1] frameworks that could be used. In general terms, liberal theorists are criticised for excessive individualism, which allows the elaboration of nonhistorical theories, ignoring culture and social relations (Kymlicka, 2006). However, this is true for Lockean Contractualism (Locke, 1998), which deals with the state of nature and the formation of Civil Government. In that case, the same cannot be said for contemporary liberals, such as Dworkin (2002) and Sen (1995), who consider that culture shapes individuals' preferences for choosing their life projects and defining a dignified life within their

context.

Vita (2008) suggests the two basic theses of liberalism are: 1) the state protection of a set of fundamental rights of citizens and 2) state neutrality with regard to citizens' conceptions of the good life. In short, these are elements common to a range of authors, such as Rawls (1999), Dworkin (2002), Kymlicka (1995; 2006), Sen (1995; 2011) and Vita (2008), within the theoretical axis called egalitarian liberalism (Gargarella, 2008).

For Sen (1995), every political theory of justice presents its version of the materialisation of abstract equality, which establishes a connection with liberal justice. Although there is compatibility with some aspects of liberal theories, it is worth mentioning that there is a diversity of authors with different theses. Given that conflicts between their members mark societies, we need to adopt a common denominator, which allows the resolution of these divergences, and each author will present their thoughts to accommodate differences and resolve conflicts within a framework that ensures equality in some aspect.

So, egalitarians believe in equality, but from there, it is complicated (Stone, 2022). Even if we agree that we want an equal society, we still do not know if people are supposed to receive equal amounts of something or be treated equally or as equals – and we could go on to ask in what ways. Rawls set the terms of contemporary debate regarding equality through his theory of justice as fairness. For Rawls (1999), equality of condition must be developed as a component of a theory of justice, intended to be the foundation of a democratic society and acceptable to all reasonable members of this society. A just society should not be forced to do whatever is necessary to bring about its members to attain any given level or share of quality of life. Several scenarios need to be considered. On the one hand, there are issues that individuals cannot control, such as natural talents and some social aspects, such as being born into a low-income family without access to certain social resources. On the other hand, some aspects of an individual's life are their choices. Rawls suggests that the conception of resources to be deployed in an ideal of equality is primary social goods. These are defined as goods a rational person wants, whatever else he or she wants. Rawls has suggested that the scope of this problem of devising an index of primary goods is lessened by giving some primary goods, the fundamental liberties, priority over the rest. Then, Rawls (1999) elaborates his theory based on mechanisms that place participants in a position of prudence, reinterpreting the state of nature of the Lockean social contract. Thus, it proposes principles of justice that serve to guide the distribution of essential goods among the members of a well-organized society, presenting a theory in which everyone is morally equal, with the right to live according to their life plans. However, it is with the difference principle that means are provided to combat poverty more efficiently that argues that social and economic inequalities must be arranged so that they are to the most significant benefit of the least advantaged members of society, consistent with the just savings principle.

It turns out that there are authors who understand Rawlsian justice as not being egalitarian enough[2], such as Dworkin (2002), and, therefore, propose equality of resources, conceived through a hypothetical auction, in which participants bid to obtain the set of goods whatever they wish. It turns out that in life, everyone is subject to events that may represent a situation of risk or social vulnerability, which requires that some resources be allocated to an insurance system (Dworkin, 2002). At a theoretical level, equality of resources respects moral equality among all members of the community, being more sensitive to individual aspirations (through the auction, in which each person acquires what they want) and using an instrument to balance or reduce situations of deprivation (through insurance, which can be associated with a social security system). However, both theoretical models discuss abstract equality or equal consideration through different means.

According to Kymlicka (2006, p. 111-118), it is common to describe the political landscape placing liberals between libertarians, on the right, who believe in freedom, and Marxists, on the left, who believe in equality, making the Social State compatible with liberalism, by combining freedoms and inequalities of the market economy with various egalitarian social welfare policies. For Sen (1995), every theory defends equality in some field. Marxists would defend greater socioeconomic equality, even if this ends up partially sacrificing freedom (Kymlicka, 2006). Furthermore, some liberals, such as Dworkin (2002) and Rawls (1999) do not present equality in conflict with freedom. According to Dworkin (2002), there is no conflict between freedom and equality. However, if there were, freedom could only be lost under the penalty of asserting that some citizens are more important than others.

