



Decolonial turn and the law: beyond colonial restrains

Giro Decolonial e o Direito: Para Além de Amarras Coloniais

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Abstract

The aim of this article was to analyze an epistemological and hermeneutical construction that would recognize Brazilian plurality and interculturality, with a due social and environmental commitment to life. Based on an interdisciplinary bibliographical research, it was tried to demonstrate how the decoloniality, by means of the decolonial gyration, allows to approach the legal field with the heterogeneous and alternative knowledge.

Keywords: Legal epistemology; Emerging knowledge; Interculturality.

Resumo

O artigo reflete sobre a possibilidade da construção epistemológica e hermenêutica que reconheça a pluralidade e a interculturalidade brasileiras, com o devido compromisso socioambiental para com a vida. Baseando-se em uma pesquisa bibliográfica, buscou-se demonstrar como a decolonialidade, por intermédio do giro decolonial, pode lançar luzes para que o campo jurídico ultrapasse as amarras coloniais.

Palavras-chave: Epistemologia jurídica; Saberes emergentes; Interculturalidade.



1. Introduction¹

Brazilian reflections are historically developed from an Eurocentric epistemological center which downplays local and regional knowledge, especially in the Latin-American territories which have been colonized². The legal system reflects this assumption by using principles and rules resulting from hegemonic European theoretical constructs as its axiological and normative bases. Therefore, even though conflicting norms are increasingly less frequent and validity is a fundamental factor of all norms, such norms lack material effectiveness, and are clearly insufficient in view of society's extreme inequalities.

The objective of modern constitutions, including the Brazilian Federal Constitution of 1988, may be summarized in the promotion of the well-being of men, so as to ensure them the conditions required for their own dignity, including the protection of individual rights and of the minimum substantial requirements to perpetuate a decent life.

Nevertheless, by placing the Man (and only the Man) in the center of constitutional concerns, modern constitutions promote the imperativeness of a neutral universal speech to the detriment of the diversity of local knowledge. Inclusion and otherness turn into variables that require further questioning of the knowledge based on regionalism and the marginalization of the knowledge left out of the epistemic centers considered relevant.

We aim to bring the legal sphere³ closer to the concept of decolonization⁴ of knowledge, with the purpose of enhancing the comprehension of the constitutional

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² The adopted and inherited hierarchical legal system is described as a top-down approach. In spite of the legitimacy of this constitutionalism brings a harmony between the norms laid down there, it appears a model of force that pushes on the foundations a dominant logic that, not always, reflects the plurality and complexity of the social scope. Thus, according to Avritzer (2016), top-down forms of participation have been identified as very ineffective and often undemocratic. Under this paradigm, the legal norm makes it an example of epistemic violence, the imposition of a single legal manifestation (FOUCAULT, 2006) and the silencing of those other systems that intend to challenge the post Law. This eminently Cartesian rationalism serves as the foundational basis of the solipsist legal logic of which *"within the conception of a suprasocial law, the law, disconnected from the conditions in which man effectively lives and associates, and therefore equally alienated from social reality"*. (MARQUES NETO, 2001, p. 135).

³ By claiming the law as a *"field"*, it is intended to verify it from a global situation whose influence of its phenomena is felt in parts with different characteristics, and in this situation are appreciated many aspects that form social structures. different. Thus, *"[...] the theory of the legal field is the application, in the world of law and the science of law, of the institutions of psychology of form (Gestalt), with a view to overcoming*



principle of dignity, thereby adding to it the emergence of multiple constitutional perspectives compatible with the search for the material effectiveness in Brazilian reality.

From a deductive-dialogical methodological approach, eminently bibliographic, the critical tendency herein demonstrated highlights not only a constitutional exegesis that acknowledges its own limitations, but also proposes a fertile path of research of the intersections of otherness, effectiveness of norms and epistemological liberation.

Precisely because of the amalgam created by the legal sphere, researches concerned with interculturality are welcome as they strengthen social shields and grant an active voice to those forgotten by the modernity goddess in its eurocentric version.

We seek to conclude that there are not sufficient approaches on the decolonial turn and on alternatives to development which expand the hermeneutical method from a view which breaks with the anthropocentrism and the reductionism of the homogeneous knowledge.

2. Colonization and its Reflections

In order to break Brazilian epistemological shackles, one must analyze how colonization of knowledge was possible, and, more specifically, from a paradigm of conquest, how the eurocentric thinking created a legacy of social inequities and deep inequalities resulting from a line of thought which prevents the comprehension of the world from the world itself.

