



THE BLACK LEGEND: COLONIALITY AND RACISM

A Lenda Negra: a colonialidade e o racismo

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RESUMO

A Lenda Negra dirigida contra Castela e Filipe II não impactou apenas a situação intra-ocidental, mas também favoreceu uma radicalização do colonialismo, colonialidade e racismo. O modelo constitucional adotado por Filipe II foi um modelo de monarquia policêntrica. Este modelo continha a opção estratégica do reconhecimento da soberania das nações indígenas e um melhor caminho jurisprudencial para a redução da destruição ambiental. O modelo constitucional centralizado do Império Britânico não só foi associado à expropriação em grande escala das nações indígenas e aos genocídios perpetrados contra elas, mas também forneceu apoio ao extrativismo extremista. Entre as implicações do extrativismo extremista estão as mudanças climáticas e a redução da biodiversidade. Um melhor caminho a seguir requer um retorno ao passado, ou seja, policentricidade constitucional.

Palavras-chave: Cosmovisões; nações indígenas; monarquia policêntrica; Escola de Salamanca; soberania

ABSTRACT

The Black Legend directed against Castile and Philip II did not only impact the intra-Occidental situation, but it also has favoured a radicalization of colonialism, coloniality and racism. The constitutional model adopted by Philip II was a polycentric monarchy model. This model contained the strategic option of the recognition of the sovereignty of the Indigenous nations, and a better jurisprudential path to reduce environmental destruction. The centralized constitutional model of the British Empire has not only been associated with large-scale dispossession of the Indigenous nations and genocides perpetrated against them, but it has also provided support to extremist extractivism. Among the implications of extremist extractivism are climate change and a reduction of biodiversity. A better path forward requires a return into the past, i.e., constitutional policentricity.

Keywords: Cosmovisions; Indigenous Nations; Polycentric Monarchy; School of Salamanca; Sovereignty

I. Description of the issue

The black legend directed against Castile and Philip II (henceforth the Black Legend) contributed to the radicalization of colonialism. The polycentric monarchy, as it existed in Philip II's reign, would have been structurally capable of respecting the diversity of the empire's various regions¹. Instead, the legal speech occurred in an unilateral western context. For example, solutions are sought in the western concept of democracy², and the concept of democracy in indigenous nations is ignored. Ignoring the concepts of indigenous people paves the way for colonialism and the ongoing coloniality in the Americas. This begs the question: are the constitutional models of polycentric monarchies superior to the centralized models employed specifically by England?

The propaganda based on the Black Legend didn't only impact Castile and Philip II, but also had a negative effect on the normativity of the cosmovisions of indigenous nations and of the teachings of Francis of Assisi on the environment³. Also, Jean Gerson granted rights to animals and objects (Guzmán-Brito, 2013: 82). Since the Black Legend overthrew these obstacles to avarice, greediness, jealousy, ire, lust, slothness and pride (the seven deadly sins touted by the Catholic Church), it majorly contributed to the environmental destruction of the last five centuries.

As always when it comes to successful propaganda, the Black Legend contains some undoubtedly true elements. The evidences are: 1) the fact that the Castilian crown, with the help of the Inquisition, persecuted strictly the religious non-conformities, including protestantism; 2) the most powerful Habsburg of the time, emperor Charles V, was at the same time king of Castile and harassor of the Holy See (Canavaggio, 2009: 819); and that the Castile crown tolerated the usage of torture as means of obtaining confessions by the Inquisition. However, these and other criticism were hypocritical as there was no discussion of religious liberty in England, for example, and the use of torture wasn't exclusive to Castile.

¹ The polycentric monarchy would have provided a means for the indigenous nations to exercise their sovereignty again. This evaluation is based on the fact that a current polycentric Spanish monarchy has centrifugal forces. For further reading: Fernández & Rodríguez-Prieto (2006), p. 294.

² Ruiz (2002: 147-149) and Seco & Rodríguez-Prieto (2004: 422-425).

³ In the case of cosmovisions and case law, it's not about a comparison, but, ultimately, of two different dynamics in how the norms are applied. The problem is in the West. As shown by Pietro Barcellona and Boaventura de Sousa Santos in its postmodern criticism, the West lost its capacity to guarantee the compliance of the norms by social means instead of legal ones. For further reading: Lourdes (1999), p. 324-325.

It's typical of propaganda to exploit and radicalize pre existing prejudices, including in the case of the Black Legend. There's evidence that an anti-hispanic legend began in northern Italy in the 12th Century, aimed at Aragon, not Castile (Matthey, 2008: 414). Precision is not one of propaganda's strongest points. It's also typical of successful propaganda to accuse the main target of anything the propagandist does to distract from the propagandist activities. It shouldn't be forgotten that those activities can also happen later. Therefore, it was highlighted in the Black Legend that the indigenous people were tortured by the castillians⁴. The hypocrisy of the criticism became particularly clear in the 19th Century United States, when the indigenous nations were destitute, devoid of privileges and murdered.

The beneficiaries of the Black Legend were France, the Netherlands and especially England. One can argue that the United State's attitude toward Latin America is still influenced by the Black Legend, for example, the United State's opposition to latin american immigrants could be partially explained by this context.

The 1566 revolt against the Duke of Brabant in the Netherlands, who was king Philip II of Castile in a polycentric monarchy (Soen, 2019: 11), doesn't seem to have reduced the demonization of Castile. The implicit demonization of the government model of a polycentric monarchy inside of the constitutional structure of the Black Legend was problematic not only for the indigenous people in America, because a polycentric monarchy contained the strategic option of containing coloniality⁵ and colonialism.