Still, the new sociopolitical context enables us to theoretically conceive an era of diversity with Indigenous peoples at the heart of this process. So, even if it is possible to maintain a basic justice structure along the lines defended by Rawls, his difference principle can benefit from reflections made by Kymlicka (2001).

By leaning towards the protection of fundamental rights and the freedom of choice of members of the political (and cultural) community to question and reject cultural traditions, Kymlicka's multiculturalism (2001) is closer to the liberal vision than to communitarianism, which allows discussing political, economic and social arrangements – despite being a succinct and superficial form, it is possible to associate communitarian thought with the ideas of cultural relativism in the conception of human rights. Although Kymlicka understands that the cultural context is fundamental for individual members of society and the group as a social organization, its starting point is individual autonomy (Camati, 2022, p. 3).

Rawls (1999) argues that justice is the first virtue for social institutions, having a normative meaning, having as its scope the guarantee that all citizens can live with dignity, which may require specific state action, such as public education, or even justify some affirmative actions. The first consequence of the normative sense of justice is that political, social and economic institutions can be analysed from this perspective. If they prove to be inadequate, they must be changed. Secondly, the choice of a variable to measure equality will justify the existence of specific political arrangements until this equality is achieved and, as the case may be, maintained. One way of understanding this is selection for income equality: until everyone has the same income, wealth redistribution programs are necessary, and factual conditions may demand that such policies be permanent. Depending on the theory, equality may be civil and political rights before the law (formal equality), more incisive income equality (a version of material equality close to the thinking of analytical Marxism), or equality in human dignity to encompass fundamental civil, political, social, cultural, economic and diffuse rights, within some limits that respect individual responsibility (which would be material equality in the liberal vision).

In short, we are trying to identify what can be distributed and how. By way of illustration, a well-known mechanism is progressive taxation on income, in which people who earn higher salaries suffer higher rates when paying taxes. At the same time, the State is responsible for providing a type of “social insurance”, which can be education and public health, a social security system and/or social assistance, among other measures. On the other hand, the State should not bear any misfortunes, but only those recognized as materially fundamental and, therefore, foreseen in the Federal Constitution.

The Constitution formally and materially recognises fundamental rights to life with dignity (Sarlet, 2010). It should be noted that the defence of a set of fundamental rights, to guarantee everyone a dignified life, allows us to affirm that at least some aspects of egalitarian liberalism are compatible with the constitutional text (Cittadino, 2009), even more so when it is noted that

the dignity is one of the foundations of Brazil's Federal Constitution (FC) (Article 1º, III, FC), which has as its constitutionally defined fundamental objectives the reduction of social inequalities (Article 3º, III, FC) and the promotion of the good of all, without distinction (Article 3º, IV, FC), in addition to providing that everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, freedom, equality, security and property (Article 5, FC).

In this way, the formulation of social and distributive programs in Brazil must have as its fulcrum an idea of justice, which takes into account what is best for the entire society and for the individuals that make it up (Brito Filho, 2012). Thus, it is common to demarcate a dividing line between individuals experiencing a situation of deprivation of essential goods and those with access to these goods, considered indispensable for a dignified life (Sen, 1995). Therefore, liberal equality considers people responsible for the decisions they can make as a lifestyle and does not penalize them when they are harmed or deprived of essential goods they cannot choose. This ensures that everyone is guaranteed a minimum level of material well-being that meets their fundamental needs.

Despite the argument that this theory endorses, at some level, the Welfare State, there is no way to say, on an abstract level, what concrete measures are necessary to ensure that all individuals can live with dignity, which may depend on the context, the society or the situation that people are going through. Equal consideration, within liberalism, is the basis for adopting specific treatments for specific groups, recognising that they are in some vulnerable situation. Therefore, implementing some policies favouring specific individuals is a way of redistributing wealth within the community so everyone can live with dignity. In this step, liberal equality demands more than treating equals equally and unequally to the extent of their inequality. To treat everyone as equal, it is essential to recognise the differences between individuals and, in some cases, encourage or discourage the plurality of conceptions of what constitutes a dignified life. Within this school, Kymlicka presents his conception of liberal justice, with differentiated rights for groups.

