


LEGAL COLONIALISM, THE DECOLONIAL TURN AND THE PRINCIPLE OF THE DIGNITY OF THE HUMAN PERSON IN BRAZIL

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ABSTRACT

The present research aims to analyze through the Decolonial Pivot the effectiveness of the Principle of the Dignity of the Human Person towards historically subaltern individuals in Brazil. In this way, it became necessary to understand the historical process of colonization of Latin America and its consequent domination of the Amerindian peoples. Therefore, he categorically used the teachings formulated by Immanuel Wallerstein to understand the incongruities in the functioning of the modern world-system, presented since the theological and scientific clash between Las Casas and Sepúlveda. In addition, to understand the Decolonial Turn, the research used researchers within the spectrum of subalternity, for example: Catherine Walsh, Frantz Fanon, Enrique Dussel, Walter Mignolo. Through the contributions of the researchers, it was possible in the present research to present a historical-social panorama of how colonialism was sedimented in the legal-normative sphere, and, finally, reflections on the principle of the dignity of the human person built on the decolonial rereading for better adequacy with the real needs of Latin American individuals, especially in Brazil. To this end, the qualitative method was used, a bibliographic survey of productions related to decoloniality, legal colonialism and the principle of the dignity of the human person.

Keywords: Legal Colonialism. Decoloniality. Principle of the Dignity of the Human Person.

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INTRODUCTION

The present research seeks to answer how legal colonialism impacts the effectiveness of the Principle of the Dignity of the Human Person to historically subaltern individuals? To this end, the qualitative method was used due to the variety of perspectives and convictions present in the same social group, as well as the distinctions between analysis and understanding. (GOMES, 2012). In addition, a survey and bibliographic review of authors such as Immanuel Wallerstein, Walter Mignolo, Catherine Walsh, Flavia Piovesan and Enrique Dussel were used to understand society and the legal-normative system as a product resulting from the colonial process.

From this perspective, we sought to address how legal colonialism was constituted in the context of Latin America, who are the individuals considered subaltern and to what extent the Decolonial Turn can provide the rereading of the Principle of the Dignity of the Human Person in Brazil.

The first section of the present work sought to understand how individuals considered *subaltern* were constituted in a Latin American context, using a historical cut of the colonization process in Latin America. Through the teachings passed on by Immanuel Wallerstein, in his book: "European universalism: the rhetoric of power" (2007), it was possible to visualize how the system of social division of labor based on the slave system of *encomiendas worked*, and the scientific and theological contributions used in the clash between Las Casas and Sepúlveda to carry out the exploitation of the Amerindians. Still, in its subsection, it was sought to understand how the modern world-system was sedimented, and, consequently, the current legal-normative system, understanding the "Humanizing" character of the universalizing norms and the individuals who benefit from this formatting.

Subsequently, the second section sought to demonstrate what the repositioning of thinking through the Decolonial Turn consists of, especially by Walter Mignolo and Catherine Walsh (2005). At this moment, other ways of thinking and constituting the rereading of peoples historically subalternized by the colonization process were presented, in an irruptive and counter-majoritarian way. In its subsection, the impacts of the Decolonial Turn for the constitution of the normative-legal system in Latin America were presented, through the teachings of Bernard Constantino Ribeiro (2022), and the author's production together with Sparemberger (2015), the new forms of Latin American constitutionalism were demonstrated, with the example of the Federal Constitution of Bolivia and Ecuador.

Finally, in the third section, the traditional way of thinking about the Principle of the Dignity of the Human Person was presented, including the notes deliberated by the Constitution of the Federative Republic of Brazil (1988). Nevertheless, due to the theoretical construction of the present research, at this moment it was sought to point out the formal and material limits so that the classical conceptualization is sufficient to support individuals historically excluded from the Humanizing process of the norms of the modern world-system. Therefore, through the Decolonial Turn, new ways of thinking about the normative legal system were sought, especially the Principle of the Dignity of the Human Person.

THE COLONIALIST PERSPECTIVE ON THE LATIN AMERICAN TERRITORY AND ITS INDIVIDUALS

The understanding of what is understood as the colonial perspective of the Latin American peoples requires, initially, that this first section focuses on the historical cut of how the process of colonization and exploitation of Latin America took place, and, consequently, of the Amerindian peoples. To this end, the author Immanuel Wallerstein, who categorized the concept of European Universalism, in his book "European Universalism: the rhetoric of power", will be used.

Thus, in the foreground, it can be stated that the history of the exploration and conquest of Latin American countries can be easily confused with the history of the expansion of European peoples over Latin America. The author Immanuel Wallerstein (2007) is willing to debate this process of conquest and domination, teaching that the expansion of European peoples around the world served to consolidate the construction of the capitalist world-economy, involving military conquests, economic exploitation and mass injustices. Consequently, due to exploitation, contemporary society has been conditioned to believe in the narrative that the expansion of these peoples served to disseminate what is meant by civilization, economic growth and development or progress, and these words are interpreted from the perspective of universal values, also understood as natural law, Wallerstein (2007) demonstrates.

