

## **Haiti as an Underground Memory of Modern Revolution and Constitutionalism**

*O Haiti como Memória Subterrânea da Revolução e do Constitucionalismo Modernos*

**Deivide Júlio Ribeiro<sup>1</sup>**

<sup>1</sup> Federal University of Minas Gerais, Belo Horizonte, Minas Gerais, Brasil. E-mail: deividej@gmail.com. ORCID: <https://orcid.org/0000-0001-9831-3934>.

**Maria Fernanda Salcedo Repolês<sup>2</sup>**

<sup>2</sup> Federal University of Minas Gerais, Belo Horizonte, Minas Gerais, Brasil. E-mail: mariaf.salcedo@gmail.com. ORCID: <https://orcid.org/0000-0002-6274-0026>.

Article received on 12/12/2020 and accepted on 26/06/2021.



This work is licensed under a Creative Commons Attribution 4.0 International License



**Abstract**

The text discusses the Constitution of Haiti as an underground memory of modern constitutionalism. We argue that it is a historical experience that adds layers of meaning to the revolutionary period of the eight hundred and provides interpretive tools to understand the effects of modernity and constitutionalism in peripheral geopolitical contexts. The hypothesis is that keeping the Haitian Revolution and constitutionalism underground relegates the experiences of slavery, colonialism, and racism to insignificance.

**Keywords:** Modern constitutionalism; Haiti Constitution; Memory; History; Critical theory.

**Resumo**

O texto discute o Haiti como memória subterrânea da revolução e do constitucionalismo moderno, isto, é, uma experiência histórica que agrega camadas de sentido ao período revolucionário dos oitocentos e aporta ferramentas interpretativas para compreender os efeitos da modernidade e do constitucionalismo em contextos geopolítico periféricos. A hipótese é que a manutenção da Revolução e do constitucionalismo haitianos na clandestinidade relegam à insignificância as experiências da escravidão, do colonialismo e do racismo.

**Palavras-chave:** Constitucionalismo moderno; Constituição do Haiti; Memória Subterrânea; História do constitucionalismo; Teoria crítica.



*The long silence about the past, far from leading to oblivion, is the resistance that an impotent civil society opposes to the excess of official speeches.<sup>1</sup>*

## 1. Initials Considerations

The narratives about modern constitutionalism use the American and French bourgeois revolutions experiences as a parameter and model. Themes such as the theory of the constituent power and constitutional history present these experiences as precursors of constitutionalism. First, it is important to clarify that we do not deny the importance of these events. However, some questions remain: are there alternative experiences to these models? If so, would these alternative experiences of constitutionalism be able to expose the impasses and tensions inherent to the historical events, allowing us to reinterpret and question their prescriptive pretension? Do the model experiences have a silencing effect on other experiences? Moreover, what are the results of these silencing effects for any constitutional project that intends to be democratic?

This text essays some possible answers to these questions, as it aims to break with a particular linear understanding of the History of Law that takes the constitutional “reality” as a given. Worked as a recipe for any evil, this understanding of constitutionalism ignores how modernity touches people and territories in different ways according to their geopolitical position. Likewise, this linear way of making history conceals violence and power. The prescriptive character of the constitutional experiences structurally deepens the existing social hierarchies and serves as an ideological legitimation for the dichotomies “first” and “third” worlds; “north” and “south”; “west” and “east”; “white supremacy” and “non-white inferiority”; “male” and “female” to name a few.

The introduction of other experiences of constitutionalism outside the North-Western-White-Masculine-Christian axis allows us to revisit its principles, which were born to limit state power through a set of rights derived from the ideals of freedom and equality, with a universality pretense. Furthermore, when we question the official narrative built under the pillars of the limit of state power and rights, it allows us to access

---

<sup>1</sup> POLLAK, Michael. Memória e identidade social. In: Estudos históricos. Rio de Janeiro, v. 5, n., 10, 1992, p. 203.



the silences imposed by these processes, the relegated traditions, and the reasons for such concealments.

With this in mind, this text outlines the thesis, still under development, that we can understand the Haitian Revolution and the constitutionalism that derives from it as underground memories<sup>2</sup>, one of the historical experiences that add layers of meaning to the revolutionary period of the eighteenth century and contribute interpretative tools to understand the effects of modernity and constitutionalism in peripheral geopolitical contexts. The text is divided into two parts: first, we discuss how collective memories are constructed, using historian and sociologist Michael Pollak's concepts, which highlight the role of the excluded in the processes of the dispute for memory, as they oppose the official memory.

In the second part, we expose some narratives that helped consolidate the official memory of constitutionalism and ways in which the Haitian Revolution tensioned its main assumptions to the extent that it became a clear representation of the struggle for recognition of the humanity of black people, in a historical context strongly marked by black slavery. Thereby, the validity of slavery and its unfolding strongly contrasts with the idea of universality that underlies liberal constitutionalism in its genesis, from which derives the claim for the abolition of slavery and the reiteration of the Rousseauian maxim that opens the book *The Social Contract*, "Man is born free but everywhere is in chains."

Finally, the text will discuss why any constitutional project that claims to be democratic is not if it ignores and relegates the struggle of black people, represented here by the Haitian Revolutions and constitutionalism, to the clandestineness of social memories. The persistent silence of the underground traditions of struggle reaffirms the structural violence that complies with modern constitutionalism and fails to show that it is constituted by the dispute of memory, much more than by its duration or stability. As one takes the path of dispute and resistance, one "accentuates the destructive, uniformizing, and oppressive character of collective memory,"<sup>3</sup> from which it is possible to claim, in the present, a space for political change and a critical, even self-critical, review of the past, so that we project the future in such a way as to destructure this violence.

---

<sup>2</sup> According to the thesis by POLLAK, Michael. *Memória, esquecimento, silêncio*. In: *Estudos históricos*. Rio de Janeiro, v.2, n.3, 1989, p.3-15.

<sup>3</sup> POLLAK, Michael. *Memória, esquecimento, silêncio*. In: *Estudos históricos*. Rio de Janeiro, v.2, n.3, 1989, p.3.



## 2. Collective Memory as a Constitutive Factor of Identities

The construction of social memory, undoubtedly, has a vital role in the constitution of the identity of individuals and groups. According to Michael Pollak, collective memory comprises “[...] conscious attempts to define and strengthen feelings of belonging and social boundaries between collectivities of different sizes”<sup>4</sup>. Therefore, in the author’s perspective, collective memory has the function of maintaining a certain internal cohesion, as well as establishing boundaries that create spaces of belonging.

However, when we talk about collective memory, it is necessary to remember that it accounts for the plural and diverse societies, which include countless borders and spaces of self-identification. This way, even though this conception may give the idea of uniqueness at sight, if it is constitutive of identities, this memory inside is constantly disputed by numerous narratives.

If so, the practice and the constitution of identities are always related to alterity since it occurs through acceptability, admissibility, and credibility negotiated directly with others. For this reason, there is no way to attribute an essence to people or groups when we know that memory and identities are in constant negotiation<sup>5</sup>. The real battles for memory are found in the disputes of memories and, consequently, in the constitutions of identities<sup>6</sup>.

An example that illustrates these disputes and that in a certain way is related to the theme of this work concerns racial democracy, a thesis widely adopted by the Brazilian social sciences which found its basis in the way Gilberto Freyre’s 1933 book *Casa Grande & Senzala* introduced the debate on hybridization and cultural mestizaje<sup>7</sup>. The thesis

<sup>4</sup> POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.7.

<sup>5</sup> POLLAK, Michael. Memória e identidade social. In: **Estudos históricos**. Rio de Janeiro, v. 5, n., 10, 1992, p. 204.

<sup>6</sup> POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.3.

