

Decolonial thinking and Brazilian Labor Law: contemporary intersectional subjections

Decolonialidade do saber e direito do trabalho brasileiro: sujeições interseccionais contemporâneas

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Abstract

The article aims to establish a dialogue between decolonial thinking and the dominant doctrinal approach of Brazilian's Labor Law protective core: free/subordinate labor. It seeks to reveal continuities of intersectional subjections structured by a racial-sexual labor division, from colonization, in contemporary labor relations in Brazil, since such types of subjection remain invisible by the prevalent Labor Law doctrine.

Keywords: Brazilian Labor Law; Decolonial thinking; Intersectional subjections.

Resumo

O artigo visa um diálogo entre decolonialidade do saber e a abordagem doutrinária dominante do núcleo protetivo do Direito do Trabalho Brasileiro: trabalho livre/subordinado. Busca-se extravasar continuidades de sujeições interseccionais estruturadas por uma divisão laboral racial-sexual, proveniente da colonização, nas relações de trabalho contemporâneas no Brasil, uma vez que tais sujeições permanecem invisibilizadas pela doutrina juslaboral prevalente.

Palavras-chave: Direito do Trabalho brasileiro; Decolonialidade do saber; Sujeições interseccionais.

1. Introduction¹

The main objective of this article is to provide, under a juridical-sociological aspect², a critical dialogue between the conception of decolonial thinking and the dominant doctrinal approach of Brazilian Labor Law protective core: free and subordinate labors. Above all, it goes beyond to overcome the intersectional continuities of subjection³ structured by a racial-sexual labor division, derived from colonization in Latin America, in contemporary Brazilian labor relations, as such subjections remain invisible by the prevalent Labor Law doctrine.

This article is inserted in the paradigm of theories from the South⁴, which propose, firstly, through a juridical-interpretative theoretical investigation, to analyze the conception of decolonial thinking in the postcolonial studies. So, it is based on the central concept of coloniality of power elaborated by the Peruvian sociologist Aníbal Quijano (2005, p. 117), emphasizing the concept of decolonial thinking as a movement of epistemic detachment from Eurocentrism, which is also intersected by other postmodernism concepts, such as the Enrique Dussel's transmodernity (2005, p.31), the criticism of the point zero notion by Grosfoguel (2005, p.14) and the idea of Walter Dignolo's epistemic disobedience (2008, p. 288).

¹ All text, included texts quoted by the authors, has been translated freely from Portuguese or Spanish to English.

² According Gustin and Dias (2013, p. 22): the juridical-sociological aspect proposes to understand the juridical phenomenon in a broader social environment, analyzing the Law as a dependent variable of the society and worrying about the contradictory relations that the Science of Law establishes with other fields: sociocultural, political and anthropological.

³The Intersectionality, a concept derived from feminist studies and movements, refutes the enclosure of the great social differentiation axes, such as the categories of religion, gender, class, race, ethnicity, age and sexual orientation (BILGE, 2009, p. 70). The intersectional approach goes beyond simply recognizing the peculiarities of the oppressions that operate from these categories and postulate their interaction in the production and reproduction of social inequalities (BILGE, 2009, p. 70). For Kimberlé Williams Crenshaw, intersectionality is a conceptualization of the problem that seeks to capture the structural and dynamic consequences of the interaction between two or more subordination axes (CRENSHAW, 2002, p. 177). According to Crenshaw (2002, p. 177), it is a concept that specifically addresses the way in which racism, patriarchy, class oppression and other discriminatory systems create basic inequalities that structure the relative positions of women, races, ethnicities, classes. Thus, intersectionality deals with how specific actions and policies generate oppressions that flow along these axes, constituting dynamic or active aspects of disempowerment (CRENSHAW, 2002, p 177).

⁴ In the words of Connell (2012, p. 11-12): "The colonial encounter itself is present in all these projects, but not in Eurocentric theory. This 'encounter' is not just the moment of colonial conquest or indirect control, no matter how important it may be. It also implies the constitution of colonial society, the transformation of social relations under colonial power, the struggles for decolonization, the installation of new dependency relationships, and struggles to deepen or challenge this dependency. The social thought that emerges from this historical experience is called 'Southern theory'. Whatever it may be called and analyzed, this historical experience -as, it should be remembered, involves most people in the world - is crucial to social theory."

Subsequently, this conception is related to the prevailing doctrinal approach of the protective nucleus of Brazilian Labor Law - free and subordinate labors - which reproduces the theoretical-temporal parallel of contraposition in face of the slave-servile work, derived from the Eurocentric legal paradigm, exalting the employment relationship as the great achievement of modern society.

However, this linear transhistorical approach ignores that such forms of labor in the Latin America colonization were simultaneous and associated with the idea of race and gender to naturalize inferior functions in the social division of labor. Consequently, the performance of precarious and subaltern functions in contemporary labor relationship in Brazil affects workers and peripheral workers, who have been oppressed by race and gender intersectionality since colonization, and who still been silenced by a single Eurocentric matrix narrative of freedom celebration by subordinate labor, as result of colonial thinking still present in the Brazilian Labor Law.

2. Decolonial thinking in postcolonial studies

The postcolonial studies are permeated by distinct and variable axes, but these are presented as a common characteristic of the methodological effort for deconstructing essentialisms, searching to consolidate a critical epistemological reference to dominant modernity conceptions, that are closely related to the colonial experience (COSTA, 2006, p. 117).