Thus, "[...] since the conquest of the Americas, the projects of Christianization, colonization, modernization and development conformed the relations between Europe and its colonies in clear opposition" (CORONIL, 2005, p. 58). By evoking an indistinct

only dogmatic or critical views of law, trying to understand it in an engaging and dynamic perspective, as a symbolic structure of society, designed to give security and stability to certain interests". (Mendes, 2008, p. 57)

⁴ It is important to establish that, according to Walsh (2009), the term used here will be decolonial, supplying the "s" to mark the intention to distinguish itself with the classic concept of decolonization. Therefore, "it wants to point out that the intention is not to undo the colonial or to reverse it, that is, to overcome the colonial moment by the post-colonial moment. The intention is to provoke a continuous positioning of transgressing and insurgent. The decolonial therefore implies a continuous struggle" (COLAÇO, 2012, p. 7-8)



process of development, social and political agents become indefinite beings subjected to the hegemonic sources of power.

From a colonial standpoint, mankind would be divided in species and subspecies. (MBEMBÉ, 2017, p. 119), there being a hierarchy to differentiate and separate men, based on their peculiarities, through legal instruments that allow one to keep a distance from other beings.

Colonizers operate under different conditions and configurations of a relational universe of European domination of other peoples around the globe. The process of colonization, on its turn, encourages a distancing from reality by adopting a universal identity that does not reflect current Brazilian aspirations.

Colonial domination marks Latin-American history not only with the purpose of transforming reality (ARAÚJO, 2008) but also of recounting it. From an eurocentric perspective⁵, modernity would be the liberation from immaturity based on a rational effort that would result in a new development to be imposed upon mankind.

The binary perspective disseminated by eurocentrism imposed a flow of colonial expansion aimed at dominating the globe. "[...] beyond European enclosure, the state of nature rules, - a state without faith or law" (MBEMBÉ, 2017. p. 107). Through a fallacious flow which culminates in Europe and [the assumption] that the differences between the European and non-European human beings would stem from a natural difference, and not from power, enabled the founding of the hegemonic perspective which must be discussed.

This biological perception was a fundamental constituting element of relations of domination. The dominated peoples, hence, based on phenotypical characteristics, had their cultural and epistemological contributions put aside in favor of a Eurocentric universal rationality.

In this aspect, eurocentrism managed to transit through the other continents to legislate on the use of reason, showing how their conceptions of the Law, State and Culture were the only possible ways to transcendentalism and evolution.

In the beginning, all was America, that is, all was superstition, primitivism, fight of all against all, and state of nature. The last stage of human progress,

⁵ From a critical perspective of eurocentrism, it is important to note that it does not refer to all European modes of knowledge, *"but to a specific rationality or perspective of knowledge that becomes worldly hegemonic, colonizing and overlapping all previous ones. or different, and their respective concrete knowledge, both in Europe and in the rest of the world"* (QUIJANO, 2005, p.115)



achieved by European societies, is built, on its turn, as the absolute other to the first and at its counter light. (CASTRO-GÓMEX, 2005b, p. 84).

The coloniality of powers, as a constituting factor of modern liberal reality is founded upon a science that considers the dichotomy space/time, placing the European continent as the starting point for the growth of knowledge. It is possible to state that "coloniality constitutes modernity" (MIGNOLO, 2005, p. 44).

Under an Iberian hegemony, the epistemological colonization, taking into account all social elements which Quijano (2005) highlights, has developed as an hegemonic thought to define a world order which would stem from discussions, objects and subjects delineated by a tension solely of the European continent.

The process of discovery⁶ of the American continent and its individuals set up a direction to get to know the Other not to understand him, but to dominate him. "The basic relation among the centers and peripheries was of sack and exploitation, both of labor (indigenous and later on, African) and of natural resources" (COLAÇO, 2012, p. 127). It is possible to state that, as a Eurocentric paradigm, modernity is identified, in the end of the fifteenth century, with the conquest of the American continent and the Atlantic Ocean. Therefore, "Latin American enters Modernity (long before North America) as the other face: dominated, exploited and undercover" (DUSSEL, 2005, p. 28).

The colonial world does notice the conflicting and diverse economic, social, legal and political manifestations that transform the social structures of a given region. "The dominating view is not, therefore, equivalent to the social structuration itself but to the way in which a group, which imposes the dominating view, conceives social structuration" (MIGNOLO, 2005, p. 43). Relations of power become asymmetric and active participation of differences is reduced, thereby justifying the decolonial intentions which break with the hegemonic inclinations of power.

