



## **Law no. 11.645/2008 and its contributions to the consolidation of democracy regarding indigenous culture**

### **A lei nº 11.645/2008 e suas contribuições para a consolidação da democracia referente à cultura indígena**

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## **1 INTRODUCTION**

For a long time, Brazilian society has been reproducing a whole system of racist values and practices, when its role should be to promote Brazilian ethnic diversity, to



value this diversity and to combat any attitudes of prejudice, discrimination and denial of rights.

Brazilian constitutions prior to 1988 deny the rights of indigenous people<sup>1</sup> by providing for their integration into society, so that they become ordinary citizens. What we perceive is the imposition of a national identity, which follows European parameters, a remnant of colonization in our country, which created stereotypes and prejudices when dealing with minorities instead of national diversity.

Given this context, the teaching of indigenous history and culture in Basic Education works as an attempt to alleviate the problem described above, by including the theme throughout the school curriculum, as established by Law No. 11,645, of March 10, 2008. Therein lies the central point and it is enough to see the legislator's effort to ensure issues of cultural diversity, rights and citizenship of indigenous peoples and, with this, to promote a renewal of the guidelines and didactic structures to human formation in paradigm of Democratic State of Law.

This law, which makes the study of indigenous history and culture compulsory in basic education in public and private schools, aims to try to alleviate prejudices and stereotyped ideas in relation to indigenous people, in addition to providing equal opportunities for all ethnic groups and respect for cultural plurality in a democratic society.

It is only since the Federal Constitution of 1988 (Chapter VIII and other sparse articles) that indigenous peoples (original peoples) began to have their rights protected and recognized, in order to preserve their culture, customs, beliefs, languages, no longer talking about integration into society as ordinary citizens.

We realize that, even though their rights are protected and constitutionally recognized, all social spaces still discriminate against indigenous people, but the school is the cruelest. Questions arise: how to motivate teachers to practice and apply diverse materials that address indigenous peoples? and how can teachers bring knowledge to students about the rights and citizenship of indigenous peoples? How to build respect for difference, reorganizing the curriculum based on political and ethical aspects involving these peoples?

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<sup>1</sup> When we refer to indigenous culture, we are referring to the original peoples. We know that, historically, the colonizers who arrived here were looking for the Indies and, by a mistake, ended up here in Brazil. When they came into contact with the original peoples of these lands, they mistakenly called them Indians. In this work, when we use the expressions Indians or indigenous, we will be referring to the original peoples.



It is at school that individuals consume a significant amount of time of their lives and where they receive, in large part, their cultural formation. Moreover, it is the school that ends up spreading prejudice to these peoples, given the way the indigenous issue is treated in history books and on commemorative dates.

Hence the importance of working on otherness, leading citizens from an early age to recognize and respect the other as they are, thus avoiding intolerance based on substrates of secular violence. At this point, Enrique Dussel's (1994) criticism of the concealment of the other is essential. Without alterity, there is no way to speak of democracy, as expressed in our current Constitution.

According to Stuart Hall (2006, p. 11-13), "identity is formed in the interaction between self and society", being "continuously formed and transformed in relation to the ways in which we are represented or interpellated in the cultural systems that surround us". And the postmodern subject does not have a fixed, essential or permanent identity. We speak today of a fragmented and decentered identity, transformed by time and space. As modern society is characterized by difference, it is necessary to speak of various identities.

The school needs to work with these identities, because it is there that we have the time and space to form the citizen. A person's identity is born in their interactions with the family, at school, in the community in which they live, at work, among other relationships, but all converge at school, which has a hybrid culture, and must show students that they are not pure, that is, that all Brazilians are the result of a miscegenation of various ethnicities.

We realize, then, the need to adopt the policy of multiculturalism, which consists of the "game of differences, whose rules are defined in social struggles by actors who, for one reason or another, experience the bitter taste of discrimination and prejudice within the societies in which they live." (GONÇALVES; SILVA, 2000, p. 1). (GONÇALVES; SILVA, 2000, p. 11).

In this paper, the rights of indigenous peoples will be discussed, as well as issues related to identity formation and multiculturalism. We understand that knowledge about indigenous history and culture contributes to reducing prejudice, as well as enabling equal opportunities and respect for cultural plurality.