Beforehand, the colonization process in Latin America had as its main form of work the exploitation of the pre-Cabral and pre-Columbian Amerindian peoples. In this sense, in order to define the process of domination of the labor force of the native peoples of this region, Wallerstein (2007) exposes the system of *encomiendas* that consisted of the *repartimiento* (division) of Amerindians as forced laborers, in a regime of slavery, on

agricultural, pastoral or mineral properties, where the Spaniards were responsible for the administration of these spaces and the social division of labor among the Amerindians, obtaining as its main result the exploitation of these individuals.

However, it should be noted that in the midst of the conquest of the new continent, the author demonstrates that the logic of domination was not unison among the Spaniards, highlighting the figure of Bartolomé de las Casas⁵, responsible for being one of the first to speak out against the system of *encomiendas*, articulating politics and the Spanish Church with the aim of ending the model of social division of labor practiced. As a consequence of Bartolomé de Las Casas' political activity, Wallerstein (2007) points out that in 1537, he was responsible for promoting the publication of the papal bull *Sublimis Deus* by Pope Paul III, and in 1543, the decree of *the Leyes Nuevas* by Emperor Charles V., the aforementioned documents were responsible for the termination of new concessions for the system of *encomiendas* and attributed a prohibitive character to the enslavement of Amerindian peoples. On the other hand, the author demonstrates that these provisions were resisted by the *encomenderos* and representatives of the political powers at the time, so that the provisions contained in the documents were quickly suspended (Wallerstein, 2007).

Subsequently, Wallerstein (2007) states that Bartolomé de las Casas found in Juan Ginés de Sepúlveda his main theological and intellectual clash, through the publication of the works "*Demócrates Primero*" and "*Demócrates Segundo, o De las justas causas de la guerra contra los indios*", presents a counterpoint to Las Casas' defenses, sustaining four arguments intrinsic to the defense of the form of execution of the system of *encomiendas*, using important theorists of the time, such as Aristotle, St. Augustine and St. Thomas Aquinas. Thus, firstly, Sepúlveda maintains that the Amerindians would be barbaric, simple-minded, illiterate and uneducated, brute, totally incapable of learning anything other than mechanical activity, full of vices, cruel, stating that this type advises that they be governed by others (Wallerstein, 2007).

In this way, Sepúlveda's first statements demonstrate the imaginary constructed by the Spaniards about the peoples who originally inhabited Latin America at the time. In his second thesis, he argued that the Amerindians should accept Spanish domination - even if they did not want it - this, therefore, had served to rectify and punish their crimes against

⁵ Bartolomé de las Casas, a Spaniard, arrived in the Americas in 1502, was the first priest to be ordained in the "new continent", initially, he actively participated in the *ordering* system, however, in 1554, he renounced his participation in this model of social division of labor and returned to Spain, teaches Wallerstein (2007, p. 31). In 1552, he wrote the work "*A Brevíssima relación de destrucción de las Indias*".

divine and natural law, stating that they were tainted by idolatry and the impious custom of human sacrifice, diverging from what Christianity preaches (Wallerstein, 2007). In his third thesis, he maintained that the domination of the Amerindian peoples consisted of a divine mission to prevent evil and the great calamities inflicted by them, preventing new innocent people from being sacrificed to idols annually, and, finally, in his fourth and last thesis, he defended that "Spanish domination facilitates Christian evangelization", so that the influence of Christianity in the entire process of Spanish colonization in Latin America becomes inseparable. Wallerstein (2007) demonstrates.

Therefore, it must be considered that the construction of this rhetoric was based on the divine duty to intervene and dominate the peoples to supposedly defend them from attitudes contrary to what would be understood as divine and natural law, even though it was also justified by the immediate material benefit obtained from the exploitation of Amerindian labor through the system of social division of labor of *encomiendas* and the natural riches existing in the region. Certainly, beyond the evident antagonism observed between the intellectual and political construction of Las Casas and Sepúlveda, it is true to say that Sepúlveda's thoughts constitute part of the construction of the social imaginary about Latin American peoples up to the present moment. Thus, Wallerstein (2007) states that for the present day, the equivalent of the great achievements of the European peoples is consistent with the right and duty to spread democracy, and when questioned, the intervenors justify their action based on a justification of natural law and Christianity in the sixteenth century, the civilizing mission in the nineteenth century and human rights and democracy in the late twentieth and early twenty-first centuries.