In spite of its global character, it is evident that coloniality of power is generated in different places and times, in specific and ever-changing ways, whose constant historical transformations enable the perpetuation of those movements and their foundations: conflict, exploitation and domination.

⁶ The term discovery is misused when associated with the process of conquest of the American continent, being valid only from a Eurocentric perspective. *"In fact, the Spanish and Portuguese have found nothing. Everything already existed and had name and owner. America is already populated millennially, albeit sparingly in some regions"* (ZIMMERMANN, 1986, p. 88).



The colonial potentate is replicated in numerous ways. First, by inventing the colonized. The colonizer has made and continues to make the colonized. After, by crushing this invention with non-essentiality, turning him into a thing, an animal, a human being in a perpetual state of becoming. And lastly, by constantly injuring the humanity of the subject, thereby multiplying the blows to his body and attacking his brain to create wounds. (MBEMBÉ, 2017. p. 188)

The cultural expressions of the dominated are extirpated and hidden since the universal character of the Eurocentric knowledge tends to deny the Other that does not correspond to the manifestations of hegemonic power (FOUCAULT, 2011) which lay the foundations of the epistemological ground. The manifestations of colonization compel the dominated to question constantly the reality that surrounds him.

The colonization project discards regional values in favor of Eurocentric civilization ethics. The Other is captured and reproduced as "an absolute negation, as the farthest point in the horizon" (HARDT, NEGRI, 2001, p. 142). The barbarism against the dominated individual is seen as a machine of suppression of identity and otherness, operating from a universalizing optic. "The Other has been imported to Europe – to natural history museums, public exhibitions of primitive peoples and so forth – and thus made increasingly available to popular imagination." (HARDT, NEGRI, 2001. P. 142)

Therefore, the expressions of the dominated are considered as traditional and contrary to the development proposed by European science thereby denying them the possibility of creating their own views of the world. "By framing them as an expression of the past, their contemporaneity is negated."

The decolonial project believes that freeing the otherness is an essential factor for the accomplishment of alternatives to the development and hermeneutical comprehension of the proposed norms. Hence, it would be an achievement of solidarity between "[...] Center/Periphery, Woman/Man, diverse races, ethnicities, classes, Mankind/Earth, Western Culture/ Cultures of the ex-colonial world, etc., not by pure negation but through incorporation as from the acknowledgement of Otherness" (DUSSEL, 2005. P. 29).

The task consists of a critical theory which, by observing the Eurocentric boundaries forced on Latin-American epistemology, inventively perceives the reality that operates behind social sciences, legal sciences and philosophy with the purpose of integrating narratives of validity and effectiveness.



And even if this is not a new program among us, we must now get rid of a whole series of binary categories with which we have worked in the past: the theories of dependency and philosophies of liberation (colonizer versus colonized, center versus periphery, Europe versus Latin America, development versus underdevelopment, oppressor versus oppressed). We shall understand that it is no longer possible to conceptualize new configurations of power with these theoretical instruments. From this point of view, the new agenda of the post-colonial studies could contribute to revitalize the tradition of critical theory in our midst. (CASTRO-GÓMEZ, 2005a, p. 86).

The suggested deconstruction requires an effort to overcome the roots of this group of knowledges which globally found social sciences as instruments of domination (rather than mechanisms of emancipation).

3. Decolonial Turn

To think legal science from local knowledge that breaks with colonial heritage means tracking the initial points of Latin-American knowledge that open spaces for epistemological questions targeted at the particular objects of this reality.

The colonial project is about managing instruments of power conceived in an hierarchical fashion, taking into consideration the language and the privilege of communication and knowledge produced by the control of concepts and theories that enable the downplay of objects and subjects beyond those recognized by an Eurocentric movement.

In particular, this narrative encompasses the process of dehumanization (HERNÁNDEZ, 2016) that lead to the negation of particular ethical behaviors of areas dominated by European nations. Hence, colonial situations, especially those crystallized by the legal field, force upon the subjected groups the sexual, cultural, economic and epistemic exploitation and oppression by the dominant individuals.

The anticolonial criticism, in its turn, is accomplished through a position that proposes the unification of humankind, with a view to respond to the crises of universalism and of the exploitation of subaltern and marginalized individuals. one may point out, therefore, that: "Europe is no longer the center of gravity of the world" (MBEMBÉ, 2017, p. 9). The power exerted by the colonizer is evidenced, both historically



and legally, by territorial division, the disregard for the original peoples of the land and the imposition of Portuguese legal rules and Eurocentric hermeneutical methods.

