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COLONIALITY OF LAW: A HISTORICAL-INSTITUTIONAL PATTERN OF POWER[1]

COLONIALIDADE DO DIREITO: UM PADRÃO HISTÓRICO-INSTITUCIONAL DE PODER

COLONIALIDAD DEL DERECHO: UN PATRÓN DE PODER HISTÓRICO-INSTITUCIONAL

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ABSTRACT
Under a legal-critical methodological approach, with a theoretical framework of decolonial thinking, it presents itself as the coloniality of law is responsible for the construction of institutions that reproduce systematic and institutionalized oppression. When one thinks about what are the materialities of the application of the law and who are those legal protectors, one realizes the existence of an overvaluation of this historical pattern of power in which salaried work was chosen for Europeans in Latin America and subdelegating the processes of exploitation of land to indigenous and black women. Thus, everything that differs from this standardization of the universalist subject of law, in a way, to be notified in a different way in relation to the others. This subjection can be called and understood as privileges that are received by the adequacy to the universal standard. After talking about the construction of this branch, we start a pluri-verse use of law as a courter-hegemonic tool for the expansion of the epistemological subject.
KEYWORDS: Theory of law. Decoloniality. Pluralization of the epistemic. Subject of law. Modernity/Coloniality.

RESUMO
Sob uma vertente metodológica jurídico-crítica, com o marco teórico do pensamento decolonial, apresenta-se como a colonialidade do direito é responsável pela construção de instituições que reproduzem opressões sistemáticas e institucionalizadas. Quando se pensa em quais são as materialidades da aplicação do direito e quem são os sujeitos jurídicos de proteção, percebe-se a existência de uma sobrevalorização do padrão histórico de poder o qual se elegeu o trabalho assalariado aos europeus na América Latina e subdelegou os processos de exploração da terra às/aos indígenas e às/aos negras/os. Assim, tudo aquilo que difere desta padronização de sujeito universalista de direito, de alguma maneira, se sujeita de uma forma diferente em relação aos demais. Este assujeitamento pode ser chamado e compreendido como privilégios que são estabelecidos pela adequação de sujeitas e sujeitos que são beneficiados pela lógica de poder

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eurocêntrica ocidental. Após falar sobre a construção deste ramo, parte-se para uma utilização pluri-versa do direito enquanto ferramenta contra-hegemônica de expansão do sujeito epistemológico.
PALAVRAS-CHAVE: Teoria do Direito. Colonialidade do Direito. Decolonialidade. Pluralização do sujeito epistêmico do direito. Modernidade/Colonialidade.

RESUMEN
Bajo un enfoque metodológico jurídico-crítico, con un marco teórico de pensamiento descolonial, se presente con la colonialidade del derecho es responsable de la construcción de instituciones que reproducen la opresión sistemática e institucionalizada. Cuando se piensa en cuales son las materialidades de la aplicación de la ley y quiénes son esos sujetos legales de protección, se percebe la existencia de una sobrevaloración de este patrón histórico de poder en el que el trabajo asalariado fue elegido para los europeos en América Latina y subdelegando los procesos de explotación de la tierra a mujeres indígenas y negras. Así, todo lo que difiere de esta estandarización del sujeto universalista de derecho, de alguna manera, es sujeto de manera diferente en relación a los demás. Este sometimiento puede ser llamado y entendido como privilegios que se establecen por la adecuación a la norma universal. Después de hablar de la construcción de esta rama, partimos de un uso pluriverso del derecho como herramienta contra hegemónica para la expansión de lo sujeto epistemológico.
PALABRAS CLAVE: Teoría del Derecho. Colonialidad del Derecho. Decolonialidad. Pluralización del sujeto epistémico de derecho. Modernidad/Colonidad.

1 INTRODUCTION[2] [3]

To think that law [4]was built by modern society as an instrument of global normalization, and it is crossed, in South territories, by the existence of a subalternity[5] it is not an unprecedented finding within the Social Sciences (SPIVAK, 2010). Many[6]

2 The first author contributed to the proposition, elaboration, writing, organization and formatting of the work. The second author contributed to the guidance and review of this work.

3 This article is an open project that was built from the discussions held in a year and then months in the research group RESSABER-UFOP, also linked to the program "Novos Direitos, Novos Sujeitos" [New Rights, New Subjects]/UFOP, and to the presentation entitled "O direito ocidental como padrão colonial/moderno que (re)produz exclusões sistemáticas e institucionalizadas" [The western Law as a colonial/modern pattern that (re)produces systematic and institutionalized exclusions], presented by the first author in 2019 at the "IV Congresso Internacional de Direito Constitucional e Filosofia Política" [IV International Congress of Constitutional Law and Political Philosophy]. Thus, we thank the constant discussion with the professors Dr. Flávia Souza Máximo Pereira and Dr. Natália de Souza Lisbôa, who always contribute to the debate and are an inspiration of our researches. We also thank the friend and professor Victória Taglialegna Sales, LLM, for the proofreading and discussions about the text.

4 The word law with a lower case "l" is used given the epistemic disobedience (CASTRO-GOMES, 2005). In this way, it is understood that language as an instrument of power must and can be redesigned to rethink the positions of these language colonialities.

5 We work here with subalternity from Spivak (2010), understanding ourselves as a group that is not a part of the elite and remains deprived of its resources. It is a concept that lies in its usefulness from the opposition to the colonizers narratives of the homogeneous subjects (SPIVAK, 2010), in such a way that, within the colonial relations, it can be understood that those racialized subjects are crossed by the subalternizations also due to gender.

6 In terms of epistemic disobedience, the feminine is used at the front to demonstrate that the neutral pattern is a political choice.

authors expose the exploratory process of coloniality and its contact with the legal institutions in Brazil[7].

