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THE EFFECTS OF COLONIAL POWER RELATIONS IN INDIGENOUS RIGHTS IN BRAZIL
A legal, historical and sociological analysis

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ABSTRACT

This thesis seeks to address the effects of colonialism on indigenous rights in Brazil. Through literary research, it seeks to demonstrate how the relationships established in the period of Portuguese domination were perpetuated in time, consolidating and threatening the life, customs and lands of indigenous peoples in Brazil. This study is especially relevant to raise the understanding of why native peoples are today in a state of vulnerability and how colonial relations contributed to their finding themselves in this situation. It was concluded that only through breaking with these colonial models of power is it possible to devise truly effective solutions to protect indigenous peoples. Thus, it was found that colonial power relations are still very present both in the national reality of Brazil and in the international community. Furthermore, these relationships are very harmful, since they place non-Western cultures in a place of inferiority, seeking to assimilate and erase them. In this way, they must be broken so that the real and effective expression of Brazilian multiculturalism can be possible, in order to allow not only the expansion of the expression and political participation of these peoples, but also to allow the existence of different ways of living, thinking and to organise socially, economically and politically.

Key words: colonialism; indigenous peoples; Europe; Brazil; law

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CHAPTER I - INTRODUCTION

This chapter seeks to introduce the themes that will be addressed in this research, demonstrating the centrality of the role of colonialism in the construction of the modern and globalised world. Furthermore, some of the numerous contrasts between the indigenous and European perspectives will be introduced. Moreover, this first part aims to outline the structure and objective of this work.

1.1. Colonialism and Globalisation

Before the arrival of the Europeans in the Americas, in 1492, the world was consisted of several human societies distributed in all continents, each one with its own language, history, religion, and political and social organisation. After this date, with the beginning of the colonial process, a new world system was born, in which the culture of a single civilisation began to impose itself on the other ones[1]. Hence, when lecturing on the definition of the concept of modernity, Professor Enrique Dussel explains that

> there was not a world history in an empirical sense before 1492 (as this date was the beginning of the "world-system"). Previous to this date, empires or cultural systems simply coexisted. It was only with the fifteenth-century Portuguese expansion (which reached the Far East in the sixteenth century) and the discovery of America by Spain that the whole planet became the space of one world history[2].

In addition, the author states that colonialism was not only the platform that allowed the constitution of a new globalised and capitalist world-system, but it was also the one that placed Europe at the centre of this scheme. According to him,

> even though all cultures are ethnocentric, modern European ethnocentrism is the only one that might pretend to claim universality for itself. Modernity's Eurocentrism lies in the confusion between abstract universality and the concrete world hegemony derived from Europe's position as center[3].

Thus, the Europeans, as the main authors of the globalised world, were those who shaped the economic, political and social model that came to be used in almost all countries.

[1] Enrique Dussel, Javier Krauel and Virginia C. Tuma (trs), 'Europe, Modernity, and Eurocentrism' (2000) 1:3 Nepantla: Views from the South 465.
[2] Ibid.
[3] Ibid.

Furthermore, they also formulated new values and interests that would constitute the base of this universal mindset. In this sense, according to Makau Mutua,

> In the last several hundred years, the globe has witnessed the universalization of Eurocentric norms and cultural forms through the creation of the state and the predominance of certain economic, social, and political models. International law itself was founded on the preeminence of four specific European biases: geographic Europe as the center, and Christianity, mercantile economics, and political imperialism as superior paradigms. Both the League of Nations and its successor, the United Nations, revitalized and confirmed European-American domination of international affairs. In the post-War period, non-European states were trusted or mandated to Western powers or became client states of one or another Western state.[4]

1.2. Clashes of Perspectives between Europeans and Native-Brazilians

The arrival of Europeans in Brazil was a moment of enormous cultural contrast, especially because these two civilisations developed separately for thousands of years, without ever having had contact with each other. As a result, each of them constructed radically different world views, not just in a psychological scope, but also in a practical one. In an extensive research developed by Professor Darcy Ribeiro in his book "The Brazilian People", the enormous contrasts between the ways of life of the Brazilian indigenous and the European settlers are exposed. In describing these differences, the author explains that:

> For the Indians life was the peaceful fulfillment of existence in a bountiful world and a harmonious society. […]
>
> For the newcomers it was quite the contrary - life was a chore, a difficult obligation in which everyone was condemned to work and everything was subordinated to profit. Wrapped in cloth, shod with boots, and wearing hats, they placed their luxury and their vanity in those items, in spite of these being filthy and ragged more often than elegant and beautiful. Armed with iron spears and thundering blunderbusses, they felt themselves to be the flower of creation.[5]