Notably, the process of conquest of Latin America and its pre-Cabral and pre-Columbian Amerindian peoples is consistent with what Wallerstein conceptualizes as *European universalism*, a concept that consists of a set of moral principles and conceptions that emerge from the European context and seek to become globally recognized universal values – which many of its proponents refer to as natural law – or are presented from this perspective. (Wallerstein, 2007). Therefore, the concept presented by the author demonstrates two relevant points to be taken into consideration: 1) the rhetoric of universalism consisting of a natural law, notably superior to other forms of presentation of society, and; 2) the colonial perspective on Latin American countries, supported by Sepúlveda's "civilizing" vision, which, in reality, dehumanized the Amerindian peoples, establishing them as barbarians, simpletons.

Therefore, the theoretical clash between Las Casas and Sepúlveda was a determining factor for the sedimentation of what the author conceptualizes as European universalism, constituting itself as the naturalization of imperialist/colonization expansion based on the expansion of civilizational values of European logic.

SCIENTIFIC LEGAL COLONIALISM

The understanding of the historical process of colonization of Latin America gives rise to the need to reflect on the impact of this relationship of domination in the context of the normative-legal construction of the world-system. On the other hand, for the authors Romaguera and Teixeira (2015), the expansion of the humanist discourse present today is rooted in the domination of the third world by the European continent, that is, of the countries that were colonized, which is why the authors make a point of demonstrating moments in recent history in which the humanist discourse was used under the colonialist stain.

The text seeks to highlight the spread of humanism, especially during the domination of the so-called third world by European countries. Among the aspects highlighted are: the creation of a set of Human Rights to be disseminated; the imposition of democratic principles; the legitimacy of rulers in nation-states; the concept of just war; the capitalist economic model; the fight against communism; neocolonial wars in the Middle East; ethnic conflicts in Africa; the war in Kosovo; the conflict in Vietnam; the financing of African militias; the development of nuclear weapons and oil exploration; the practice of social dumping; border control and immigration; humanitarian aid; the operations of multinational corporations and their exports; among other contemporary episodes that are sustained by a humanist ideology, marked by their colonialist roots (Romaguera and Teixeira, 2015).

In the same vein, Barreto (2013) comments on the concept of transmodernity formulated by Enrique Dussel, to go beyond "postmodern" theory – a critical perspective that aims to transcend modernity from within and that, in doing so, remains a Eurocentric critique of modernity.

From the above, it is possible to perceive the concern of Barreto and Dussel about the need to construct a transmodern critique to overcome the humanist ideology under Eurocentric and colonial influence. It is clear that the effort made to connect Natural Law, Natural Law and Natural Rights to Human Rights, in a way, occurred to ensure the universal ideal and the culmination of civilizational progress. (Romaguera and Teixeira, 2015).

Nevertheless, the effort made to bring these discourses closer together ended up resulting in false equivalence. Now, the rights guaranteed must be guaranteed due to the inherent condition of Human Being, in contrast, what exists in the social body and in the legal sphere is a non-humanitarian, but humanizing discourse.

Human Rights are essential to the definition of humanity, but they are not intrinsic to the Human Being. In fact, the Human Rights narrative ignores the real individual that this ideology generates. From this perspective, a black woman from a developing country possesses the same humanity as a white, heterosexual, proprietor, European man. José-Manuel Barreto points out the issue of the (non) subject, emphasizing that the modern and free subject is the result of the slave trade and colonialist actions. (Romaguera; Teixeira, 2015)

Therefore, if a *link* between historicity and the present moment is made, the dehumanizing role of the discourses employed by Sepúlveda is found in the main legal devices in today's world-system. In this area, it is essential to analyze what is meant by humanity in this process falsely bored by "civilization", for Frantz Fanon (1968) the world is divided in a dual way, between settlers and colonized, the author understands that the discussion of the colonial world by the colonized cannot be understood as a rational confrontation of points of view, nor is it a discourse about the universal, rather, the unbridled affirmation of singularity admitted as absolute, understands that the colonial world is Manichean.

From the thought presented, Fanon presents the following terms: subhuman, the inhuman and the antihuman. It is not enough for the colonizer to claim that ethical principles have abandoned, or rather, never been, part of colonized society. The indigenous are seen as alien to morals, since the lack of values is perceived, as well as the refusal of them. It is considered an adversary of ethical principles, in this context, it represents evil in its purest form. (FANON, 1968).