Considering this, this article's proposal, by linking the evident coloniality of law, is to think of alternatives for this compulsory standardization that is established *in* and *by* law in the Southern territories[8]. Thus, under the theoretical framework of decolonial thought[9], through the legal-critical methodological aspect[10], legal coloniality is presented to intend the law as an instrument with a counter-hegemonic potential.

The hypothesis of the article lies in the interpretation that there is only the possibility of the counter-hegemonic use of law, if its constitutive bases become evident. That is, the presuppositions of violence and the systematic productions of exclusions of specific subjects as products of this model of social organization. In other words, it is necessary to make clear the process of standardization carried out by law from a subject of central enunciation in institutions as a partial, historical and situated process. Thus, we see the need to break with the alleged neutralities and impartialities that are structured *by means of the* law.

To prove this hypothesis the article is divided into four parts. Initially, we work with the conception of modernity/coloniality as a structural, institutionalized reality and a hegemonic project of power, in which we see the existence of a pattern that reflects, operationalizes and hierarchizes certain existences. In such a way that this is

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7 Quote, *e.g.*: 1) PEREIRA, Flávia Máximo; MURADAS, Daniela. Decolonial thinking and brazilian labor law: contemporary intersectional subjections. **Direito e Práxis**, v. 9, p. 37, 2018; 2) GOMES, David F.L.; CARVALHO, Rayann. "Could the law be decolonial?". **Direito e Práxis**, *Ahead of print*, 2020; 3) ALMEIDA, Leonardo. Legal Theory and the Specter of the Post-Colonial: the subaltern as the spectral legal subject. **Direito e Práxis**, Ahead of print, 2020; 4) PALHARES, José Vitor; NICOLI, Pedro. A colonialidade da organização e regulação do trabalho. **Direito e Práxis**, *Ahead of print*; 5) MÁXIMO PEREIRA, Flávia; NICOLI, Pedro. Os segredos epistêmicos do direito do trabalho. **Revista Brasileira de Políticas Públicas [Brazilian Journal of Law and Public Policy]**, p. 513-540; 6) LISBÔA, Natália. Perspectivas decoloniais do novo constitucionalismo latinoamericano. **Conpedi Law Review**. v. 4, n. 2, 2018, p. 199.

8 South and North are used in the geopolitical sense of the knowledge production and not attached to the geographic understanding of it (GROSSFOGUEL, 2008).

9 The decolonial thinking corresponds to the valorization of Southern theories, focusing on matters that challenge the coloniality pattern which are presented with the aim of seeking to (re(dis))cover perspectives and ways that build an epistemological decolonization (BALLESTRIN, 2003), this being one of the ways of resistances and that are re(off)centered on a diverse logic, in which one has the constructions of diverse pluralities or diversified pluralities that access to many and other ways of (re) discovering knowledge. As Natália de Souza Lisbôa adds (2018, p. 201): "the concept of decoloniality is based on the need to go beyond the presupposition of certain academic discourses that we would now be living in a decolonized and post-colonial world, thus setting off from the references of the end of colonial administrations and the formation of nation-states in the peripheries, which in fact does not happen, since the international division of labor between center and periphery continues and can still be verified, as well as the hierarchisation of populations by ethnic-racial criteria emerged with the European colonial expansion".

10 The use of this methodology presupposes a critical perspective of the legal phenomenon (GUSTIN, DIAS, 2010, p. 25).

allied to the current construction of the State, economy and law (MAGALHÃES, 2016). This phenomenon is brought as a historical pattern of power that establishes social relations and is marked by the existence of conflicts, domination and exploitation within the Modern State (QUIJANO, 2005).

Next, it is brought that law is one of the ways, if not the main one, of carrying out institutionalized oppressions from a binary perspective within modern/colonial society. Therefore, it is demonstrated how law, in the face of its legal-state apparatuses, constitutes a hierarchical and excluding knowledge.

It is demonstrated that this law, within the limits established by modernity/coloniality, disciplines individuals' bodies within society with the assumption of pacification of social conflicts.

A continuous act, it is identified that the regulation (in this case, legal) chooses which subject will include/exclude and, consequently, what are the policies that regulate the activities of the state. As such, depending on the branch of law being worked on and the discussions inherent to this matter, the legal regulation and abstraction act in certain ways towards the subjects who will bear the effects of the restriction of freedom or the punishments of social apparatuses (CASTRO-GOMEZ, 2005, p. 89).

Based on this, it is shown how these ideas are carried out within the context of modernity/coloniality to, then, taper into the issues of law and, finally, to outline (alleged) alternatives for the expansion of the epistemic subject in law through the academic theoretical framework of decoloniality.

The research is justified by (re)affirming that law is inserted in state mechanisms of maintenance and protection of the political order, therefore, it shows itself as a branch based on a logic of apparent solution to the social demands that are brought to its scope of resolution. However, it is necessary to make clear the violence perpetrated and the effects of these forms of resolution that translate ways of understanding coloniality[11].

2 CONSTRUCT OF MODERNITY UNDER THE LOGIC OF OPPRESSIONS AND EXCLUSIONS

In this section, it is demonstrated how the idea of "coloniality/modernity" was created and how these processes have been present since the invasion perpetrated in Latin America by the Europeans. This idea, initially criticized by Enrique Dussel,

11 Colonialities are a complex of permanence of the power structures of colonial modernity in each field of social existence, including within knowledge (MÁXIMO PEREIRA; NICOLI, 2020). These are plural and each time it delves into the decolonial debates it has its expansions and tensions, such as the concepts of Coloniality of Time (PEREZ-OROZCO, 2016), or the discussions on Coloniality of Work (CARRASCO, 2006, GUTIÉRREZ-RODRÍGUEZ, 2013).

makes it clear that there is a pattern of subjection that begins to materialize in the Southern territories[12] and that are globalized as universal reproduction.