This way of understanding the legal system translated the European mentality and a disregard for the rights produced by indigenous communities existing here and, after, by the subjects that constructed on a daily basis, spaces of sociability, whether slaves, former slaves, immigrants – peoples of diverse ethnicities and cultures that used to form – and still form – Latin-America's (especially Brazilian's) social fabric. Such de-legitimization of customary local rights imposed in Latin-America legal systems unknown to it, and which keep influencing our legal systems and legal scholars. (HENNING; BARBI; APOLINÁRIO, 2016).

Post-colonial scholars, on their turn, understand that those epistemological Eurocentric heritages enable a debate beyond European borders to point out the relations of speech in the legal and social fields that may denounce the structures of power. Questioning and self-affirmation are statuses that contradict colonial practices as, as they may be considered a "[...] negation of the negation of the humanity of some individuals and as such it is a decolonial practice of affirmation of the life and the being." (HERNANDEZ, 2016, p. 280)

The philosophy that propels liberation (DUSSEL, 1986) within the philosophical and historical complexity inherent in the Latin-American continent, even if it appears to defend indigenous peoples and the full and free rationality of the local peoples, irrupts in an intellectual, philosophical and juridical movement that highlights the contradictions of the ideological background of the domineering, hegemonic and Eurocentric block.

By questioning the dominant aspects of the legal speech from the perspective of subaltern sectors, one problematizes the legal sources, the argumentative limits and polemics ensuing therefrom that may affect social relations. There is a strong effort to promote the re-examination of statements in order to correct the biases of the research inclined to revere universalizing and hegemonic thought.

It turns out that even though there is a perception that the barriers of the globe are beyond Eurocentric limits, Latin America, "[...] as a block, has not yet overcome the barriers of social, economic, political structure which were its distinctive features by the end of the last century". (STEIN; STEIN, 1997, p. 148). A debate that radicalizes the



epistemological bases of the legal field is needed such that the new perspectives for normativity and legal thought allied to decolonization be perceived.

The philosophy of liberation aims at being a movement that does not claim to be exclusive nor hegemonic as regards the analysis of the liberation subject. It is only aware of explicitly fulfilling the need to articulate the philosophical discourse with the praxis of historical liberation. (DUSSEL, 1986, p. 226)

This philosophy demonstrates how knowledge and power are linked and also help build a project from the subalterns. From the epistemological periphery, the subject not only supports domination, but frees himself from the dialectic between oppressed and oppressors. Understanding one's condition is essential to transformation and recovery of humanity (FREIRE, 2017) in light of the process of dehumanization imposed over the last centuries.

Critical discourse is articulated by positioning the subject in a revolutionary process that begins with the philosophy of liberation but does not stop there. "One has to deconstruct the very tradition that often emerges as a counterpoint to the discourse of difference that reveals its invented character" (MBEMBÉ, 2017, p. 166).

Therefore, we intend to demonstrate how Western history does not mean only an elaboration and ordering of facts, but rather processes of epistemic violence (LANDER, 2005; COLAÇO, 2012; SANTOS, 2003; SPIVAK, 2010). The construction of the colonized subjects as the Other is the clearest example of this violence to ever trivialized.

In addition to deconstruction, it is important to stress the need to overcome the figure of the simple subordinate, as he is often taken as a metaphor for the attribution of a lesser value to the others. He is considered a subject connected to lower classes and forgotten by the dominant knowledge. "The underling is identified as the colonized, or the colonial subject, it is not a passive being, an absent subject, but rather an active subject" (COLAÇO, 2012, p. 114). In addition to the concept of classes (MARX; ENGELS, 1999), subordination is expressed through social, cultural, economic and epistemological effects of power.

It turns out that decolonial thinking aims at highlighting the autonomy and the conditions for the subaltern social actor to become an agent of multiple mediations within his social context, arguing, through discourse, the possibility of such actor having an active voice in questioning globalizing perspectives. By questioning Eurocentrism and



favoring plural forms, the project of construction of a modernity that is compatible with the experienced reality.

The intended discussion faces the epistemological selection that obeys a colonizing model that still prevails over the identity of the countries peripheral to the Eurocentric axis (PIZARRO, 1993). The emergence of studies that break with the colonial model evidences peculiarities that for many years have remained at the shadows of a conquering movement.