The postcolonial approach establishes a production process critique of scientific knowledge that, favoring Eurocentric matrices, reproduces the logic of the colonial relationship (COSTA, 2006, p. 118). As Costa (2006, p. 118) points out, the experiences of subaltern groups⁵, as well as the transformation processes in "non-Western" societies, still been treated from their similarity or divergence relations called *center*. This hierarchical binarism requires a modern epistemology rupture through a criticism of otherness, but not in the sense of being against the *center*, against the "other one." The

⁵ Subaltern groups refers to the subaltern class term of the Italian theoretician Antonio Gramsci, as categories dismissed from power. However, Spivak emphasizes that we should not theorize about a subordinate monolithic and undifferentiated subject, they are heterogeneous subjects that make up the "lower strata of society constituted by the specific modes of market exclusion, political and legal representation, and the possibility of becoming full members of the dominant social stratum" (SPIVAK, 2004, p.12.)

aim is to strive to introduce subaltern groups into the dialectic of the "Me" and the "Others"⁶; a Latin American struggle that does not be only included in the scope of social interactions, but also in relation to the reason and to the knowledge (GORDON, 2008, p.16).

The core of this criticism, as Ballestrin (2003, p.108) points out, is not an original finding of postcolonial studies. However, the author (2002, p.108) points out that these studies have a central role to play, because they have promoted the revaluation of theories from the South, which seek to discover transmodern⁷ perspectives for epistemological decolonization, through strategies of disobedience, and epistemic suspicion, which propitiate the road of pluriversality as a universal project⁸, according to Walter Mignolo (2000, p.25).

Walter Mignolo, as well as Aníbal Quijano, is part of the collective "Modernity and Coloniality", a dissenting side of the Latin American Group of Subaltern Studies⁹, which aims an epistemological project that must consider the perspective of critics from the Global South, who think with and from subalternized ethnic-racial-sexual bodies and places (GROSGOQUEL, 2008, p 118). Grosfoguel (2008, p. 117) says that, as epistemological projects, postmodernism and poststructuralism are still trapped within the Western canon, reproducing a certain form of power / knowledge coloniality. Thus, the group "Modernity and Coloniality" perceived from the dialogue with the Latin American Group of Subaltern Studies the need to transcend – what means, to decolonize - Western epistemology and canon, in defense of the "decolonial option" to

⁶ As Ballestrin points out (2003, p. 91), a postcolonialism arose from the identification of an antagonistic relationship, the colonized and the colonizer, in which the presence of the other one prevents me to be totally myself. "The relationship does not arise from full identities, but from the impossibility of constitution by themselves" (LACLAU, MOUFFE, 1987, 214.).

⁷ According to Dussel (2005, p. 31), transmodernity is a political, economic, ecological, erotic, pedagogic and religious liberation project that proposes to transcend the Eurocentric modernity version. For Grosfoguel (2008, p. 139), instead of a single modernity, centered in Europe and imposed on the rest of the world as a global design, Dussel proposes to face the Eurocentric modernity through a multiplicity of critical decolonial responses from cultures and subaltern epistemic places of colonized peoples.

⁸ For Mignolo (2000, p.25), transmodernity would be equivalent to diversity as a universal project, as result of "critical thinking of frontier" as an epistemic intervention of the various subalterns. According to Grosfoguel (2008, p. 117), frontier thinking is a critical response to fundamentalisms, hegemonic or marginal. For the author (2008, p. 117), what all fundamentalisms have in common (including the Eurocentric one) is the premise that there is only one epistemic tradition from which truth and universality can be attained.

⁹ According to Grosfoguel (2008: 116), among many reasons that led to the disintegration of the Latin American Group of Subaltern Studies, one can emphasize the opposition between those who considered the subalternity as a postmodern critique - which represents a Eurocentric criticism to Eurocentrism - and those who saw it as a decolonial critique - which represents a critique of Eurocentrism by the silenced and subalternized knowledge.

understand the world marked by the permanence of global coloniality in the different levels of personal and collective life (BALLESTRIN, 2013, p.89).

Among the central concepts used by the collective there is the coloniality of power, elaborated by the Peruvian sociologist Aníbal Quijano. The coloniality of power demonstrates that the colonial, economic, political, social, and epistemic relations did not end with the destruction of colonization, that is: coloniality allows us to understand the continuity of colonial domination forms beyond colonization.

According to Quijano, the modernity was characterized by a world power pattern which dominated and disputed the control of the various forms of social existence, forming a structural complex, whose character is always historical and specific (QUIJANO, 2002, p.4). From this perspective, the phenomenon of power in modernity was characterized as a type of constituted social relation by the permanent co-presence of three elements - domination, exploitation and conflict - that affect areas of social existence, among which we can note work; the space of collective authority; the sex, within their resources and products; and the modes of knowledge production capable of shaping subjectivities (QUIJANO, 2002, p.4).

The modern power pattern imposed, as a way of labor control, the *capitalism* allied to codification of the differences between conquerors and conquered through the idea of *race*¹⁰, that is, it is a supposed distinct biological structure that destined some ones in natural situation of inferiority in relation to others; the *Nation-State* borned as a central form of collective authority control; the bourgeois family institution predominates in sex control; and, finally, the *Eurocentric paradigm*, as a hegemonic form of knowledge production (QUIJANO, 2002, p.4). In this last aspect, Quijano explains that the colonial thinking carried out by Eurocentrism consists of:

Eurocentrism is here the name of a knowledge perspective whose systematic elaboration began in Western Europe before the middle of the XVII century, although some of its roots are undoubtedly older, or even ancient, and that in the following centuries became hegemonic movement through the same flow of bourgeois Europe (...) It is not, therefore, a category that involves all cognitive history throughout Europe, nor in Western Europe in particular. In other words, it does not refer to all modes

¹⁰ Quijano (2014, p. 285) asserts that a racial / ethnic classification imposed above world population was the cornerstone of this power pattern. In this sense, the category race, originated and globalized from Latin America, operates in each of these planes, means and dimensions, material and subjective, within daily social existence and societal scale (2014, p. 285).

of knowledge of all Europeans and all ages, but to a specific rationality or knowledge perspective that becomes worldwide hegemonic in order to colonize and overlap all others, previous or different, and to their respective concrete knowledges, both in Europe and on the rest of the world (QUIJANO, 2005, p. 126).