Modernity[13], for Dussel (1993, p. 10), has its invention in Western Europe with the realization and narratives about the conception of an other, but it begins, in fact, when it has the confrontation with subjects that are socially imagined while different from the Western European standard (which would be the population of the Americas). It is noted that in this narrative modernity has as its initial milestone the colonization process.

Hence, in an attempt to impose culture (in the broad sense) and the economic--political system, the cynicism of the idea of otherness develops a pattern of subjects, works and state organization that are reverberated as unique and that must be followed by that people (QUIJANO, 2005). Such an attempt has Latin America as a laboratory of colonial expansion (DUSSEL, 1993, p. 10). This process was a way of expansion of the European organization to other countries in a hegemonic way and in order to build a single hierarchical society.

The creation of this hegemony is carried out inside and outside Europe with the maritime expansion and the strengthening of the Christian kings who were preparing for the projection of their territory over that glebe of overseas lands (DUSSEL, 1993, p. 10). We need to point out the Alhambra Decree[14], which was signed in 1492 by Queen Isabella I of Castile and King Ferdinand II of Aragon; it established that Jews should convert to Christianity or leave the territory that was being created, with the purpose of unifying the people of that State that was being formed (DUSSEL, 1993). Then there was the creation of the official orthography that established a language by the Spanish crown in 1492 (DUSSEL, 1993).

It was with this elaboration that the attempt was made to legitimize Europe at the center of the world and, thus, constituted the first ways of calling the relations of center-periphery (or us x them, or Old World x New World) (DUSSEL, 1993, p. 12). It is the dialectic of the production of the other. It is noted that this creation is immensely linked to the process of documentation, production of pseudo truths, establishment of a unique narrative of knowledge and imposition on the different (GROSFOGUEL, 2008; MIGNOLO, 2005; QUIJANO, 2005, p. 116-122).

It is also noteworthy that, with such ideas strengthened by Cartesian scientific rationalism, there is the election of a single way of thinking as correct and hegemo-

12 In this research, South and North in capital letters are used in a geopolitical context.

13 Dussel (1993, p. 21) states that he has remarkable facts for the end of the Middle Ages: The Renaissance Movement, the "uncovering" of America and the discovery of the passage to India that leads through the Cape of Good Hope, as it leads Europe to a cultural, artistic (ideas), wealth and autonomy power.

14 It is also known as Edict of Expulsion.

nic, the others (of the native peoples) being subaltern/costumed/irrational (QUIJANO, 2005, p. 116-122; GROSFOGUEL, 2008; MIGNOLO, 2005). This rationalism sought, not infrequently, to legitimize the existence of Eurocentrism and of that Western European subject as superior and endowed with rationality within its multiple perspectives (GROSFOGUEL, 2008; MIGNOLO, 2005).

Such a structuring originates from what is called the first stage of un-covering the (local) characteristics, to a perspective of discovery (of the territories) and, then, there is a third figure that is called by the author as Conquest, which is carried out within a *praxis* domination of peoples[15] and land exploration[16], in a disorderly way and which has as one of its main characteristics the annihilation of indigenous peoples (DUSSEL, 1993, p. 12). This happens within "a military, practical, violent process that dialectically includes the other as 'self'." (DUSSEL, 1993, p. 43), which was an extremely violent process. One of the embodiments of this process of composition of rationalism and domination was the election of the social sciences as one of the forms of control and organization of human lives:

> The birth of the Social Sciences is not an additive phenomenon in the context of the political organization defined by the nation-state, but rather constitutive of them. It was necessary to create a platform for scientific observation about the social world that one wanted to govern. Without the collaboration of Social Sciences, the Modern State would not be able to exercise control over people's lives, to set long- and short-term collective goals, nor to build and attribute to citizens a cultural "identity". Not only did the restructuring of the economy according to the new demands of international capitalism, but also the redefinition of political legitimacy, and even the identification of the character and values peculiar to each nation, required a scientifically based representation of how social reality "worked". Only on this information it was possible to carry out and execute government programs. (CASTRO-GOMEZ, 2005, p. 87)

All this legitimization that, first comes from this violent encounter, is a sexual--cultural-religious-lexical domination that leads, in a second moment, to the attempt of social pacification – with the establishment of a legal guideline, in which part of the population enjoys rights and the other doesn't, through the justifications that result

15 Christian domination stands out (DUSSEL, 1993, p. 62) as a spiritual conquest, which has repercussions in almost all the dominated nations within Latin America, which was its great laboratory.

16 For this practice of domination, Dussel (1993, p. 50) states that the conqueror had a phallic ego, since the conqueror either kills the Indigenous violently, or reduces them to servitude, or rapes the Indigenous women in front of the men (DUSSEL, 1993, p. 51). This construction highlights a sexuality centered as masculine, oppressive, alienating and unjust (DUSSEL, 1993, p. 51).

from the Coloniality of Power[17] (marked by gender,[18] class and race issues) and that serves to consolidate another kind of domination. The establishment of a single figure determines and constructs right and wrong, permitted and forbidden, without being consulted or even debated. This structure is imported from Europe and must work in the Americas. As shown by Castro-Gomez (2005, p. 88):

> All state policies and institutions (schools, constitutions, law, hospitals, prisons, etc.) will be defined by the legal imperative of "modernization", that is, by the need to discipline passions and guide them to the benefit of the collective through work. The matter was to bind all citizens to the process of production by submitting their time and body to a series of norms that were defined and legitimized by knowledge. The Social Sciences teach what are the "laws" that govern economics, society, politics, and history. The State, in turn, defines its governmental policies based on this scientifically legitimized normativity.