Thus, the current world-system needs to deal with the false equivalence of humanism and human rights, since the latter have their discourse based on universal ideals, but which is linked to colonizing practices (Romaguera; Teixeira, 2015). The author Jean-Paul Sartre analyzed humanism in the preface to Frantz Fanon's "The Wretched of the Earth", affirming humanism as a lying ideology, the exquisite justification of plunder; his tenderness and preciosity supported our aggressions (Sartre, 1968) referring to all transgressions carried out in the name of "Natural Law" which, in reality, are only attributed

to considered individuals to whom Humanity is recognized. Thus, Fanon (1968) highlights that the settler constructs history, his existence is a great journey, a true adventure. It represents the fundamental principle: We build this land. It is an uninterrupted reason: If we are absent, everything will be lost, this land will return to a primitive state, the farmer shapes history and is fully aware of it.

Thus, the construction of legal-scientific knowledge dialogues intrinsically with the construction of the world-system and with the universalization of *European universalism*, which attributes humanist values under the colonialist stain up to the current stage of evolution of legal science and its contributions of defense to individuals. For Ribeiro (2022), modern Western Law was conceived from the deconstitution of social relations, the distance between the individual and the collectivity, notably demarcated by the influence of capital in interpersonal relationships. In this sense, in the context of the coloniality present in Law, the author maintains that there is an effort to preserve and reinterpret the legal order in favor of universalist, globalizing, individualistic principles and, above all, distant from the issues that emerge in social reality. (RIBEIRO, 2022).

Herkenhoff (1999) still in the 90s taught that the current legal system is characterized by a conservative character. In Brazil, the rules guarantee benefits that last over time, often establishing new advantages. Private property remains almost untouched, and social mobility becomes complex or extremely challenging. It is possible that, in a future society, institutions such as courts, codes, and the legal framework will become obsolete, leading to the resolution of conflicts between individuals through simple circles drawn on the ground.

Therefore, the presence of legal colonialism with one main objective is perceived: the maintenance of the *status quo*. At the national level, for Thula Pires, the legal system historically undertaken was not only intimately related to coloniality and the categories of thought that resulted from it, but also played a fundamental role in its consolidation, so that the trajectory of the legal institutes that proclaimed freedom occurred in parallel with slavery, genocide and the exploitation of colonized populations. (Pires, 2019).

Law schools emerged as spaces with a highly hierarchical structure, predominantly controlled by an economic, racial, and sexual elite of the country, influencing political processes that occurred on the margins of the popular classes, which were racialized as non-white. Legal theory and jurisprudence begin to reinforce the interests of the owners of the means of production in Brazil, marginalizing not only access to justice, but also

participation in the elaboration of norms for citizens considered second-class, as well as those whose humanity was denied (Pires, 2019).

Therefore, the juridical-normative construction in the modern world-system is influenced by the European universalizing logic defended by Sepúlveda and conceptually presented by Wallerstein.

O GIRO DECOLONIAL

In opposition to the previous section, this section will present the theoretical construction of what is currently understood as the Decolonial Turn. That is, the moment when Latin American researchers began to realize that as Latin American subjects, they were not able to tell their own stories, due to the historical process of construction and sedimentation of capitalism, colonial history, modernity and "other forms" of scientific construction.

Catherine Walsh emphasizes that the question of the power of knowledge and its links to the interests of capitalism, colonial history, and modernity has been a topic of interest among a group of Latin American intellectuals since the late 1990s. This project was consolidated in 2001 in an agreement between Duke University and the University of North Carolina in the United States, the Universidad Javeriana in Bogotá and the Universidad Andina Simón Bolívar in Quito (UC Berkeley in California later joined as another institutional member), and with researchers from Bolivia, Colombia, Ecuador, Peru, Venezuela, Argentina, Mexico and the USA. (Catherine Walsh, 2005).

First, Walter D. Mignolo classifies that the decolonial movement points to the conceptual detachment with the coloniality of power, decoloniality points to the project of "conceptual disconnection" with what Aníbal Quijano articulated as the package of the coloniality of power: the control of land and labor (economy); the control of authority (politics, state, armed forces); the control of gender and sex (heterosexual Christian-bourgeois family) and the control of subjectivity (the model of subjectivity modeled on the ideal of the white, European and Christian man) and knowledge (from the theological-political politics of knowledge to the ego-logical politics, whose center and source of irradiation was Renaissance and Enlightenment Europe) (Mignolo, 2005).

Ballestrin highlights the importance of the Modernity/Coloniality Group constituted in the late 1990s for the construction of the Decolonial Turn, adding that Composed of Latin American academics from various educational institutions in the Americas, the group

promoted a crucial epistemological change for the critical and utopian revitalization of the social sciences in Latin America in the twenty-first century: the intensification of the postcolonial discourse in the region through the concept of the decolonial turn (Ballestrin, 2013).

