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For an ontological turn in the Brazilian Judiciary: a new role to be played by blacks and indigenous peoples

Por uma virada ontológica no Judiciário brasileiro: um novo papel a ser desempenhado por negros e indígenas

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Abstract

The historical disregard of non-Eurocentric knowledge is one of the characteristics of the phenomenon known as colonialism. It persists in Brazil under the current Constitution and reaches the Judiciary. This article examines how such disregard may hinder the judicial application of black and indigenous populations rights. Then, the paper proposes an ontological turn in the judiciary. That means the functioning of a judicial system that expands the consideration of various knowledge in the exercise of its functions. Methodologically, the article is based on interdisciplinary bibliographic research. In addition, it examines two justice system initiatives: the Indigenous Conciliation Center in the Maturuca Community in Roraima and the Vozes dos Quilombos Project in Piauí. The analysis is conducted from semi-structured interviews with the coordinators of those initiatives. Under such method, the article seeks to innovate using the anthropological concept of ontological turn to apply it legally to the judiciary. It was found that the both examined initiatives are able to reveal possibilities of judicial listening in favor of historically colonized populations.

Keywords: Judiciary; Colonialism; Ontological turn.

Resumo

A histórica desconsideração de saberes não eurocêntricos configura uma das características do colonialismo, fenômeno que persiste no Brasil sob a vigente Constituição, alcançando o Judiciário. O presente artigo examina como tal desconsideração judicial pode obstar a aplicação dos direitos das populações negras e indígenas. Em seguida, propõe uma virada ontológica no Judiciário, para que este amplie a consideração de diversas formas de conhecimento no exercício de suas funções. Metodologicamente, o artigo é assentado em pesquisa bibliográfica interdisciplinar que se soma a exame de duas iniciativas do Sistema de Justiça, realizados a partir de entrevistas semiestruturadas com seus coordenadores: o Polo Indígena de Conciliação na Comunidade de Maturuca em Roraima e o Projeto Vozes dos Quilombos no Piauí. Sob tal método, o artigo procura inovar utilizando o conceito antropológico de *virada ontológica* para aplicá-lo juridicamente ao Judiciário. Verificou-se, ao final, que as iniciativas examinadas são aptas a revelar possibilidades de escutas judiciais de populações historicamente colonizadas.

Palavras-chave: Judiciário; Colonialismo; Virada ontológica.

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Introduction[1]

The situation of greater vulnerability of the black (black and brown) and indigenous populations in Brazil is revealed by numerical data. In this 21st century, the country continues to coexist with blacks among the 75% poorest (IBGE, 2019) and with 18% of indigenous people living in extreme poverty, a figure six times higher than the proportion of the rest of the population (CEPAL, 2016). In turn, more than 66% of all people who are incarcerated are blacks (FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA, 2020), who still represent about 75% of those killed by police officers (GRELLET, 2020). This population stratum was also the hardest hit by the Covid-19 pandemic, with 47.6% of its deaths due to the disease, compared to 28.1% of the white population (AGÊNCIA DE NOTÍCIA DA AIDS, 2021). Under the same context, the process of land grabbing against traditional communities has led to more than a thousand murders of indigenous people in the last three decades (CIMI, 2020).

These indicators are an effect, among many others, of a centuries-old process of subalternization of labor, body, life, freedom and forms of existence that have inferiorized blacks and indigenous peoples over the centuries. This process is called *colonialism* (SANTOS, 2002).

Understanding the origin of the phenomenon requires a return to the work of Immanuel Wallerstein (1983). The author notes that one of capitalist system's fundamental objectives is the ceaseless accumulation of capital and the consequent need to expand territories. The coming of European explorers to the American continent starting from the end of the fifteenth century is part of this need. However, this process did not only bring caravels, firearms and adventurers, but above all, the arrival of its own way of existence - the Eurocentric civilization[2] - which, as a way of justifying the exploitation of territories and people carried out from then on, placed itself in a racially superior position to the original societies of the continent and to Africans brought by force to be enslaved (QUIJANO, 2005).

[1] The author thanks the reviewers for their suggestions.

[2] Eurocentrism is not "[...] a category that implies the entire history of cognition in all of Europe, nor in Western Europe in particular. In other words, it does not refer to all the ways of knowledge of all Europeans and at all times, but to a specific rationality or perspective of knowledge that becomes hegemonic worldwide colonizing and overlapping all others, previous or different, and their respective concrete knowledge, both in Europe and in the rest of the world" (QUIJANO, 2005 p. 126).

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"The idea that white Europeans could colonize the rest of the world was based on the premise that there was an enlightened humanity that needed to meet an obscured humanity [...]", according to Ailton Krenak (2019, p. 11). Precisely because they were defined as inferior races, the populations considered to be “obscured” became, in the colonizing view, devoid of knowledge. They would have nothing to add to the public space of civic discussions and the promotion of public policies.

The aforementioned economic and social data reveal the persistence of similar practices in the 21st century, in order to provide a format to contemporary colonialism, called by Boaventura Santos (2007) social or cultural colonialism. If there is no longer foreign political colonization nor the explicit official discourse of the inferiority of races, there remains, in fact, hierarchies similar to those of the pre-1822 period (year of Brazil's independence from Portugal), directed above all to the descendants of the enslaved and exploited native inhabitants and Africans: objectification of labor, corporal domination, relativization of life and freedom and the contempt for traditional knowledges.