Although the demonization of Castile (Spain) aimed mainly at the Counter-Reformation of the Catholic Church and the Inquisition, that doesn't mean that the true motives are elsewhere. The demonization also meant that the validity of the legal essays of, for example, Bartolomé de las Casas, Francisco de Vitória and Francisco Suárez, was compromised. The surge and spread of the Black Legend had devastating effects on indigenous nations; devastating effects that persist and still affect the indigenous people of the Americas. In the

⁴ Duviols (1988: 317-318), Wallerick (2010: 49-50) and Callagher (2015: 444).

⁵ Coloniality is described in various ways in literature. This article is based on this description: "La colonialidad del poder, según Quijano, vendría a ser algo así como una matriz de poder que tiene su origen en la época colonial pero que continúa existiendo a pesar de la desaparición de ese sistema político después del advenimiento de otros sistemas, el republicano, en los países latinoamericanos. En esa matriz colonial del poder, la explotación económica de la tierra se llevó a cabo por parte de una minoría étnica compuesta por europeos, bajo cuya custodia y tutelaje trabajaban grandes números de indígenas, quienes generaban una gran plusvalía. En el contexto latinoamericano, su enfoque tuvo la virtud y la originalidad de poner de relieve la importancia de lo étnico en el proceso histórico de la explotación de la riqueza americana, tanto en tiempos coloniales como en el periodo republicano." For more: Verdesio (2018: 98).

following centuries, the indigenous nations of sub saharan Africa also experienced the same devastating effects (Espinosa, 2017: 497). With the studies of those three academics discovering the illegality of the wars on the indigenous nations and denouncing the western administrative practices on indigenous territory⁶, the Black Legend did in fact contribute to the reduced legal barriers against colonialism and coloniality.

The spread of the Black Legend not only masked the much worse behavior of the crown in the 16th century, but also established a mentality on the Anglo-Saxon legal systems that persists today. To this day, this radicalization sudo-legalizes the occupation of indigenous territories and the stealing of natural resources of these territories, as seen with the bitumen extraction from the River Athabasca bay and the gold extraction in Calin. Due to the Anglo-Saxon influence on Latin America, the disguised radicalization by the Black Legend spread across the old spanish empire.

From the point of view of indigenous nations, the European empires illegally established colonies and colonized indigenous territories, and the current states are only colonies that perpetuate the illegal colonization of the territories of indigenous nations. Following that perspective, the current states are referred to as colonies in this study.

Although the black legends of legal history and philosophy have been discussed in hindsight⁷, they received insufficient attention as continuous and dynamic driving forces, sometimes leaning into radicalization, in legal literature. In law, the opposition of black legend, a golden legend, becomes a problem when the golden legend is used to disguise illegality. By law, a black legend becomes a problem when it's used to suppress legality. Golden and black legends were used in the legalization of coloniality.

When exploring the significance of a black legend to law, three hindering factors arise. First, a black legend can change with time, and that's why the significance of a black legend, that now isn't recognizable anymore, cannot be clearly seen at the start of a dynamic legal development. Second, it's not possible to exclude the possibility that, with time, a dynamic, possibly also reversible, begins between a black legend, neutrality and a golden legend. Third, a black legend may disguise another one, which is not easy to identify.

⁶ Fitzpatrick (2009: 44) and Mantovanni (2017: 252).

⁷ For example: Berlière (2002: 12) e Anônimo (2010: 193-197).

II. Veracity of the Black Legend

Successful propaganda, which is the case of black legends, usually aren't true or false, but true and false at the same time. This becomes apparent when one considers the historical context of the Black Legend, particularly in the 16th century. Another characteristic of successful propaganda is that the propagandist projects their own crimes onto the target of the propaganda, thus radicalizing their own crimes⁸.

The Black Legend, directed against Castile and King Philip II, is by no means the only or even the first of its genre, for example, the black legend against Romulus in Rome, appeared over two millennia ago (Martin, 2013: 119). Also, the Black Legend against Castile (and Spain) returned multiple times for propaganda purposes, for example, during the French occupation of Spain in the 19th century (Aymes, 2004: 133). Simultaneously, a black legend is relative, since one's black legend is another's golden legend (Venturi, 1993: 495).

Art is a vehicle of propaganda. The lack of veracity can be observed in the three novels written by César Vichard de Saint-Réal (1672), Thomas Otway (1676) and Friedrich von Schiller (1787) about the relationship between the supposedly tyrannical king Philip II of Castile and his son Don Carlos, setting aside the fact that Don Carlos was at that same time insane and sadistic. Apart from the lack of veracity, those pieces reinforce and spread anti-catholic and anti-castilian sentiments.

i. Historical context

The origin and spread of the Black Legend cannot be understood separately from the tensions between England and Castile. The Black Legend wasn't the start of the tensions between England and Castile, but it came to be when the tensions worsened. Everything started with the undoubtedly illegal desire of Henry VIII to divorce from Catherine of Aragon. After a period of calmness during the reign of Mary I, the tensions worsened in the reign of Elizabeth I. The reasons for the anglo-spanish war from 1585 to 1604 included the factual support of the English crown to the illegal smuggling activities in large scale in the Caribbeans, as well as the

⁸ The declarations are based on an evaluation of the speeches of Joseph Goebbels since 1943, in particular his speech in the Berlin Sportpalast on 18 February 1943.

illegal piracy in the Caribbeans and the Atlantic Ocean. The defamation of Castile wasn't only desirable, but also necessary from the British point of view.