<sup>7</sup> In his work, Gilberto Freyre did not develop any thesis with the name “racial democracy” or even use this term as a concept. However, the thesis is attributed to the development of the debate on race and racism based on his thesis on miscegenation and hybridization, added to the way he tells the different stories throughout the books *Casa Grande & Senzala* and *Sobrados e Mucambos*, using expressions that will gain an explicit racist and conservative sense. Regardless of the dubiousness of its origin, the racial democracy myth is a central element in the debate on racism in Brazil. On the contradictions and antinomies of the work and the readings of Gilberto Freyre’s work, See: LEHMANN, David. Gilberto Freyre: a reavaliação prossegue. *Horizontes Antropológicos*, Porto Alegre, v. 14, n. 29, p. 369-385. Junho 2008. Disponível em: <[http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0104-71832008000100015&lng=en&nrm=iso](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-71832008000100015&lng=en&nrm=iso)>. Acesso em 26 Agosto de 2020.



developed in this seminal work, by one of the authors known as the interpreter of Brazil, has significant influence in the context in which the theme of the formation of national identity has become a central issue, not only in academia but also in the political, cultural, artistic, and social fields. This idea understands miscegenation as the fruit of the “friendly” union between the races, which would become the criterion of national identity.

At the time, this was the official history that would unite Brazilians based on a common characteristic, but it is impossible not to notice that such a narrative takes others to the underground. Other memories that were not equally convenient for the national identity were relegated to the underground historical clandestinely. Furthermore, Pollak presents the concepts of official/dominant memory (history), the one told to reflect the image of the intended identity, and underground/clandestine memories (histories), those hidden, silenced, and unspeakable for not meeting the pretended expectations of official identity, in order to explain this dispute over memories<sup>8</sup>. Thus, official and underground narratives dispute the understanding of society.

Additionally, Pollak uses the concept of framed memories<sup>9</sup>, considering that memory has the function of maintaining internal cohesion and defending its limits based on common characteristics attributed to the group. Consequently, one can draw a frame of references from common points of both identities, from which one constructs them and draws the borders between them, a fundamental step to distinguish official memory from underground/clandestine memories.

History provides the elements from which one builds framed memories. For memory to have durability and consistency, it is necessary to constantly interpret the past according to the present and future questions. This activity is limited in construction, implying that one cannot build memory arbitrarily, which is why this work must meet specific justification requirements. Besides, for this memory to have credibility, it will depend on the coherence of successive discourses<sup>10</sup>.

---

<sup>8</sup> The bases are found in POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p. 3-15; POLLAK, Michael. Memória e identidade social. In: **Estudos históricos**. Rio de Janeiro, v. 5, n., 10, 1992, p. 200-212; POLLAK, Michael. A gestão do indizível. In: **WebMosaica Revista do Instituto Cultural Judaico Marc Chagall**, v. 2, n.1. jan.jun,2010, p. 9-49.

<sup>9</sup> POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.7. POLLAK, Michael. Memória e identidade social. In: **Estudos históricos**. Rio de Janeiro, v. 5, n., 10, 1992, p. 204.

<sup>10</sup> POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.7. POLLAK, Michael. Memória e identidade social. In: **Estudos históricos**. Rio de Janeiro, v. 5, n., 10, 1992, p. 204.



Developing the framing of memory requires various actors, who orient themselves based on different sources: sensory, films, oral research, and organized speeches, among others. In addition, the professionals who frame memory can guide themselves by material bases such as museums, libraries, theaters, sculptures, statues, and buildings, which imprint the spelling of the intended memory in their structures. When we come across these actors from a distant time but present in our daily lives, we realize that, little by little, they are integrated into the cultural background of humanity.

The specialized work of framing a collective memory is essential for constructing a particular social group's identity and continuity. However, it is important to emphasize that even though memories of these groups and institutions do not always have factual support, they can still survive even in the face of their respective disappearances. In this case, the cultural, literary, or religious references, which assume the form of a myth<sup>11</sup>, nourish their existence. Thus, the distant past can become a promise for the future and even a challenge to the established order.

It is worth emphasizing that perennity is not entirely assured, whether it is institutional or of social groups. On the contrary, one opens space for injustice and violence when one does not take the demands for justification and the successive coherence of discourses seriously. One replaces the relation of alterity and the negotiation with another over accepting identity, transforming them into violent impositions. In other words, fissures open that demonstrate the inconsistency of the official discourse, which ends up confronting the conditions of possibility and duration of this memory; through these fissures, subterranean memories emerge to question the fragility of official memory<sup>12</sup>.

To go back to the example, the dominant narrative of racial democracy hides the fact that miscegenation, even Freyre's rereading against the racialist and eugenicist theories of his time, did not dismantle the narrative of inferiority accepted by politicians, thinkers, and academics<sup>13</sup>. On the contrary, it reinforced this narrative by hiding and ignoring everyday experiences and modes of social hierarchization and organization

---

<sup>11</sup> POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.8-9.

<sup>12</sup> POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.7-8. POLLAK, Michael. Memória e identidade social. In. **Estudos históricos**. Rio de Janeiro, v. 5, n., 10, 1992, p. 204.

<sup>13</sup> About this theme, See SCHWARCZ, Lilia Moritz. **O espetáculo das raças: cientistas, instituições e questão racial no Brasil 1870-1930**. São Paulo: Companhia das Letras, 2005.



marked by race. Racial democracy hides the fact that behind the supposed “friendly” coexistence between white and black people, there is a long history of rapes against black women, physical and psychological aggression, extreme poverty, social and political exclusion, and all kinds of violence resulting from the effects of modernity/coloniality.<sup>14</sup>

The official collective memory narrative suffocates the collective narratives and memories experienced by black people. Its fissures become evident when one confronts the supposed discursive successive coherence of racial democracy with the daily lives that subject black people, a life lacking any possibility of rational justification. Thus, on the ideal level, the thesis of racial democracy intends to explain racial conditions in Brazil. However, on the factual level, the precariousness, poverty, daily detraction of rights, and explicit and veiled racism, are part of the daily experiences of black people, which counteracts the explanatory power of that “thesis.”

Once these underground memories enter the public space, other demands and claims begin to dispute the official memory, demanding political and social changes and self-criticism of the past. Moreover, these clandestine memories remain alive even if relegated to the space of the unheard, the unspoken, the space of silencing because they are carefully passed on in networks of family, friends, and informal circles, waiting for the time to expose the hitherto hidden fractures of organized official memory<sup>15</sup>.

It is precisely on this tension between official/dominant memory and clandestine/underground memories that this paper launches some initial reflections. Indeed, we seek to expose certain narrative inconsistencies that modern constitutionalism has hidden since its beginnings. Moreover, to expose these fractures, the paper adopts the Haitian Revolution and its force in forming images and references in the construction of the underground collective memory as an interpretative criterion capable of forging other narratives more consistent with the factual conditions of black people.

---

<sup>14</sup> *Modernity/coloniality* is the complex power relationship, implicit in the logic of modernity, that justifies all forms of violence under the argument of progress, development, emancipation, and happiness. This term implies that coloniality is the hidden face of modernity. Both are sides of the same coin. On this topic, see MIGNOLO, Walter. *Desafios decoloniais hoje. Epistemologias do sul*. Foz do Iguaçu: Duke University, 2017. v. 1. p. 13.

<sup>15</sup>POLLAK, Michael. *Memória, esquecimento, silêncio*. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.3.



### 3. The Haitian Revolution and the Tensioning of the Dominant Memory of Modern Constitutionalism

Perhaps the most striking official memory of modernity<sup>16</sup> is the narrative constructed by the Enlightenment<sup>17</sup> to universalize the meanings of law and man, among other things. However, this supposed universality was limited geographically and directed to a specific group of people: the white, European, Christian, owner man, who becomes a parameter of humanity. This new measure imposed a new world geographic arrangement, in which Europe became the center and other places the periphery of the world. This process was rooted in the world history of humanity<sup>18</sup>, and it would no longer be possible to speak of plural histories of humanity, concealing diverse narratives that coexisted with this new narrative<sup>19</sup>.