The last facet of the mentioned colonialist practices – the disregard of traditional knowledges[3] – reveals, in turn, the epistemic character of the phenomenon. As pointed out by Djamila Ribeiro (2017, p. 35) in relation to the historically colonized strata, “the experiences of these socially located groups in a hierarchical and non-humanized way mean that intellectual productions, knowledge and voices are treated in an equally subaltern way [.. .]”. This circumstance may explain the silencing imposed on them in spaces considered essential to public debates, such as the media and universities, still today mostly occupied by whites, that is, people who do not have, among their life experiences, the submission to racism.

Faced with the abysmal distance between the reality of constitutional norms that promise the construction of a free, fair and solidary society (article 3, subparagraph I) and racial equality (article 5, *caput*) compared to the reality of a life of subjugation and silencing, it is necessary to investigate the role that the Judiciary has played for the

[3] The epistemic aspect of contemporary colonialism is referred by Aníbal Quijano (2005, p. 121) as *coloniality*, which, according to the author, enables white people of European descent to maintain “[...] all forms of subjectivity control, of culture, and in particular of knowledge, of the production of knowledge”. Walter Mignolo (2017, p. 2) reinforces this denomination, pointing out that “coloniality names the underlying logic of the founding and unfolding of Western civilization from the Renaissance until today [...]”. As a methodological option, this text uses the expression colonialism, as used by Boaventura Santos and authors such as Grada Kilomba (2019, p. 33), which, in a crystalline way, synthesizes the phenomenon as one that “[...] symbolizes sadistic practices of conquest and domination and their brutal regimes of silencing the so-called '*Others*'”. Despite these denominational differences, Quijano and Mignolo deal with the same form of centuries-old oppression.

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persistence of such a situation. As a State function that applies the rules in force in litigation, how has the Judiciary dealt with colonialist practices? What is its responsibility for the prolonged subordination of blacks and indigenous peoples? How can it act in the fulfillment of the constitutional project of overcoming colonialism to reduce inequalities?

This paper's aim is to answer these questions. It seeks to examine colonialist obstacles of an epistemic nature, present in judicial activity in enforcing rights over black and indigenous populations, in order to propose an ontological turn in the Brazilian Judiciary, starting to consider non-Eurocentric knowledges in the performance of its functions.

As seen in the research approach, there is a special focus on the description of the epistemological perspective of contemporary colonialism, which, in turn, leads the study to seek a possible alternative, also epistemic, to this state of affairs. This is due to the fact that the age-old silencing of subaltern groups prevents them from denouncing and overcoming the objectification, domination, contempt and relativization of rights that, as previously mentioned, shape the phenomenon in question.

In methodological terms, this is a paper based on bibliographical research that promotes an interdisciplinary dialogue between Law and Social Sciences: there is an interaction between studies of Anti-Discrimination Law and analysis of Decolonial Sociology and Anthropology. Based on this dialogue, the paper seeks to *innovate* by using the anthropological concept of *ontological turn* to legally apply it to the Judiciary.

In addition to the examination of the literature, there are also brief examinations, carried out from semi-structured interviews with its coordinators, of two initiatives originating from the Justice System and able to reveal possibilities of listening to colonized populations within the scope of the Judiciary. The first of these initiatives is the Indigenous Conciliation Center in the Maturuca Community in the Court of Justice of Roraima; the second, the "Vozes dos Quilombos" Project, in the Public Defender's Office of Piauí.

To achieve the proposed purpose, according to the path adopted, the paper is divided into six sections, in addition to this introductory one. In section 1, a brief mention is made of two cases that symbolize judicial difficulties in understanding non-Eurocentric knowledges. In sections 2 and 3, these obstacles are related to the historical construction of the Judiciary according to colonialist standards. In section 4, the need for an ontological turn in the Judiciary is pointed out so that it may overcome the difficulties of understanding historically colonized knowledges, indicating, in the following section, two

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practices, currently in force, that seem to reveal the possibility of sustained resilience. In the end, the paper presents its conclusions.

1 Two judicial practices and the same symptom

The examination begins with an attempt to promote prompt concreteness to the debate posed. Two judicial practices are mentioned that show difficulties of the Judiciary in dealing with non-Eurocentric knowledges.

One should note that, when the term *Judiciary* is mentioned here, one is not ignoring the fact that, in a Federative republic such as Brazil, there is no single judicial unit, but several separate unities in different bodies: state courts, federal courts, superior courts, specialized branches, etc. In short, a whole range of units made up of judges and civil servants from the most diverse regions of the country. However, *Judiciary* is here referred to as an institution considered in its *entirety* (the "State power") which, as argued, in general presents difficulties in its relations with colonized forms of existence, a fact symbolized by two practices mentioned.