Categorically, he also argues that the decolonial movement becomes relevant, insofar as the "unique" way of thinking articulated by the knowledge policies that are the result of the Eurocentric and capitalist model, regardless of whether political thought is right, center or left, despite apparently encompassing all possible roots of thought, does not cover the totality of thinking (Mignolo, 2005). In this way, Mignolo affirms the emergence of the recentralization of critical thinking, making a break with colonial values, thus, with the awareness of political, economic and epistemic "dependence", new centers of "critical thinking" emerge that reveal the strategies of coloniality and seek, from the historical and subjective experience of coloniality, to articulate a thought of rupture, a decolonial critical thought (Mignolo, 2005).

In the foreground, one can think of the decolonial movement as the rupture with the construction of knowledge solely and exclusively based on knowledge that feeds on the perverse logic of colonialism. Distinctively, as a category of a new way of thinking, thoughts about Latin America cannot be dissociated from all the crossings of its colonial history, so Latin America cannot be understood without taking into account its links to colonial heritages and the ethnic-racial differences that colonial/modern power has produced in this part of the world. (Catherine Walsh, 2005).

This movement is motivated through an "Other" way of thinking, which demarcates the alternative or different meaning of this production of knowledge, Walsh affirming that the project of modernity/coloniality is seen as an other-paradigm, insofar as it tries to build a critical thinking that starts from histories and experiences marked by coloniality and not by modernity, and also insofar as it seeks to connect critical ways of thinking not only in Latin America, but also in other parts of the world where imperial/colonial expansion and coloniality itself deny the abstract universality of the modern project and point to different ways of thinking, being, and acting. As we will discuss later, what a thought-other offers is the opening of the critical, analytical, and utopian possibilities of working towards the decolonization of the self, but more specifically towards decoloniality—of existence, knowledge, and power (Walsh, 2005).

Through what the author teaches, "Other" thinking consists of the construction of critical thinking that attends to the histories and experiences marked by the entire colonization process arising from imperialist/colonization expansion, denying the experiences arising only from the abstract universality of the modern project, and corroborating the possibility of maintaining existence, the production of knowledge and the seizure of spaces of power by historically subalternized peoples.

THE DECOLONIAL LEGAL-NORMATIVE CONSTRUCTION

The movement to reorganize the forms of knowledge production based on the experiences that are rooted in regions affected by the imperialist/colonizing expansion of European peoples was also decisive for the construction of new ways of seeing legal science. Researcher Bernard Constantino Ribeiro, in his work "Law and decolonization: insurgency and counter-hegemony in Abya Yala" affirms the existence of an exclusionary civilizational den, where subjects from native peoples, peoples in diaspora, marginalized peoples, oppressed peoples, and subalternized peoples are not supported by scientific and technological progress (Ribeiro, 2021). This time, legal science is not oblivious to these processes that make "Other" thinking unfeasible, for Ribeiro (2021) Law ends up being the means by which some legal actors and legislators start to operationalize many of the manifest violations of human rights – remember the humanizing character of universalism based on the previous sections -, so the author demonstrates the need to question the constitutive processes that configure the denials, obstacles and erasures of the subjectivities of the subjects.

For the author Leonel Júnior (2014), the avant-garde Constitutions of the twenty-first century in Latin America are intrinsically connected to the reorganizations of progressive social movements in the late twentieth and early twenty-first centuries against ongoing neoliberal policies. In this way, the constitution of "Other" thought teaches legal science the emancipatory, irruptive and decolonizing character of epistemic decoloniality - for countries immersed in the *locus* of domination, control and that had the capitalization of their subjectivities - since traditional knowledge and practices were replaced by the universalizing discourse of salvation, civilization and domination of peoples (Ribeiro, 2022). In this area, Enrique Dussel teaches that the political sciences (sociology, law, the so-called political sciences, etc.), pedagogy, history, communication sciences, economics, all of them cannot use the model indicated for the factual or natural sciences. In this model, it is

necessary to introduce the dialectical moment to know how to situate each fact in its context or conditioning totality, and the eclectic moment to be able to detect the dysfunctional interpellations that the oppressed continually launch from the exteriority or utopia of the constituted system, taking into account the freedom of the agent (Dussel, 2011).

Driven by the growing movement against the majority, Latin American intellectuals structured an anomalous form to the legal system that was in place. The new legal model of social cohesion, guided by the implementation of non-homogenizing and totalizing assumptions within the legal system, therefore tried to carry out an epistemological, critical, and socially engaged recovery with access to truth, memory, justice, and intergenerational continuity (Ribeiro, 2022). In other words, he sought to reread the narratives previously carried out by the homogenizing universalizing discourse and retold them from the perspective of the subalternized. Therefore, the new look at legal science from the perspective of the subordinated individual resulted from a new perspective to understand and interpret Law, considering it as an essential element of the social phenomenon, instead of an impediment to harmonious coexistence with nature. (Ribeiro, 2022).