## **2 OBJECTIVE**

Analyze issues of cultural diversity (implementation of indigenous history and culture) and make interlocutions and intersections with Law No. 11.645 / 2008, through a historical-political study of interdisciplinary character between Law and Education.

## **3 METHODOLOGY**

This article consists of a literature review on the reflexes of Law No. 11.645/2008 for the consolidation of democracy with regard to indigenous culture. With this qualitative research, it was intended to make an interdisciplinary study between law and education, adopting a historical-political procedure. For this, a rescue of indigenous rights in Brazil was carried out. Subsequently, we discussed the formation of national identity and the decentralization and fragmentation of identities today. Then, an exposition was made on the origins and meanings of multiculturalism and, finally, the reflexes of Law No. 11.645 / 2008 were pointed out for the consolidation of democracy with regard to indigenous culture. It was assumed that knowledge of indigenous history and culture can alleviate prejudices and stereotyped ideas about indigenous people and provide equal opportunities for this ethnic group and respect for cultural plurality in a democratic society.

## **4 DEVELOPMENT**

### **4.1 RIGHTS OF NATIVE PEOPLES IN BRAZIL**

Throughout the history that constitutes Human Rights, it is important to highlight some conventions that have impacted and developed discussions and reflections for the defense of rights, among them, the International Convention on the Inter-American Indigenist Institute (1940) concluded in Patzcuaro, Mexico, which originated Decree No. 36.098/54. This decree created the following bodies: an Inter-American Indigenist Congress; the Inter-American Indigenist Institute, under the direction of a Directing Council; and the National Indigenist Institutes, establishing their functions and recognizing that the indigenous problem covers the whole of the Americas. The Charter of the United Nations (1945) reaffirmed faith in the fundamental rights of man, in the dignity and worth of the human being, in equal rights, and in nations large and small.

It should be noted that the historical moment experienced in the discussions of the General Constituent and Legislative Assembly of the Brazilian Empire in 1823, an important key to reflect the theme presented here, was to distinguish between "Brazilians"



and "Brazilian citizens". Thus, according to Roberta Maia Gresta's (2019, p. 299) doctoral research, "indigenous people could not be included in the category of citizens", since they did not recognize the authority of the empire and lived "in open war with us [*sic*]", since they could not, in any way, have rights.

Furthermore, the Brazilian constitutions of 1934, 1946, 1967 and 1969 aimed to promote the integration of indigenous peoples into national society, claiming that, due to their degree of acculturation, they should "cease to be Indians". Through this mistaken understanding, indigenous peoples did not see their culture, customs, languages, beliefs and traditions recognized or even preserved, and were given the rights and duties of ordinary citizens. They treated indigenous people as "silvícolas" and basically provided for the "incorporation of silvícolas into the national communion" and the possession of the land they occupied, on condition that they did not transfer it.

In addition, in the infra-constitutional context, the Civil Code of 1916 provided in its text for the relative incapacity of "silvícolas", who should be protected by the SPI (Indian Protection Service), which as of 1967 was extinguished, giving way to FUNAI (National Indian Foundation).

Even the Statute of the Indian, established by Law No. 6,001/1973, aimed to integrate indigenous people into Brazilian society, making them "cease to be Indians". Only since the Federal Constitution of 1988, Brazilian law has recognized the right of indigenous people to continue to "be Indians", that is, to have their culture, customs, languages, beliefs and traditions recognized and preserved, and to protect their rights, which are set out in Chapter VIII of the Constitution and in other sparse articles. This chapter undoubtedly expresses an advance of Brazilian society towards the realization of democracy. According to Sérgio Leitão (2002, p. 1),

The Constitution definitively ruled out the assimilationist perspective, ensuring Indians the right to difference and making no mention of the institute of guardianship. It thus recognized permanent and collective rights for them, including:

- recognition of their social organization, customs, languages, beliefs and traditions;
- original and imprescriptible rights over the lands they traditionally occupy, considered inalienable and unavailable;
- permanent tenure over these lands;
- exclusive enjoyment of the riches of the soil, rivers and lakes therein;
- use of their mother tongues and their own learning processes;
- protection and valorization of indigenous cultural manifestations, which become part of the Brazilian cultural heritage.