Interestingly, the Black Legend was created and divulged by the aggressor, which was undoubtedly illegal. Therefore, the demonization generally supplies more information about the aggressor than the victim. In the tensions between England and Castile, the Reform of England had a pivotal role, but the reasons were much more profound, namely, riches and power. Basically, it's about a British king who is ready to violate the law to have a son. The extinction of the very short lived Tudor dynasty, after the death of his youngest daughter, came to show that his violations of the law ended up not aiding him in his goals.

Henry VIII established the Reform in England and, therefore, the succession of his son Edward VI to the throne and later his daughter Elizabeth I, with the dissolution of monasteries, that started two years after the rupture with Rome (Supremacy Act 1534). The beneficiaries of this dissolution were those who received the riches of the Church. As the oldest daughter and undoubtedly the only legitimate heir of Henry VIII, Mary I would later find out that the return of the Church's properties would be a great obstacle in the attempts to reestablish England's ties with the Roman Catholic Church.

ii. Projection and radicalization

The oppression that the castilians were accused of was also done by the 1076legal1076, as shown by the fate of many catholic martyrs. While the Dominican Antonio de Montesinos harshly criticized the Encomiend system of the Caribbean in 1511, and in the following 1076lega the castellan kings approved laws that slightly protected indigenous nations. The situation evolved in the english colonies and, after the rebellion in 1775, the United States acted in the 1076legal10761076i of repeated violations of contract and genocide. The violence and savagery perpetrated by England and the United States 1076legal1076 indigenous nations were projected on indigenous nations, thus creating a smoke screen for their actions. The Black Legend made this smoke screen even more dense.

Propaganda influences thought and behavior more than the initial purpose of the propaganda might suggest. In the case of the Black Legend, propaganda undermined the credibility of jurists, who were also catholic, including Bartolomé de Las Casas, Francisco de Vitória and Francisco Suárez (Mora, 2011: 2). This promoted 1076legal10761076ismo and



1077legal1077, since all of the three jurists mentioned pointed out the illegality of the wars 1077legal1077 indigenous nations, the illegality of the conquest of indigenous territories and the illegality of the administrative practices put in place in the conquered territories.

Parallel to the religious wars, which were superficially connected to the Reformation and the Counter-Reform, modernity emerged and spread, and the enlightenment connected itself to it. This created three problems. First, in the propaganda of modernity 1077legal the Age of Enlightenment, horrifying images based on the Black Legend were frequently used. Second, the scholarly foundation of the legal studies of Bartolomé de las Casas, Francisco de Vitória e Francisco Suárez was hindered and the validity of their results questioned. Third, the triumph of modernity 1077legal the Age of Enlightenment meant the radicalization of 1077legal1077ismo and 1077legal1077.

III. The Spanish Empire: the first 1077legal conquest and occupation

Castile conquered extensive territories in the Americas prior to the British. From the legal point of view, the castilian approach is interesting for two reasons. First, the legality of the wars against indigenous nations in the Americas and the legality of the castilian colonial administration were questioned very quickly after the start of the conquests, which led the castilian kings to approve moderating laws in the 16th century. Second, Castile molded the colonial administration after the castilian and roman models, who also had a moderate influence. The Black Legend undermined these moderated factors. It's of particular interest to colonialism and colonality research, however, the constitutional model of the polycentric monarchy practiced by Philip II.

i. The legality of the wars and administration

The concept of sovereignty has a complicated history in western law. The matter of sovereignty can be seen as a pivotal question in the tensions between the Holy See and the secular rulers of the Middle Age. In legal literature, the start of the sovereignty discourse is generally seen only in the writings of Jean Bodin or in the Peace of Westphalia. This vision means that the concept of sovereignty only emerged after the end of the western wars against indigenous nations and, therefore, indigenous nations were not and still aren't sovereign. It's important to highlight that the writings of Jean Bodin and the Peace of Westphalia sought



answers to internal conflicts in the West, which by no means mean that they cannot contain significant answers to the question raised by conflicts between indigenous nations and the West. Posterior western literature is even more problematic, as a proximity between jurists and rulers of western empires cannot be excluded as a possibility.

The theoretical-legal approaches developed by Jean Bodin and established in the Peace of Westphalia occurred in the context of opponents with approximately equal military forces. Even though there were denominational differences, the opponents were part of the same cultural group. That fact made it possible to confirm the principle of *regio eius religio*, which wouldn't be possible in the other case. In the conflict between the Holy See and the secular rulers the constellation was more complicated. On one hand, the question was if the Pope or the respective secular ruler could be considered the heir to the Roman emperor's powers. On the other hand, the question was about who had the sovereignty, if the Pope, as the Vicarius Iesu Christi, or the secular ruler, with their power to use strength.

There is a different approach to sovereignty in the western case law literature, represented for example, by the scholars of the School of Salamanca. They were interested, for example, in the theory of rightful law and the limits of the king's powers. In other words, they considered the rise and maintenance of sovereignty. The case law work of Francisco Suárez can be cited as one example in this context. Since the School of Salamanca was an important castilian university and since the constitutional model of a polycentric monarchy was practiced by Philip II, the concepts of sovereignty introduced by Francisco Suárez are of interest for this study.

Before that, however, it's appropriate to make some observations based on the cosmovision of numerous indigenous nations. The concept of sovereignty makes little sense when humanity is considered part of the universe at the same time as it is forced to not disturb the harmony of the universe. A sovereignty diverse from that of the universe is hardly imaginable in such cosmovision. That means that all of those sovereignty demands become even more obsolete due to extractivism, because extractivism represents violence against the eternal and all-powerful sovereign, i. e., the universe. The indigenous nations that maintained harmony in and with the universe acted in the interest of the sovereign and, therefore, are the only human representatives of the only sovereign, the universe.