To a certain extent, the formulation of the thought "Other" requires the understanding of the category of *race*. Thula Pires Apud Frantz Fanon (2019), demonstrates that the category of *race* was instrumentalized to separate individuals into two zones, that of the human (zone of being) and that of the non-human (zone of *non-being*). The two zones are antagonistic, while the zone of being is concretized through the standard of humanity determined by the profile of the sovereign subject, which is constituted through the following characteristics: male, white, cis/straight, Christian, proprietor, without disability (Pires, 2019). On the other hand, the author sustains the importance of the categories presented by Frantz Fanon for the construction of "Other" thought, and problematizes that the construction of the legal-normative system occurs based on the experiences of the zone of being, demonstrating that the recovery of Fanonian categories is anchored in the premise that the normative construction (theoretical, legislative and jurisprudential) is produced from the experience of the zone of being, being unable, in these terms, to offer an answer that repositions the role of human rights over the processes of violence on the zone of non-being (Pires, 2019).

The ineffectiveness of the imposition of universal and humanizing values for the normative-legal construction in Latin America is perceived, with the Decolonial Turnaround being a milestone for the repositioning of thinking. In this way, Bernard Constantino Ribeiro

(2022) presents based on the propositions presented by Bolivia and Ecuador, demonstrating that the transfer of the historical-constitutional reality of the nations that consider themselves developed, with the objective of colonization and neocolonization of the peoples of Latin America, has brought almost no benefit to the cultural, political, environmental, and legal advancement of these regions. On the contrary, it created obstacles and caused a series of setbacks that maintained the poverty of the population (Ribeiro, 2022).

The paths indicated for the "new" Latin American constitutionalism from the Bolivian Constitution of 2009, pointed out all the implications for the solidification of this new way of thinking, Ribeiro (2022) adduces that the Bolivian Constitutional Charter came from incessant struggles on the part of social movements from a whole historiography of resistance and struggles, encompassing native peoples, Afro-descendants - what Fanon categorizes as individuals located in the zone of *non-beingement*. Therefore, Ribeiro (2022) highlights that the old practices adopted by modern constitutionalism are not capable of sustaining all the subjectivity and complexity that exists in Latin American relations and experiences, as they do not propose to reanalyze the problems that constitute the reality of individuals, providing only a superficial reading of the problem experienced.

Thus, the author presents the main changes that accompany the "new" Latin American constitutionalism, Differently from what was predicted and the misleading promises of the contemporary constitutional model, a new approach to understanding and generating Law has emerged, beyond the simple norm. In this context, it ceases to be an element that totalizes, becoming a tool for the analysis of problems, the investigation of other possibilities and the continuous advancement in the search for social justice. Thus, Law is seen as a complex social phenomenon, which considers the intersection and dialogue with fundamental issues such as subject, norm, factual reality, and the various non-institutional and pluralistic configurations of the relationship between human beings and nature (Ribeiro, 2022).

It is in this direction that the new perception of constitutionalism for the Latin American region is heading, the understanding of the norm not as an end in itself, but as a gear that enables the analysis of problems and provides social justice. The author Leonel Júnior (2014) understands that this is the idea of a constitutionalism that seeks to change the conditions established so far, with the real objective of adapting to a reality that needs social justice, material equality and respect for a diversity of individuals who have been

historically marginalized from the constitutional process and from life in society. In this way, there is a chance for these individuals to exercise a protagonism that previously belonged to a generic constitutional subject; with the new Latin American constitutionalism, the subject now reflects its color, its form, its identity, and its potential to generate transformations (Leonel Júnior, 2014).

Likewise, the promulgation of the Constitution of Ecuador in 2008 sought to expand popular participation, especially in the context of marginalized popular wills, teaches Ribeiro (2022). Thus, in the way taught by Moraes and Freitas (2013), the Constitution of Ecuador made an "egocentric turn", because governability came to be legitimized in the democratic ideal of the people's identity and not under the influence of external Western standards that did not correspond to Latin American culture. The authors also argue that the egocentric movement, introduced in an innovative way by the Constitution of Ecuador in 2008, through the affirmation of the rights of nature, known as Pachamama, and the incorporation of the idea of good living in legislation (Moraes; Freitas, 2013).

Therefore, through the promotion of social movements that seek to break with the neoliberal logic, Latin American countries, based on the "Decolonial Turn", have sought the emancipation of normative-legal production from the standardizations of modern humanism, which, in reality, has little dialogue with culture, customs, traditional knowledge and experiences lived through the marks of colonialism in Latin America.