The Constitution also innovated by recognizing the procedural capacity of indigenous people, their communities and organizations to defend their own rights and interests, assigning to the Public Prosecutor's Office the duty to guarantee them and to intervene in all judicial proceedings concerning such rights and interests, and finally establishing the competence of the Federal Court to judge disputes over indigenous rights.

The recognition of these rights made indigenous people go from being non-existent subjects to protagonists of the national scenario, which, according to Araújo (2006, p. 17), "considerably changed the context in which they live and their ability to interfere in defense of their own rights".

However, the Civil Code of 2002 still left a gap in relation to the civil capacity of indigenous people, although it no longer used in its text the expression "silvícolas", it provides in its art. 4, sole paragraph, that "The capacity of the Indians will be regulated by special legislation.". (BRASIL, 2002). It is ignored that the special legislation itself, which is the Indian Statute (BRASIL, 1973), relativizes this capacity, imposing conditions on the Indian to apply to the judiciary, if he wants to stop being tutored, as provided in its art. 9.

After the promulgation of the 1988 Constitution, other laws dealing with indigenous issues were also created, among them, we highlight some linked to education, such as the Law of Guidelines and Bases of National Education (1996), the National Education Plan (Law No. 10,172, of January 9, 2001), the new National Education Plan (Law No. 13,005, of June 25, 2014) and Law No. 11,645 of 2008, object of our study. This law "amends Law No. 9.394, of December 20, 1996, modified by Law No. 10.639, of January 9, 2003, which establishes the guidelines and bases of national education, to include in the official curriculum of the education network the compulsory nature of the theme 'Afro-Brazilian and Indigenous History and Culture'". (BRASIL, 2008).

All these laws have praised and clarified the right of indigenous peoples to a differentiated education, directed by the use of indigenous languages, by the valorization of the knowledge and knowledge of these people and by the training of indigenous people themselves to act as teachers in their communities. In addition, they aim to "promote the correct and broad information of the Brazilian population in general, about indigenous societies and cultures, as a means of combating ignorance, intolerance and prejudice in relation to these populations" (BRASIL, 2001).

According to Orço and Orço (2017, p. 138),



the training of indigenous teachers in secondary and higher education courses in Brazil must respect the socio-political and territorial organization of the peoples, value languages and promote intercultural dialogues. These principles are contained in the Resolution that established the National Curriculum Guidelines for the Training of Indigenous Teachers, approved by the National Education Council (CNE) in April 2014 and ratified by the Ministry of Education in 2015. Therefore, the training of indigenous people as teachers to work in schools located on indigenous lands is, today, one of the main challenges and priorities for the consolidation of an Indigenous School Education based on the principles of difference, specificity, bilingualism and interculturality.

Considering that the legislation for Indigenous Education is new and that most of these indigenous teachers are inserted in Brazilian villages, we still have a great absence of training articulated with the guarantee of a bilingual and intercultural education. We emphasize that it is essential that universities, municipal and state departments of education articulate with the MEC's Secretariat for Continuing Education, Literacy, Diversity and Inclusion (Secadi) so that indigenous teachers experience the school space as an educational system that considers the education of each people. Several reflections refer us to indigenous teacher training policies such as: consolidating permanent teacher training that leads to their schooling up to the third degree and that the teacher has an effective participation in the entire educational process.

#### 4.2 IDENTITY FORMATION

In the treatment given to indigenous people by the constitutions prior to that instituted in 1988, we realize that there is a denial and non-recognition of the rights of Indians. The Federal Constitution of 1988 leveraged the change in this scenario. It is the discussion on the construction of identity in the Modern State that we will make next.

For the formation of the modern state, the construction of a national identity was sought in order to facilitate the standardization of the army, currency, culture and law. This led to simplification, disregarding the fact that people have different families, cultures, languages and identities and that they live in cities, villages, towns and the countryside. In short, only one way of being and living was considered in the formation of the state. This model follows the uniform, hegemonic and European Western standards.

The milestone for the consolidation of this model, which ends up reflecting in the construction of Modern International Law and in the elaboration of the constitutions of several countries, according to Afonso and Magalhães (2011), was the year 1492, which was marked by European overseas expansion and the expulsion of the Moors, Gypsies



and Jews from the Iberian Peninsula, which led to the creation of a European identity as an identity to be followed by all countries, a consequence of colonialism and imperialism.