Through a hierarchical relationship, this rearrangement also allowed the human categorization into races, whose highest degree would be the European, white man. All these transformations culminated in the process of production, concealment, and violence that we call colonialism<sup>20</sup>. Thus, colonialism was the economic and political

<sup>16</sup> Modernity is a historical, political, and social phenomenon, which had its genesis in 1492. It involves colonialism, the process of "concealment of the other" which allowed the development of European metropolises. On the topic, See DUSSEL, Enrique. **1492: o encobrimento do outro: a origem do mito da modernidade**. Rio de Janeiro: Vozes, 1993. DUSSEL, Enrique. Europa, modernidade e eurocentrismo. In: LANDER, EDGARDO (Org.) **A colonialidade do saber: eurocentrismo e ciências sociais Perspectivas latino-americanas**. Buenos Aires: 2005. p. 24–33. Available on: <[https://edisciplinas.usp.br/pluginfile.php/2591382/mod\\_resource/content/1/colonialidade\\_do\\_saber\\_eurocentrismo\\_ciencias\\_sociais.pdf](https://edisciplinas.usp.br/pluginfile.php/2591382/mod_resource/content/1/colonialidade_do_saber_eurocentrismo_ciencias_sociais.pdf)>. Accessed in: April 19th, 2019.

<sup>17</sup> It is necessary to note the changes in the concept of history and time in European modernity. Until the 18th century, history referred to exemplary narratives of the past left for the present. From the 18th century onwards, the term History began to be used in singular and capital letters to designate an abstract and theorized concept. This change also designates a new posture about time since it is not just a matter of linking past and present in the form of a "moral" of history. History thus becomes "an abstract unity that extends into the future, where it becomes thinkable and realizable, as a teleological procedure." (KOSELLECK, Reinhart. A history of concepts: theoretical problems and practical. In Historical Studies, Rio de Janeiro, v.5, n. 10, 1992, p. 137). In this sense, the Enlightenment is not a name given by historians to a historical movement but a self-naming of people who understood themselves as responsible for making history and, in this objective, to shed "lights" on the "darkness." It is the 18th-century Illuminists who created the term "Dark Ages" to refer to the Middle Ages, on the process of self-naming and creating a historical category for themselves, see KANT, Immanuel. Resposta à pergunta: O que é Iluminismo? In: **A paz perpétua e outros opúsculos**, Lisboa: Edições 70, 1995.

<sup>18</sup> Here again we can see that the project of making a World History of Humanity is influenced by the concept of history based on the 18th century and by the self-appointment of Enlightenment as the intellectual movement responsible for history.

<sup>19</sup> DUSSEL, Enrique. **1492: o encobrimento do outro: a origem do mito da modernidade**. Rio de Janeiro: Vozes, 1993.

<sup>20</sup> On the complex process involved in colonialism and its relationship with the theme of race, see FANON, Frantz. **Os condenados da Terra**. Juiz de Fora: Editora Juiz de Fora, 2005. FANON, Frantz. **Pele negra, máscaras brancas**. Salvador: EDUFBA, 2008.



instrument that made possible the maintenance and stability of this narrative as official, and that, far from ending with the temporal end of colonies, persisted in the form of coloniality<sup>21</sup>. In colonialism, according to Trouillot<sup>22</sup>, the practice of slavery imposed a degree of more significant inferiority in humanity on black people. On the contrary, it prevented the Enlightenment values from being extended to them. It placed them on the threshold of humanity itself, oscillating between the recognition as persons and the definition as things. Moreover, this practice, while naturalizing the condition of these individuals to subaltern places, classified them as objects incapable of offering resistance, presenting political projects, and producing their history<sup>23</sup>.

The colonial narrative defined black people as obedient and incapable of thinking for themselves, which would justify the situation imposed on them without any reaction. Trouillot describes the contents of an 18th-century letter that a settler from the Island of São Domingos sent to his wife in France. To reassure her, he stated that freedom for blacks was a chimera:<sup>24</sup>:

There is no movement among our Negroes. (...) They don't even think of it. They are very tranquil and obedient. A revolt among them is impossible." (...) "We have nothing to fear on the part of the Negroes; they are tranquil and obedient." (...) "The Negroes are very obedient and always will be. We sleep with doors and windows wide open. Freedom for Negroes is a chimera."<sup>25</sup>.

The framing in this period used philosophical, religious, and juridical categories as mechanisms of justification. That is why one of its guises - that of constitutionalism, played a central role in this construction. The Enlightenment, as a philosophical movement, and the historical experiences of the Bourgeois Revolutions of the United States (1776) and France (1789) laid the foundations for this newborn constitutionalism, mainly because they placed man as the center of all purposes, guided by the principles of equality, liberty, and fraternity<sup>26</sup>.

<sup>21</sup> On colonialism and coloniality, See CASTRO-GÓMEZ, Santiago; GROSFUGUEL, Ramón. Giro decolonial, teoría crítica y pensamiento heterárquico. In: SANTIAGO CASTRO-GÓMEZ; RAMÓN GROSFUGUEL (Org.). . **El giro decolonial Reflexiones para una diversidad epistémica más allá del capitalismo global**. Bogotá: Siglo del Hombre Editores, 2007. p. 9–24. Available on: <www.javeriana.edu.co>. Accessed in: April, 12<sup>th</sup>, 2019.

<sup>22</sup> TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995.

<sup>23</sup> BUCK-MORSS, Susan. **Hegel e o Haiti**. São Paulo: n-1 Edições, 2017.

<sup>24</sup> Chimera consisted of a mythological beast with an appearance that was a hybrid of a lion's head, goat's body and serpent's tail and released flame through its nostrils.

<sup>25</sup> TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995, p. 72.

<sup>26</sup> ALMEIDA, Sílvio Luiz De. **O que é racismo estrutural?** Belo Horizonte: Grupo Editorial Letramento, 2018, p. 21.



However, these principles, transformed into constitutional norms with a claim to universality<sup>27</sup>, ran into contradictions. If every human being had equality, liberty, and fraternity, why didn't they apply to the native peoples and the blacks kidnapped and forced to come to America? If France had the Declaration of the Rights of Man and of the Citizen, why did slavery exist for its colonies?

On the one hand, the founding fathers of the United States of America defended equality and freedom emphatically against the "potential slave situation" that the English Crown intended to impose on them. Additionally, they did not hesitate to use the slavery metaphor to refer to the relationship between the colonies and the metropolis. On the other hand, these same champions of freedom and independence from England were and continued to be enslavers after their metropolitan emancipation. These successive discursive inconsistencies make the justification of the official memory intended by modern constitutionalism expose some of the original weaknesses.

As said above, the fact that those specific memories are relegated to clandestinity and remain underground does not mean that they have ceased to exist. That is why it is necessary to speak of Haitian Revolution as a counterpoint to the narrative taken as official. Due to the idealizations in everyday life that serve to reiterate the official narrative and frame memory, to speak of a revolution engineered by black was something that did not pass through the imagination of any settler. The return to the memory of the Haitian Revolution, which we want to highlight here, gains a unique sense of counter-narrative for being a simultaneous fact to the experiences of the French and American revolutions that serve the official memory as models of constitutionalism.

The Haitian Revolution, taken as a historical experience but also as an imaginary and as the possibility of building an anti-colonial counter-narrative, represents this underground memory because it presents new facts and new readings for historical facts, which make evident the contradictions of the official memory sustained by the Enlightenment. Furthermore, the Haitian Revolution, already in its time, became

---

<sup>27</sup> Regarding the claim to universality of rights, in legal-naturalist language, it is worth remembering the sentence that opens the United States Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by the Creator of certain inalienable rights, among which are life, liberty and the pursuit of happiness." Likewise, in France, the Declaration of the Rights of Man and of the Citizen carries this claim in its title and in its opening text, which says: "The aim of all political association is the conservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression." Our objective here is to highlight the structural contradictions of these linguistic beliefs and pretensions that are presented as the ontology of revolutions itself.



controversial for recognizing any resistance by enslaved and black people was a sign of recognition of their humanity, which contradicts the common sense that the black would have as essence, the satisfaction of serving. Once again, the official memory showed its fragility and contradiction because those who serve for pleasure and do not show any resistance would not need to be subjected to measures, some legalized, others frontally illegal and violent<sup>28</sup>. Why was a Code Noir<sup>29</sup> necessary if the colonists' narrative repeated that cases of resistance to slavery were punctual, not generalizable, and unrelated to political decisions and forms of social and economic organization?

To admit widespread resistance was to assume that the system did not work perfectly, as one wanted to believe, which would challenge the Enlightenment's ontological and political certainties. Thus, the existence of the Haitian Revolution and constitutionalism had the power to confront the conceptual frameworks of modernity: race, colonialism, and slavery.