17 The concept of Coloniality of Power, elaborated by Aníbal Quijano (2005), occupies a centrality in the studies of decoloniality, that articulates the issues of race and work, people and space that obey the needs of the Capital within the colonial context, what allows us to understand some of the aspects linked to such ways that this power exerted/exerts. This concept has imposed as a pattern of control of labor the capitalist system, as a basis in the international racial division of labor, attributing patterns of labor according to phenotypic features; for the control and form of collective authority it shapes as a central element the nation-state, which had been forged in many locations; for the control of sex one has the bourgeois family, having the centrality of the white woman; and, finally, the Eurocentric paradigm is demonstrated as the hegemonic way of production of knowledge (QUIJANO, 2005, p. 4). It also affirms that the Coloniality of Power has not depleted itself with the end of modern/colonial (and that of Colonialism) relations, and to this day makes itself present through domination mechanisms, given it is recognized as the historical pattern of power (QUIJANO, 2005, p. 4).
Aníbal Quijano (2005) addresses the term Coloniality of Knowledge, as an outcome of the Coloniality of Power (QUIJANO, 1995), which refers to the Eurocentric paradigm as a hegemonic form of domination. The author conceptualizes the Coloniality of Knowledge the modern-Eurocentric project of control of subjectivities, to build knowledge structures that emerge from the experience of the marginalization of the other, especially the colonial, perpetrating a strategy of domination by cultural and social hierarchization, being one of the phases of Eurocentrism. In historical terms, the Coloniality of Knowledge allowed European, Christian, white, elitist, heterosexual and cisgender man to impose himself as a universal subject of rights, in addition to presenting his knowledge as the only scientific one. Consequently, in a binary reductive logic, non-European knowledge was subalternized, considered peculiar, secular, from the past and enigmatic, and, therefore, unable to achieve the truth and universality inherent in the knowledge of the colonizer. This concept is the key to understanding the attempt of "naturalization" and "neutralization" by the colonizers.

18 Maria Lugones (2014, p. 941) considers that Aníbal Quijano (1995) left out gender/sex differentiations, gender identity (in such a way as to assume that all colonial and pre-colonial relations were hetero-cisnormative) and intersectional issues when conceptualizing the term Coloniality of Power. Thus, Lugones (2014, p. 941) conceptualizes that for the analysis of colonial relations such issues mentioned are integral parts and that gender coloniality is shown as the analysis of the complex interaction of gender oppressions through economic, racial aspects related to sexual orientation and gender identity aspects that occurred within the historical pattern of modernity/coloniality power (LUGONES, 2014, p. 941). In such a way that coloniality of gender, like all colonialities, is still present within the current standards, and remains at the intersection of gender, class, race as central constructions of capitalist-globalized-world power systems (LUGONES, 2014, p. 939). The author presents gender decoloniality as an alternative to resist the pattern of gender coloniality from the perspective of colonial difference (LUGONES, 2014, p. 940).

Rita Segato (2012) states that when it comes to subjects[19] - within this binary European modern colonial pattern–, to arrive at what is called ontological completeness, which is the fullness of being[20], one undergoes a process of equalization with a pre-established universal equivalent[21] of concepts in which it is only satisfied by framing these terms (SEGATO, 2012), starting to see diversity(ies) and plurality(ies) [22] of subjects as a problem[23] (LISBÔA, 2018, p. 199) that should be excluded from that instrument. That is, that subject of the Americas would never reach this fullness of being.

The whole creation of this logic subalternizes knowledge that does not pass through the dual (hard) key of the modern colonizer. It should be noted that these subjects are established and formed by a lexicon that must be stable, so that law can have space to develop itself. It is a double process: teaching the language and, with it, interpreting what is presented in front of it. So much so that law depends on it to establish itself as one of the forms it dominates: to name things is to define and delimit the world-system of its members (CASTRO-GOMEZ, 2005, p. 93). In the case of specialized knowledge, such as law, this is done by an exclusionary vocabulary, only for the initiated, which gives access to a group of specific people and intensifies oppressions/dominations, as well as amplifies inequalities as a consequence.

It is added that those subjects who do not conform to the above-defined pattern are assigned the status of the other, as already stated by Dussel (1993, p. 10-21), who may be crazy, sick, or criminal, in a process of "outrificação" [otherfication] of differences, that is, that one who does not know, is not accepted, or is not part of the inte-

19 Specifically, relating to subjects, it will be used a gender free "subject/s" instead of "male/female subjects" due to the linguistic multiplicities that the term can present within the reading key of subjectivities, but in all other opportunities it will be used in the male and female.

20 This construction of fullness of being can be questioned within the modern constructions themselves, for what would this fullness of being be? What to be? Is this being limited by standards of race, gender, class, religion? It starts from the view that this perspective of fullness of being, as a philosophical question, should also be abandoned in a single perspective, and one should work with the different plenitudes of the different people in their different global-regional contexts.

21 The pattern of subject established by modernity/coloniality is male, heterosexual, white, European, Catholic, capacitist, bourgeois, cisgender. This excludes all who are not in the hegemonic global north or do not fit within this perspective of subjects and transforms them into minorities subalternized to an ideal of subject – always subjugated – (often) idealized.

22 It is chosen to bring in the perspective of more than a few diversities or pluralities so that an open construction is possible of what these concepts are, avoiding closing them in precise conceptual readings and, therefore, excluding, in some way, existing expressions of diversity and plurality. Hence, the aim is to build an open and re-signified reading key at all times so as not to repeat the colonial/modern logic of binariness.