Also according to these authors, contact with the New World, "is dictated by a posture of superiority of the European in relation to the Indians, their cultures and ways of life." (AFONSO; MAGALHÃES, 2011, p. 268). In this sense, this stance disregards the other, denying their culture and imposing their dominant thinking, under the pretext that the colonizers' interventions and the dissemination of universal values would avoid barbarism and violence in the colonized countries.

Considering that identity is a personal attribute, which only appears when an individual relates to the other, that is, it is in difference and diversity that identity is created, we realize that the tradition imposed from the formation of the Modern State comes to erase identities.

Much has been debated on the issue of identity and what we perceive is that "modern identities are being "de-centered", that is, displaced or fragmented", that is, "the old identities that for so long stabilized the social world are in decline" (HALL, 2005, p. 7-8).

Thus, in the midst of this decentralization or fragmentation of identities, let us now address the issue of multiculturalism.

#### 4.3 MULTICULTURALISM

As we stated earlier, multiculturalism consists of the "game of differences, whose rules are defined in social struggles by actors who, for one reason or another, experience the bitter taste of discrimination and prejudice within the societies in which they live." (GONÇALVES; SILVA, 2000, p. 1). (GONÇALVES; SILVA, 2000, p. 11). This movement arises from the action of culturally dominated groups, who were denied the right to preserve their cultural characteristics, as is the case of indigenous people in Brazil before the 1988 Federal Constitution.

Multiculturalism had its origins in the streets, blocks and neighborhoods of urban centers and gradually expanded to school and legal institutions, among others. Such a movement not only involves the contradictions between social classes, arising from capitalism, but also includes the diversity of genders, religion, color, ethnicity, etc.

There is a plurality of meanings for the term multiculturalism. One of them, according to Gonçalves and Silva (2000), is that it is a movement of ideas that results from a type of collective consciousness, that is, it is the plurality of cultural experiences





that shape social interactions in their entirety. Multiculturalism is also considered as a political proposal, being understood by some as a political strategy of social integration, which admits the advantages of the multicultural character of their society, highlighting the need to preserve a core of common values; for others, it should not converge to a core of common values, denying ethnocentrism. Thus, this term is sometimes used as a political strategy, sometimes as a kind of theoretical body.

As the core of the discussion of this paper is the reflexes of Law 11.645/2008 for the consolidation of democracy, with regard to indigenous culture, we have chosen to consider this term as a kind of theoretical field, which has been used by the organizing institutions of culture, including schools, universities, museums, artistic exhibition halls, books, films, videos and other media.

#### 4.4 LAW 11.645/2008 AND ITS REFLEXES FOR THE CONSOLIDATION OF DEMOCRACY WITH REGARD TO INDIGENOUS CULTURE

Law 11.645 of March 10, 2008, object of our reflection and discussion, thus provides:

Art. 1 Art. 26-A of Law No. 9.394, of December 20, 1996, shall come into force with the following wording:

"Art. 26-A. In public and private primary and secondary education establishments, the study of Afro-Brazilian and indigenous history and culture becomes mandatory.

§ Paragraph 1 The syllabus referred to in this article shall include various aspects of history and culture that characterize the formation of the Brazilian population, from these two ethnic groups, such as the study of the history of Africa and Africans, the struggle of blacks and indigenous peoples in Brazil, Brazilian black and indigenous culture and the black and the Indian in the formation of national society, rescuing their contributions in the social, economic and political areas, relevant to the history of Brazil.

§ 2 The contents referring to Afro-Brazilian and indigenous Brazilian history and culture will be taught within the entire school curriculum, especially in the areas of art education and Brazilian literature and history." (NR)

Art. 2 This Law shall enter into force on the date of its publication. (BRASIL, 2008)

With this law we have, for the first time in the history of Brazil, the mandatory teaching of indigenous history and culture in our educational institutions. Law No. 11.645/2008 also reinforces the determination of the teaching of African and Afro-Brazilian history and culture, precepts previously established with Law 10.639/2003. The



aforementioned laws were drawn up in order to mitigate prejudice and stereotyped ideas in teaching, towards indigenous and Afro-descendants.