The choice of the specific practices was based on three circumstances that should be highlighted. First, because they were carried out in periods close to each other (early 2014), when the anti-colonialist norms of the 1988 Constitution had been in force for some decades, represented to all secularly colonized populations by the promise of freedom, justice and solidarity, the prohibition of discrimination and racial equality (Articles 3, I and IV and Article 5, caput), without prejudice to provisions applicable to specific strata[4]; secondly, because they involve precisely the focus of this paper, the populations originating from the American continent and those of African descent; and, thirdly, for their incisive language, highlighting the judicial obstacles to the implementation of rights that this study intends to point out.

It is true that the selection of two practices, amidst the millions of cases that are pending in the country, may seem insufficient to reveal the difficulties of the judicial framework in dealing with colonized peoples. The choice of two cases, however, is only

[4] Such as the specific recognition of indigenous ancestral knowledge, through the legitimation of social organization, customs, languages, beliefs and traditions, defined by Article 231; or such as the recognition of "quilombola" property, validating its use according to the knowledge of these specific communities, provided by article 60 of the Transitory Constitutional Provisions Act.

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to symbolize the presence of obstacles in the system as a whole, which, in addition to concrete examinations such as the one carried out, are evidenced by other scientifically verifiable elements, such as the abovementioned black prevalence in prisons, which are there under judicial approval (validated *flagrante delicto* or decreed custody, both by the Judiciary).

After these preliminary observations, we can finally move on to the practices. We start in February 2014, when Chief Babau, the Tupinambá indigenous leader of Serra do Padeiro, was sent to prison by decision of the Criminal Court of the District of Una. It is worth mentioning here, in order to better contextualize the problem, that this community is one of the components of the Tupinambá ethnic group, a people who are fighting for their right to land demarcation (article 231 of the Brazilian Constitution) located between the municipalities of Buerarema, Una and Ilhéus in the state of Bahia. This struggle, however, is disregarded by the Brazilian State, which does not fulfill its legal duty to listen to the indigenous people and proceed with the demarcation demanded.

In order to support the jurisdiction of the State Court of Bahia for the decree of custody of an indigenous person, the judicial authority who signed the decision noted:

> From what appears in the representation, there is possibly the existence of people who are taking advantage of benefits granted to those who really deserve it (Indians) and under the protectionist mantle of the State intend to commit serious crimes such as those that have been occurring in the present region.
> The representation states that there is no objective and safe criterion for verifying who is truly an Indian, including reports that anyone can claim to be an Indian, be registered with the Federal Agency, including the possibility of retraction and ceasing to be an Indian.
> [...].
> The fragility of the indigenous QUALITY measurement system is clear, a fact that causes not the strengthening of the aforementioned biotype, but the discredit of those who truly are Indians and who deserve all respect and state protection.
> [...].
> I emphasize that the *modus operandi* of the criminal practice being investigated completely distorts the conception that one has of an indigenous person and completely removes the indigenous characteristic from those investigated [...] (BAHIA, 2014).

From the content of this judicial act emerges the disregard of ethnic self-identification. This, despite the fact that it is a right provided for in article 1, subparagraph 2, of Convention 169 of the International Labor Organization, entered into by the Federative Republic of Brazil in 2002 in the context of the autonomy of indigenous knowledges normatively legitimized in the post-Constitution of 1988. In such disregard,

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this population stratum is inserted in the position of a component of static societies (marked by biotypes) and, therefore, outdated (to the point of depending on the State for the recognition of an *indigenous quality*), ignoring the fact that any collectivity is subject to social changes, especially those resulting from miscegenations that have occurred among diverse populations over the centuries (BONFIL BATALHA, 1972).

It is important to emphasize that denying a given population the possibility of self-identification means denying it the ability to produce relevant knowledges. In fact, those who cannot even decide which social stratum they belong to, depending on an external governmental decision, are, under this logic, devoid of any autonomy, including cognitive autonomy. This is a circumstance that, in the context of colonialism, justifies the centuries-old exclusion from public debates and the impossibility of having specific demands (such as the demarcation of Tupinambá land) taken into account by public authorities.

Leaving now the State Court of Bahia, we reach the Federal Judiciary Section of Rio de Janeiro where we find the second judicial practice, held in April 2014. In a public civil action filed by the Federal Public Prosecutor's Office, an injunction was denied for *Google* to remove 15 videos offensive to umbanda and candomblé posted on the social network *Youtube*. The videos related the Brazilian religious rituals of African origin seen, from a Eurocentric Christian perspective, as devilish and evil, and one of the videos even called for the closure of “terreiros” [religious shrines of Afro-Brazilian rituals].

The situation described, however, did not legally impress the Judiciary, as can be seen from the excerpt below extracted from the grounds of the judicial decision:

> In this case, both manifestations of religiosity do not contain the necessary features of a religion, namely, a basic text (Koran, Bible, etc.), absence of a hierarchical structure and absence of a God to be worshipped.
> At this point, we will not go into the swampy field of what constitutes a religion, since we are merely conducting an examination of provisional injunction, but we can affirm that a system of faith is not being harmed. Afro-Brazilian religious manifestations do not constitute religions, much less do the videos contained in Google reflect a belief system – these videos are distasteful, but they are manifestations of free expression of opinion (BRASIL, 2014).