This way of thinking is similar to the vision of the Holy See during the Middle Age, when "indigenous nations" are replaced by "Holy See" and "universe" by "God". In this sense, a comparison of the relations between the indigenous nations and the colonies of settlers connected to the Holy See with the secular rulers in the perspective of western case law is more revealing than a discussion based on legal concepts that appeared in the context of western religious wars. The fact that the secular rulers can finally affirm themselves solely by belic force is an indication that the arguments proposed by the Holy See were better because, in the opposite case, the secular rulers wouldn't have to resort to violence. The situation is the same in the colonies of the settlers, because the empires and the colonies of the settlers are products of violence and can only exist with the help of violence.

In the current international context, sovereignty has important legal consequences, which is the reason why it's necessary to find a solution for the matter of sovereignty. One viable way of dodging the complexities that overwhelm the western concept of sovereignty would be that only the legality of conquering a territory can determine sovereignty. That would have devastating consequences for the sovereignty demands of the empires and colonies of settlers in America, because the wars against the indigenous nations were clearly illegal. Consequently, all of the claims of the empires and colonies of settlers in America are null and ineffective. As a result, the conquests and the administration in all of the territories in the Americas were and still are illegal, and, therefore, null and ineffective.

ii. The first models

The elite of the territories conquered by the Roman Republic and Roman Empire leaned into integrating themselves into roman society, but, as a rule, the roman authorities did not force the population of the conquered territories to abandon their cultures and identities, as evidenced by the references made to the punic speakers in the writings of Augustine of Hippo.

The castilian colonialism initially seems to have followed a roman pattern, which means that the elites of the ingenuous power were captured and the rest of the population was used as a labor force. To the characteristics of the castilian colonial rule, that today would be called racist, can be found in the roman mores until the emperor soldiers. Parallel to the strengthening of the western modernism in the 17th and 18th century, the roman model was



gradually abandoned in favor of a radicalizing racist coloniality. An important milestone was the fact that Charles II (of Castile) prohibited the use of the indigenous nations' languages. Intended or not, this measure also affected the cosmovisions of indigenous nations⁹. In the following decades, the Jesuits, that among other things supported indigenous nations, found themselves persecuted by the secular rulers. That opened the doors for the extreme extravism, a vision congruent with the conclusions made by Bartolomé de las Casas about the vile behavior of castilian settlers (Teglia, 2016: 51).

Although the antagonist attitude of the representatives of modernity and the Age of Enlightenment in relation to the Catholic Church was amply discussed in literature, their anti-hispanic attitudes received less attention. In that topic, some consequences of the Black Legend and the conflicts between Spain (including Castile), on one side, and England, France and the Netherlands on the other, must be observed. When Spain, amply centralized in the 18th century, implemented numerous ideas of modernity and of the Age of Enlightenment between the Bourbons, the colonialism directed against the indigenous nations in the Americas and the extreme extravism were effectively declared virtues. That also made violence against the universe, including humanity, a virtue.

An indicative of the importance of the Black Legend can be found in the French Age of Enlightenment. Although the indigenous nations were important allies of the French Crown until the Paris Treaty (1763), the French Age of Enlightenment not only betrayed the indigenous nations in favor of the rebelling Thirteen Colonies, but many of them expressed racist opinions. Why? One explanation for this could be that, due to the Black Legend, the French Age of Enlightenment rejected all that was protected by the Catholic Church. That made indigenous nations victims of modernity and the Age of Enlightenment.

After the illegal wars against the indigenous nations and the associated conquests of their territories, the western case law discourse oscillated between conceding autonomy to the indigenous nations and assimilating the indigenous people (Fortunat, 2019: 300). The autonomy vision is a reminiscence of the strategic option linked to the polycentric monarchy of Philip II, and the assimilations vision is a reminiscence of the centralized approach of the British Empire. Neither of them recognize the illegality of the wars and conquests that give the indigenous

⁹ The difference in the cosmovisions of the indigenous nations also reflects the differences and dynamical changes in the universes in which the indigenous nations lived and still live, in which the cosmovisions contain norms that are necessary for survival in these universes. For more: Navarrete (2018: 28)

nations continuous and unrestricted domain of the indigenous nations over all of the conquered territories.

The underlying polycentricity of Philip II's government was acquired through the existence of six councils in charge of the administration of different parts of his empire. These six councils administered Aragon, Castile, Flanders, Italy, Portugal and India. This polycentric structure contained the option of taking into consideration the different circumstances in the councils, inside an strategic guideline established by Philip II and his successors in Habsburg. As a result, it was possible to accommodate linguist diversity not only in the Hyspanic Peninsula, but also in the Americas. The strategic options of the polycentric monarchy were successively lost, and one could even say wasted, under the influence of the Age of Enlightenment. It's worth highlighting that the anticlericalism that permeated the Age of Enlightenment was at least partially a product of the Black Legend.

One of the options of Philip II's polycentric monarchy was the revival of indigenous nations. The existence of this option is evidenced by the continuous normativity, though restricted, of the indigenous nations' cosmovisions in the polycentric monarchy¹⁰. In view of the pandemics that killed over 90% of the indigenous people, any revival would have been challenging, but the structure of Philip II's empire did not stop him. If it's necessary that the sovereign unities form a community in which the unities share common moral concepts (Sánchez, 2017: 174-177), the case law work of Francisco Suárez is an obstacle to a pluricentric monarchy that respects the comovisions of the indigenous nations. It's evident that this aspect of Francisco Suárez' thought is molded by legal coloniality. The *pactum asociationis* of Francisco de Vitória is based on the idea that community, at least implicitly, is based on a deal (Sánchez, 2017: 169), which in the case of the indigenous nations cannot be subsumed. For the West to be able to invoke the *pactum asociationis*, the indigenous nations of the Americas and the West would have to elaborate a *pactum asociationis* in common agreement which, however, never happened. Evidently, the chances of a revival were improved by the case law work of Francisco Suárez on *ius in bello* and *ius post bellum*.