## 3. Multicultural Liberalism

Justice guarantees each individual an inviolability that not even the majority of society can violate (Rawls, 1999). This sphere of inviolability is easily understood as a set of fundamental rights recognised in Western democratic Constitutions (Kymlicka, 1995), being beyond the reach of political negotiations. It turns out that recognising only this group of rights may prove insufficient in the face of some deprivations, making it necessary to discuss other ways of protecting individuals, especially those from minority cultural groups, classified as national minorities and ethnic minorities (Kymlicka, 1995). For individuals to have autonomy, they must first be able to choose how to live their life according to their own beliefs, which involves some relationship with the culture of the society in which they are inserted, which provides meaning to life, through social activities, educational, religious and economic (Kymlicka, 1995). It is common for this society to be concentrated in one territory, share a common language and practices, and see its culture institutionalized in schools, media, economy and government.

At this point, there is room to better understand liberal neutrality from a multicultural perspective. It is common to understand liberalism as a thought committed to individual rights, in conjunction with a neutral State, in the sense of not adopting cultural, religious projects or collective objectives, in addition to guaranteeing personal freedom and security to people (Walzer, 1998). However, it is possible to endorse a liberalism that accepts the defence of collective goals, as long as individual rights are guaranteed, as neutrality resides in the creation

of equitable conditions for the development of all groups that so desire and not in the total absence of interference (Camati, 2022, p. 7).

A dignified life only materialises within a given context, allowing people to make meaningful choices. The problem for Kymlicka (1995) is that the State ends up promoting a notion of the dominant culture (which can be religious or secular, conservative or liberal, etc.), which will inevitably create benefits for the majority of the population, who share the same ideals and will harm those who do not share, which are generally minorities. Despite being a superficial example, it would be the case of a State that recognizes the Christian religion as official, that can even finance some Christian religious activities, and that has Jews or Muslims living in the same territory - and these will not have access to the same support as Christians will either have to use their resources to maintain their culture.

This situation leads to the adoption of differentiated rights for minority cultural groups (Silva; Oliveira, 2015), which is required by liberal thinking that defends measures to reduce inequalities that are not the fault of the individual (Kymlicka, 1995). It is a similar reasoning to that which postulates that a person with a disability must have more resources to be able to live with dignity (Sen, 1995).

For Silva and Oliveira (2015), Kymlicka distinguishes two types of demands that minority groups can make: internal restrictions and external protections. The first refers to the demands of the group that seeks to use state power to limit its members' basic civil and political freedoms in the name of solidarity, which proves to be incompatible with liberalism. External protections refer to the request to protect the group from the impact of external decisions taken by the majority, which is already consistent with liberalism (Kymlicka, 1995). External restrictions promote equity between groups and can, therefore, be defended, while internal restrictions limit the rights of group members to question and review their traditions, being generally prohibited and, only exceptionally, can be accepted.

Multiculturalism understands that there are multiple systems of cultural meaning that can lead to different ways of seeing the world (Lücke; Kostova; Roth, 2014). At this point, the rights recognised in the Constitution, when interpreted in a more conventional way, cannot solve society's problems or resolve cultural conflicts within the community or between different communities (Kymlicka, 2011). Therefore, it is important to conceive such rights and differentiate minority groups: ethnic minorities and national minorities (Silva; Oliveira, 2015).

Thus, Kymlicka (1995) understands that national minorities are historical communities that occupy territory, share a language, culture, identity and nation, and are involuntarily absorbed by other majority groups with a distinct culture, which also occupies part of the territory. Therefore, they have the right to self-government (political autonomy to administer their territory), polyethnic rights (to preserve their culture) and representation rights (reserving seats in the Legislature for their group). National minorities are those present at the founding of the State, with a previous history of self-government, shared culture and language, and use of institutions to exercise their government.

Self-government rights concern the territorial political autonomy of groups to govern themselves, ensuring the full development of their cultures, without resorting to the right of secession, in which independence from the nation-state is sought. Federalism would be a mechanism to respect national minorities. It is applicable to national minorities and is permanent. A Federative State corresponds to a form of vertical distribution of government responsibilities, between several internal political units (Oliveira, 2016, p. 44). For Riker (1964, p. 11), a State is Federal if it establishes two levels of government over the same territory and people, whether each level has at least one area in which it is autonomous, and whether there is any guarantee of its autonomy within its sphere of activity.