The existence of religions with African roots was judicially denied because they did not have a written belief system and were not hierarchical. This is a conclusion that disregards knowledges based on oral tradition and socio-community ways of life, such as those of populations forcibly brought to be enslaved until the 19th century, stripping

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many of their current descendants of the right to religious freedom provided for in article 5, subparagraph VI, of the current Brazilian Federal Constitution.

Despite the diversity of the populations involved in the two aforementioned judicial decisions (one involving indigenous peoples and the other, populations of African descent), there is a common element that unites them, in addition to the fact that they were handed down in the same year, 2014. In both cases, the Judiciary ignored the autonomy of these populations' knowledges, ultimately validating an entire system of oppression, of colonial origin, based on the racial superiority of the colonizers.

We do not assert – it is important to emphasize – that there was a deliberate intention of the judges who issued the decisions to downgrade non-Eurocentric knowledges. Indeed, in the case of the Federal Court of Rio de Janeiro, the press reported (PINTO, 2014) that the very judge who signed the decision reconsidered his assertions. The problem lies in the naturalization of racist conceptions, brought about by historical colonialist practices, which are not always perceived by the actors of the Justice System themselves, as they are structurally impregnated in Brazilian society, as pointed out by Silvio Almeida:

> In summary: racism is a result of the social structure itself, that is, the "normal" way in which political, economic, legal and even family relations are constituted, not being a social pathology or an institutional breakdown. Racism is structural. Individual behaviors and institutional processes are derived from a society whose racism is the rule and not the exception (ALMEIDA, 2020, p. 50).

2 Judiciary as an Eurocentric construction

Within the same reasoning of the persistence of racism that pervades social frameworks from historical colonialist practices, it should be remembered that, similarly to other countries on the American continent, Brazilian Judiciary is, in its genesis, the result of a colonized construction of the State. In such terms, it was shaped in the light of European judicial systems, ignoring forms of conflict resolution based on ancestral knowledges adopted by local indigenous communities or by African populations.

In its daily functioning, it originally acted coherently with the colonialist State of which it is a part. In this regard, Fabio Konder Comparato (2013, p. 12) recalls the silence of judges in cases of abuse performed by slave owners against slaves, in slave-owning

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Brazil governed by the Imperial Constitution of 1824, "[...] since several judges were farm owners, with a good number of slaves".

Although the slavery over blacks and indigenous peoples was overcome by Brazilian law in the late 19th century[5], the system lasted, legitimizing similarly discriminatory practices throughout the Republican period. This is the case, for example, of the criminalization of so-called *charlatanism* and *witchcraft*, which took place more intensely in the first half of the 20th century, when the medicinal knowledges of the colonized populations was disregarded by Brazilian Judiciary, which, in the exercise of criminal prosecution, viewed them as punishable criminal offences.

On the other hand, it is worth remembering that if the Judiciary criminalized ancestral medicinal knowledges of blacks and indigenous peoples, this is due to the fact that, prior to its decisions, legal rules were in force that supported criminalization. These norms, in turn, were inserted in broader frameworks of *civilizing programs* (SCHRITZMEYER, 2004) supported by the country's economic and political elites, which, in short, would place Brazil on the same level of what was considered the development of nations colonizing Europeans.

The enactment of the 1988 Brazilian Federal Constitution, although it normatively ended the legitimacy of such programs, did not succeed in suppressing the naturalization of judicially colonialist situations. This can be seen from the two judicial decisions brought in the previous section, to be added to other signs present, such as data on the prison population, reaching, in addition, the very racial composition of the Judiciary at the beginning of the 21st century: according to the Judicial Census, promoted by the National Council of Justice (CNJ, 2018), 80.3% of magistrates in the country do not declare themselves to be indigenous or black.

[5] Manuela Carneiro da Cunha (2012, p. 82-83) reports that "declared or concealed, however, indigenous slavery lasted until at least the mid-nineteenth century. Children were sold (Circular 9/8/1845) and adults were disguised as slaves as well (Notice 2/9/1845). In what is now the Amazon, enslavement in the most traditional forms – direct seizure, encouragement of indigenous warfare to buy prisoners – continued as if nothing had happened".

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3 The problem of interpreting rights

Under purely technical conceptions about the interpretation and application of legal norms, the presence of a structurally white Judiciary, built according to Eurocentric standards, would not bring relevant effects[6]. After all, the exercise of such an activity would be politically neutral, as if *Politics and Law* were watertight and incommunicable sectors.

Yet, there is no way to separate Politics from Law into watertight sectors. According to Max Weber, Politics consists of the "[...] aspiration to participate in power or to exert influence over the distribution of power [...]" (WEBER, 2015, p. 63), expressing itself in the struggle for domination provided by State apparatus, which, under the rule of law, must take place within parameters secured by the normative system. Around these struggles, in turn, there are mobilizations of certain social groups to modify the Law itself, creating legal institutes, expanding or extinguishing them.

There are examples throughout history to confirm the close relations between both sectors. Individual private property, a basic value of the capitalist mode of production, was enshrined in the legal system as a political aspiration of the bourgeoisie, in the context of the French Revolution of 1789. In turn, labor rights were products of workers' mobilizations in post-Industrial Revolution Europe and in Brazil, which was beginning its process of industrialization under the Constitution of 1891. A final example: the original rights destined to the indigenous population, provided for in the Brazilian Constitution of 1988, have arisen as result of this population mobilization in favor of the acknowledgement of the diversity of forms of existence in the country's territory.