It is an effort to demonstrate heterogeneity with inter and transdisciplinary intentions in the context of the inclusion of distinct knowledges without any epistemological exclusion or domination, thereby giving voice to the multiple views of reality. This does not mean that the work of this group is of interest only to allegedly universal social and human sciences, but that the group intends to intervene decisively in the discourses of modern science to create another space for the production of knowledge, a distinct way of thinking, a paradigm of the other, the very possibility of talking about worlds and knowledges in another way (ESCOBAR, 2003, p. 51)

The continuous act of reflecting on Latin American reality clarifies how the philosophical and social thought developed in the continent still suffers direct influences from a Eurocentric and exclusionary knowledge.

By designating pluriversal subjectivities and knowledges, decoloniality provides answers to colonized objects and individuals. Therefore, it is correct to state that “[...] it means a type of activity (think, turn, choose) that confront sthe rhetoric of modernity and the logic of coloniality” (GROSFOGUEL; MIGNOLO, 2008, p. 34).

The change of mindset is revealed through a scientific production that rethinks development and its association with discursive colonial practices which furthered the creation of inequalities between the Eurocentric movements and the reality of the Latin American colonies.

The decolonial studies focused on the legal field use concepts and reflections as true tools that problematize dialectical statements from the foundations of hegemonic knowledge. “By contrast, it is about introducing the decoloniality paradigm, which embraces modernity in a relationship of coexistence and simultaneity” (KOHLRAUSCH; MENDES, 2017, p. 136).

Through local logic, emerges the intention to break with the universality of constitutional concepts, as they are interpreted, and of the human rights stream that reproduces hegemonic intentions of exclusion and discursive imposition.



Decolonial studies make it possible to understand the legal discourses supposedly universal as constructions that emerge and endure from colonial relations. It is a different perspective to understand the Law, in that it allows it to be thought from different categories and forms of knowledge unimaginable to western law. (LACE, 2012, p. 124)

In spite of the conception of a decolonized world in the Latin American continent, that is not entirely false, since in the 19th century there were processes of political independence of the subordinate countries, the epistemic bases implemented in such countries are still perpetuated, so this turning movement is necessary to promote legal and social thinking from local needs and urgencies.

The decolonial experience emerges from this inferiorization we aim to overcome and of the logic of subordination imposed by modernity that resists maintaining the particularities of peoples and epistemological fields beyond Eurocentric limits. The option for decoloniality means advancing the process of decentralization and detachment from the hegemonic foundations of thinking.

The translation of “giro decolonial” into English is 'decolonial turn'. The expression 'turn' has two meanings. It means shift, in the same sense when we say change shifts and, on the other hand, means turning to the right or left, rotating 360 degrees. The decolonial shift in the sense of reaching the shift of decolonial thinking may fall into the expression decolonial option. The decolonial option then means that the decolonial shift is an option (GROSFOGUEL; MIGNOLO, 2008, p. 33).

Among the thoughts denied by the Eurocentric logic, the decolonial option is radicalized to strengthen the local discourse as it establishes the epistemic potential beyond those foundations already set and accepted by universalizing intentions.

This turn of knowledge comprises a historical clash that allows the legitimization of other knowledge and wisdoms that are alternatives to the understanding of nature, social relations and reality itself in order to build different forms to experience life. It is not possible to deny, therefore, the proposed responsibility for the future of mankind beyond the scientific objective Eurocentric frontiers based upon which unsustainable political and ecological rhetorics were built.

Decolonizing the rich diversity of peoples/cultures and their different territorialities made visible a new theoretical perspective of historical time and space as the manifestation of the “unequal accumulation of times. The Eurocentric vision of cultural evolution was imposed to the world as the only possible universality. Thus, traditional peoples became backward societies, as if they were only a stage in the way of human development and economic growth. Thus traditional cultures were quieted and remained invisible.



Simultaneity of different temporalities that forge cultural territories were occluded by the hegemonic temporality that orders the world, secluding other cultures. (LEFF, 2015, p. 37)

So, in line with the thinking of those individuals who are taken as illegitimate to define the epistemic process, decolonial thinking is concerned about taking over a spatial imaginary to expand the boundaries of living knowledge.

By unveiling the logic of coloniality and reproduction of the colonial power matrix and disconnecting from the imperialist effects on the categories of thought, we propose a progressive act of epistemological expansion.

Decoloniality, in turn, develops from all languages, memories, knowledge, people and places of the planet that were gradually subordinated by European and North American expansion. It is an option precisely because it rejects a single way of reading reality and, in this sense, it can be characterized as a paradigm of coexistence. Along with border thinking, it conflicts with totalizing knowledges, creators of wholeness. (HENNING; BARBI; APOLINARY, 2016).