23 Within a critical construction, especially the *queer* one, the perpetuation of these dissident subjects can be (re)signified by a perspective of building a society by the margins and constant re-signification until implosion of the categories that show themselves as elitist, assimilationists and hygienists. Even this very construction of a perspective that is not assimilationist is questioned, since classifications are a reducing form of complexities and are ways to access and reduce those translated subjectivities.

lligible of knowledge (of that established rationalism) will be excluded, segregated or erased. Law builds this official narrative and legitimizes the perspective of the unique story[24] with the institutionalization / promotion of these places of exclusion aligned with the official discourse on the part of the State (ADICHIE, 2009; SILVA; BOMFIM; BAHIA, 2021, p. 205).

Thus, by structuring and defining the binary logic of modernity/coloniality through the imaginary of the other, which begins with the colonial emergence of the Atlantic commercial circuit (MIGNOLLO, 2005), the colonizer dictates patterns to be followed to control the construction of a society through the imposition of language, sexuality, faith (exclusively Catholic), by the control of spirituality, the accentuation of gender oppressions, the imposition of a specific form of rationality (DUSSEL, 1993) and the establishment of a pattern of races and their destinies specific related to labor activity (QUIJANO, 2005, p. 116-122).

Likewise, Anibal Quijano (2005, p. 116) schematizes and unveils these oppressions with the concept of Coloniality of Power which, as already presented, articulates that the social classifications of the population are linked to racialization of subjects (such as a discourse of biological structure), work and space that were produced in the colonial context to obey the needs of capital. This construction led the domination exercised in the colonies to a phenotypic level: the creation of a race imagined as inferior and a process of dehumanization of people brought from Africa to be enslaved in the Americas by Western Europeans (QUIJANO, 2005, p. 116-122).

This violent process was built in a hierarchical way, places and social roles that served as legitimization to carry out the control of people within the work environment (QUIJANO, 2005, p. 117). In such a way that law was there to seal the possibility of promoting people to the level of non-human. This has always been seen as a process of producing the dialectic of the "I" (man/colonizer/white/dominant/owner) against the other, which is what differs this pattern (QUIJANO, 2013, p. 144-147).

It urges to emphasize the centrality of the racial issue in this construction. It is not only concerned with one more element, but, within the economic-social-existential relations of Latin America and the entire history of slavery, it is an element that constitutes the focus of these analyses because it was created within the Americas (QUIJANO, 2005, p. 117). This articulation reveals a structure of control of Labor, its resources and products, which articulated the construction of social hierarchies arou-

24 Chimamanda Adichie (2009) reflects in her lecture that the references that were constructed by her referred to a European romantic pseudo-image, since the authors did not the share the same origin as hers and always had Africa as an underworld or a place of extreme poverty (or the other). The colonizer's perspective reflected her coloniality so much that she also believed in that misrepresented view of her own people, however plural and diverse they may be.

nd the exploitation of the capital-labor relationship and which served as a form of production for the world market (QUIJANO, 2013, p. 144).

Therefore, it can be stated that the epistemic subject of law is not a black person; despite the alleged neutrality of the subject, equality is denied to him: first, formal equality, then material equality. In this way of domination of social relations, means of dominant control of intersubjectivity are constructed – so that historical memory, imagery, beliefs and, especially, knowledge are controlled (QUIJANO, 2013, p. 144-145).

Furthermore, it is also adduced that this coloniality was not depleted with the end of colonial relations and is present to this day in contemporaneity through the mechanisms of domination, among them science and law itself (QUIJANO, 2005).

Then, it can be seen that apparatuses and institutionalities were created for the projection of Europe as a cultural, geographical and scientific knowledge production center and, consequently, the devaluation of what was and is considered as different from the standard. It is also noted that there was a construction of this ideal of subject. So, it is stated that there is a historical pattern of subject created by modernity/coloniality that translates as unique since the invasion of the Americas.

3 LEGAL COLONIALITY: LAW AS STANDARDIZATION

Colonialities show themselves as the repetition of power patterns imported from Europe that remain after the end of colonization (QUIJANO, 2005). Therefore, in this section, the goal is to present the role of law in the construction and consolidation of the exploitation processes established and practiced in Latin America. In the meantime, the urgency of the debate on the existence of a historical-institutional pattern of founding power of colonial relations in Latin America is indicated, which is still in the structure and functioning of the State. In this analysis it is noted that law is the great driver of binary patterns (right/wrong, legal/illegal) and establishes, among many things, fixed roles that subalternize social relations (CASTRO-GOMES, 2005, p. 85-90).

The concept of coloniality for Flávia Souza Máximo Pereira and Pedro Augusto Gravatá Nicoli (2020, p. 524) are "geopolitically referenced patterns of power that sustain the institution of what is understood as modernity, being its necessary counterface, in relations that project themselves, reinvented in time and spaces until the present".

In this regard, the law within this process acts in order to determine standards to be followed and established as activities that may or may not be admitted within this spectrum, operating exclusions, maintaining subalternities and legitimizing pre-

carization (MÁXIMO PEREIRA; NICOLI, 2020, p. 518-522). Decolonial studies reveal that there are more permanences than modifications within the social praxis of modernity/coloniality (MÁXIMO PEREIRA; NICOLI, 2020, p. 516).

Hence, to think about the coloniality of law is to reflect that it constitutes a created pattern that sustains modern/colonial institutions. The normative force attributed to the law by the colonization process shows itself as an element of maintenance of *status quo* for the same epistemic subject. Thus, during the process of production of colonial apparatuses, it was necessary to develop an overseas colonized legal system that is the closest to that of the colonizer, so that the colonized only reflect the production of those norms and import theories without questioning them. This pattern has been raised to a global level.

For it to be put into operation it is necessary to attribute an ambivalence of this protection, in which through the presence of freedom, and to avail itself of it, it would only be possible with the binding/subjection to that system and normative apparatus. It is a limitation of the notion of the world operated by the colonizer, from the possibility of being free within the imposed bonds. Freedom is controlled.