In addition to these close relationships between Politics and Law, the members of the Judiciary themselves are not personally neutral. Just like any other citizen, they have their own views of the world, arising from the social values they acquire throughout their experience with their family, the educational system, class origins, the racial and gender stratum to which they belong, the news they watch, churches they possibly attend, among other factors.

This does not mean that the judge is not bound by legal parameters as a valid judgment criterion. However, the strict text of the law is often endowed with multiple

[6] This is what the School of Exegesis supported in the 19th century, for whom the Judiciary was responsible for "[...] the mere application of normative statements, literally considered, to the factual situation submitted to it [...]" (RAMOS, 2015, position 974).

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meanings (BAXI, 2006), reflecting the political clashes present in the construction of any legal institution, as noted above. In the end, the interpretative process ends up subjecting itself to the personal values of those who carry out the prior reading and enforcement of the law, such as judges when analyzing conflicts brought to them.

The political and legal effects of a predominantly white Judiciary are, therefore, intuitive. More than 80% of judges in Brazil proceed to interpret the broad normative promises foreseen by the Federal Constitution based on knowledge acquired through life experiences that are unaware of racist heritages of a colonialist nature. For example, to a large extent, they do not experience the struggle for land essential to their own existence, as indigenous communities do on a daily basis. They also do not experience what it is like to be part of a population stratum that is the target of around 75% of deaths by police officers (GRELLET, 2020) or whose religious practices are the target of almost 60% of the crimes of intolerance in Brazil (RIOS , 2019), a fact that is daily experienced by black populations.

From the picture described above, it seems axiomatic to conclude that there is a need to promote public policies that promptly modify the composition of the Judiciary, making it less white. The institution of the policy of racial quotas also for indigenous people and for all judicial instances - in order to expand the terms of National Council of Justice's Resolution nº 203, June 23, 2015, which limited them to the black populations in public contests for admission to the Judiciary – would constitute an important alternative. More black and indigenous judges would bring new life experiences and new knowledges for law's interpretation. In addition, as pointed out by Silvio Almeida (2020, p. 110), they would lead to the "[...] opening of a political space so that the claims of minorities can be passed on [...]".

These observations, however, do not mean that the presence of historically colonized populations in the Judiciary will secure, by itself, deference to the respective knowledges in the judicial assessment of disputes. The complexity of the epistemic facet of contemporary colonialism makes the issue of representativeness just one aspect of an entire framework constituted based on under centuries-old racist patterns, as can be extracted from the observations made by the same author cited above:

> Although essential, the mere presence of black people and other minorities in spaces of power and decision-making does not mean that the institution will cease to act in a racist manner. Action of individuals is oriented - and often is only possible - through institutions, always having as background the

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> structural principles of society, such as political, economic and legal issues (ALMEIDA, 2020, p. 49).

What Silvio Almeida is saying is that greater presence of historically colonized populations in places of power can do little good if these places remain, in their frameworks, set up according to colonialist standards. In these terms, a racially plural Judiciary may not solve the problems mentioned above if *structurally* it continues to function the way it was historically built, that is, under the exclusive perspective of life of European descent population.

Stories told by black judges, presented in articles available on the World Wide Web, confirm this warning. In this sense, there is a paper authored by Judge Karen Pinheiro, from the Court of Justice of Rio Grande do Sul, reporting her professional experience, that points out:

> There were many episodes of blatant racism found along the way, both in registry offices and courtrooms, in public events, in acts practiced by different members of the legal careers, who were surprised by the image of a black woman exercising jurisdiction.
>
> Strangeness in interpersonal relationships has always been my companion: there were those who asked where the judge was, there were those who addressed everyone present in the courtroom except me; there were those who said they thought of someone different, even though I was occupying the most prominent place in the forensic environment, which showed rejection of the figure of a female judge who boasted a representation that did not correspond to the pattern built in the collective imagination. All, in different ways, but through unspoken codes, revealed racism in their conduct (PINHEIRO, 2019, online).

In a similar sense is the report of Edinaldo Santos Junior, judge of the Court of Justice of Sergipe:

> Thus, despite formally experiencing the conditions of any other Brazilian judge, my color could still be considered a subordinating factor. When dealing with territorial policies in relation to race, Grada Kilomba, in her book "Plantation Memories", reminds us that in contemporary racism there is no place for difference and those who are different remain perpetually irreconcilable with the "nation"; they are foreigners. Along the same lines, Fanon would say that we blacks are not slaves to the idea that others have of us, but to our (simple) appearance.
> Questions like these: "Are you a judge?" or "where is the judge?" in evident contexts of consolidated judicial territoriality, such as a magistrate's office, for example, demonstrate an odious continuation of a structurally racist thought that, consciously or unconsciously, identifies a certain race as inauthentic for occupying certain places of power (SANTOS JUNIOR, 2021, online).