Thusly, life for the natives and for the Europeans had completely different meanings: while for the former it should be enjoyed to the fullest, for the latter it was a burden to be carried, with the constant fear of sin designed by Christianity. These different perspectives, which are born from the historical and social context of each civilisation, were and still are reproduced in different ways, such as how they observe and relate to nature, work and the land

[4] Makau Mutua and Antony Anghie, 'What is TWAIL?. Proceedings of the Annual Meeting' (2000) 94 American Society of International Law 31.
[5] Darcy Ribeiro *The Brazilian People: the formation and meaning of Brazil* (Gregory Rabassa tr, University Press of Florida 2000) 23.

they own. Furthermore, the ways in which each of these peoples organise themselves politically, socially and economically have always been very different.

In other words, the perspectives of these two peoples were never incorporated and were, throughout the formation of the Brazilian State, almost completely incompatible. Thus, the indigenous who survived the "civilisation process" ended up being excluded from a government that almost essentially represents the ideas of the colonisers. Furthermore, as explained by Wolkmer[6], the colonisers brought a legal-political organisation completely foreign to those in force in the territory, imposing it not only on Europeans who lived in the country, but also on indigenous and Africans. Moreover, according to the author, as Brazilian law was born entirely from the European system, without any indigenous or African influence, these two peoples ended up not having their aspirations and needs represented in the political-legal sphere, which, in turn, was reserved to the dominant social group, the Euro-Brazilians[7].

1.3. Research question

The relevance of colonialism in shaping the modern world and in particular the continuity of colonial thought and relations, is still largely ignored by international law. Which, when dealing with international relations and issues, ends up overlooking a large part of the problem and not only allowing, but also serving as an instrument, for the perpetuation of imperialist structures. As an example, one can cite the report on conditions of life and work of indigenous populations of Latin American countries, published in 1949, by the International Labour Organisation, which concluded that indigenous people needed the help of the West to overcome their “backward” lifestyle[8]. According to the report, “[I]t is now almost universally recognised that, left to their own resources, indigenous peoples would have difficulty in overcoming their inferior economic and social situation which inevitably leaves them open for exploitation”[9].

[6] Antônio Carlos Wolkmer, *História do Direito do Brasil* (3rd ed, Editora Forense 2003) 42-43.
[7] Ibid.
[8] Makau Mutua, ‘Savages, victims and saviors: the metaphore of human rights’ (2021) 45:1 Asian studies review 48.
[9] International Labour Organisation, ‘Conditions of life and work of indigenous populations of Latin American countries’ (Fourth Conference of American States Members of the International Labour Organisation, Report II 1949).

To this end, the research question is: how do colonial power relations affect indigenous rights in Brazil? In order to answer this question, this research seeks to adopt a critical approach to the role of the indigenous people in Brazil today, based on the analysis of the hegemonic relations created from colonisation and the image of the Indian that was built in this context. For this, it will be used legal, sociological, political and philosophical analysis in order to obtain a better and deeper understanding of the subject.

That being said, this work seeks to address the exclusion of the indigenous people in the Brazilian State and society, through the historical analysis of colonial power relations in the country. This study seeks to demonstrate how the social exclusion of native peoples in Brazil took place and how it is perpetuated. In addition, it aims to question the role of the West in the hierarchy and marginalisation of the multiculturalism that was formed since the arrival of the European.

Therefore, the aim of this research is to demonstrate that in order to achieve real political representation in Brazil, it is necessary to break with Eurocentrism and to incorporate the multicultural character of the Brazilian people in the political sphere, which can only be achieved through the guarantee and extension of indigenous rights and their real and effective political participation.

1.4. Overview

The introductory chapter seeks to present the issues that will be addressed during the research and bring initial understandings for the better development of the topics that will be discussed. Hence, in its subheadings 1 and 2 it is exposed a preliminary analysis on the conflicts between European and indigenous culture.

In the second chapter, it will be analysed how the image of the Brazilian indigenous was built from the narrative of European colonisers. Furthermore, the contrasts between indigenous and European life during the colonisation process will be examined. In order to do so, several aspects of both societies will be observed, such as beauty, religion and work.

The third chapter will be dedicated to understanding the consequences that the cultural clashes between Europeans and Indians, explained in the previous chapter, brought to modern

Brazil. In order to do so, it will be observed aspects such as the current situation of extermination of native peoples, conflicts over their lands and the sexual exploitation of the women of the tribe.