It is important to emphasize that by taking the Haitian Revolution as a counterpoint, a counter-narrative to the Enlightenment's claim to humanistic universality, one does not deny the gains that this tradition brought to the quest for human emancipation. Nevertheless, one cannot ignore that this same tradition presented contradictions between its ideals and practices. To talk about revolutionary processes is to assume hits and contradictions, so if the Bourgeois Revolutions have importance in the construction of modern constitutionalism, one cannot deny that the Haitian Revolution has it too. Taking equality and freedom as foundations of constitutionalism, Santo Domingo/Haiti extended the reach of these values to those who, at that historical moment, were violently excluded from them: blacks in diaspora and native peoples of the American continent<sup>30</sup>.

---

<sup>28</sup> Regarding the dubiousness between legal and illegal, the Brazilian experience of Feijó Law in 1831, enacted to ban the slave trade which until today is referred to as the "law for English to see" and which gives rise to this popular expression, calls attention. The law prohibited the Atlantic traffic of enslaved people and, additionally, illegally trafficked Africans become free. We know, however, that after the law, trafficking intensifies and there is a long way to go for illegally enslaved Africans to obtain institutional recognition of their freedom.

<sup>29</sup> Denomination of the French legal regulation that disciplined slavery in the colonies.

<sup>30</sup> We cannot fail to mention the participation of women in the Haitian Revolution, such as Suzanne Sanité Bélair, Cécile Fatima, Marie Jeanne Lamartiniere, Marie Sainte Dédée Bazile, Henriette Saint-Marc, Marie Claire Heureuse, Felicité Bonheur, Catherine Flon. The Haitian revolutionaries played an important role in the committees that managed the plantations, and in the direct confrontation during revolutionary moments. In addition, at every New Year's celebration, these revolutionaries are honored by Haitians by eating Soup Joumou (pumpkin soup). This tradition refers to the ritual where Haitian revolutionaries ate the forbidden soup after being freed from slavery the day before independence. For more details, See: DUARTE, Evandro Charles Piza; QUEIROZ, Marcos Vinícius Lustosa. A Revolução Haitiana e o Atlântico Negro: o



Additionally, one must note the complexities surrounding revolutionary moments from which the Haitian Revolution does not escape. Even though it is a historical event that the French Revolution influenced, one cannot deny that the latter was also influenced by the Haitian Revolution, especially during the period under Toussaint L'Ouverture. At the same time, it is a mistake to say that the Haitian Revolution is a proselyte of the French Revolution because contextual peculiarities made it possible the insurgency, the revolt of Haitian revolutionaries who, at other times, were under the violent yoke of slavery<sup>31</sup>.

One can read the revolutionary events on both sides of the Atlantic as interrelated and simultaneous. For example, the constituent moments in revolutionary France suffered interference from the demonstrations in Santo Domingo/Haiti, so much that the island mulattos<sup>32</sup> demanded political rights and representations in the French Assembly while simultaneously seeking to maintain black slavery<sup>33</sup>. As an outcome, the mulattos were excluded when the Declaration of the Rights of Man and Citizen was promulgated. This exclusion was influenced by the Maritime Bourgeoisie, profiting from the slave trade, and white colonial owners, who argued that granting rights to the mulattos at that moment was to abolish slavery in another near time. As a result, the French Constituent Assembly once again denied them humanity. As a result, the French Constituent Assembly once again denied them humanity. In turn, this event influences one of the seminal

---

Constitucionalismo em face do Lado Oculdo da Modernidade / The Haitian Revolution and the Black Atlantic: Constitutionalism in face of the Dark Side of Modernity. *Revista Direito, Estado e Sociedade*, v. 0, n. 49, 2016. Available on: <<https://revistades.jur.puc-rio.br/index.php/revistades/article/view/680>>. Accessed on Jan. 26th, 2021.

<sup>31</sup> On this complexity of the Haitian and French revolutionary process, See: JAMES, Cyril Lionel Robert. *Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos*. 1. ed. São Paulo: Boitempo Editorial, 2010; DUBOIS, Laurent. **A colony of citizens: revolution & slave emancipation in the French Caribbean, 1787–1804**. Oakland: The University of North Carolina Press, 2004a. DUBOIS, Laurent. **Avengers of the New World - The Story of the Haitian Revolution**. Cambridge: Harvard University Press, 2004b.

<sup>32</sup> Here we use the terminology used by scholars and according to the racial classifications of the time. See JAMES, Cyril Lionel Robert. *Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos*. 1. ed. São Paulo: Boitempo Editorial, 2010; DUBOIS, Laurent. **A colony of citizens: revolution & slave emancipation in the French Caribbean, 1787–1804**. Oakland: The University of North Carolina Press, 2004a. DUBOIS, Laurent. **Avengers of the New World - The Story of the Haitian Revolution**. Cambridge: Harvard University Press, 2004b. In Brasil MOREL, Marco. **A revolução do Haiti e o Brasil escravagista - o que não deve ser dito**. São Paulo: Paco Editorial, 2017.

<sup>33</sup> A very sensitive topic in Haitian history was racial classification. James draws attention to the fact that there was an internal dispute between white settlers, mulatto landowners, poor whites, and enslaved blacks. The colonists had no sympathy for the mulattos, who in turn did not sympathize with the enslaved and the latter two were hated by both poor whites and colonists. Evidently, this is just a simplification of the real situation that was found in São Domingos, which influences and has directly influenced the social and political events of that state. For more details on these racial divisions and classifications, see MOREL, Marco. **A revolução do Haiti e o Brasil escravagista - o que não deve ser dito**. São Paulo: Paco Editorial, 2017 e JAMES, Cyril Lionel Robert. *Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos*. 1. ed. São Paulo: Boitempo Editorial, 2010.



moments of the Revolution of Santo Domingo/Haiti, after the death of Ogé, an important mulatto in this dispute<sup>34</sup>.

Another example of the influence of the events in Santo Domingo on the French Revolution, during the period of most outstanding participation of the masses in this political process, from March 1793 to June 1794, was the decree abolishing slavery in the French colonies<sup>35</sup>. Susan Buck-Morss argues that all of Europe was aware of every step in Santo Domingo/Haiti, as it was the most profitable colony in the world system at that period. Population in general, intellectuals, and even well-known Enlightenment thinkers knew of the importance of the Island to the capitalist economy in that period<sup>36</sup>.

As seen before, the Atlantic revolutions on both sides consist of complex, interrelated, ebb-and-flow but peculiar and autonomous processes. Despite this observation, in the narrative and official memories of the revolutions and constitutionalism, the Haitian Revolution gains, even today, a tangential, figurative, and almost clandestine role, even if it has understood and applied the ideas of the Enlightenment more broadly. Trouillot<sup>37</sup> draws attention to a curious point, to say the least: that the Haitian Revolution entered history by being unthinkable at the same time it was happening. That is, there was and is a framing work of memory that relegated the Haitian Revolution and Haitian constitutionalism to the underground pages of these two paradigms. Furthermore, in this sense, we speak in this article of the clandestineness of official memories about these processes, thus configuring an underground memory.

From this dominant narrative, which deprives enslaved people of their agency, objectifying them and making them apolitical, it is possible to explain in what ways the black insurrection becomes a problem for white bourgeois revolutionary ideals. Indeed, the slave system presumed the normality of the domination system. The Negro insurrection was seen as an act of maladjusted or rebellious adolescents. However, this

---

<sup>34</sup> JAMES, Cyril Lionel Robert. **Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos**. 1. ed. São Paulo: Boitempo Editorial, 2010, p. 79-82.

<sup>35</sup> During this period, England was fighting to take São Domingos and the pressure to keep the island under French rule was great. Abolishing slavery with recognition from France was one more reason to have the black revolutionary army on your side. So much so, that in this period Toussaint L'Ouverture and Sonthanax, upon learning of the French Decree that definitively abolished slavery, expelled the English from the Windward Islands. JAMES, Cyril Lionel Robert. **Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos**. 1. ed. São Paulo: Boitempo Editorial, 2010, p. 141.

<sup>36</sup> Buck-Morss even raises the hypothesis that Hegel, when writing the Phenomenology of the Spirit, took as a basis the events that took place in São Domingos/Haiti. For more details see: BUCK-MORSS, Susan. **Hegel e o Haiti**. São Paulo: n-1 Edições, 2017.