Brazil adopted the Federation system in 1889, with Decree No. 1/1889 and the end of the Empire, foreseen in all Republican Constitutions from then until 1988, which established three levels of government: Union, States/Federal District and municipalities (Article 1, FC/1988). Polyethnic rights are group-specific measures to help them express their particularity in the face of the dominant culture. As cultural differences are not intended to be eliminated, there are permanent rights to integrate different groups through institutions that combat harmful discrimination. Special rights of representation are those arising from the concern about the lack of representation in the political process of issues of diversity and disadvantaged groups. They can ensure a reserve of seats in the legislative body for these members. Ethnic minorities are groups that voluntarily left their land and, when entering another territory, intend to preserve their culture, even though they are integrated into the new society and accepted as members of this new community, having the right to accommodate their cultural preferences and try to preserve them (Kymlicka, 1995).

This theory has limitations, as it does not include Afro-descendants, environmental refugees or fugitives from wars and armed conflicts, minorities that involve group lifestyles, or new social movements, which for Kymlicka (1995) does not impede applying his theory indirectly, insofar as the lack of access to culture for these groups can lead to injustice.

Despite collective fundamental rights not being well accepted in a traditional liberal model (Donnelly, 2003), Kymlicka's reasoning allows for recognising this group of fundamental rights based on the individual right to manifest and express cultural identity. Furthermore, citizenship is emergent in everyday life, reproduced continuously and intimately with the sensations, routines, environments, memories, aspirations, and other embodied qualities that comprise how people understand and inhabit the world (Edensor; Sumartojo, 2018). Conceiving citizenship in simple terms or in a unitary way is ignoring that people can be in different situations, have different conceptions of a dignified life and may require protection because they belong to specific groups.

## 4. Multicultural Citizenship, Indigenous Peoples and the 1988 Federal Constitution

Within a liberal framework for protecting human beings, sensitive to differences between cultural groups (ethnic or national minorities), the State must ensure some minimum material well-being for individuals and, in some cases, implement external protections for minority groups.

Even so, the poverty rates among indigenous peoples in Brazil are higher than the non-indigenous population (Menezes-Filho et al., 2021). The social and economic inequality of indigenous peoples is rooted in Brazil's colonization history. According to the latest census data carried out in the country, there are about 1.6 million indigenous people, in contrast to a total population of 200 million (IBGE, 2022). However, at all levels of comparison, the illiteracy rate is higher than that of the rest of the population, and there is more incredible difficulty in accessing quality health, education, and housing services. Generally, the Indigenous communities are located in risk areas; most of the Indigenous peoples are in informal work without a formal contract, with difficulties in accessing public health services.

As an example, Assunção et al. (2023) examined the prevalence of cases of vitamin B1 deficiency, which is common in the low-income population, in a situation of food insecurity, based on cases notified to the Ministry of Health, between the years 2013 and 2018. In the end, this study concluded that the indigenous population has a higher incidence of the disease, which confirms their position of deprivation. Based on the previous premises, it is possible to sustain differentiated rights for minority groups; in the case of indigenous peoples, their differences

must also be respected with differentiated rights.

It is possible to identify national citizens, temporary immigrants on vacation or work, permanent immigrants, and political or environmental refugees – each having a different relationship with others and the State in terms of rights and duties, individually and collectively.

Citizenship, as a set of rights legitimised by a given political community, when understood by the liberal values of nationalism and state sovereignty, encounters limitations that do not favour Indigenous peoples and end up leading to interpretations that compromise the collective rights of Indigenous peoples (Beltrão; Oliveira, 2010, p. 716).

The social movements, which fought in the 1970s in Latin America for the recognition of the right to cultural difference and diversity, achieved changes in the legal system of several South American countries, including the constitutional provision of rights for indigenous peoples. Some international instruments have also contributed to this cause, such as the International Labor Organization Convention 169 and the 2007 International Declaration on the Rights of Indigenous Peoples.

In this way, several Latin American countries have promulgated or modified their Constitutions, inserting rights in favour of Indigenous peoples, including Brazil, with the 1988 Charter. Among the rights of Indigenous peoples are:

- Bilingual and intercultural education at the elementary school level for Indigenous peoples (Article 210, §2, FC/88);
- Protection of manifestations of Indigenous cultures (Article 215, §1°, FC/88);
- Recognition of Indigenous peoples' social organisation, customs, languages and original rights over traditionally occupied lands (Article 231, FC/88);
- Full civil capacity and individual and collective active legitimacy to take legal action. (Article 232, FC/88).