Mignolo (2010, p.15) points out the Aníbal Quijano's concept, analytically, opening possibilities for reconstruction and the restitution of the silenced histories, subjectivities, languages and knowledge repressed through the idea of the European totalitarian rationality. Moreover, according to Mignolo (2010, p.15), the coloniality of power, in programmatic terms, proposes a project of "detachment"¹¹ from Eurocentric knowledge. Thus, the decolonization of knowledge is a project of epistemic detachment in the social sphere, as well as in the academic sphere, that is a dimension of the social (MIGNOLO, 2010, p. 15). In the words of Quijano (1992, p. 447):

The criticism of the European paradigm of rationality / modernity is indispensable. Even more, urgent. But it is doubtful that the way consists in the simple negation of all its categories; in dissolution of reality in discourse; in pure negation of the idea and the perspective of totality in the knowledge. Far from this, it is necessary to detach from the links of rationality-modernity with coloniality, in the first place, and ultimately with all power not constituted in free decision of free people. It is the instrumentalization of reason by the colonial power, in the first place, that produced distorted knowledge paradigms and failure in liberating promises of modernity. The alternative is therefore clear: the destruction of the coloniality of world power.

For Mignolo (2010, p.10), the idea that knowledge is part of colonizing processes already existed in academic debates in Latin America before post-colonial studies. The author (2010, p.10) recalls that the Brazilian Darcy Ribeiro, in the early 70's, clearly expressed that the empire marches to the colonies with weapons, books, concepts and prejudices. In general, as discussed by Quijano (2005, p. 122), this debate was dominated, especially after the Second World War, by the issue of development-

¹¹ Mignolo also uses, in a way complementary to Quijano's "detachment", the term "delinking" that was introduced by the Egyptian sociologist Samir Amin, formulated at the level of economy and policy (MIGNOLO, 2010, p.16). According to Mignolo (2010, p.16), without an epistemic delinking it is almost impossible to get rid of the modern notion of wholeness.

underdevelopment, through the modernization theory, which argued, among other arguments, that modernization necessarily implies the Westernization of non-European societies and cultures, because it is a phenomenon of all cultures, not only Eurocentric or Western.

However, what Mignolo and Quijano propose is different: it is not a mere verification of the decolonial thinking, but also of the development of an urgent epistemic disobedience, as a method of internal opposition to modern and Eurocentric concepts, based on categories of Greek and Latin concepts and experiences and subjectivities formed from these bases, both theological and secular (Mignolo, 2008, p. 288).

According to Mignolo (2008, p. 289), we will not be able to go beyond the limits of liberalism, Christianity and even Marxism or Foucauldism without epistemic disobedience, however, it should not be confused with the idea of delegitimizing European critiques or postcolonial ideas grounded in Marx or Foucault.

As implementation of epistemic disobedience, Mignolo (2008, p. 289) does not suggest "identity policies", but the "identity in policies". For the author, identity policy is based on the assumption that identities are essential aspects of individuals, which can lead to intolerance, and fundamentalist positions in identity policy are always a danger (Mignolo, 2008, p. 289). According to Mignolo (2008, p. 289), when we partially agree with this view of identity policy, of which nothing is exempt - since there are identity policies based on the conditions of being black or white, woman or man - we can reveal the importance of identity in policies. Identity in policies is relevant not only because identity policy permeates the whole spectrum of social identities, but because the identity control policy resides in the construction of an identity that is posited as natural (MIGNOLO, 2008, p. 289). Thus, for Mignolo (2008, p. 289) to be white, heterosexual and male are the main characteristics of the identity policies that denote identities as essentialists and fundamentalists. However, dominant identity policy is not exposed as such, but through abstract universal concepts such as science, philosophy, Christianity, liberalism, Marxism (Mignolo, 2008, p. 289). The Argentine author explains:

The identities built up by modern European discourses were racial (that is, the colonial racial matrix) and patriarchal. Fausto Reinaga (Aymara intellectual and activist) clearly stated in the 1960s: "Damn, I'm not an Indian, I'm an Aymara. But you made me as an Indian and as an Indian I will

fight for liberation." The Identity in politics, in short, is the only way to think decolonially (which means to think politically in terms and projects of decolonization). All other forms of thinking (that is, by interfering with the organization of knowledge and understanding) and of acting politically, that is, forms that are not decolonial, what means to remain in imperial reason; that is, within the imperial identities policies (MIGNOLO, 2008, p. 290)

In a similar direction, the philosopher Castro-Gómez (2005, p.14) discusses the point zero notion¹², criticizing the 18th century Enlightenment as an attempt to create a universal metalanguage capable of overcoming the deficiencies of particular everyday languages. In this way, the scientific language of the Enlightenment would establish an epistemological distance from other human languages - which would be "sources of error and confusion" - to establish a point zero, that is, a "neutral" platform of observation, from which the world can be named in its essentiality, reflecting the universal structure of Eurocentric reason (2005, p.14). Thus, as emphasized by Grosfoguel (2007, p. 64), Eurocentrism deals with an epistemic subject who has no sexuality, gender, ethnicity, race, class, spirituality, language, nor epistemic location in any relation of power, and produces the truth through an inner monologue with himself, with no relation to anyone outside himself. Therefore, it is a deaf and faceless knowledge that has been assumed by the human sciences since nineteenth century as the epistemology of axiological neutrality and the empirical objectivity of the subject that produces scientific knowledge¹³ (GROSFOGUEL, 2007, p. 65).