From the problematization of the Latin American reality, local knowledges (without universalistic pretensions) emerge with the intention of solving the problems of this particular modern socio-legal experience. It is therefore a connector “[...] between all those who think and act based on the meaning of the world and of the life that arises from the awareness of the colonial wound” (GROSFOGUEL; MIGNOLO, 2008, p. 35).

This episteme fights to promote an interpretation that shows boundaries from views that were silenced by the colonial ideology that presents itself as the only possible interpretation of social reality. Such hermeneutic spirit, therefore, cannot prevail as a Brazilian form of constitutional interpretation, as it carries an axiological weigh that has potential to strengthen the subjects, while safeguarding their particularities.

Overcoming the legacy of coloniality, it is required by the production that Latin American worldviews be strengthened, especially within Brazilian hermeneutics. The decolonization, therefore, emerges as a legal alternative that makes explicit, in Latin American soil, the possibility of displacing the Eurocentric and colonialist perspectives in favor of local substrata, with the purpose of promoting a knowledge eminently linked to the anxieties experienced within this spatial locus.

4. Decoloniality and the Legal Field



Following such conjectures, the necessary grounds for breaking Eurocentric image as the universal and exclusive bearer of legal progress and rational are laid down. Using European lenses to look at the sociopolitical reality in Latin America, one will not correctly perceive the distinctions of identity and of the discourse of development that that does not apply in certain meanders.

Eurocentric legacies still block the broad perception of social experiences thus generating self-reproducing cyclical thoughts. The decolonial perspective, in turn, permits the creative potentiality of distancing from silenced knowledge and the merger of social knowledges.

In this sense, subordinate and marginalized knowledges have an epistemological ability for dialogical development with other knowledges, from plural perspectives and capable of transforming the environment in which they operate.

The process that culminated in the consolidation of capitalist relations of production and the liberal way of life, until they acquired the character of natural forms of social life, had a colonial / imperial conquest dimension and/or submission of other continents and territories by the European powers, and a bitter civilizing struggle within the European territory following which the hegemony of the liberal project was finally imposed. (LANDER, 2005, p. 12).

From this point of view, it is understood that the legal reflections elaborated solely for European reasons eventually subordinate other knowledges that do not fit within these frames. "Decolonial thinking reflects on colonization as a large and prolonged event with many disruptions and not as a historical stage that has already been overcome". (COLAÇO, 2012, p. 8). We claim both a state model and a field of knowledge that takes into account the diversity of local knowledges and therefore recognizes the conditions for effectiveness in a given location.

The search for alternatives to the deeply exclusionary and unequal conformation of the modern world requires an effort to deconstruct the universal and natural character of the liberal-capitalist society. This requires one to question the objectivity and neutrality purposes of the main instruments of naturalization and legitimation of this social order: the knowledges that we know globally as social sciences. (LANDER, 2005, p. 8).

Western epistemology during the last five centuries has been claimed to be the only one capable of providing valid knowledge about social fields, including law, economics, politics and ethics. This construction was due to the development of an



episteme that produced conceptual figures (subject and object) that have a method of discovering universal and colonizing truths.

However, the supposedly universal knowledges (FOUCAULT, 2011) are produced by a discourse that considers the conditions for epistemological validity to be true. The truth, therefore, would be a product of the knowledge-power condition and of the political articulation of the procedures of constitution of discursive practices.

The consolidation of Eurocentric epistemology in Brazil was based on a paradigm of conquest that used violence to justify the intrusion of the foreign thinking. Therefore, once already established, such epistemology is projected as an obstacle to understanding Latin American reality. By claiming knowledges from outside the continent, it defines as invalid any episteme that is beyond the reach of knowledge.

The justification of modernity, from a hegemonic view, allows the rationalization of violence as a necessary instrument to sustain an exclusionary position. From an Eurocentric point of view (DUSSEL, 2005, p. 29), in order to support an Eurocentric standpoint, modern civilization places itself in a higher position vis a vis the other civilizations, thereby obliging modern civilization, in view of a moral requirement, to develop the barbarians. The path to this education of development is unidirectional and determines a compulsory fallacy which starting point is Europe. Therefore, violence is inevitable because the process of domination assumes there will be victims inherent to the civilizing process, in which the barbarian is to blame and the innocent colonizer seeks the emancipation of the immature.

This action, already naturalized by historical experience, transforms social relations, making the colonization process acceptable and natural to the process of learning and knowledge. In this respect, “[...] modernity and rationality were imagined as experiences and products exclusively European” (QUIJANO, 2005, p. 111).