Law then shows itself as a *locus* of abstract recognition of formally equal subjects, which reproduces material inequalities and social hierarchies that attribute personhood and dignity on one hand and, on the other, exploitation, absence and violence (RAMOS; NICOLI, 2020, p. 27-35). The more they are subjected to processes of vulnerability (historical, material, social, political), the more the violent process of law is exposed and the less the protective aspect appears.

This historical pattern of power relations is imposed as a form of domination in relation to the modes of work control, and designations of work mechanisms were made from their phenotypic characteristic (QUIJANO, 2005, p. 144 and 2013, p. 146). It can be noted that there is a coloniality instituted in the construction of law that serves to mediate relations between people who own capital and perform with the hegemonic substratum, and those who are excluded from capital and are dissidents to the agreed standard.

It is also emphasized the construction of a new [25]society in the colonies starting from the hegemony of scientific knowledge (Eurocentrism as a dominant perspective), from the Catholic perspective, from the genocide of the original peoples and

25 It brings the concept of "new", as it started from the extinction of that old society and its subalternization to build what this "new" society was. This text is not in line with ideas of "new" that are repetitions of the old, as are contemporary conceptualizations of the post-pandemic "new normal".

African peoples with slavery[26] - as a form of exploitation of forced labor, having as the main regime of local labor – they brought marks for the recognition of dissident subjects of the pattern that was built as correct in these lands and are marks of coloniality/modernity. The way of organizing itself, the processes of production of historical and social memory, the imaginary and knowledge were absurdly controlled for the production of trans-historical and single linear narratives, to show the processes of domination as a natural process or something given within contemporary society[27] (QUIJANO, 2013, p. 145).

The Eurocentric pattern is exalted, in which there are the dominance of the market, liberal political institutions and the form of humanity as a given development process and not as a reflection of human explorations, especially of Latin, black and indigenous blood (QUIJANO, 2013, p. 145-155).

On this path, all new demands are made and realized within this institutional microsystem of law, which reproduces the binary system, are doomed to only remedy the situation, but almost never solve it[28] (SEGATO, 2012).

Therefore, it is noted that the problem is epistemic, as it is not possible, within this paradigm of knowledge, to get out of the need for framing in "theoretical boxes", in which it seeks to frame patterns/behaviors of the subjects, and the attempts of the subjects to remain in a pattern of binary responses is the attempt to seek a more comfortable "theoretical box" than the previous one, that is, it is the search for normality within this pattern (MÁXIMO PEREIRA, NICOLI, 2020, p. 519; BAHIA, 2017). Or, even more uncomfortable, is the search for normality within that dissent that is presented to it as subjectivity, which is already formatted within a modern/colonial pattern.

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26 As a proposal for epistemological revision Slavery should be written with a capital "S", because a great genocide of the black population was generated since the beginning of colonization, in which these black people were removed from their territories of origin to be enslaved in the Americas (KATAR MOREIRA, 2019). All that with a false and moralistic civilizing interest of the European elite in this new continent, in such a way that a lot of black blood was shed in the construction of this white-capitalist-bourgeois-European project and, given this, as a way to mark those lives, Slavery must be understood as a historical moment in which people were enslaved only and exclusively by their skin color (KATAR MOREIRA, 2019). That being the case, it was a colonization and an exercise of Coloniality (in which this term represents an instrument of domination that was used in the Americas as a form of control) that was imposed on a population.

27 It is worth mentioning that there were means of resistance to this narrative, such as the quilombola territories, the ways of passing on the knowledge of the original peoples, and the religions of African origin.

28 To build this argument we bring the example of the Maria da Penha law, which is an achievement of women's rights and led, at first, to the decrease in the statistics of violence against women in the domestic sphere. However, after a short period, such numbers started to increase again and in a consistent manner. The way the state handles issues (through law) involving dissident subjects, which are those who don't follow the patterns, does not settle the conflicts, it only maps them, limits them, establishes official statistics of who will live and who will die, but it doesn't settle the conflict. Death for dissident subjects is still a constant.

Thus, it means trying to conform to the patterns of society with crumbs of recognition coming from the legal perspective. This should be criticized in the sense that it is useless to fight against some forms of oppression, if these only reach mostly cisgender white men who repeat the colonial pattern, based on the context of race and sexuality (LUGONES, 2010).

In this regard, fighting for the expansion of rights guaranteed by the Constitution of the Federative Republic of 1998 and public policies is fighting for this achievement to be realized for the majority of the population and not just an elitist conquest of rights to the same group that performs the hegemonic.

It is noticed that struggles that are related, for example, to criminal law, for the recognition of minority rights, are made for the punishment of all, but maintains the selectivity of that system over peripheral people. In the same way that LGBTQIA+ rights, which are built in terms of justice of recognition, repeat the pattern and grant citizenship to the same group of subjects if they do not promote changes in terms of justice of redistribution.

Therefore, it is necessary to think about how and by whom the rights held as recognition are accessed. But it is also necessary to reflect on the materialities of the lives of these subjects who cannot access the conquered rights (BOMFIM, 2021). The struggle is for recognition in terms of formal, material and, above all, substantial equality.

4 CLAIM AN EPISTEMIC DECOLONIZATION OF LAW[29]

Faced with those demonstrated processes, aware of all the weaknesses and problems within the law, it is necessary to rethink the legal episteme. Thus, we take the risk of making some propositions.

The idea of an other role focuses on the proposition of a theoretical perspective for the science of law that goes along with other perspectives, and it is not about the search for a way to escape the binarisms imposed by modernity, which can act in the production of a new isolated form of thought and new methods of exclusion (LISBÔA, 2020, p. 200-205). It is necessary to revisit the law by non-hegemonic epistemologies (LISBÔA, 2020, p. 200-205).