Dussel (2005, p. 31), in his concept of transmodernity, proposes the overcoming of this illustrated reason, that is, when it is imposed as a "developmentalist reason" of the hegemonic modernization process. However, modern reason must be transcended not as a negation of reason, but as an overcoming of Eurocentric, violent and hegemonic reason. In author words (2005, p. 30):

¹² The author uses the expression "the hubris of point zero". According to Castro-Gomez (2005, p. 18), the Greeks claimed that hubris was the worst of sins because it presupposes the illusion of being able to go beyond the limits of the mortal condition and become like the gods. Thus, hubris supposes the ignorance of spatiality and it is conceived as arrogance, excessive trust and lack of content (CASTRO-GÓMES, 2005, p.19)

¹³ According to Matos and Paradis (2014, p. 66), although they may differ in several respects, all "classical" Eurocentric theoreticians agree that women "naturally" do not have the attributes and capacities to become individuals, so " 'individual' is a patriarchal category. The authors (2014, p.66) mention that to Locke reason would be natural, and women could not be citizens, because they would not be endowed with the capacity of reason and they was subjected to a particular contract (marriage), not being, therefore, able to participate in the social contract. Thus, the authors point out, that engaging in contracts was not as universal as it may seem at first glance, because gender gives a specific status in liberal theory, although it seeks to present itself as a gender neutral theory (MATOS; PARADIS, 2016, p.67).

So it is not a premodern project, as a folk affirmation of the past, nor an anti-modern project of conservative, right-wing groups, Nazi or fascist or populist groups, nor a postmodern project as a denial of Modernity as criticism of every reason to fall into a nihilistic irrationalism. It must be a "trans-modern" project (and would then be a "Trans-Modernity") by a real subsumption of the rational emancipatory character of Modernity and its Neglected Alterity ("the Others") of Modernity, by denial of its mythical character (which justifies the innocence of Modernity over its victims and therefore becomes contradictory irrational).

As Ballestrin points out (2013, p. 111), the knowledge decolonization proposed by postcolonial studies, particularly by the group of Modernity / Coloniality, is at the same time provocative and uncomfortable, due to the radical questioning to classical matrices of the past, whether via liberalism or Marxism. However, Ballestrin (2013, p. 111) asks what the implosion limit would be on the epistemological basis of the social sciences. This is our questioning regarding Labor Law in Brazil and its alleged universality, based on the institutionalized Enlightenment¹⁴ in the context of modernity, considering the neutral and hegemonic nucleus as the free and subordinate labor.

3. Knowledge Decolonality in Brazilian Labor Law: visibility of contemporary intersectional labor subjections

As Walter Mignolo emphasizes, in 18th century, European secular philosophers celebrated the theology abandonment and the advancement in direction of rational scientific world where the truth is replaced by the belief, but still within the same Eurocentric abstract paradigm (Mignolo, 2006, p.675). The "new" scientific rationality was a totalitarian model, because it denied the character of science to all forms of knowledge that were not guided by its epistemological principles and its methodological rules (SANTOS, 1988, p. 50).

This problem also emerges from the way which the scientific revolution and the Enlightenment itself were conceived: as a modernity triumph in the perspective of modernity by itself; as a self-celebration that denied to the rest of mankind the ability to

¹⁴ The caricatures of the Enlightenment are criticized, what was co-opted by a certain ideopolitical tendency of the bourgeoisie, transforming human freedom and autonomy into mere formalities (ROUANET, 1987, p. 205).

think and to produce knowledge outside of the patterns created and conceived as Eurocentric epistemic supremacy (Mignolo, 2006, p. 667). The scientific revolution, as well as the Enlightenment, despite his immense contributions, can be considered as species of a "homemade revolution", because there is a greater paradigmatic continuity than a rupture, to the extent that there is a change within the same Christian and Western tradition, which continues rejecting other non-European forms of knowledge (MIGNOLO, 2006, p. 672).

Particularly in relation to modern European thought propagated by the Enlightenment institutionalized by the bourgeoisie, the idea of the modern labor relations¹⁵ differentiation arises, which, in contrast to the slave and servile model, was based on freedom, as the core of Labor Law.

The aporia of the free and subordinate work in Labor Law is exalted as a form of resistance to pure autonomy of the will, instituted by contractual individualism, centered in classical liberalism, because, unlike Civil Law, the labor branch recognizes the factual asymmetry among subjects relationship and tried to grant protective legal superiority to the employee (ANDRADE, 2014, p. 128).

As Andrade and D'Angelo (2016, p. 74) point out, the uniform narrative established by Eurocentric jus-labor doctrine was settled with the advent of the Industrial Revolution and the Modern State, which is represented by the victory of the bourgeoisie in face of Monarchical Absolutism. In this context, contradictory free and subordinate work appear to establish a counterpoint and to bury the labor relations previously experienced, that is, slave and servile relations (ANDRADE, D'ANGELO, 2016, p.74).

¹⁵ Lodovico Barassi was considered decisive for the distinction between the labor contract (*nomen iuris* created by the Italian author) and the previous labor relations. Barassi classified the contract of employment in the type of leasing unit (grant for onerous title of the enjoyment of any source energy), distinguishing the contractual species *locatio operis* from *locatio operatingum*. While in the first one, work management was carried out autonomously by the worker, in the second one, the management of the activity was concentrated in the work creditor who assumed the risk, as a counter-legal subordination of the worker (BARASSI, 1917). For the author (1917), therefore, legal subordination is the distinguishing feature of the employment relationship, freely agreed by the worker and guaranteed by the employment contract. Barassi (1917) contributed to the birth of Labor Law through a dogmatic construction of the work contract, in which the work force and the worker himself was inseparable, something that goes beyond the simple humanization of the *locatio hominis*, which is why he needed a protection in specific legal basis.