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It is really difficult to expect from the Judiciary, structurally considered, sensitivity about the problems suffered by those who, from time immemorial, have been inserted in the lowest rungs of the Brazilian social scale. The historical advantages acquired by a population that was never enslaved - the white - seem to expand in the struggles for rights that occur in the context of judicial processes.

4 The reactive nature of rights and the necessary ontological turn

It is noteworthy that such advantages subvert completely the *reactive* logic of the recognition of demands in the form of rights in favor of colonized strata.

In fact, the rights of indigenous peoples, provided for in articles 231 and 232 of the 1988 Constitution, constitute a *reaction* against historically colonialist practices, which place the original populations in inferiority in relation to the rest of the population. Similarly, the ban on discrimination based on origin, race, sex, color and age, provided for in Article 3, IV, of the same constitutional document, presents itself in the form of a *reaction* against situations of disadvantage to which population sectors like black people have been and are subjected to. If colonialist practices did not exist, there would be no reason to attribute special rights to colonized strata.

Appearing, then, as responses to hierarchizations, such rights require the State to carry out actions that create "[...] subjective conditions and objective conditions of participation parity" (MOREIRA, 2020, p. 725). The Judiciary is included in this role, insofar as the enforcement of rights is also its task as one of the State powers.

It turns out that, as we have seen, there is a judicial activity built on Eurocentric knowledge. It is, therefore, under these models that it routinely proceeds to the interpretation of rights, even when it operates in processes in which populations that adopt other forms of existence contend.

There is a problem that seems to be inherent to the system: the perspective that guides the interpretation of rights is the same that underlies colonialism, the object of the social reaction that gave rise to the normative framework to be applied. Hence the importance of promoting structural changes in the Judiciary, which reach the roots of the difficulties of its members in carrying out the effectively decolonizing interpretation and enforcement of legal norms. In view of its structural character, the mentioned task implies

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facing one of the cores of colonialist oppression: *disregard for knowledges of the colonized strata*.

From this circumstance arises the need to carry out what is now called *ontological turn* in the Judiciary.

The expression ontological turn has its origins in Anthropology, a branch of Social Sciences that was born from the Eurocentric view in relation to populations originating from colonized territories. Therefore, in its genesis, it was based on evolutionary thinking, which saw exploited societies as non-evolved stages of humanity.

Although overcoming evolutionism is an academic consensus since the last century, its remnants are still recognized in anthropological works. The very insertion of certain populations in the form of objects of study, such as inanimate things examined by the natural sciences, does not fail to reveal itself as a position of superiority by the researcher of the Eurocentric society in relation to the researched in colonized societies.

The ontological turn appears, then, as an academic movement that is inserted as an alternative to overcome any element that places the scholar in a superior situation to the one that is referred to in scientific investigations. Adopting symmetrical parameters with the researched, it intends that science treats him as a subject equal to the researcher, even though he has other customs, traditions, beliefs and institutions formed based on his own knowledge.

Hence, research based on such an academic perspective recognizes that reality is not just that one built by European colonizers. They admit and support the presence of multiple realities, constituted from the knowledges of the most diverse populations spread across the Brazilian territory and, more broadly, across the entire planet: each of these populations having its own *ontology*, that is, its way of "[...] being and being in the world" (SILVA, 2011, p. 183), on an equal footing with any other.

Given the decolonizing nature of the Constitution's norms, such as those contained in Articles 3, I and IV, 5, *caput* and 231 (already mentioned), it seems legally reasonable to make use of the academic model of the ontological turn in the institutional performance of the Judiciary. However, how can one apply a way of acting for scientific research in the proceedings of a State power? The Eurocentric perspective that, over the centuries, has shaped the judicial system makes it necessary to build new frameworks that, acknowledging the multiple knowledges existing in Brazilian territory, provide all

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litigants with equal opportunities to speak and listen before a plural body of judges, in order to break silencing and make the egalitarian exchange of knowledge effective.

The frameworks to be built, consequently, must be guided by horizontality. This is the essential factor to make them capable of overcoming, at least on the judicial level, the epistemic root of contemporary colonialism, called by Boaventura Santos the *totalitarian colonizing logic*, "[...] which denies the rational character of all forms of knowledge that are not guided by its epistemological principles and methodological rules" (SANTOS, 2002, p. 61). An ontological turn, as you can see.

5 The possible ontological turn in two practices

The radical nature (in that it reaches the root of the epistemic problem) of the structural change advocated above reveals the difficulties of its implementation. Is it possible for a structurally Eurocentric State power to overcome Eurocentric colonialism in order to give voice to those it has historically silenced? A positive answer to the question is the one that best fits the legal order in force, especially since, in the end, the ontological turn implies the fulfillment of constitutional normative promises, reducing inequalities. To carry out the ontological turn is, in such terms, to break with discrimination of origin, race, sex, color and age (Article 3, IV, of the Federal Constitution) in the judicial interpretation of rights; it is, similarly, to legitimize non-Eurocentric uses, customs and traditions (Article 231 of the Federal Constitution).

To point out the feasibility of sustained structural change in the Judiciary, we mention two practices currently underway. Both reveal that the judicial interpretation and enforcement of rights can effectively be based on an egalitarian exchange of knowledge.