Hence, the proposal is to identify[30] how decoloniality can make clear which are the body-political and geopolitical assumptions of knowledge that are used in the

29 The title epistemic decolonization of law is inspired by the research line of the RESSABER-UFOP group.

30 It is emphasized that these are not the only proposals, and that the intention of this section is to present only the directions and feasibilities that were chosen by the authors, without the purpose of exhausting the possibilities.

construction of certain knowledge (GROSSFOGUEL, 2008, p. 122-128, LISBÔA, 2020, p. 200), and how some productions linked to hegemonic signs maintain the *status quo* before legal science itself. The role of decoloniality in this process is highlighted, which is a *praxis*-project of structural, economic, social, political epistemic detachment properly situated (BALLESTRIN, 2003; GROSSFOGUEL, 2008; HARAWAY, 1988).

Therefore, the propositions of epistemic decolonization of law are a challenge, which is to use a hegemonic tool (in this case, law) as a subversive form, understanding the entire role that this power structure operates in contemporary society.

It is a matter of deconstructing the idea of a universal man (average subject, moral and good manner) supposedly neutral and all its various derivations that tend to hierarchize people and social structures, demonstrating that there is a complex interconnection that has been maintained since the (violent) process of colonization with the abstraction of this subject. The relations of coloniality are denoted as metanarratives that present only a view of the processes of domination as if they were the only truth, and this is repeated within the perspective of the coloniality of law. Thus, to (re)think law is also to question which are the institutionalities formed within this structure. For this, it is necessary to present and discuss propositions that break with the majority role and with the racist, cis-sexist and segregationist pact of modernity/coloniality. Ramon Grossfoguel brings up issues that deserve to be highlighted:

> 1) a decolonial epistemic perspective requires a broader canon of thought than the Western canon (including the left-wing Western canon); 2) a truly universal decolonial perspective cannot be based on an abstract universal (a particular one that amounts to global universal image – or design), rather it would have to be the result of a critical dialogue between various political/ethical/epistemic critical projects, aimed at a pluriversal world and not a universal world; 3) the decolonization of knowledge would require taking seriously the perspective/cosmologies/views of critical thinkers from the Global South who think with and from racial/ethnic/sexual subalternized bodies and places. (GROSSFOGUEL, 2008, p. 44)[31]

Therefore, when thinking about the decolonization[32] of law one must pay attention to the geopolitics of knowledge in which one has the production of localized knowledge (HARAWAY, 1988), and to the body-politics situated with the reality in which it is produced (ANZALDÚA, 2000; GROSSFOGUEL, 2008). It is not enough to bring into local law institutes from European systems and import them without any reflection on local reality.

Denoting the matter of the place of epistemic enunciation increases the epistemic and social responsibility to mark a place in the social structure and to occupy that

31 It is worth mentioning the concept of subversive complicity presented by Ramon Grossfoguel (2008, p. 44-46) according to which one must question the dominant structures to then, when reflecting on them, propose something different from that hegemonic use.

32 As this production is linked with the authors of the Modernity/Coloniality Group, the term decolonization is used.

space, despite all the existing tensions (ANZALDÚA, 2000). As long as we are in academia writing under subaltern bodies without integrating them into this reality, we will still be maintaining the logic of colonization with those who can or cannot talk about their experience (REA; AMANCIO, 2018). In the same way that as long as the knowledge of law is not situated and located, but translated mostly by elitist people, within the white marble walls, we will still be inserted in a partial construction (ANZALDÚA, 2000; HARAWAY, 1988; MOREIRA, 2017).

The decoloniality process has the authors and southern realities as central analyses of the discussions: "the subaltern epistemic perspectives are a form of knowledge that, coming from below, gives rise to a critical perspective of hegemonic knowledge in the power relations involved" (GROSSFOGUEL, 2008, p. 46).

It takes care to insert in the academic and popular discussions what is produced about and by the subaltern, but also under this perspective and from it (GROSSFOGUEL, 2008, p. 46-48). Theorizing beyond surfaces. It is the expansion of the limits that are pertinent by the criticism of law and the expansion of the intangibles that are central to the reflection *of* and *by* law (MURADAS; MÁXIMO PEREIRA, 2018; PALHARES; NICOLI, 2020).

It is related to a new way of thinking about the legal field, but that decentralizes and pluralizes the barriers and limits of what is considered legal (PALHARES; NICOLI, 2020); it is thinking and working on the margin as something that constitutes the very construction of law. Appropriating tensions and criticisms as a basic process of law meets the idea of stability that the system figures to bring. However, this stability can be translated as a process of maintaining the hierarchical structures of those who hold the privileges that make up the ruling classes that have control of capital.

The neutrality and objectivity present in the legal field and in academia are some of the myths[33] of modernity/coloniality that must end so that one can think of situated knowledges (GROSSFOGUEL, 2008, p. 46-47). Because,

> By hiding the place of the subject of enunciation, European/Euro-American colonial domination and expansion managed to build a hierarchy of higher and lower knowledge throughout the globe and, consequently, of higher and lower peoples (GROSSFOGUEL, 2008, p. 52)

Given this, one should play with the characteristics of the hegemonic system, as is the case with law, but cause ruptures that show those modern/colonial roots of the one who judges (GOMES, CARVALHO, 2020). It is necessary to demonstrate what are the elements that are behind a neutral decision, and the law must propose itself as

33 According to Ramon Grossfoguel (2008, p. 126) this myth "was the notion that the elimination of colonial administrations led to the decolonization of the world, which originated the myth of a 'postcolonial' world. The multiple and heterogeneous global structures, implemented over a period of 450 years, have not evaporated along with the political legal decolonization of the periphery over the past 50 years. We continue to live under the same 'matrix of colonial power'."

an unfinished system, and must open itself to other realities of institutional judgment or even resolutions that do not cover this notion of modern/colonial justice (GROSS-FOGUEL, 20008, p. 45-50). This is one of the ways to use a hegemonic mechanism in a counter-hegemonic way. It is thinking and acting for the recognition of materialities--other than that of the standard subject and determined by traditional justice.