Within the legal field, one must not forget that Law does not manifest itself only through normativity, but especially in the construction resulting from the discourses which determine special subjects and objects to be delineated. The legal rule in this epistemological construction process becomes a product of the imposition on those who question hegemonic reasoning. This silencing process is a violent self-reproduction that accentuates inequalities and does not add any value to the alterity proposed for unifying purposes.



Therefore, if the aim is to overcome Modernity, it will be necessary to negate the negation of the myth of Modernity. To this end, the side negated and victimized by Modernity shall first find itself innocent: it is the innocent victim of the ritual sacrifice, who in finding itself innocent considers Modernity as guilty of the sacrificing, conquering, original, constitutive and essential violence. By denying innocence through Modernity and in affirming the Otherness of the Other, initially negated as a guilty victim, it allows one to discover for the first time the hidden and essential face of Modernity: the peripheral colonial world, the sacrificed indigenous persons, the black slaves, the oppressed woman, the alienated child and popular culture, etc. (the victims of Modernity) as victims of an irrational act (as a contradiction of the rational ideal of Modernity itself) (DUSSEL, 2005, p. 29).

By identifying that predominant knowledge has an Eurocentric predilection, both of origin and purpose, it can be said that discourses are regionalized events produced by subjects anchored in a defined space-time. Therefore, "there is no universal knowledge, better or fairer, but discourses that have a history, and history cannot be separated from power" (COLAÇO, 2012, p. 17).

Universality, therefore, is a fallacy because it demonstrates an intention of conquering one knowledge to the detriment of another, whether of a certain race, nationality, culture or gender. Thus, "[...] it is just a globalized version of an extremely provincial local tradition. Emerging from a dominating and colonizing culture, modern systems of knowledge are colonizers themselves." (SHIVA, 2003, p. 21).

By breaking with universalism and defining local knowledges, it becomes clear that it is possible to separate instruments and subjects from political, legal and cultural phenomena. Thus, the concepts of Europe and the Other (MIGNOLO, 2005) were developed from the European continent and by the construction of a discourse of domination. The cloak of truth, inserted in the legal discourse under the name of universality, prevents the localization of relations of power previously established (FOUCAULT, 2011). Local knowledges are hidden and silenced by a foreign epistemological force created with the intent of conquest.

The foreground of the violence unleashed against local systems of knowledge is not to consider them a knowledge. Invisibility is the first reason why local systems collapse before being tested and proven by confrontation with the dominant knowledge of the West. Distance itself eliminates local systems of perception. When local knowledge finally appears in the field of globalized vision, it is made to disappear, by denying it the status of systematic knowledge and qualifying it "primitive" and "unscientific" (SHIVA, 2003, p. 23).



In this sense, if legal concepts take for granted a single epistemic origin, this reinforces the enlarged European thinker's view of himself by declaring himself “[...] the holder of a universal knowledge that would represent the truth, whereas' the ‘others' held the 'local' knowledge '(COLAÇO, 2012, p. 19). The types of knowledge, according to such Eurocentrism, aim at turning the world more objective, thereby creating a risk to individuals and an uncertainty regarding the recognition of the Other.

The disarticulation of the world, the objectification of human beings and of the planet, and the denial of otherness are manifestations of a modern Eurocentric rationality which disrupt ecosystems and make it impossible to materially verify axiological load in the constitutional text. Thus, colonial patterns of power suggest a perspective of knowledge from which the non-European would be inferior, whose “[...] new racial, colonial and negative identity implied the spoiling of its place in the history of mankind’s cultural production”(QUIJANO, 2005, p. 116). The identities that arise are conducive to the discourse of domination and dualistic appropriation.

Contradictions manifest themselves in the absence of a rigorous speech and in its implementation, when dissent arises around the sustainable development discourse and the different meanings of this concept in relation to the interests opposed by the appropriation of nature (LEFF, 2006, p. 138)

The construction of a new rationality enables inclusive social practices, conducted by new social actors, committed to decolonial emancipation processes and willing to feed local and intercultural knowledge.

The decolonial and plural intent seeks a conception of interculturality to generalize itself as a movement that is part of a recognition thinking constructed from the political place of subaltern enunciation, because Latin American society, as constituted, favors and reproduces practices of epistemological monoculture.