The first of these practices is the initiative of the Court of Justice of Roraima (TJRR), the *Indigenous Conciliation Center in the Community of Maturuca*, which operates primarily in the resolution of internal community conflicts. The second, "Vozes dos Quilombos" Project, does not come from the Judiciary, but from the Public Defender's Office of Piauí, an institution that is part of the Justice System and which, in this case, has priority action in conflicts involving "quilombola" communities and the Public Power.

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There are no academic texts or journalistic articles that provide more precise elements about both initiatives. It was deemed appropriate, therefore, to collect information from the public authorities that coordinate them, through semi-structured interviews, carried out, between the years 2020 and 2021, remotely via *Whatsapp* application and email (the conversations took place during the Covid 19 pandemic, which required sanitary isolation measures). The following questions were asked from them:

a) What is the project?

b) How many people work on the project?

c) How are they chosen?

d) Do they undergo training?

e) Are there any other relevant elements that deserve to be informed?

The methodology employed is far from exhausting all the possibilities for analyzing the initiatives. Ethnographic work in the localities or interviews with the respective users could deepen the examination[7]. For the purposes of this article, however, interviews with those who coordinate them, formulated as a way of making up for the lack of bibliographic material on the subject, seemed sufficient to present them as possibly repeatable public policies. This was the analysis adopted in this text.

The examination begins with a mention of the Indigenous Center of Conciliation in the Community of Maturuca, a practice carried out in 2015 by the TJRR, a small Court (less than 60 judges) representative of the Judiciary of the Roraima federation unit, inhabited by only 600 thousand people in a vast territorial area of 224 thousand square kilometers. Under the leadership of Judge Aluízio Ferreira Vieira, a self-declared indigenous person, the Center provides members of the local indigenous population with a leading role in resolving internal conflicts, taking into account their uses, customs and traditions, as provided for in the Federal Constitution (article 231). It is a response, originating from the local judicial system, to two problems that seem axiomatic to communities such as the one achieved by this practice: firstly, the distance of the locality from urban centers in a federation unit characterized by low population density and, secondly, the historical need of the indigenous population to have their knowledges considered in conflict resolution.

[7] To deepen the studies on the Vozes do Quilombo Project, regarding the perception of users, we suggest a video available on the internet: <https://youtu.be/Z8VWwLNMz2E> .

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As narrated by Judge Vieira (2020, verbal information), for the project to be put into execution, 16 people were initially trained to act as conciliators, all chosen by the leaders of the community itself. It was agreed that the conciliator must be indigenous, respected by the people of the locality and that he carry out an activity that makes him socially known by all, such as that of a teacher, health agent or, in his own language, "*tuxaua*", that is, a community political leader. Each conciliator must attend continuing education courses, under the responsibility of the TJRR.

Under the requirements and structure mentioned above, conciliators have the duty to ensure that the handling of cases submitted to them for amicable settlement is consistent with the ethical and moral dictates of the community. There is, in this last point, true recognition of legal pluralism in the Brazilian territory, through the legitimization of community norms, based on their own knowledges. After all, such dictates have a binding normative nature on the format of the work of those who carry out the mediation of disputes.

After the first practice, we turn to the second one, "Vozes dos Quilombos" Project, carried out by the Public Defender's Office of Piauí, currently composed of 112 public defenders. Located in the northwest of Brazil's Northeast Region in an extensive area of more than 251 thousand square kilometers, Piauí has just over three million inhabitants, 224 municipalities and about 266 quilombola communities. According to the Public Defender Karla Andrade (2021, verbal information), creator and coordinator of the initiative, the project was born in 2019, as a response to obstacles in access to justice for local quilombola populations, spread across 37 municipalities (with members of the defense office in only eight of them) and grouped mostly in communities that are difficult to access.

The project began in Quilombo Custaneira, in the rural area of Paquetá do Piauí, where a meeting was held with more than 30 representatives of 13 Quilombola Communities and members of the State Coordination of Quilombola Communities. The meeting led to the development of the working objectives of the project, with the main points being the presence of the Public Defender's Office in the communities and the promotion of the participation of quilombolas in the spaces of debate (judicial and extrajudicial). It also set as an objective the strengthening of partnerships between the Public Defender's Office and social movements in the promotion of affirmative actions in favor of quilombolas and their communities. Hence the institution's concern to work in

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constant dialogue with the populations concerned, even if it does not have them officially involved in its execution (the project has, in addition to the coordinator, six other public defenders and three other civil servants).

Within the framework of the same dialogue, also paying attention to quilombola demands (according to the autonomy established by Convention 169 of the International Labor Organization), the Public Defender's Office of Piauí gives priority to conciliatory solutions, especially in hearings with public administrators. This option has led, in the view of the project coordinators, to satisfactory results, such as, for example, ensuring that quilombola schools are not closed and that healthcare is provided at public health centers (including priority distribution of the COVID-19 vaccine).