<sup>37</sup> For more details on the process of silencing the Haitian Revolution, See: TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995, p. 73.



belief became insufficient to justify the system and even failed to convince the colonists themselves of its plausibility. As Trouillot says: "Would each single explanation be true, the sum of all of them would say little of the causes and effects of the repetition of such cases."<sup>38</sup>

The paradox of this process is that one understands the Haitian Revolution as unthinkable, an impossible event, a non-event, when one lacks conceptual references to describe it to the point that when the news of the Revolution on the Island reached France, many preferred to believe that it was false information. Even after it was confirmed, the French described it as a miscalculation by the landowners.<sup>39</sup>

From this perspective, if the United States Revolution demonstrated that it was possible to end colonial domination within the New World and the French Revolution destroyed the feudal structures of the Old World, the Haitian Revolution confronted colonialism by abolishing slavery.<sup>40</sup> As far as constitutionalism is concerned, if the United States and France inaugurate a juridical, political model based on the claim of universality of rights from the principles of equality and freedom, it was the Haitian constitutionalism that realized them more fully through the abolition of slavery and the search for racial equality<sup>41</sup>.

#### 4. Underground Constitutionalism and the Exposure of Fractures in the Pretentiously Universal Constitutionalism

In this last part, we will highlight the peculiarity in Haitian constitutionalism, perhaps the most crucial point in its constitutions<sup>42</sup> and its cornerstone, the abolition of slavery and

<sup>38</sup> TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995, p. 84.

<sup>39</sup> TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995, and JAMES, Cyril Lionel Robert. **Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos**. 1. ed. São Paulo: Boitempo Editorial, 2010.

<sup>40</sup> MOREL, Marco. **A revolução do Haiti e o Brasil escravagista - o que não deve ser dito**. São Paulo: Paco Editorial, 2017.

<sup>41</sup> It is important to emphasize that we are not idealizing the Haitian revolutionary process here. This work assumes that every revolution and, consequently, the constituent process resulting from it, are marked by numerous contradictions. With the Haitian Revolution it was no different. For a deeper reading of the contradictions and complexity of the historical process in Haiti, See the reference work of JAMES, Cyril Lionel Robert. **Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos**. 1. ed. São Paulo: Boitempo Editorial, 2010.

<sup>42</sup> Altogether Santo Domingo and Haiti had five constitutions: 1801 (Toussaint Louverture), 1805 (Jacques Dessalines), 1806 (Alexandre Pétion), 1807 (Henri Cristophe) e 1816 (Alexandre Pétion). In all of them there was a ban on slavery. In this paper, we will focus on the first two.



the search for racial equality. Haiti's first Constitution of 1801 stated in "Article 3. There can be no slaves in this territory, servitude is abolished here forever. All men who are born here, live and die free and French"<sup>43</sup>. In the context of this Constitution, it is possible to see in the final part of the mentioned Article 3 that there is still no explicit mention or claim for autonomy from France. On the contrary, the claim is for French nationality and applying the Declaration of the Rights of Man and of the Citizen on Haitian soil. In this context, the claim for the end of slavery gains force as a counter-narrative that expresses the fractures of freedom and equality without abolition.

The preamble of the Constitution of 1805, known as Dessalines, affirms, once again, freedom as synonymous with the end of slavery and an allusion to the inferiority narrative based on the metaphor of majority/minority:<sup>44</sup>:

In the presence of the supreme being, before who all mankind is equal and who has spread so many species of creatures over the surface of the earth for the purpose of manifesting his glory and power through the diversity of his works, in the presence of all nature, by who we have been so unjustly and for so long considered as rejected children<sup>45</sup>.

This abolitionist reaffirmation confronts Haiti with imperialist pretensions, considering that the slavery system economically and socially sustained colonialism<sup>46</sup>. Moreover, it gains a new dimension by aligning the end of slavery with the fight against racial discrimination, linking the racial and colonial components. This issue becomes evident in the text of the Dessalines Constitution, which determines that among the children of the same family, there would be no distinction of color, considering that from that moment on, all Haitians are recognized by the generic form of blacks.

---

<sup>43</sup>SAINT-DOMINGUE CONSTITUTION, 1801, Available on: < [https://mjp.univ-perp.fr/cons tit/ht1801.htm](https://mjp.univ-perp.fr/cons%20tit/ht1801.htm)>. Accessed in Feb, 22th, 2020, Art. 3o. (Tradução livre) Article 3. Il ne peut exister d'esclaves sur ce territoire, la servitude y est à jamais abolie. Tous les hommes y naissent, vivent et meurent libres et Français.

<sup>44</sup> On the importance of the majority/minority metaphor in the philosophical debate of the Enlightenment, its self-naming, and its use as a historical category, it is interesting to consult one of the basic texts of the European Enlightenment KANT, Immanuel. Answer to the question: What is Enlightenment? In: **A Paz Perpétua e Outros Opúsculos**. Tradução Artur Mourão. Lisboa: Edições 70, 1995.

<sup>45</sup> The text of the Dessalines Constitution of 1805 can be consulted at CONSTITUTION DE L'EMPIRE D'HAÏTI, 1805. Available on: < [https://mjp.univ-perp.fr/constit/ ht1805.htm](https://mjp.univ-perp.fr/constit/ht1805.htm)>. Acesso em: 22 fev. 2020, Preâmbulo. En présence de l'Être Suprême, devant qui les mortels sont égaux, et qui n'a répandu tant d'espèces de créatures différentes sur la surface du globe, qu'aux fins de manifester sa gloire et sa puissance, par la diversité de ses oeuvres, En face de la nature entière dont nous avons été si injustement et depuis si longtemps considérés comme les enfants réprouvés (...)

<sup>46</sup> FISCHER, Sibylle M. *Constituciones haitianas: ideología y cultura posrevolucionarias*. Casa de las Américas, 2003, p. 17.



The Constitution states in Art.14: "All distinction of color among the children of one and the same family, whose head of state is the father, must necessarily cease; Haitians will now be known only under the generic name of Blacks."<sup>47</sup>

At this point, we do not have the category of race created from the debate on biology, which will only emerge in the late nineteenth and early twentieth centuries. Being Haitian expressed, in this context, a political will, above all. To say that all Haitians would be considered blacks directly affronted the colonial logic because the subaltern becomes the paradigm of universality.

However, such a denomination may lead to the question of whether it would be a contradiction with the pretended will to eradicate racial discrimination. About this question, it is necessary to clarify two points. The first is that Haiti's independence was not internationally recognized when this constitution was promulgated. Even though it had lost the war, France did not believe in the country's independence. Relations between Haiti and France remained dubious, and there was a fear that the former colonists, with support from France, would return to reclaim their former properties. The designation of Haitians as blacks, coupled with a ban on whites acquiring property in the country, was a way to prevent this unwanted return.<sup>48</sup>

The second point is a shared fear of the metropolises that the Haitian Revolution would serve as an example and expand throughout the rest of the region. The mere publicity provoked insurrections on the continent. However, Haiti was pressured not to "export the Revolution" to the rest of the countries in the region, using the need for diplomatic recognition by the imperial powers. The claim that all Haitians are black presented itself as a way to get out of this colonial trap. Consequently, the country created a way to acquire citizenship beyond the traditional blood and territorial criteria. It "reassured" the imperial powers while opening the possibility to invert this linguistic-

---

<sup>47</sup>CONSTITUTION DE L'EMPIRE D'HAÏTI, 1805. Available on: < <https://mjp.univ-perp.fr/constit/ht1805.htm>>. Accessed in: Feb, 22th, 2020. "Article 14: Toute acception de couleur parmi les enfants d'une seule et même famille, dont le chef de l'État est le père, devant nécessairement cesser, les Haïtiens ne seront désormais connus que sous la dénomination génériques de Noirs." Regarding the contradictions and tensions inherent in the process of building memories, note the patriarchal reference that still persists in the bases of Haitian constitutionalism, with the allusion to the father as head of state of his house. This point allows us to clarify our argument in this article. The historical facts that occurred in the 18th century in France, the United States, and Haiti are not linear, logical, and sequenced in and of themselves. It is historiography and historical, political, social, and economic narratives, as well as the cultural construction of symbologies and stories about history, which will shape, as a whole, interpretations, and points of view on these events, giving them greater or lesser importance and legitimizing force for the present.