Labor Law perceives the specificity of this free and subordinate labor relation, in which one of the subjects - the employer - holds the directive power; and the other one remains legally, economically, and psychologically subordinated to the first. Thus, the jus-labor branch elaborates its own principles with characters of irrenunciability, non-eligibility, unavailability able to compensate the inequality among the subjects in this relationship (ANDRADE, D'ANGELO, 2016, p.76). From the perception of this asymmetry, "modern liberalism forged another ideology, that is, it universalized this model of sociability and produced a new normative-coercive regulation centered on free / subordinate work" (ANDRADE, 2014, p.128). Everaldo Gaspar Lopes de Andrade comments critically on this presumably "revolutionary" conception of Labor Law (2014, p.128):

And Labor Law appears exactly as a right that promoted a true revolution in a tortuous and emblematic field of Private Law: the autonomy of the will. Therefore, the legal-labor theory presents, as a trophy, the presuppositions of this new branch, broke with the contractual individualism and the freedom of the parties, insofar as they recognized the existence of an asymmetry, an inequality among the subjects of the contractual relationship: employer / employee; bourgeoisie / proletariat.

The dominant Brazilian Labor Law doctrine imported the Eurocentric legal-labor paradigm and extolled the free and subordinate labor as the central object of this Labor Law, reproducing, included, the theoretical-temporal parallel of contraposition between slave and servile labor in order to condemn them and to exalt the employment relation as the great conquest from the modern society recognized by the bourgeois Liberal State (ANDRADE, D'ANGELO, 2016, p. 72). An example of this dominant doctrine¹⁶ is the manifestation of Maurício Godinho Delgado:

Labor (as free and subordinate labor) is today the most important and frequent legal relationship among all the labor relations formed in capitalist society. This socioeconomic generality of work, however, is, as seen, an extremely recent phenomenon: in the periods prior to the nineteenth

¹⁶ In addition to Maurício Godinho Delgado, many other authors reproduce this transhistoric linear sequence, as Sérgio Pinto Martins (2011) and Amauri Mascaro Nascimento (2011).

century, non-free labor prevailed as the servile form or as the slave form - formerly one. (2016, p. 298)¹⁷

This doctrine reveals that Brazilian Labor Law, choosing the free and subordinate labor as its central object, welcomed the European foundations of the liberal modernity philosophy, in order to legitimate in Brazil the sociability model which sought to universalize the capitalist mode of production centered on subordination of the labor force to capital (ANDRADE, D'ANGELO, 2016, p.76). In this sense, Everaldo Gaspar Lopes de Andrade (2014, p. 129) points out that Brazilian Labor Law, reproducing this Eurocentric hegemonic jus-labor doctrine, also inserts a legal architecture with a supposed neutrality to "soften" the commodification effects of the labor by the capital, but, in fact, it was presupposed to legitimize the capitalist *modus operandi* in labor relations.

This fictitious neutrality, which also manifests itself in the "peaceful" and static conciliatory function between capital and labor, adopted by the majority jus-labor doctrine serves as an instrument for silencing historical struggles that have triggered the construction of Brazilian Labor Law¹⁸. An example of this is the theory of the "granting of the Consolidation of Labor Laws"¹⁹, reproduced by the dominant homeland doctrine, which disseminates the image of Getúlio Vargas as the founding father of labor laws in Brazil, to legitimize the propagation of another discourse: that Brazilian workers were always passive before the process of legislative formation, suppressing their historical active role of resistance (CAMPANA; BOSCHI, 2009, p. 65), whether or not²⁰ during colonization²¹.

¹⁷ In another passage, the author reproduces the same logic: "Although the 'Lei Áurea' does not have any jus-labor sense, to a certain extent, as the initial reference point of the Brazilian Labor Law History. That fulfilled a relevant role to join these assumptions to configurate this new specialized legal branch. In fact, it constituted a diploma that both eliminated the incompatible production relation with the labor branch from the socio-legal order (slavery), and, consequently, stimulated the incorporation, by social practice, of the revolutionary formula of using the labor force: the employment relation "(Delgado, 2016, p.110).

¹⁸ In this sense, as an example of the invisibility of social struggles in the historical construction of Brazilian labor legislation: "There were several sparse norms on the most diverse labor issues. There was a need to systematize these rules. To this end, the Decree-Law approved the Consolidation of Labor Laws (CLT). The objective of the CLT was only to gather the sparse laws, consolidating them "(MARTINS, 2011, p.12).

¹⁹ Paranhos (1999, p.23) explains: "The myth of donation spread with the greatest intensity, mainly from the 'Estado Novo', and, by its diffusion, the belief that the social legislation would be no more than a Getulio's gift fallen from skies over the heads of Brazilian workers."

²⁰ The numerous strikes registered in Brazil between 1900-1920, the creation by the working class of unions, alliances, cooperatives, mutual aid associations, clubs, libraries, free schools, trade unions, conferences, cultural courses, national and state congresses, regional workers' federations and the Brazilian workers'

In a critique of the ontological dimension, Everaldo Gaspar Lopes de Andrade (2014, p. 21) points out that the majority doctrine can not overcome the paradox of free and subordinate labor, underlining this ignored permanent and dialectical contradiction between capital and labor, which continues to be the core of Labor Law in Brazil, despite the fact that the asymmetry among the subjects of the employment relationship will never be eliminated, because the employee, in a totalizing capitalist reality, is coerced legally, economically and psychologically.