DECOLONIAL REFLECTION ON THE PRINCIPLE OF THE DIGNITY OF THE HUMAN PERSON

The Constitution of the Federative Republic of Brazil of 1988 lists in its Article 1, III (Brazil, 1988), the dignity of the human person as a fundamental principle to govern national legal relations. Furthermore, the Magna Carta maintains in its article 4, item II (Brasil, 1988) that the Federative Republic of Brazil must govern its international relations by the prevalence of human rights. In this area, in the understanding of Ribeiro and Sparemberger (2014), Human Rights are constituted for the national system as an "abbreviated" way of mentioning the fundamental rights of the human person, as these are essential for the existence and development of the human being, also stating that human rights correspond to the basic needs of the human person, these being common to all and that, once attended, guarantee their dignity. It is understood that: in order to achieve Human Rights, it is necessary to put into effect the Principle of the Dignity of the Human Person.

As a formal measure to achieve the dignity of the human person, the Magna Carta established in Article 5, *caput* (Brasil, 1988) the fundamental rights and guarantees of individuals, guaranteeing that everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property (Brasil, 1988). In other words, Brazilian individuals or foreigners residing in Brazil are guaranteed a set of rights and freedoms institutionally recognized and guaranteed by positive law, originating from each State (Sarlet, 2010). In the same sense, Ribeiro and Sparemberger (2014) state that the fundamental right to the dignity of the human person is the basis of the entire legal system, and is also considered a fundamental factor for the other fundamental rights that are vehemently guaranteed by the Federal Constitution.

In this sense, the dignity of the human person, as a fundamental value (and normative principle) that attracts the content of all fundamental rights, requires and presupposes the recognition and protection of fundamental rights of all dimensions (or generations, if we prefer). Thus, without recognizing the fundamental rights that are inherent to the human person, in fact his own dignity will be denied (Sarlet, 2009).

Nevertheless, as demonstrated throughout this research, the process of legal-normative construction is not linear, being historically constituted through the logic of the modern world-system that is based on an abstract universalism, which has at least ethical a point of departure and not of arrival (Piovesan, 2009). That said, taking into account the universalist character of the Federal Constitution, the discussion returns to the historical point of debate: in Brazil, who are the individuals who, through the constitutive logic of the modern universalist world-system, have material access to fundamental rights and guarantees?

For Mignolo (2008), the language of modernity and its supposedly universal concepts (such as Christianity, modernity, the State, democracy, the market, among others) have enabled and continue to allow the continuity of the colonial logic (domination, control, exploitation, devaluation of human life, marginalization of the knowledge of colonized cultures, etc.).

Adding to the debate is the understanding of Sparemberger and Kyrillos (2013), who demonstrate that knowledge is fundamental for the maintenance of domination in various spheres of human activity. In the context of contemporary globalization, the control of technological knowledge emerges as a decisive factor in power dynamics. These dynamics

have been shaped over time, resulting in distinct knowledges and knowledges that have established a hierarchy between those who dominate and those who are dominated. The dominated, in turn, saw their knowledge minimized, which also applies to our theme of analysis: the traditional knowledge of Law.

Therefore, the figure of the subordinated subject, of the individual located in the zone of *non-being*, is perceived. In this sense, Ribeiro and Sparemberger (2014) demonstrate the importance of the Latin American "insurgency" - especially in Brazil - for the construction of a legal-normative system that dialogues with its traditional peoples and communities, facing their own rights. It is to say the need for the Decolonial Pivot so that the norm dialogues with the real social problems. Ribeiro and Sparemberger (2014), through a decolonial analysis, found, therefore, that the only way to reinvent Human Rights and make the dignity of the human person effective is through the reconstruction of concepts and knowledge, actively participating in social struggles in search of a world where the accumulation of capital gives way to a development that values people and communities. It was also noted that a cultural exchange, dialogue, new epistemologies and the decolonization of historical practices of marginalization are emerging. Although this process may be long, it is essential that human and fundamental rights be reassessed, in order to offer new solutions to contemporary demands.

From a logical perspective, the realization of fundamental rights requires material access to these guarantees. In this sense, Flores (2009) demonstrates that most of the literature that deals with the studies of rights seeks to demand a theory and/or solution that pays special attention to the concrete contexts in which we live and "a practice" – educational and social – according to the present we are going through, that is, the rereading of rights is essential to encompass all the complexity that involves the Brazilian social body, country demarcated by its history as a colony.

FINAL CONSIDERATIONS

The expansion of European peoples through the colonization of Latin America, as Wallerstein exposed, sedimented the so-called "European Universalism", through the rhetoric of power, to the extent that it conditioned thinking based on the following duality: civilized individuals and barbarian individuals. In this sense, from the system of *encomiendas* undertaken by the Spaniards, the social division of labor was realized in a slave-like perspective of domination and exploitation of the Amerindian peoples.

Nevertheless, this system of *encomiendas* was responsible for the theological and scientific debate between Bartolomé de las Casas and Juan Ginés de Sepúlveda.