The comprehensive uptake to the case law work of Francisco Suárez means that the indigenous nations would have permission to maintain their economic culture and structure (*largo sensu*). Since the king's sovereignty is not absolute, but relative, in the sense that the king must base his decisions in the common good (Juri, 2019: 123), it's possible to affirm that this

¹⁰ Menegus (1992: 152-153) and González (2011: 222).

common good can be determined by the cosmovisions of indigenous nations. The concept of natural law being universal (Losada, 2009: 119-121), also accepted by Francisco Suárez, spoke against the normativity of the indigenous nations' cosmovisions. However, the universal validity of natural law is relativized by the fact that human law is valid when certain material requirements are met (Losada, 2009: 118-119). The combination between the relativity of the king's sovereignty and the validity of human law creates the possibility of the revival of the normativity of the indigenous nations' cosmovisions. One possible result of complete uptake would be therefore a prohibition of the comprehensive system in the Americas. The greatest challenge for Philip II in the Americas was not the indigenous nations, but the settlers, an experience already lived by his predecessors.

IV. The British Empire and the USA: radicalizing illegality

Besides the Spanish Empire, the British Empire was also, and still is, if settling colonialism and neocolonialism are considered, important in the Americas. Instead of the constitutional model of a polycentric monarchy established in the Spanish Empire in the 16th century, the British Empire was characterized by centralization. Comparing the Spanish and British Empire shows a radicalization in the former in comparison with the latter.

The centralization was associated with the rise of the modern estate in the context of the French Revolution of 1789 (Francischetto & Kaiser, 2020: 126). This is so imprecise that a constitutional centralization can be previously observed in England. The constitutional centralization was indisputably a result of the norman's conquest of England in 1066. The constitutional centralization in the British Empire was, therefore, just a continuation and geographical expansion of the British constitutional model.

The Portuguese Empire was another example of constitutional centralization. That can in part be a result of the animosity between the Portuguese and Castilian crowns after 1640.

i. The legality of the wars and administration.

There can be no pretense that a significant part of the puritan english colonizers that established themselves along the Atlantic coast in the 17th Century was inclined to attend to the scholarships of catholic jurists who were also clergymen. Therefore, none of the protections



offered to the indigenous nations in the legal scholarships of Bartolomé de las Casas, Francisco de Vitória e Francisco Suárez were available to the indigenous nations.

Since the British puritans were extremely anticatholic, they rejected everything that they considered to be catholic. The Black Legend certainly did not reduce this negative attitude. The rejection to the works of Bartolomé de las Casas, Francisco de Vitória and Francisco Suárez and, therefore, to the sovereignty of the indigenous nations in all of the territories of the Americas was inevitable¹¹. This does not make the rejection legal. The violent reaction of the Thirteen Colonies against the Royal Proclamation (1763) and the Quebec Act (1774) can be understood under this context. The illegal rejection indisputably contributed to the crimes of insurrection and treason. As a result, the Black Legend contributed to the fact that the Thirteen Colonies, and later the United States, were and still are characterized by puritanism.

In the founding mythology of the United States, the puritan british colonizers are called pilgrims. From the case law point of view, this characterization is concerning because it's not possible to highlight that, in their religious zeal, they did not only break the main principles of western law, but also the main principles of christianism. The combination of a predestination theory, in which economic success plays a major role, with extravism, that can bring great riches, it's particularly problematic because this combination is not only an excuse, but also an incentive to disconsider the complete and continuous sovereignty of indigenous nations in all of the territories of the Americas. Therefore, this combination transformed a legal determination into a denominational matter.

This transformation meant that the destruction of the Catholic Church's domain on the old Spanish Empire walks hand in hand with the consequence, even if it is quite surprising, of the legalization of extreme extractivism. The spread of some branches of protestantism is, therefore, of interest to the beneficiaries of extreme extractivism, which was occasionally accompanied by demands of religious freedom. In this point, the cases of Brazil and Guatemala can be highlighted.

¹¹ It's been argued that the writings of Francisco Suárez were suppressed due to his opinions on popular sovereignty (Borges de Macedo, 2016: 1501-1504). These visions did not make him endearing for the monarchs of the time, but it must not be forgotten that his visions on the legality of the colonial conquests and administrations were in fact more disturbing in a time in which the establishment and expansion of the colonial empires were sought after by many European kingdoms. For example, the french Estates General were essentially a consultative organ in the 17th and 18th centuries. The popular sovereignty would have, therefore, been put into practice by monarchs.

The common law system followed the British Empire and the US's 1084gainst1084ismo. This is tied to two problems. First, although the Equity, in its original form, had granted the indigenous nations a way to defend their inalienable rights based on the scholarships of Tomás de Aquino, among others, a following degeneration of the patrimony effectively kept the indigenous nations away from this avenue. Second, the legal theory associated to the system of common law does not specifically recognize the authority of Roman law, effectively depriving the indigenous nations of ways to defend their rights in colonial courts.