In this line of thought, the ecology of knowledge emerges, based on the idea of the epistemological diversity of the world, in the recognition of the existence of a plurality of forms of knowledge beyond scientific knowledge. This implies giving up any general epistemology. (PORTANOVA; CORTE, 2015, p. 136)

By making visible the need for a production of knowledge that does not destroy the Other, decoloniality can be understood as an instrument and a process of epistemological formation that is capable of denaturalizing the processes of conquest, both social and legal, which oppose the domination of the singularities. This decolonial



rationality thus emerges from “[...] questioning the dominant rationality” (LEFF, 2006, p. 279)

From the recognition that there is a plurality of heterogeneous knowledges, flows an epistemological ecology (SANTOS, 2010a) that allows the flourishing of emancipatory struggles emerging from subordinate subjects. For a nonviolent episteme, practices of transgression and liberation are oriented from the edges of Eurocentric knowledge.

[...] the social and cultural realities of peripheral societies of the world where the belief in modern science is weaker, where the links between modern science and the designs of colonial and imperial domination are more visible, and where other forms of non-scientific and non-Western knowledge persist in the social practices of large sectors of the population. (SANTOS, 2010a, p. 108).

While analyzing the internal pluralities of the intended social field, in the light of a decolonial approach, the doors are opened for the insurrection of subjected knowledge (FOUCAULT, 2011), since the characteristics ignored by the *cogito* and legal positivism gain strength.

The perception of interculturality organizes an unprecedented articulation of colonial intention, which, according to Walsh (2009), amounts to an ideological principle that builds a modern democracy and guarantees the maximum participation of peoples and nationalist components of a state.

There are other rights, other ways of thinking about the law based on stories and experiences other than just the Western epistemic legal models. These forms of knowledge do not aim at universality but recognize themselves as local. Of course, when we talk about “local”, we do not mean that knowledges are separated and not communicate with each other, on the contrary, the place is always “interlocal, but never epistemically universal (COLAÇO, 2012, p. 22).

The decolonial project proposes a transformation and, unlike the intention prevailing in contemporary Latin America, the decolonial project cannot be mistaken by an ideological reproduction of colonialism. In this context, through decoloniality, one proposes the construction of non-Eurocentric thinking from a counter-hegemonic production as opposed to the epistemological colonization project. Therefore, interculturality becomes an important, ambivalent and inspiring source because “[...] it can mean an inclusive, neoliberal multiculturalism, and on occasions, conservative, as



well as a represent a transformative political-social process and project.” (WALSH, 2009, p. 83)

It is an interaction between subjects, knowledges, rationalities and constitutional principles that are subtracted. Such movements must admit asymmetries and recognize the ability to produce public policies from socioeconomic edges. This phenomenon represents a diversity of processes and dynamic directions that recognize the multiple procedures in the construction of a new civilizing sense that takes subalternities into account.

Therefore, decolonization aims at an incessant search for interpretative notions that reaffirm the local ability to construct knowledge, capable of guiding caselaw and governance as a plural and multifaceted phenomenon.

Conclusion

This article answers, affirmatively, that there is a Latin-American composition that allows legal axiological reevaluation, aiming at a decolonial counter-narrative that substantiates a legal field that has objects beyond the norm.

The legal imaginary, in turn, plays a central role in contributing to a participatory and inclusive transformation of social relations, recognizing the reconciliation between the formal legal field and the social reality that legitimizes legal established forms.

In this same perspective, by realizing the nuances of the heterogeneous global community, it was understood how the interpretative multiplicity lays the foundations for a consciousness that is different from the Eurocentric consciousness, which the present study opposes as it disregards the singular peculiarities of different realities.

This reevaluation calls for the paradigmatic transcendence of the image of the cognitive subject that composes the legal field in its ability to visualize the Other. The act of knowing and understanding cannot be combined with the death of plural and diverse epistemes as justification of the prevailing discourse. The position of containment and preservation of divergent discourses is susceptible to an epistemological evolution that understands the social and communicative emergencies that, through acts of conquest, are subordinated by a homogenizing discourse.



To this end, the decolonial project was used so that the proposition of legal transformation would not reproduce colonial ideologies or end in itself. We saw how, within this field, the search for new interpretative intentions that reaffirm the local ability to build knowledges capable of guiding legal and administrative understandings, based on a plural and multifaceted phenomenon, has overcome a set of knowledges that universally transform social sciences in instruments of domination.

Finally, by claiming a production of knowledge that strengthens regional and Latin American worldviews, the decolonial turn validates itself as a form to explain Brazilian law, in that it moves the epistemic axis beyond Eurocentric and colonialist barriers in favor of local substrates.

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