The legal fallacy of "free and paid" labor was denounced by Marx, who, in this respect, adds it to decolonial readings²² as a form of resistance to liberal modern theories in the labor market. Thus, according to Marx (1996, p. 169), there is no free and paid labor in the capitalist system, because there is the transformation of the value and the price of the labor force into salary or value and price of labor by itself. About this form of manifestation, which becomes invisible the true relation and shows just the opposite of it, resting all juridical conceptions about the worker and the capitalist and all capitalist mode of production mystifications, all its illusions of freedom (MARX, 1996, p. 168). The parties of an employment contract shall never be legally equal, insofar as the exchange between capital and labor is presented in the same manner as the purchase and sale of the other goods. "The buyer gives a certain sum of money, the seller a different item. The juridical conscience recognizes a material difference, but it is expressed in legally equivalent formulas" (MARX, 1996, p.170).

However, the legal paradox of free and subordinate labor, as an importation of modern liberal-bourgeois Eurocentric thought²³, reveals more than a critique of the

confederation refute the idea that the Brazilian workers' movement was inconsistent and not very combative (CAMPANA, BOSCHI, 2009, p. 65).

²¹ An example of this doctrine: "In a country of colonial formation, with an essentially agricultural economy, with an economic system built around the slave labor relationship - like Brazil until the end of the nineteenth century - it is not possible to investigate the existence of this new legal branch while is not consolidated the minimum assumptions for the socioeconomic assertion for the basic category of the labor branch, the employment relationship. If the existence of free labor (legally free) is a historical and material presupposition for the emergence of subordinate labor (and consequently of the employment relationship), it is not necessary to speak about the juridical branch of labor relations without the presupposition of this relationship is structurally allowed in the society in question. Thus, it is only after the extinction of slavery (1888) that a consistent research on the formation and historical consolidation of Labor Law in Brazil could be initiated" (DELGADO, 2016, p.110).

²² Despite we adopt the decolonial critique in this work, we understand the need to transcend the Western epistemology and canon, which is not simply to ignore all Eurocentric scientific productions that can contribute to decolonial resistance in certain respects.

²³ It is emphasized that the Brazilian Labor Law did not suffer specific and particular influence of the doctrine of its Portuguese colonizer. Brazilian Labor Law doctrine is influenced by Eurocentric thinking in its entirety, because when we talk about "Europe" we are not referring to a geographic area or country. It

ontological dimension, presented by Everaldo Gaspar Lopes (2014), or Marxist, because it goes beyond other instrumentalization of the knowledge coloniality.

Our majority doctrine, perpetuating the Eurocentric thought that establishes this alleged transhistorical difference between slave-labor and free-subordinate labor, hide overlapping forms of work that took place in Brazil colony and their respective articulations with race and gender, which hides, until today in the Brazilian Labor Law, intersectional subjections.

First, the unilineal and universally valid historical theory about the known forms of labor, propagated by contemporary labor doctrine, needs to be questioned. From the point of view of modern liberal-Eurocentric thinking, still extolled by Brazilian Labor Law, slavery, servitude and independent commodity production have conceived as a historical succession prior to the commodification of the labor force, that is, they are pre-capital. (QUIJANO, 2005, p 126).

However, as Quijano (2005, p. 126) points out, in Latin America, forms of labor control did not emerge from a unilineal historical sequence, because none of them was a mere extension of old pre-capitalist forms, and therefore they not were or are incompatible with capital. The author (2005, p. 126) points out that Latin America slavery was established as a commodity to produce for the world market, simultaneously with indigenous servitude and independent mercantile production. Thus, all these forms of work in Latin America not only acted concomitantly, but they were also all articulated around the axis of capital and the world market (QUIJANO, 2005, p. 126).

In addition to being simultaneous, such forms of work in Latin America were associated with the idea of race to grant legitimacy to the domination relations domination between colonizer and colonized, as well as to the naturalization of the higher and lower functions in the division of labor.

Thus, a systematic racial division of labor was imposed, in which Indians²⁴ were confined to the structure of servitude²⁵, and blacks²⁶ were reduced to slavery. The

refers to everything that established a racial-ethnic-cultural-epistemic expression in Europe, as an extension of it, that is, as a distinct identity, not subject to the coloniality of power (QUIJANO, 2014, 287).

²⁴ It is important to emphasize that such phenotypic codification in the homogeneous group "Indians" was done by the colonizer, dominating and naturalizing the inferiorization, ignoring that such people had different cultures including Aymara, Quechua, Guarani, Nahuatl, several dialects of Mayan roots, which was dissected and classified by Western linguists (MIGNOLO, 2010, p.82)

Spaniards and the Portuguese, as the dominant white race, could receive salaries, be traders, artisans and independent farmers (QUIJANO, 2005, p 118). Only the white nobles could occupy the middle and high posts of the colonial, civil or military administration (QUIJANO, 2005, p. 118). Quijano (2005, p. 119) describes the racial distribution of colonial labor, reflected in the contemporary social division of labor in Latin American countries:

Thus, each form of labor control was articulated with a specific race. Consequently, the control of a specific work form could be at the same time a control of a specific group over dominated people. A new technology of domination / exploration, in this case race / work, was articulated in a way that appears as naturally associated, which, so far, was exceptionally successful.

Moreover, the racial division of labor in Latin America was articulated with gender domination relationship. We agree with bell hooks (1994, p. 203) that to condemn the white colonizer's imperialism without examining patriarchy is a strategy that aims to attenuate the ways in which gender determines oppression within a specific group. Thus, it should be emphasized that the women's place in the colonization of Latin America, specifically related with indigenous and black women, was stereotyped along with the rest of the bodies, and more "inferior" their races were, more their sexual objectification.