The existence of a black legend reclaimed in propaganda can be used to disguise na existing illegality. 1084gainst1084i applies to the case of the 1084gainst1084ismo of US law. There are two crucial questions. First, did the Black Legend, which was initially directed 1084gainst Castile and Philip II, have a direct or indirect role in the attempts to legalize the 1084gains wars of conquest 1084gainst New Spain and later Mexico? Second, were the black legends directly or indirectly directed 1084gainst the indigenous nations used in the attempts to legalize the 1084gains wars of conquest 1084gainst indigenous nations?

ii. The model

The superficial contradiction of the Age of Enlightenment based in modernity and the religious fanaticism combining themselves into an attempt to legalize the genocide, expropriation and exclusion of indigenous countries of british North America, including what would later become the United States. Any pretense to adhere to the Roman Empire model was abandoned.

The British Empire had some aspects of a polycentric monarchy, but the domain of England was evident during its entire existence. Contrary to Philip II's polycentric monarchy, England's government, with all of its intentions and practical purposes, ruled all of the British Empire. This centralized approach was not propitious to accommodate the differences in the various parts of the British Empire. This centralized constitutional model should have allowed the British government to have a closer control on the activities of the colonizers than the constitutional model of Philip II's polycentric monarchy model did. As long as there was an external threat, it was possible for the British government to have a reasonable amount of

control over the colonizers. Soon after the destruction of New France, the British government faced a rebellion in the Thirteen Colonies. The centralized model, however, was not more stable than the polycentric model.

Contrary to legend, the Thirteen Colonies rebellion of 1775 was not a reaction against centralization, but a reaction against the rise of rudimentary polycentricity in the British Empire, particularly the Royal Proclamation of 1763 and the Quebec Act of 1774. Even more than the constitutional model of a polycentric monarchy, the centralized constitutional model of the British Empire was unable to control the avarice, greediness, jealousy, ire, lust, sloth and pride of the colonizers. This has to be considered a serious case law deficiency of the British Empire. In the following centuries, the centralization of the United States happened, while the genocide, expropriation and deprivation of freedom directed at the indigenous nations became even more radical.

The case law failure of the British Empire is aggravated by the following events in the Americas. After the Thirteen Colonies rebellions in the 18th century and the disintegration of the Spanish Empire in the 19th century, there was no rebirth of the polycentric model. On the contrary, there was a stabilization of a centralized European model without Europe. Any potential (future) control on behalf of the Council of the Indies and the British government on the violence against the universe in the form of coloniality, extractivism and racism was eliminated. The Spanish Empire and the British Empire created a monster in the Americas, one they could not control.

A question that received very little attention in literature is the weakening of Equity in the common law jurisdictions in British North America, including what would later be the US. Since the original Equity, based on christian morality, was a corrective in relation to the common law, the clear determinations in the papal encyclical *Sublimis Deus* should be seen as binding to the Anglican Church, as in the moment of it's publication in 1537, the Anglican Church had cut it's administrative ties with Rome, but not it's theological ties.

In literature, the influence of the Age of Enlightenment was debated, but what did not receive enough attention are the strengthening winds of the restoration. This might have fed the fear, among the elites of colonial power in the Spanish Empire, of a restoration of the polycentric monarchy of Philip II, with a simultaneous adhesion to the *ius in bello* and *ius post*

bellum of Francisco Suárez¹². The results of this restoration would have been devastating to the elites of the colonial power. A rebellion inspired by the Thirteen Colonies one could have looked less threatening west of Mississippi¹³.

V. The remaining effects of the Black Legend

Although the Black Legend isn't mentioned today as frequently as before, it left deep, and many times unrecognized, marks on western thought. In the Americas, the after effects of the Black Legend are evident mainly in three cases. First, the radicalization that occurred as a result of the disconsideration of the scholarships, for example, of Bartolomé de las Casas, Francisco de Vitória and Francisco Suárez, can be seen in the dismissal of the complete and continuous sovereignty of the indigenous nations of the Americas in all of its extension. Second, the US treats the colonies of colonizers in Spanish America as little more than colonies. Third, there is no effective control against the worsening of environmental destruction, because the disrespect to the scholarships of the aforementioned scholars promotes the disrespect to the cosmovisions of the indigenous nations.

i. Disrespect to the complete and continuous sovereignty of the indigenous nations

Despite the attempts of complicating the legal situation, the legality of a claim of sovereignty in the Americas depends only on the legality of the conquest. The studies of Bartolomé de las Casas, Francisco de Vitória and Francisco Suárez made the wars against the indigenous nations and, consequently, the conquests and administrations that followed, illegal. As a result, any claim of sovereignty over the colonies of colonizers is illegal and null against the indigenous nations. The sovereignty of the indigenous nations in all of the territories in the Americas is completely and continuously valid since 1492.

¹² The movement of withdrawal of the Spanish Empire in the 18th century is instructive in this context. Instead of completely accepting the European Enlightenment, the elites of power created an "other" hispanic-american based on the European Enlightenment. The hispanic-american elites of power were, thus, intellectually more honest than their anglo-american counterparts a few decades before, because the latter had to fight against the incompatibility of slavery with personal freedom. In Spanish America, the ongoing colonialism and coloniality could be integrated with the "enlightenment of others". For comparison: Soriano (2018: 3-4).

¹³ In literature, it has been argued that the political and legal chaos that followed the aggression of Emperor Napoleon against Spain played a significant role in the process that led to the rebellion of the king, see: Cruz (2012: 51-55). In view of the rebellion against the king in the Thirteen Colonies around 40 years before, this explanation seems too innocent.

Legal literature generally ignores the fact that the structure of the law is an integral part of sovereignty. Western case law, for example, cannot, therefore, expect the indigenous nations to separate ethics, morality and religion from law, or for the indigenous nations to have constitutive procedures. The necessity of a moral base for the exercise of power and, therefore, for the exercise of legislation, is not unknown in western case law, which can be observed, for example, in the case law work of Francisco Suárez (Guzmán-Brito, 2013: 83-84).