<sup>48</sup> FISCHER, Sibylle M. *Constituciones haitianas: ideología y cultura posrevolucionarias*. Casa de las Américas, 2003, p. 20-22.



constitutional construction so that all its anti-discriminatory potential became even more evident. If it were possible to say, by inverting the phrase, that all blacks are Haitians, Haiti would thus become a possibility for people who had fled from slavery or found themselves in a situation of oppression to find a place of recognition of their citizenship<sup>49</sup>.

In this sense, not only the Haitian Revolution but also Haitian constitutionalism emerge as unprecedented historical events capable of impacting the modern colonial-capitalist system. By placing the abolition of slavery as a foundational element of the State, this non-event directly questioned the claim of universality of modern constitutionalism based on the US and French experiences. Haitian constitutionalism, contemporary to the other two, reveals the restrictive character of citizenship they intended. Haiti evidences the modernity/coloniality logic, the intimate relations between colonialism, slavery, and race, even within the parameters of the time and without the need for any anachronisms.

The self-liberation of the enslaved caused fissures in the prevailing mode of social organization, which is why it imposed the reconstitution of the region's general models of existence and grammar, allowing for new readings and appropriations of the concepts of citizenship, freedom, equality, and democracy<sup>50</sup>. The Haitian revolution and constitutionalism represented, on the one hand, a possible horizon for the enslaved; on the other hand, for the local elite and the former metropolises, they represent fear, especially the fear of their spread throughout the Americas.<sup>51</sup>

The impacts and resonance of the Haitian Revolution in Brazil are illustrative. In a seminal work, Marcos Vinicius Lustosa Queiroz shows the fear of Haiti present in the genesis of Brazilian constitutionalism, throughout the debates of the Constituent Assembly of 1823, in the granting of the Constitution of 1824, and the various insurrections, especially those of the Regency<sup>52</sup>. The author also explains how fear drove the public security policy and plays a central role in the definition of citizenship, to restrict

<sup>49</sup> FISCHER, Sibylle M. *Constituciones haitianas: ideología y cultura posrevolucionarias*. Casa de las Américas, 2003, p. 24-26.

<sup>50</sup> BUCK-MORSS, Susan. *Hegel e o Haiti*. São Paulo: n-1 Edições, 2017.

<sup>51</sup> On the fear of the Haitian Revolution in the Americas and, especially in Brazil, a phenomenon known by historiography as Haitianization, See MOREL, Marco. *A revolução do Haiti e o Brasil escravagista - o que não deve ser dito*. São Paulo: Paco Editorial, 2017. E AZEVEDO, Célia Maria Marinho De. *Onda negra, medo branco: o negro no imaginário das elites do Séc. XIX*. São Paulo: Annablume Editora, 2008.

<sup>52</sup> On the connection between the Haitian Revolution and the constituent process of 1823, we recommend QUEIROZ, Marcos Vinicius Lustosa. *Constitucionalismo brasileiro e o atlântico negro: a experiência constitucional de 1823 diante da Revolução Haitiana*. 2017. 200 f. Universidade de Brasília, 2017. Disponível em: <[http://repositorio.unb.br/bitstream/10482/23559/1/2\\_017\\_MarcosVinicius\\_LustosaQueiroz.pdf](http://repositorio.unb.br/bitstream/10482/23559/1/2_017_MarcosVinicius_LustosaQueiroz.pdf)>. Accessed in: 12 set. 2018.



access to black people, maintain the privileges tied to the exercise of private property, and the slave system and white supremacy. Thus, equality and freedom are, therefore, watched and racially marked<sup>53</sup>. In the author's own words, "the fear of the Haiti effect in the Brazilian state formation directly interferes with the emergence of Brazilian constitutionalism, denying citizenship and its consequences to black people of African descent who were here."<sup>54</sup>

In Brazil, the black wave<sup>55</sup>, allied to the Haitian Revolution, continued to spread over time, claiming humanity and emancipation, even facing this barrier and relegated to the clandestineness of social disputes<sup>56</sup>. In the dispute, the restrictions on citizenship continued for fear of equal rights for enslaved people. The Haiti effect alarm remained approximately thirty years after the Brazilian Constitution of 1824<sup>57</sup>.

In this latest case, Abadé De Pradt proposed one of the most compelling narrative constructions used to combat the effects of the Haitian Revolution: "curse or not say." In short, De Pradt proposed to silence and conceal the Revolution and, at the same time, to execrate and reject the repetition of the "horrors" of Santo Domingo. According to Morel, this was the most prevalent narrative in 19th-century Brazil. It allowed to maintain the slaveholding order in the hands of its beneficiaries without any rupture and, above all, removed the enslaved person's role in self-liberation<sup>58</sup>. Indirectly, the slow, gradual, and secure abolition was another efficient narrative that used the Haitian Revolution as a "bad example."<sup>59</sup>

<sup>53</sup> QUEIROZ, Marcos Vinícius Lustosa. **Constitucionalismo brasileiro e o atlântico negro: a experiência constitucional de 1823 diante da Revolução Haitiana**. 2017. 200 f. Universidade de Brasília, 2017. Disponível em: <[http://repositorio.unb.br/bitstream/10482/23559/1/2\\_017\\_MarcosViniciusLustosaQueiroz.pdf](http://repositorio.unb.br/bitstream/10482/23559/1/2_017_MarcosViniciusLustosaQueiroz.pdf)>. Acesso em: 12 set. 2018.

<sup>54</sup> QUEIROZ, Marcos Vinícius Lustosa. **Constitucionalismo brasileiro e o atlântico negro: a experiência constitucional de 1823 diante da Revolução Haitiana**. 2017. 200 f. Universidade de Brasília, 2017. Disponível em: [http://repositorio.unb.br/bitstream/10482/23559/1/2\\_017\\_MarcosViniciusLustosaQueiroz.pdf](http://repositorio.unb.br/bitstream/10482/23559/1/2_017_MarcosViniciusLustosaQueiroz.pdf) . Acesso em: 12 set. 2018.

<sup>55</sup> Onda Negra (Black Wave) is the term used to designate numerous black revolts in search of human emancipation, mainly in Brazil. For more details, see: AZEVEDO, Célia Maria Marinho De. **Onda negra, medo branco: o negro no imaginário das elites do Séc. XIX**. São Paulo: Annablume Editora, 2008.

<sup>56</sup> RIBEIRO, Sabina Gladys. O desejo da liberdade e a participação de homens livres pobres e de cor na independência do Brasil. **Cedes**, v. 22, n. 58, p. 21–45, 2002. Disponível em: <<http://www.scielo.br/pdf/ccedes/v22n58/v22n58a03.pdf>>. Acesso em: 4 mar. 2019.

<sup>57</sup> On this topic see AZEVEDO, Célia Maria Marinho De. **Onda negra, medo branco: o negro no imaginário das elites do Séc. XIX**. São Paulo: Annablume Editora, 2008. Também MOREL, Marco. **A revolução do Haiti e o Brasil escravagista - o que não deve ser dito**. São Paulo: Paco Editorial, 2017.

<sup>58</sup> MOREL, Marco. **A revolução do Haiti e o Brasil escravagista - o que não deve ser dito**. São Paulo: Paco Editorial, 2017, pp. 159-161.

<sup>59</sup> On this topic, See CHALHOUB, Sidney. **A força da escravidão: ilegalidade e costume no Brasil oitocentista**. – 1ª ed. – São Paulo: Companhia das Letras, 2012. CHALHOUB, Sidney. **Visões da liberdade: uma história das últimas décadas da escravidão na Corte**. São Paulo: Companhia das Letras, 2011.



So far, we intuit that the racial marker seems to be a constant that radiates its effects under the pretext of change and progress at the price of maintaining the same privileges derived from silent and violent segregation due to colonialism and its persistent coloniality in the spheres of power, knowledge, and existence. In other words, a framing of memory to hide the struggles, disputes, and claims for citizenship of black people. Equality and freedom are central pillars of modern constitutionalism. However, we cannot ignore the tensions that constitute it. Disregarding these historical and social disputes engendered by black people, represented here in the memory of the Haitian Revolution and constitutionalism, is a choice, a process of framing memory, which throws them underground.