In this sense, Las Casas made articulations between politics and the Spanish Church, culminating in the papal bull *Sublimis Deus* by Pope Paul III, and the decree of *the Leyes Nuevas* by Emperor Charles V., documents that defended the end of the slave system of *encomiendas*. On the other hand, Sepúlveda countered Las Casas' arguments by defending the maintenance of the *encomiendas* system, believing that the Amerindians, in reality, were "barbarians", "simpletons", "totally incapable of learning anything", "of such a kind that it is advisable that they be governed by others", also stating that the expansion and domination of the European peoples over the original Latin American peoples represented salvation, from the expansion of Christianity and the civilizing ideals coming from the "old continent".

To a certain extent, the arguments presented by Las Casas consolidated the idea that the intervention and domination of the Amerindian peoples constituted a divine duty to defend them from what the European peoples understood as "natural law". In other words, in the way in which Wallerstein conceptualizes it, the doctrines that derived from the European context aspired to the character of global universal value, thus, what is understood by "natural law", in reality, are the civilizing and humanizing standards presented by the construction of European norms and conducts at the time. Therefore, for Wallerstein, the arguments presented by Sepúlveda are still used to support the current forms of domination present in the modern world-system, they are characterized through the discourse of expansion of democratic ideals and values, the expansion and defense of Human Rights.

Certainly, this entire historical process of expansion of European universalism had an influence on the scope of normative-legal construction in the modern world-system. In this way, Enrique Dussel, based on the concept of transmodernity, sustains the need to break with the humanist ideology built from the Eurocentric and colonial influence going beyond the "postmodern" theory. It was perceived, in the present research, that the idea of Natural Law, Natural Law and Natural Rights to Human Rights, used in a Universal way, present false equivalence, to the extent that the discourse of human rights must be guaranteed due to the inherent condition of being human does not reach *subaltern individuals*. Soon, it was perceived that the discourse of human rights is constituted as a discourse that is not humanitarian, but humanizing.

From the above, the legal-normative system built through colonial values demonstrates the true purpose of legal colonialism, the maintenance of the *status quo*. Categorically, through the teachings of Thula Pires, it was evidenced that Law Schools in Brazil have historically been environments dominated by the economic elite (racial and sexual), serving the theory of law and national jurisprudence as the primary factor of consolidating the privileges of the dominant social portion and excluding *subaltern* individuals, second-class, those whose humanity was denied access to justice. Evidently, the humanizing perspective of human rights is perceived in the context of Brazil.

On the other hand, from the 90s onwards, Latin American theorists began to formulate and presented an "Other" way of thinking: decolonial critical thinking. This time, it was started from the construction of the repositioning of thinking about social relations, taking into account the knowledge of native peoples and traditional Latin American communities. In the way Walter D. Mignolo and Catherine Walsh teach, decoloniality points to the project of conceptual *delinking* with universalizing modern values that do nothing and/or little dialogue with the real needs of the Latino population. Furthermore, decolonial critical thinking is intrinsically demarcated by the experiences obtained by the coloniality and exploitation of Latin American peoples, that is, the construction of thinking does not dialogue with the universalizing standards of the modern world-system.

The reformulation evidenced had an impact on the way of seeing the normative-legal system, culminating in the so-called new Latin American constitutionalism, as an example, the Constituent Charters of Bolivia and Ecuador. Based on the impulse provided by social movements contrary to the policies adopted by neoliberalism, both countries reformulated their Constituent Charters in accordance with what decolonial critical thinking teaches. In this way, a prominent space was provided for all individuals considered *subaltern* in the constituent process of yesteryear, thought from the Eurocentric bias. In addition, in the case of the Ecuadorian Constitution, the rights of *Pachamama* and *Sumak Kwsay* – of nature and good living, respectively – were also guaranteed.

It is true to say that the Constitution of the Federative Republic of Brazil of 1988 lists the Principle of the Dignity of the Human Person as a basic principle to govern legal relations. However, as exposed in the present research, the Brazilian legal-normative system is still built on the basis of universalizing values of the modern world-system, and the set of fundamental rights – based on universally declared human rights – is the humanizing, not humanizing, character. That is to say, in Brazil there are individuals

historically excluded from access to justice and from the extrinsic conditions for the exercise of life with dignity, which is a counterpoint to the formal right established by the Magna Carta.

Therefore, it is important to understand that the law built from Eurocentric ideals as a legal science, but also as a standardizer of legality, ends up being the means by which individuals seek to maintain the *status quo* of inequality and helplessness in access to the material right of the Principle of the Dignity of the Human Person. For this reason, it becomes more and more necessary to pay attention to decolonial critical thinking and the new Latin American constitutionalism, through the repositioning of thinking it may be possible to build a legal system that speaks to the real needs of *subaltern* individuals historically excluded from spaces of power and minimum conditions of dignity.

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