The polycentric monarchy of Philip II did not contain just the option of resurrection of the indigenous nations of America, but also the option of eventual resurrection of the sovereignty of the indigenous nations. In fact, this resurrection would have probably been the result of the case law work of Bartolomé de las Casas, Francisco de Vitória and Francisco Suárez, in addition to the anti-racist stance of the Roman Catholic Church¹⁴. To find an explanation to the absence of this resurrection, it's necessary to consider the impact of the Black Legend. The successful propaganda against Castile and Philip II meant and means that this resurrection was postponed, initially in the British Empire and later in the (former) British Empire.

The complete and continuous sovereignty of the indigenous nations in all the Americas' territories does not mean that the colonial courts of the colonizers have no jurisdiction. The colonial courts of the colonizers are obliged to resolve legal disputes between the colonizers and to guarantee the effective, efficient, immediate and complete implementation of the decisions of the indigenous nations.

The disrespect to the complete and continuous sovereignty in all of the Americas' territories meant, since the 16th century, that the cosmovisions and knowledge of the indigenous nations had no direct or indirect normative effect over those in power. Any obstacles to extreme extractivism that were contained in the cosmovisions and knowledge of the indigenous people were thus eliminated by the colonizers. In face of the escalation of environmental destruction, this elimination contributed to the rise of an existential threat to humanity.

ii. Colonies of colonizers in service of extractivism

¹⁴ Anti-racism is evident since the start of the Catholic Church. One of the most influential doctors of the Church, Augustine of Hippo, was of punic origin. Among the popes, Anicetus was Syrian and Victor I and Miltiades were berbers.

The territories occupied by the Spanish Empire were devastated by western extractivism. The most notable example was probably the Potosí mine, but the Encomienda system was also a form of extractivism. The radicalization of extractivism was favored by two factors. First, the thirst for precious metals was intense in Europe, after many centuries of wars with Arabs and Turks, wars that would continue for many centuries, even after 1492. Second, the conclusion of the reconquest of the Iberian Peninsula with the Granada Treaty (1491), ending the employment of numerous soldiers and adventurers. In this point, it cannot be forgotten that the soldiers routinely looted the conquered territories in Europe in the 15th century.

The insidious fact about extractivism was and is that fabulous riches can be collected without creativity and innovation. In the same way, no creativity and innovation were necessary for soldiers and adventurers to loot conquered territories in Europe in the 15th century. In this sense, the violence in the universe, including the violence in nature and the indigenous nations, in the extractivism, was and is an apparent continuation of the extreme looting in the European wars. Thus, there is a continuity from looting in times of war to extreme extractivism during occupation. The extreme extractivism is, therefore, there for two reasons. First, looting is there in public contemporary international war and that makes extreme extractivism a continuation of looting as well. Second, the illegality of the wars against the indigenous nations meant since the beginning that looting was there, and that made extreme extractivism there since the beginning.

With the possible exception of the US, creativity and innovation in the Americas are still handicapped by extractivism. The US isn't necessarily an exception to the curse of extractivism, because the development of the US was molded by two peculiarities. First, the US benefited from a bigger transfer of knowledge, specially after World War I, for example, the expropriation of various German inventions in 1917, and after World War II, for example, the looting of German knowledge in missile and flying wings technology. Second, the US managed to outsource the extractivism to other parts of the Americas. As a result, the US' economy is still crucially dependent on extractivism.

Extractivism was favored by two factors in America. First, the triumph of modernity removed any western obstacles faced by extractivism. Second, the US, a colony of colonizers, supported and, in some cases, the military intervened in support of the elites of power engaged in violence in the universe exemplified by extractivism. Third, the coloniality meant

that the obstacles to extractivism in the indigenous nations' cosmovisions were ignored.

The final responsibility for the violence over the universe, including the indigenous nations, lies with the Spanish Empire, the British Empire and the empires that created the monster characterized by the continuous sovereign monopoly, coloniality, extractivism and overexploitation in the Americas. A solution to this situation is complicated due to the existence of a colony of colonizers who historically have demonstrated little interest in complying with the international law established by Bartolomé de las Casas, Francisco de Vitoria and Francisco Suárez. Contrary to the US' situation, the effective sovereign the European centralization without Europe was not the strengthening of the elites of power in the former Spanish Empire, but a pivot for the US. Of course, this in some ways reduces the responsibility of the empires. Any solution must be based in *ius in bello* and *ius post bellum*, of Francisco Suárez. A way over the monster under control would be the resurrection of the constitutional model of a polycentric monarchy with the indigenous nations as the overrepresentatives of the eternal and all powerful sovereign, the universe.

iii. Escalation of environmental destruction

The survival of extreme extractivism depends on two factors. First, the legal and religious intrawestern obstacles to extreme extractivism are removed. Second, the cosmovisions of indigenous nations that contain obstacles to extreme extractivism are removed or eliminated.

In the legal camp, the main obstacles to extreme extractivism are found in Roman law and in scholastic studies. The proportion subjacent to *actio aquae pluviae arcendae*, for example, based on Roman law, would have increased and risen financial prohibitive obstacles to extreme extractivism. Based on scholastic studies, the teaching of Francis of Assisi, beyond the condemnation of avarice, greediness, jealousy, ire, lust, sloth and pride, would have risen insurmountable obstacles to extreme extractivism. It might be appropriate to highlight that case law, philosophy and theology flow together in scholastic studies.