It turns out that these constitutional rights coexist with certain restrictions:

- Portuguese language as an official language (Article 13, FC/88);
- Private competence of the Union to legislate on Indigenous populations (Article 22, XIV, FC/88);
- Exclusive competence of the National Congress to authorise, on Indigenous lands, the exploration and use of water resources and the research and mining of mineral wealth (Article 49, XVI, FC/88)
- Competence of the Public Ministry to judicially defend the rights and interests of indigenous populations (Article 129, V, FC/88).

When observing this situation, on the one hand, there are advances that guarantee education and the protection of indigenous culture and social organisation, which can be characterised as external protections and poly-ethnic rights. On the other hand, it is possible to question what level of citizenship is intended with the provision of certain restrictions, such as the non-recognition of indigenous language(s) as an official language, the exclusive attribution to the Union to legislate on Indigenous populations, the power of Congress to authorise the exploitation of wealth in Indigenous lands and the attribution to another body for the judicial defence of their interests. For us recognising the identity of minority groups involves accepting that there is more than one nation within the state (Fragoso. 2014), which is one of Kymlicka's arguments (1995).

Firstly, language is one of the most basic means of protecting/violating a culture, as it is the very possibility of communicating and attributing meaning to the world (Kymlicka, 1995). Next,

there is no guarantee of self-government, which could occur at some intermediate level of the Federation (such as a type of local government) or even the guarantee of representation rights in any sphere of Government. The attribution of the defence of Indigenous interests to the Public Ministry translates into the idea that these people need special protection or that they cannot choose who represents them in court – without ignoring that the actions of the Public Ministry can meet the interests of Indigenous peoples and that this body is equipped with infrastructure that could very well reinforce Indigenous rights.

In other words, based on multicultural citizenship, it is viable to question the absence of other instruments to protect indigenous peoples, which in the current situation could even be interpreted as unconstitutional. However, in fact, they would bring with them the potential to recognize different citizenship, with individual and collective rights distinct from those attributed to other citizens, for whom the State has the duty to ensure a basic level of well-being. Therefore, differentiated rights do not imply the primacy of the community before the individual in a liberal framework.

Based on the theoretical framework, three questions arise:

1. Wouldn't it be possible to recognize the indigenous language (although there are different versions) as an official language, just as other countries have more than one official language?
This would lead to broader measures than just teaching Indigenous people their original language, and it could take time for other people to adapt to learning. However, it is not impossible, as it is known that there are countries that coexist with more than one language.

2. It would not be possible to conceive some system of Federation which respects the current general contours (Union/States and Federal District/Municipalities), attributing specific competencies to an indigenous Government through the sharing of certain responsibilities that today belong to other spheres of government?
There does no impede conceiving an Indigenous territory with the competence to administer and legislate over its space, respecting general norms; when it is concurrent competence or when it is exclusive competence, it would have full powers to rule on the matter. This would allow the adoption of some judicial structure to apply its laws and promote the defence of its interests.

3. Finally, could the recognition of some difficulties legitimise the adoption of a system for reserving seats in the National Congress?
Considering that indigenous people are legitimate citizens who have their political agenda, political representation could give a voice to its members and could be adopted in other spheres, such as at the state level, in addition to permeating other bodies, such as the higher courts. New philosophical provocations have emerged from recent events, whether the Arab Spring, Occupy Wall Street movements, or technological advances in communication, which have pointed to questions about traditional notions of political representation (Farias Júnior, 2021).

The evolution of constitutionalism in Latin America imposes new legal rights for indigenous peoples, marked by multiculturalism and interculturally. However, there are contradictions and paradoxes when we think about the enforcement of these rights. For instance, in Brazil, there is a timeframe thesis (called “marco temporal”) created by the Supreme Court in the 2009 “Raposa Serra do Sol” Case that prevents the guarantee of the right to land of indigenous peoples who were not living there on the date of the 1988 Constitution enactment.

Therefore, when indigenous peoples are dispossessed of their lands, other aspects of their way of life are affected, such as access to cultural practices related to their territory and access to food and water. Consequently, respecting this relationship between territory and culture

allows us to design public policies and actions that can combat poverty specific to indigenous peoples.