However, the exploitation of women in colonial Latin America goes far beyond sexual exploitation, which results in a gender coloniality²⁷, derived from the articulation

²⁵ For some authors (MONTEIRO, 1989; VENÂNCIO, 1997), in the Brazilian colonial racial work division, all races considered "inferior" by the colonizer, that is, non-white, were exclusively destined to slave labor, in this view, there was not servitude. In this sense, according to Venâncio (1997, p. 165), studies have shown that indigenous populations in the early centuries of colonization were systematically exploited on farms destined to export agriculture. In economically peripheral areas, slavery based on the Earth's Gentile extended deep roots, surviving until the second half of the eighteenth century (VENÂNCIO, 1997,p. 165). According to the author (VENÂNCIO, 1997, p. 165), the everyday life of family plantations and even at revolt moments, Amerindian captives shared their hopes and expectations, which created bonds of solidarity in the universe of slave quarters.

²⁶ The same critique of phenotypical codification - for inferiorization and a racial division of labor - is incorporated in relation to the immensity of people from different countries and cultures who reduced to a single homogeneous group - blacks - for domination.

²⁷ Lugones (2014, p.941) calls the analysis of the racialized capitalist gender oppression of "gender coloniality" and the possibility of overcoming a kind of coloniality, the "decolonial feminism." According to the author (2014, p. 941), the gender coloniality allows us to understand oppression as a complex interaction of economic, racializing and engendered systems in which each person in the colonial encounter is saw as an alive and historical being, fully featured.

between coloniality of power, knowledge, being, nature and language (LUGONES, 2014, p. 941). As María Lugones stresses (2014, p. 940), the modern colonial imposition of a racially differentiated and oppressive gender system can not be reduced only as a power circulation that organizes the sexual and domestic sphere, opposed to the public domain of authority and the wage labor sphere.

The characterization of white European women as sexually passive and physically fragile made the position of "non-white" women characterized as a sexual object, but also strong enough to withstand any kind of work, not only domestic work (LUGONES, 2008, p. 95-96) María Lugones (2008, p. 98-99) describes the colonial gender system, imbricated by race and labor exploitation:

From their ubiquitous participation in rituals, in decision-making processes, and in precolonial economics they were reduced to animality, to forced sex with white colonizers, and to a labor exploitation so deep that, often, it took them to work until the death.

The colonial "civilizing mission" was the euphemistic mask for the brutal access to the female bodies through a gender exploitation, articulated in labor and racial instances, through sexual violation, control of reproduction and systematic terror (LUGONES, 2014, p.938).

This racial and gender segregation at work within colonial / modern capitalism continued throughout the colonial period, which expresses itself in an almost exclusive association of male whiteness with wages and, consequently, with the colonial administration posts (QUIJANO, 2005, p.119)

The simultaneous distribution of slavery, servile and free labor in colonial America, articulated with race and gender, created intersectional subjections still present in the Brazilian labor division, that is, the coloniality of the class, race, and gender oppressions conveyed through the *locus* of human labor remains in Brazil. The exclusion of certain social segments from power spaces, as a colonial legacy of the unequal distribution of preconfigured labor functions according to race, class and gender, means that the entry into the Brazilian labor market of these groups - specifically black men and, black women - are always precarious, in subaltern positions, poorly paid, characterized by vulnerability of labor rights.

According to research data published in March 2017 by the Instituto de Pesquisa Econômica Aplicada (IPEA), with the Pesquisa Nacional por Amostra de Domicílios (Pnad)

indicators, provided by the Instituto Brasileiro de Geografia e Estatística (IBGE), the scale of remuneration at work remained unchanged throughout the historical Brazilian series (1975-2015): white men have the best incomes, followed by white women, black men and black women (INSTITUTO DE PESQUISA ECONÔMICA APLICADA, 2017, p. 3). The research also shows that if in the educational field women are generally in a better position than men, this advantage is not reflected in the labor market remuneration²⁸, what means that the most indicators show a watertight hierarchy in which the top is occupied by white men and the bottom by black women, what confirms that the intersectional subjections inherited from colonialism have remain still in the division of labor in Brazil (INSTITUTO DE PESQUISA ECONÔMICA APLICADA, 2017, p. 02).

According to data published by IBGE (INSTITUTO BRASILEIRO DE GEOGRAFIA E ESTATÍSTICA, 2014, p. 139), women are more subject to informal work than men: 42.7% of women are informal workers, compared to 41.5% of men. Inequality deepens when we analyze the informality articulated with the race category: 48.7% of the black population against 34.7% of the white population. If both situations present better indices for men and whites, we conclude that at the bottom we have women and blacks being the main informal workers in the country, which constitutes the "other one of the others"²⁹ (RIBEIRO, 2017, p. 7).

The Marginalized female and male workers are less likely to engage in an employment relationship, what means formal arrangements for subordinate work covered by social protection or regular earnings. They are confined to low-paid occupations and, therefore, they have limited ability to invest in the health and education of their families, which, in turn, hinders overall development and growth perspectives, not only for themselves but for the subsequent generations, crystallizing

²⁸ This fact proves that the growth of social inequality in Brazil and in the world is not about education but power relations: it does not matter the university diplomas in remuneration, because all the big gains go to a small group of individuals which occupy strategic positions in corporate offices or in finance dominated by white men (Krugman, 2015). In addition, schooling in contemporary capitalism is seen as a factor to raise labor productivity and economic growth, not to provide new knowledge and skills to citizens. "Human capital" may be just a way of individuals, with little contribution to reduce inequality and increase personal income as a whole (VIANA; LIMA, 2010, p.144).