## 5. Final Considerations

Memory is an important factor in the constitution of individual or collective identities, as seen in this paper. Memory settles the internal cohesion of its members, spaces of belonging, and boundaries. Mainly, it is necessary to consider the construction of memory and identities in plural societies and the disputes that derive from this process. Thus, constitutional memory and identity are associated with alterity since their constitution with the other in a negotiated manner. Some memories are part of the official narrative that must be told; others are relegated to the historical underground. For official history to be perennial, it must count on a justification and successive discourses that coherently sustain its existence; otherwise, it becomes a violent imposition.

The official narrative of modernity turned non-European narratives subterranean to justify itself. To do so, it relegated native and black people to the dubious condition of sub-human or things, incapable of offering resistance, having autonomy, and producing history. Using narratives such as racial democracy to determine humanity, it found justification for concealment and not negotiating these relationships. On the contrary, it became a violent imposition.

The construction of this official memory of modernity counted on philosophical, religious, and legal justifications, the latter evidenced in constitutionalism. The dominant reading of Law's meaning, and the disguise of its contradictions, transformed the Haitian Revolution and constitutionalism into non-events, relegating them to clandestinely and



telling the story that any resistance engendered by blacks would be unthinkable. In this sense, we understand and maintain throughout this article that the Haitian Revolution and Haitian constitutionalism are, even today, underground memories of constitutionalism. Perhaps it is expensive to assume the error of a subjective universality that starts from one's province and projects itself imposingly to all. These underground memories attack the cornerstone of the whole economic and social system that sustains the tradition of liberal constitutionalism, namely slavery and the related racial discrimination.

The subterranean memories put the official memory in check in a region where the large population contingent is of native and enslaved black people. Indeed, if exposed, this fracture can potentially collapse the entire empire-colonial system. For this reason, in Brazil, silence is imposed, sometimes by the "curse or not say," and sometimes by the persistence of coloniality. As an example, the idea of racial democracy developed the defense of *mestizaje* as an element of national identity at the same time that the Brazilian Constitution of 1934 consolidates in "Art. 138 - It is incumbent upon the Union, the States, and the Municipalities, under the terms of the respective laws: (...) b. to stimulate eugenic education."<sup>60</sup>

Even today, it is possible to find a constitutional narrative that minimizes Haiti's effects and significance, with arguments such as blacks also enslaved, enslaved people were better fed than the English, or the Haitian Revolution was violent. Along with the erasure from books and debates. In this regard, Trouillot warns, "The joint effect of these two types of formulas is a powerful silencing: whatever has not been cancelled out in the generalities dies in the cumulative irrelevance of a heap of details"<sup>61</sup>.

Keeping the Haitian Revolution and constitutionalism underground relegates to insignificance three vicissitudes of modern revolutionary and constitutional processes: slavery, colonialism, and racism. These run parallel and simultaneously to the claims of freedom and equality. Concealment of these tensions and contradictions prevents a critical rereading of the past and its significance for the present. To ignore this non-event

---

<sup>60</sup> BRASIL. **Constituição da República dos Estados Unidos do Brasil de 1934**. Disponível em: [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao34.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao34.htm), Art. 138. Sobre educação eugênica e a Constituição de 1934, ver ROCHA, Simone. **Educação eugênica na Constituição brasileira de 1934**. X ANPED SUL, Florianópolis, outubro de 2014. Disponível em: [http://xanpedsul.faed.udesc.br/arq\\_pdf/1305-1.pdf](http://xanpedsul.faed.udesc.br/arq_pdf/1305-1.pdf) Acesso em: 15 de setembro de 2020.

<sup>61</sup> TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995, p. 97



is to insist and not accept that the constitution is not just a text and that it is necessary to make the struggles and disputes over its meanings visible.

Treating the Haitian Revolution as a non-event only makes sense for an official narrative that has difficulty dealing with differences of which colonialism and, later, coloniality is a synthesis. The adjective non-event to refer to the Haitian Revolution stems from the imposing need to categorize the subaltern other as a non-agent producer of history, an object incapable of producing strategic and structured political actions. Insurgency, revolt, and revolution have always been a possible horizon for those subjected to modern slave violence. Finally, Trouillot reminds us, "The less colonialism and racism seem important in world history, the less important also the Haitian Revolution."<sup>62</sup>

The struggle of black people for emancipation, represented in this paper by a fragment of history, the Haitian Revolution and constitutionalism, helps us understand the partiality of the official narrative that presents itself as universal when it reveals to be a dispute of narratives that questions the primacy of the universality of rights for all people, as it ignores those excluded from these processes. From a factual point of view, Haiti existed and questioned the foundations of the revolutionary and constitutional paradigms of the United States and France. However, the official narratives about the revolution and constitutionalism make it a footnote of minor relevance, what we named a subterranean memory. Conversely, Michael Pollak points out that to say that something is clandestine or subterranean in the construction of memory is not to say that it no longer exists but that a correlation of forces prevents it from gaining visibility. In this article, we seek to reflect on these tensioning points that the Haitian Revolution raised, making the ideals of freedom and equality that characterize modern constitutionalism debatable from these tensions, following the steps of C.L.R. James, Susan Buck-Morss, and Laurent Dubois.

Mainly, we ask ourselves why law textbooks or classes about modern constitutionalism leave out the Haitian Revolution and constitutionalism. Why, when talking about freedom and equality, do we fail to make explicit the tensions that permeate the beginnings of constitutionalism and keep the Haitian Revolution and constitutionalism underground?

---

<sup>62</sup> TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995, p. 98.



We can claim that any constitutional democratic project that throws these tensions clandestinely and into the underground, excluding them from the world and national memories, is bound to reproduce and maintain the destiny of black people: silence. Moreover, in a country like Brazil, marked since its birth with the Pecha of slavery, colonialism, and racism, it is not forgetfulness; it is a choice.

### Tradução

**Felipe Fernando Abreu Ferreira**, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, Rio de Janeiro, Brasil. E-mail: felipefernandofjb@gmail.com. ORCID: <https://orcid.org/0000-0001-8600-9994>.

### Revisão

**Maria Fernanda Salcedo Repolês**, Universidade Federal de Minas Gerais, Belo Horizonte, Brasil. E-mail. mariaf.salcedo@gmail.com. ORCID: <https://orcid.org/0000-0002-6274-0026>.

### Referências bibliográficas

ALMEIDA, Sílvio Luiz de. **O que é racismo estrutural?** Belo Horizonte: Grupo Editorial Letramento, 2018.

AZEVEDO, Célia Maria Marinho De. **Onda negra, medo branco: o negro no imaginário das elites do Séc. XIX.** São Paulo: Annablume Editora, 2008.

BERNARDINO-COSTA, Joaze; GROSGOQUEL, Ramón. Decolonialidade e perspectiva negra. **Revista Sociedade e Estado**, v. 31, p. 15–24, 2016. Disponível em: <<http://www.scielo.br/pdf/se/v31n1/0102-6992-se-31-01-00015.pdf>>. Acesso em: 11 abr. 2019.

BRASIL. **Constituição da República dos Estados Unidos do Brasil de 1934.** Disponível em: <[http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao34.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao34.htm)>.

BUCK-MORSS, Susan. **Hegel e o Haiti.** São Paulo: n-1 Edições, 2017.

CASTRO-GÓMEZ, Santiago; GROSGOQUEL, Ramón. Giro decolonial, teoría crítica y pensamiento heterárquico. In: SANTIAGO CASTRO-GÓMEZ; RAMÓN GROSGOQUEL (Org.). **El giro decolonial Reflexiones para una diversidad epistémica más allá del capitalismo global.** Bogotá: Siglo del Hombre Editores, 2007. p. 9–24. Disponível em: <[www.javeriana.edu.co](http://www.javeriana.edu.co)>. Acesso em: 12 abr. 2019.

CHALHOUB, Sidney. **A força da escravidão: ilegalidade e costume no Brasil oitocentista.** – 1ª ed. – São Paulo: Companhia das Letras, 2012.