The relationship between the evangelicals and the sector of extraction has received little attention in literature. This scarcity is surprising in three aspects. First, the proximity of protestantism and capitalism discussed by Max Weber makes the proximity a radical form of protestantism (evangelicalism) and an extreme form of capitalism (extractivism) an interesting

proposition. Second, any form of favorable predestination that expresses itself as monetary riches makes more probable the practice of action that worsen environmental destruction because the importance of ethical and moral rules is effectively nullified. Third, the relentless impulse for more extractivism by presidents strongly supported by evangelicals, for example Jair Bolsonaro in Brazil and Donald Trump in the US, makes probable the existence of such a relationship.

In the scope of cosmovisions of indigenous nations, the ideas of harmony and universe establish close limits to extractivist activities. In the case of the universe, human beings are only part of an universe that consists of, for example, spirits, animals, plants, human beings, the sky and the earth. It's the humans' responsibility to act in ways that are not hindering to the harmony of the universe. The extraction of subsistence generally does not disturb harmony, but extreme extractivism on a large scale, as in the Potosí mine and the deforestation of almost 1 million km² of the Amazon for cattle ranches is another question. It's necessary to emphasize that these characteristics are based on broad generalizations and, therefore, are not always precise.

The empires and colonies of colonizers used three tactics to promote extreme extractivism. First, particularly the Spanish Empire corrupted members of the dominant indigenous class to subjugate their nations in the start of the 16th century. Second, particularly the US involved themselves in genocide in the 18th, 19th and 20th centuries. Third, the diminishing acceptance of violent acts against indigenous nations, the extractive sector and its associates turned back to the tactic of corruption, offering, for example, deals of sharing of benefits to the indigenous nations. It's unnecessary to say that the deals of sharing of benefits generally violate the cosmovision of the indigenous nations and are a result of economic threats made possible by the chronic governmental underfunding.

While the king's strategic guidelines were followed, the polycentric monarchy of Philip II did not necessarily demand the environmental policies of the various councils to be identical. The rebellion in the Netherlands (1566) suggests, however, that a fundamental principle of the king's strategy was the continued adherence to catholicism, at least in the catholic lands. In view of the teachings of Francis of Assisi, the continuous adherence to catholicism might very well have included a more rigid environmental regulation in the following years. The implementation of such policies was prevented by the necessity to obtain military supremacy in the religious wars, partly fed by the Black Legend, in the following centuries.

The combination of the pluricentric monarchy of Philip II and the case law work of Bartolomé de las Casas, Francisco de Vitória and Francisco Suárez would open new avenues in environmental law. The Black Legend might have diffculted the reception of castilian environmental law, for example, the *Nueva Recopilación* (1552) (Zambrana, 2012: 305-306), which contained a recognizement of ecosystems not only in Europe, but also in the Americas. The illegality of the wars against the indigenous nations and, therefore, the illegality of it's conquest and western administration of them would have restored the normativity of the indigenous nations' cosmovisions. Since the harmony in the universe that includes human beings is compatible with the teachings of Francis of Assisi, the cosmovisions of indigenous nations did not necessarily conflict with the strategic guidelines put into place by Philip II.

The most serious challenges to the normativity of the indigenous nations' cosmovisions and to the teachings of Francis of Assisi did not come from the indigenous nations and the Catholic Church, but the colonizers, because the colonizers would have lost a way to hoard a great fortune based on extractivism. Basically, this historical evaluation is still valid today. A pluricentricity that recognizes the normativity of the cosmovision of indigenous nations and the teachings of Francis of Assisi as the pillars of environmental law is not only mutually compatible, but absolutely necessary in face of the escalating environmental destruction exemplified by climatic changes.

In literature, it was defended that Francisco Suárez saw the limits of human legislation in natural divine law (Utrera, 2017: 153-154). This vision is vital to environmental law when seen in the context of the teachings of Francis of Assisi. So, it can be argued that the destruction of the environment cannot be promoted or allowed by human law.

VI. Conclusion

Is the constitutional model of a pluricentric monarchy superior to the centralized models used mainly by England? Yes, because the centralized constitutional model of the British Empire did not offer any benefits to the universe, including the indigenous nations and the empires. Yes, because the constitutional model of a polycentric monarchy of Philip II contained strategic options that would have been valuable to the universe, including the indigenous nations. The Black Legend prevented the adoption of the polycentric model.



In the whirlwind of the Black Legend, the polycentric monarchy did not find imitators among the European empires. Taking that the Council of the Indies was not subordinated to none of the other four councils, the council didn't have to take into consideration the opinions of the other councils in its decision making. Only the king was capable of defining a strategic direction to all other five councils individually. Although the Castilian kings could not make themselves prevail over the colonizers, as is shown by the partial withdrawal after the uprising against the *Leyes Nuevas*, the polycentric monarchy contained the strategic option of restoring the sovereignty of the indigenous nations. The polycentric monarchy, however, sometimes used another strategic option in which the languages of indigenous nations were recognized for almost two centuries.

The British Empire was administered in a more centralized way, since the colonies were under the British government, instead of subordinated directly to the king. This promoted colonialism because the differences between England and the colonies were taken less into consideration, which was possible in a polycentric monarchy. This reduced the number and variety of strategic options, which, in turn, contributed to the radicalization of extractivism. Western modernism, including the Age of Enlightenment, also promoted extractivism.

The polycentric monarchy of Philip II would have been more capable of containing the worst excesses of extractivism, because in a polycentric monarchy it would have been more probable for the cosmovisions of the indigenous nations to be taken into consideration by the administration, including the perceptions of the indigenous nations on the position of humanity in the universe. Once the Black Legend demonized Castile and Philip II, and with it the structure of the polycentric monarchy, it has a significant contribution to the escalation of environmental destruction today.

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