"Vozes dos Quilombos" Project also turns its gaze to the fight against racism in the internal space of the entity that promotes it, having presented a proposal, effectively approved in 2020, for a Resolution to the Superior Council of the Public Defender's Office of Piauí to provide for racial quotas, both for entry exams for public defender positions and in the selective tests for interns. In addition, recognizing the insufficiency (without denying the importance) of the most representative measures, the initiative led to the organization of a remote course for education in quilombola rights, with the support of the Superior School of the Public Defender's Office of Piauí and the entity's IT sector, which, in 2021, held its second edition. Finally, in the first half of 2021, the project promoted the edition of the *Booklet on Quilombola Rights*, with 15 chapters, released and made available in digital format[8].

It is worth noting that, despite the fact that it is an initiative of an entity not belonging to the Judiciary, "Voices of the Quilombos" Project may inspire judicial policies to be promoted by regional state and federal courts, thus achieving the bringing together of the Judiciary and traditional populations. It is also possible that the project will inspire, more broadly, the National Council of Justice (CNJ) in its work to standardize judicial policies throughout the country, as established by article 103-B, paragraph 4, subparagraph I, of the Federal Constitution, which can also be carried out based on the idea initiated in the Maturuca Community, through the establishment of other indigenous conciliation centers.

[8] The booklet is available at: <http://www.defensoria.pi.def.br/wp-content/uploads/2021/03/Direitos-Quilombolas-2.pdf> .

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However, it is important to note that there is no quantitative data published by the public entities responsible for both initiatives that indicate the extent to which the rights of the populations receiving the services are more adequately protected. It is even possible to speculate about this lack of reporting, relating it to the very Eurocentric standards that provide the prevailing format of the daily performance of the Court of Justice and the Public Defender's Office involved, not giving priority to the projects we studied. The existing difficulties for the daily operation of both also seem to confirm this conclusion, as in the case of the conciliation center that had its activities closed at the end of the administration of the president of the TJRR who instituted it (having been reopened in 2019) or in the case of "Vozes dos Quilombos" Project, whose public defenders who work in it do not do so in exclusive dedication, but accumulating with other functions.

Despite these circumstances, under the qualitative aspect, it seems intuitive to envision that the examined initiatives generate benefits for the communities in question, as they openly face the epistemic aspect of contemporary colonialism. In addition, it is possible to verify the direct impact in the field of jurisdictional assessment of conflicts: for example, the case of the granting of an anticipatory injunction by Paulistana District Court to block land registration of private ownership over quilombola's land, obtained by the Quilombola Community of Sumidouro, which demanded the rights over a piece of land already certified by the Palmares Foundation[9], threatened by the registration of purchase and sale contracts on the site, carried out under the omission of the Government. This case led the Piauí Public Defender's Office to file a declaratory action for the nullity of real estate registration, with an opening petition signed by the coordinator of "Vozes dos Quilombos" Project (PIAUÍ, 2022)[10].

Conclusions

In his book *Ideas to postpone the end of the world*, the indigenous Ailton Krenak (2019, p. 31) points out what, in his understanding, configures one of the main resistance factors of the colonized populations (in his case, the indigenous) throughout the centuries: "we

[9] It is up to the Palmares Foundation to secure the rights of quilombola communities.
[10] The conclusion of the handed down decision draws attention to the fact that it gives priority to quilombola rights, based on traditionality and non-Eurocentric knowledges, over the Public Records Law, based on ensuring individual property, essential to capitalist expansionism (WALLERSTEIN, 1983).

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resisted by expanding our subjectivity, not accepting this idea that we are all equal. There are still approximately 250 ethnic groups that want to be different from each other in Brazil, who speak more than 150 languages and dialects".

Although he has no legal training, Krenak understands what many legal experts have difficulty realizing. As a reaction to colonialism, diversity is the core claim of oppressed strata raised to the category of special subjects of law. If this is the core of their demands, it must also be at the core of the interpretation of rights acknowledged as State responses.

So how can the Judiciary, the State function responsible for interpreting these rights in litigation, acknowledge the diversity of forms of existence as its core elements? The Indigenous Conciliation Center and the Voices of Quilombos Project, examined above, provide an answer to this question: both reveal that such acknowledgement may take place through the empowerment of non-Eurocentric knowledges, enabling the respective bearers to act actively, on an equal footing with public agents, in resolving disputes.

It is true that the aforementioned initiatives come from State institutions, that is, the entity that, also constituted under Eurocentric standards, has led over the centuries the colonialist process of uprooting forms of existence in favor of the subsistence of a single ontology of hegemonic nature. It should not be forgotten, however, that the legal norms that establish, for colonized populations, the quality of special subjects of law as reactions to centuries-old oppressive practices also come from the State reality.

There are, therefore, counter-hegemonic spaces that can be filled in the State. This includes the space of the Judiciary, which, however, needs to adapt to forms of existence for which it was not instituted. It must therefore structurally undergo an ontological turn, understanding the needs and demands of subalternized populations and, ultimately, reading the rights it must apply through the exchange of knowledges.

All this entails, as an apparently more immediate need, a new composition of the Judiciary, less white, more plural. However, not as an end in itself. Colonized voices must be given space as a matter of priority, understanding them as indispensable in every decision-making process, not limited to a sentence that aims to end a dispute. It must range from the effective listening of arguments of litigants based on perspectives that are not exclusively Eurocentric to reaching the final decision-making act, legitimizing, in an isonomic way, all the multiplicity of knowledges that are present in Brazilian territory.

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