²⁹ In the Grada Kilomba's words (2008, p.124): "*White women have an oscillating status, as both themselves and the "other" for white men, since they're white, but they're not men; black men exercise the function of opponents of white men, being possible competitors in the conquest of white women, since they are men, but not white; black women, however, are not even white, nor men, and exercise the function of the 'other' of the other*"(original).

overlapping inequalities stratified since colonialism (INTERNATIONAL LABOUR ORGANIZATION, 2014, p.20)³⁰.

The gradual phenomenon of a loss of subordinate labor centrality in Brazil³¹ and in the world³² leads us to design variable forms of precarious atypical labor that imply labor subjection, particularly in intersection with marginalized social segments, which continue in subaltern positions inherited from colonialism. Brazilian Labor Law, assuming the paradoxical free and subordinate labor as the only protective neutral nucleus, assigns rights only to those who are covered by the employment relationship, remaining unseen intersectional subjections articulated by the work margins derived from a racial-sexual division of colonial labor, which is perpetuated by the colonial thinking. In this way, free and subordinate labor that attract the applicability of labor rights, as well as its control, have still a male and white privilege in Brazilian contemporaneity, which makes the precarious labor relations to have been endowed with color and gender, which operates intersectionally in working-class cartography.

In this sense, it is crucial to unravel the Eurocentrism from the core of labor force, which glorified subordinate work and gave it a characteristic that it could never have – that is, free labor – in order to reveal and elide other subjections, linked to the race and gender imbrications. Therefore, the decolonial thinking is necessary for the Brazilian labor doctrine, because the last one still celebrates a discourse that appears as universal, colorless and asexual, in which free and subordinate labor reveals itself with a great transhistorical conquest in the face of slave and servile labor. Behind of this apparent neutrality in prevailing doctrine of Brazilian Labor Law, the labor jurists deliberately assume one of their position: the modern liberal Eurocentric thinking that remains to this day, which legitimates and hides intersectional subjections from

³⁰ These characteristics constitute the vulnerable workers conception established by the International Labour Organization. In the original: *“These workers are less likely (...) earners to have formal working arrangements, be covered by social protection such as pensions and health care or have regular earnings. They tend to be trapped in a vicious circle of low-productivity occupations, poor remuneration and limited ability to invest in their families’ health and education, which in turn dampens overall development and growth prospects — not only for themselves but for generations to follow”*

³¹ According to IPEA’s research data, until 2014 the majority of unemployed workers were able to occupy themselves in formal jobs. In 2016, data inform that informality prevails in this transition (INSTITUTO DE PESQUISA APLICADA ECONÓMICA APLICADA, 2016, p. 15).

³² According to the International Labour Organization’s World Report 2014, only 18% of workers in the least developed countries are employed; 31.7 per cent in middle-income countries and 42.6 per cent in developing countries (INTERNATIONAL LABOUR ORGANIZATION, 2014, p.40)

colonialism, manifests itself in the massive precarious relations over specific society segments.

Through multiple formats, represented by false autonomous work, part-time work, outsourced work, intermittent work, incarcerated work, informal work, there is the pulverization of precariousness among Brazilian workers who are outside of the nucleus protection from the Labor Law. However, this legal subject exclusion of labor in Brazil, as all countries in South, is not uniform: it affects workers who have been intersected oppressed by race and gender since colonialism and who have been still silenced by a single Eurocentric matrix narrative with transhistorical freedom celebration by the subordinate work.

The distorted rhetoric that naturalizes Eurocentric modernity as a universal and homogeneous process, hiding the constant coloniality reproduction in the Labor Law in Brazil needs to be denounced. The Brazilian jus-labor doctrine needs to develop decolonial projects through disconnection from a neutral and scientific academic perspective, which demands to be epistemically disobedient, according to Walter Mignolo (MIGNOLO, 2008, p. 324). In this sense, the knowledge decoloniality is not only a turning to the left within the Eurocentric ways of knowing, but a disconnection to an academic detachment, to a critical opening that allows the discursive transgression of frontiers, which makes invisible unequal historical distributions in power spaces, manifested also in intersectional subjections at work.

4. Final words

Labor Law in Brazil is decolonial deficient to explain the specificity formation of the Brazilian labor social division. Intersectional subjections in contemporary labor relationship from the Latin America colonial racial-sexual labor division, which combined simultaneously servitude, slavery, and free labor according to race and gender, are undermined by the labor justice prevailing doctrine, which have still celebrates the Eurocentric modern legal paradigm –liberal, in order to extoll the aporia of free and subordinate labor as a transhistoric conquest of Labor Law.

It is verified that the production process of Brazilian labor knowledge was concentrated mainly in institutions created in the global "center" context, receiving

instructions from the "metropolis"³³. In the context of this article, this means that the dominant Brazilian labor doctrine accepts the existing aporia in the protective core of Labor Law and does not approach it from the social experience of those who were colonized.

Therefore, as part of an urgent epistemic decoloniality process, theoretical disobedience resources should be activated for overcoming the coloniality exclusion patterns and the marginalization of protected subject in the Labor Law in Brazil. In order to make visible and eliminate intersectional subjections in contemporary labor relations, we must start from the conception that there are groups which inherit the racial-sexual colonization work division that still today have been burdened by precarious work, directed to subaltern specific occupations, with low pay and sub-representation in political and power spheres.

Contemporary inequality and vulnerability structures at work in Brazil, imbricated by gender, race and class, were created in the colonial world, that is, they were not import products. In this sense, social thought in the global South occurs under different conditions, because it has different presuppositions. Thus, Brazilian Labor Law, as a social science, must be concerned with the colonial subjection relations which remains after the end of colonization, because the scientific-social decoloniality knowledge is a crucial component for the historical rupture of domination patterns in the labor.

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³³ In the Connell's sense (2012, p.17), the "imperial center", that is, the European world, in which the material, intellectual and scientific are concentrated, reproduces the asymmetries between North and South.

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