What we intend is that citizens realize that indigenous history and culture, even though they have been diminished or erased by the Modern State and by history books, are closely inserted in Brazilian history, considering the processes of miscegenation, since the time of colonization, contributing to the mixing of blood, transforming the indigenous into a fundamental piece in the formation of the Brazilian people.

Thus, we highlight the fundamental role of the school in making the issue and the indigenous heritage visible again and leading students to become aware of the importance of (re)knowing the culture and history of indigenous peoples as the very culture and history of the Brazilian people. The law assigns this responsibility to the school, considering that

As the transmission of knowledge in modern societies has the powerful support of educational systems (systems that consume much of the lives of individuals) and, as education, whatever it may be, is entirely centered on culture, one can understand why multiculturalists have made the school institution their privileged field of action (GONÇALVES; SILVA, 2000, p. 16).

We emphasize the need for a multicultural education, capable of involving all widespread thinking about interethnic and intercultural relations, deconstructing Eurocentrism.

It is also important to highlight the need for "liberation from the grand narratives that want to homogenize everything and leave no room for self-construction and difference" (McLAREN, 2000, p. VII), that is, the classroom must give space to the various narratives and not to a single and authoritarian narrative, as is usually the case with most textbooks and curricula. This author proposes thinking about the role of the educator, who must create new zones of possibility in the classroom, new spaces where democratic social relations can be fought for and where students can learn to critically situate themselves in their own identities, as well as proposing the break with individualism, rescuing the other, expelled from discourse and subjectivities as if it were not an integral part of ourselves.

When we think of democracy, whose principle is equality, we must take care that it is not tied to a narrative that seeks consensus, because if it does, according to McLaren (2000, p. 292), we would be "falsely assuming that individuals or groups can have equivalence in the field of material needs". And this is not what Law No. 11.645/2008



proposes, whose intention is that educators work in the classroom the various aspects of history and culture that characterize the formation of the Brazilian population, showing the struggle of indigenous peoples in Brazil, their culture and their contributions in the formation of national society, rescuing their contributions in the social, economic and political areas, pertinent to the history of Brazil.

Thus, the importance of teacher training is highlighted, so that they are prepared to work with indigenous history and culture, something very visible when seeking intercultural constitutionalism. It is necessary, therefore, that undergraduate courses follow the legislation, since they constitute the space for training teachers for basic education. In this sense, Silva (2017) reinforces that the implementation of Law 11.645/2008 is also the responsibility of undergraduate courses, which requires, on the part of the higher education institutions offering it, an adaptation of the curriculum, including practices and contents, with the objective of meeting the request of the legislation, when training teachers for the insertion of the indigenous theme. In addition, continuing education is also necessary. According to Ângelo (2019), it is necessary for educational institutions to develop initiatives aimed at continuing teacher training to work on the theme, contributing, in the medium and long term, to reduce discrimination against indigenous peoples.

Thus, with updated curricula and prepared teachers, it is possible to encourage students to rethink the construction of their own identities, mitigating prejudices and stereotyped ideas in relation to Indians, providing respect for cultural plurality and equal opportunities in a democratic society.

## **5 FINAL CONSIDERATIONS**

The discussions that form this article present objectives focused on the valorization of identity, indigenous teacher training, memory and indigenous culture. Thus, the regime that wants to be democratic coexists with diversity. It is necessary, therefore, that the possibility of adopting an intercultural constitutionalism occurs, recognizing this diversity.

We hope in this work to have elucidated the importance of Law No. 11.645/2008 for the consolidation of democracy with regard to indigenous culture, showing the historical path of indigenous rights in Brazil, the formation of our national identity and the trend of decentralization and fragmentation of identities today, observing the adoption



of multiculturalism, especially in schools, for the construction of a democratic society, which is a project in constant modification.

We believe that knowledge about indigenous history and culture can alleviate prejudices and stereotyped ideas in relation to this ethnic group, in addition to providing equal opportunities and respect for cultural plurality in a democratic society, through the construction of a profound dialectic between the self and the other.

It is worth mentioning that new public policies, as well as the adequacy of the Political Pedagogical Projects (PPP) of schools and the Curricular Pedagogical Proposals (PPC) of initial training courses should also be rethought, adapted and problematized by these issues of ethnicity, race and cultural diversity, recognizing human rights and providing effective measures that safeguard the principles of the Dignity of the Human Person.



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