CHALHOUB, Sidney. **Visões da liberdade: uma história das últimas décadas da escravidão na Corte**. São Paulo: Companhia das Letras, 2011.

CONSTITUTION DE L'EMPIRE D'HAÏTI, 1805. Disponível em: < <https://mjp.univ-perp.fr/constit/ht1805.htm>>. Acesso em: 22 fev. 2020.

DUARTE, Evandro Charles Piza; QUEIROZ, Marcos Vinícius Lustosa. **A Revolução Haitiana e o Atlântico Negro: o Constitucionalismo em face do Lado Oculto da Modernidade**. *Revista Direito, Estado e Sociedade*, v. 0, n. 49, 2016. Disponível em: <<https://revistades.jur.puc-rio.br/index.php/revistades/article/view/680>>. Acesso em: 26 jan. 2021.

DUBOIS, Laurent. **A colony of citizens: revolution & slave emancipation in the french caribbean, 1787–1804**. Okland: The University of North Carolina Press, 2004a.

DUBOIS, Laurent. **Avengers of the New World - The story of the haitian revolution**. Cambridge: Harvard University Press, 2004b.

DUBOIS, Laurent. Luzes Escravizadas: Repensando a história intelectual do Atlântico francês. **Estudios Afro-Asiáticos**, v. 26, n. 2, p. 331–354, 2004c. Disponível em: <<https://scholars.duke.edu/display/pub1125474>>. Acesso em: 23 fev. 2019.

DUSSEL, Enrique. **1492: o encobrimento do outro: a origem do mito da modernidade**. Rio de Janeiro: Vozes, 1993.

DUSSEL, Enrique. Europa, modernidade e eurocentrismo. In: LANDER, EDGARDO (Org.) **A colonialidade do saber: eurocentrismo e ciências sociais Perspectivas latino-americanas**. Buenos Aires: 2005. p. 24–33. Disponível em: <[https://edisciplinas.usp.br/pluginfile.php/2591382/mod\\_resource/content/1/colonialidade\\_do\\_saber\\_eurocentrismo\\_ciencias\\_sociais.pdf](https://edisciplinas.usp.br/pluginfile.php/2591382/mod_resource/content/1/colonialidade_do_saber_eurocentrismo_ciencias_sociais.pdf)>. Acesso em: 12 abr. 2019.

FANON, Frantz. **Os condenados da Terra**. Juiz de Fora: Editora Juiz de Fora, 2005.

FANON, Frantz. **Pele negra, máscaras brancas**. Salvador: EDUFBA, 2008.

FISCHER, Sibylle M. **Constituciones haitianas: ideología y cultura posrevolucionarias**. *Casa de las Américas*, p. 16–35, 2003.

GILROY, Paul. **O Atlântico Negro. Modernidade e dupla consciência**, São Paulo, Rio de Janeiro, 34/Universidade Cândido Mendes – Centro de Estudos Afro-Asiáticos, 2001.

JAMES, Cyril Lionel Robert. **Os jacobinos negros: Toussaint L'Ouverture e a Revolução de São Domingos**. 1. ed. São Paulo: Boitempo Editorial, 2010.

KANT, Immanuel. Resposta à pergunta: O que é Iluminismo? In: **A Paz Perpétua e Outros Opúsculos**. Tradução Artur Mourão. Lisboa: Edições 70, 1995.



KOSSELLECK, Reinhart. Uma história dos conceitos: problemas teóricos e práticos. In: *Estudos Históricos*, Rio de Janeiro, v. 5, n. 10, p. 134-146, 1992. Disponível em: <http://bibliotecadigital.fgv.br/ojs/index.php/reh/article/view/1945> . Acesso em 01 de junho de 2021.

LEHMANN, David. Gilberto Freyre: a reavaliação prossegue. **Horizontes Antropológicos**, Porto Alegre, v. 14, n. 29, p. 369-385. Junho 2008. Disponível em: [http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0104-71832008000100015&lng=en&nrm=iso](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-71832008000100015&lng=en&nrm=iso). Acesso em 26 Agosto de 2020. <https://doi.org/10.1590/S0104-71832008000100015>.

MIGNOLO, Walter. Desafios decoloniais hoje. **Epistemologias do sul**. Foz do iguaçu: Duke University, 2017. v. 1. p. 12–32.

MIGNOLO, Walter. **Desobediencia epistémica: retórica de la modernidad, lógica de la colonialidad y gramática de la descolonialidad**. Argentina: Ediciones del Signo, 2010. Disponível em: <https://antropologiadeoutraforma.files.wordpress.com/2013/04/mignolo-walter-desobediencia-epistc3a9mica-buenos-aires-ediciones-del-signo-2010.pdf>. Acesso em: 12 abr. 2019.

MOREL, Marco. **A revolução do Haiti e o Brasil escravagista - o que não deve ser dito**. São Paulo: Paco Editorial, 2017.

PAIXÃO, Cristiano; BIGLIAZZI, Renato. **História constitucional inglesa e norte-americana: do surgimento à estabilização da forma constitucional**. [S.l.]: Unb: Finatec, 2008.

POLLAK, Michael. Memória, esquecimento, silêncio. In: **Estudos históricos**. Rio de Janeiro, v.2, n.3, 1989, p.3-15.

POLLAK, Michael. Memória e identidade social. In: **Estudos históricos**. Rio de Janeiro, v. 5, n., 10, 1992, p. 200-212.

POLLAK, Michael. A gestão do indizível. In: **WebMosaica Revista do Instituto Cultural Judaico Marc Chagall**, v.2, n.1, jan.jun 2010, p. 9-49.

QUEIROZ, Marcos Vinícius Lustosa. **Constitucionalismo brasileiro e o atlântico negro: a experiência constitucional de 1823 diante da Revolução Haitiana**. 2017. 200 f. Universidade de Brasília, 2017. Disponível em: [http://repositorio.unb.br/bitstream/10482/23559/1/2017\\_MarcosViniciusLustosaQueiroz.pdf](http://repositorio.unb.br/bitstream/10482/23559/1/2017_MarcosViniciusLustosaQueiroz.pdf). Acesso em: 12 set. 2018.

RIBEIRO, Sabina Gladys. O desejo da liberdade e a participação de homens livres pobres e de cor na independência do Brasil. **Cedes**, v. 22, n. 58, p. 21–45, 2002. Disponível em: <http://www.scielo.br/pdf/ccedes/v22n58/v22n58a03.pdf>. Acesso em: 4 mar. 2019.

ROCHA, Simone. **Educação eugênica na Constituição brasileira de 1934**. X ANPED SUL, Florianópolis, outubro de 2014. Disponível em: [http://xanpedsul.faed.udesc.br/arq\\_pdf/1305-1.pdf](http://xanpedsul.faed.udesc.br/arq_pdf/1305-1.pdf) Acesso em: 15 de setembro de 2020.



SAINT-DOMINGUE CONSTITUTION, 1801, disponível em: < <https://mjp.univ-perp.fr/cons tit/ht1801.htm>>. Acesso em: 22 fev. 2020.

SCHWARCZ, Lilia Moritz. **O espetáculo das raças: cientistas, instituições e questão racial no Brasil 1870-1930**. São Paulo: Companhia das Letras, 2005.

TROUILLOT, Michel-Rolph. **Silencing the past**. Boston: Beacon Press, 1995.

#### About the authors

##### **Deivide Júlio Ribeiro**

Doctoral student at the Graduate Program in Law at the UFMG Law School. CAPES / PROEX Scholarship. Master in Law from UFMG. E-mail: [deividej@gmail.com](mailto:deividej@gmail.com). ORCID: <https://orcid.org/0000-0001-9831-3934>.

##### **Maria Fernanda Salcedo Repolês**

Associate Professor at the Federal University of Minas Gerais (UFMG) Law School; Researcher PQ-2 at CNPq, Brazil; Researcher and Outreach Coordinator of Polos de Cidadania Transdisciplinary Program; Member of the Board of Directors of the Institute of Advanced and Transdisciplinary Studies at UFMG (IEAT-UFMG). E-mail: [mariaf.salcedo@gmail.com](mailto:mariaf.salcedo@gmail.com). ORCID: <https://orcid.org/0000-0002-6274-0026>.

**The authors contributed equally to the writing of the article.**