CONCLUSION

Thus, in the face of the reflections presented, bringing conclusions to questions that still do not have answers seems to compromise again with the patterns of modernity/coloniality. However, it shifts the need to question what is the role of academia in building a critique of the dominant legal system. The various critical aspects produce many diagnoses and few propositions.

Hence, in summary, the demands that go through the recognition of law - which is an imported institute from the North Atlantic axis and has sources linked to the hegemonic colonial-European-modern-binary-thought pattern that is based on rationalism - are solved by hegemonic mechanisms that have served, for more than 500 years, the patterns of the bourgeois-heterosexual-white elites[34] and, normally, do not effectively solve the problem.

Therefore, the changes made from the perspective of the modern/colonial State guarantee, since the beginning of modernity, the maintenance of subaltern subjects and the structures of power/domination. Moreover, the demands for recognition are only realized when they are operationalized within this state logic and, consequently, maintain the exclusion of certain individuals and guarantee the *status quo* of the colo-

34 This point disagrees with the one presented by Daniela Muradas and Flávia Souza Máximo Pereira (2018, p. 2125) who affirm: "Eurocentrism is about an epistemic subject who has no sexuality, gender, ethnicity, race, class, spirituality, language, nor epistemic location in any power relationship, and produces truth in an inner monologue with themselves, with no relation to anyone outside of themselves", since the epistemic subject of Eurocentrism is the man himself, cisgender, European, white, Christian, bourgeois and all other attributions of a male subject residing in the global hegemonic North. The subject of Eurocentrism is not a black subject, it is not a Latin American subject, it is a subject of hegemonic thought. It is exactly this that Chimamanda Adichie (2009) resumes in her lecture in which she doubts that someone from her people can create something good or even create something at all, since in all her learning (eurocentrated) the story that was passed to her was that the good was created in Europe. So, disagreeing with the authors, we have that this is the neutral subject in which they refer to the constructions of the humanities, it is this eurocentrated subject who is the holder of rights and duties that are protected by Western law, such as those referring to contracts and not indigenous peoples, who until a few years ago were protected by a state body in Brazil, or even black people who have the highest incidence within the penal system due to its constructions. The law states that everyone is submitted to all these rights and can access them, but statistically and sociologically, the subjects that access private rights and criminal law are different, due to the presence of marked Colonialities.

nial/modern elites facing the granting of justice, which are actually legal crumbs[35] for the purpose of pacifying social sectors. An example, as mentioned above, was given when trans people were guaranteed the right to the social name, while Brazil is still the country that kills them the most. The possibility of the name is regulated, in turn its existence is exterminated.

In this context, it is stated that as long as changes and recognition pass through the state mechanism that produced them, they will only be the remediation of situations created by modernity with solutions also created by modernity. Thus, it is necessary to think beyond the binary logic and propose its multiples, with distinct, different, and unequal treatments, recognizing relationalities, interdependencies, and vulnerabilities. One must think about the differences and pluriversalities, as it is necessary to radically expand the State' protection. Here we conclude by the need to theorize beyond the surface and rethink the legal epistemology with the proposition of practical actions.

The use of law comes up against the problem of recognition as the chosen form for the realization of rights. Therefore, the expansion (or even implosion) of the category of the subject of rights is thought of as the only form of recognition. It should be allowed that those who have had their rights on the margins of society can have effective conditions to access them or even to exist the faculty of this access (without being a requirement). Here, the proposition presented is to understand that the margins and the borderline situations are built and are part of a political choice of law. Hence, to stretch to the margins is to displace law itself.

In doing so, we have the confirmation of the hypothesis that law manages to present itself as a counter-hegemonic instrument provided that the assumptions of violence and the systematic productions of exclusions of specific subjects within its spectrum are assumed. Law must, at once, think about the end of that supposed neutrality that still inhabits legal rationality.

To propose respect for diversity is to impose that law will be built and governed by differences and not by binarity. It is to go beyond the only way to conceive of justice and accept community standards of conflict resolution as mechanisms that are also part of the State. It is not having the answers to these questions, even if they are asked constantly and decided collectively. It is a matter, then, of trying to think of new patterns from trial and error. The proposition of an other-epistemology for law is to recognize its ontological incompleteness.

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35 We do not underestimate the achievements made in the scope of the Justice of Recognition, but it is shown that this promotes a precarious inclusion of the population that still dies (in droves) in Brazil year after year. The way that recognition is made by the state still allows that there are lives that do not deserve to be lived, lives that do not matter to the state, and even the ones with legal recognition still die (BOMFIM, SALLES, BAHIA, 2020).

Finally, recognizing the writing space of the authors of this text, it is emphasized that this work is the result of getting in contact with decolonial readings, and is a project (always) open to the construction of alternatives that must be done together and discussed in community *in* and *beyond* its research fields. The role of abstraction within academia loses meaning if it does not become a practical struggle and the commitment adopted here is that. Decolonial theory requires a *praxis*.

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36 For the construction of this text were used mostly authors from the South with the purpose of epistemic disobedience. The idea of this production is linked to the publication of the article that adopted similar criteria: MÁXIMO PEREIRA, Flávia Souza; BERSANI, Humberto. Crítica à interseccionalidade como método de desobediência epistêmica no Direito do Trabalho brasileiro. **Revista Direito e Práxis**, v. 11, p. 2743-2772, 2020.

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