Then, intergroup justice requires that members of better-off groups grant rights to groups that are at a disadvantage (Fragoso, 2014). If we consider the role of socio-historical structures (like basic institutions) as the macro sources of deprivation and systematically affect certain groups and that poverty is not only about income but also plural sources of deprivation, such as those related to health, literacy, or having access to shelter (Fragoso, 2024), there are institutions that need change.

Justice would demand the recognition of targeted actions, such as exemption compliance with certain legal norms for cultural reasons, such as a bias related to the context of local diversity (Kymlicka, 1995). These measures are consistent with the external protections, which guard sense with the relationships established between the groups (inter-group); that is, the ethnic group can safeguard its existence and their identity, limiting the impact of the decisions made by society (Kymlicka, 1995).

This does not deny that implementing the theory may be difficult to visualize or require several modifications within the Constitution. However, an analogy with the thinking of Sen (1995) is appropriate, which focuses on reducing injustice and inequality, ensuring that everyone can live with dignity, to the detriment of presenting a theoretical model with a perfect, fair and utopian society. Moreover, while there is no consensus in societies about what is fair, it is possible to think about inequality and how to reduce it.

This effort extends the Rawlsian liberalism strand by equipping it with culturally appropriate tools. Existing theories sometimes fail to distinguish some levels of analysis, where it is essential to differentiate an ideal theory (which on an abstract level would be how a just society would work) from the second-best prescription (what justice requires here today) and the empirical description (what people or groups are currently demanding).

However, why keep this discussion within a resource liberalism approach? Although it is not the focus of this work, it is possible to understand that this theoretical model offers advantages for discussing the situation of people in different social positions without giving up the primary social goods (Pogge, 2002).

Recognising the difficulty of applying the theory in its entirety at once, or even the impossibility of implementing all of its theoretical aspects slowly, should not be confused with the possibility of implementing some aspects of the author's thought, progressive implementation or even recognition of current demands. The 1988 Federal Constitution can be changed through Amendments, which already make it possible to adjust its text. In a way, there is some compatibility between the Greater Law and part of the principles of the theory of multicultural citizenship. It is up to legal scientists to reflect on ways to harmonise conflicting positions in search of a better future for all so that moral equality is recognised and does not cancel diversity and the differences between people.

## 5. Conclusion

This paper addressed the citizenship of indigenous peoples from the perspective of liberal multicultural justice theory. The combination of guaranteeing individual rights with collective rights allows us to understand ways of protecting the culture of Indigenous peoples, allowing them to enjoy their rights and live in a dignified manner.

By placing the debate in a broader context, it is not argued that there is a kind of revolution, nor is it advocating the adoption of radical stances, but rather that, based on an abstract theoretical model, it is viable to discuss current political, social and economic arrangements to

understand what justice requires today and now, as well as how to accommodate new concerns.

It is essential to differentiate the ideal theoretical model from the second-best solution, which can progressively point out ways to reach the ideal situation. Thus, new questions are raised, and new hypotheses are possible within the Brazilian legal system, which must be duly tested in favour of a fair and supportive society, theoretically and in practice. Future research would be an interesting opportunity to collect primary data from indigenous groups, which could contribute even more to the study of this topic.

**Notes**

1. There is no central core for communitarian theses, although they discuss some themes, such as ethnic-cultural diversity, which extends to indigenous peoples. There isn't a big debate over prohibitions against slavery, genocide, murder, torture, etc. There's, however, a grey area of debate that includes women's rights, social and economic rights, and the rights of Indigenous peoples. So, communitarianism has to deal with moral relativism, which is problematic to change the *status quo*, in which there are human rights violations perpetrated against minorities, such as indigenous people. See Fraser & Honneth (2004). *Redistribution or Recognition: A Political-Philosophical Exchange.*

2. Amartya Sen's egalitarianism also criticises Rawlsian resources for focusing on fair shares of resources. Since all people vary in their personal traits and other features of their circumstances to determine what each one can do with a given resource share, what we can do with our resources will also vary and affect our real freedom. The capability approach offers some insights into ethnic-cultural diversity but is quite limited on that matter, which doesn't justify its application. For more on the capability approach, see Sen (1995). *Inequality reexamined*. For a critical examination of capability approach limits, see Pogge (2002). *Can the Capability Approach Be Justified?*

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