The fourth part of this research seeks to present criticisms of international law and human rights, from the perspective of the scholarship of Third World Approaches to International Law (TWAIL). This part of the study aims to discuss the role adopted by the international community in the perpetuation of colonial power relations, which directly influence indigenous rights.

The fifth chapter is going to focus on how these clashes of ideas are reflected in Brazilian legislation over time. In this way, the historical evolution of the country's institutions, legislation and Constitutions will be analysed, from the perspective of indigenous rights. This will culminate in the elaboration of the current Brazilian Constitution of 1988, which presents itself with a very innovative text in the scope of human rights and indigenous rights at the time.

The sixth chapter brings the issue to the regional level, presenting latinamerican constitutionalism and its relevance to the expansion of indigenous rights in the area. This movement proved to be revolutionary for the indigenous issue and influenced the elaboration of several constitutional texts, including the Brazilian one.

This dissertation will be concluded in the seventh chapter, with final considerations on the topics raised.

1.5. Conclusion

In summary, this work will seek to deconstruct perspectives constituted in the colonial process, which are very solid in current Brazilian society. In addition, the urgent need for this dismantling in the practical field will be argued, so that indigenous peoples, as well as other minorities, can have their cultures, languages, traditions, religions and forms of social, political and economic organisation respected. In this way, this work seeks to present a new perspective on how native peoples ended up excluded from the social and political participation of the Brazilian State. Therefore, this discussion will aim to demonstrate the importance of breaking with the colonial power relations for the expansion of indigenous rights and for Brazil to respect

the right to difference and embrace its multiculturalism, which goes far beyond European culture.

CHAPTER II - DIFFERENCES AND CONFLICTS BETWEEN THE LIVES OF NATIVE BRAZILIANS AND EUROPEANS

2.1 Construction of the image of the indigenous by the coloniser

When analysing the image of the Indian created by the European coloniser, it can be noticed that it is based upon two main aspects. First, a vision of inferiority is formulated in relation to all the characteristics that constitute indigenous culture and, at the same time, of superiority, regarding European culture. To justify this hierarchy, dual concepts are constructed, such as modern/traditional, civilised/primitive and advanced/backward, which seek to place Europe as the main actor of modernity, and the Indian as the player of the opposite pole of this process. In this way, an image is created of Europe as the only source of human development, and all other civilisations are seen as if they were stuck in the past, unable to evolve[10]. By explaining the coloniser's mind during the exploration of the Americas, Makau Mutua exposes the extremely linear vision of history constructed by the European. This narrative, on the one hand, presents the Indigenous and Africans as peoples belonging to the past, that is, to the origin of human evolution and, therefore, backwards in relation to the present. On the other hand, it treats Europeans as the future of this history, thus representing human evolution. In the author's words:

> As if by intuition, the missionary fused religion with civilization, a process that was meant to remove the native from the damnation of prehistory and to deliver him to the gates of history. In this idiom, human development was defined as a linear and vertical progression of the dark or backward races from the savage to the civilized, the pre-modern to the modern, from the child to the adult, and the inferior to the superior.[11]

The second point that bases the imaginary created in relation to the Indian is the one that seeks to reduce their diversity in a single definition. According to estimates published by the Brazilian government, before the arrival of Europeans on the continent, there were approximately 2 million people living in Brazil[12] (this number may be even higher, according to the survey of other statistics, reaching up to 4 million Indians[13]), speaking between 600 and 1.000 different languages[14]. To compare, Portugal, at that same period, had a bit more than a million inhabitants[15]. In this context, it

[10] Anibal Quijano, 'Coloniality of Power, Eurocentrism, and Latin America' (2000) 1:3 Nepantla: Views from South 533.
[11] Makau Mutua, 'Savages, victims and saviors: the metaphore of human rights' (2021) 45:1 Asian studies review 48.
[12] Brazil, 'Quem são' *Fundação Nacional do Índio* (12 November 2013, updated 18 November 2020) <https://www.gov.br/funai/pt-br/atuacao/povos-indigenas/quem-sao> accessed 25 March 2022 and 22 May 2022.
[13] David Maybury-lewis, *From savages to security risks: the Indian question in Brazil. In: The rights of subordinated peoples* (Edited by Oliver Mendelsohn and Upendra Baxi, Oxford University Press 1994) 40.
[14] Caio Santana, 'Um Brasil de 154 línguas' *Jornal da USP* (10 January 2020) <https://jornal.usp.br/cultura/um-brasil-de-154-linguas/> accessed 25 March 2022.
[15] Nuno Valério (ed), 'Instituto Nacional de Estatística Portugal' (2001) 1 Estatísticas Históricas Portuguesas.

is clear that among the various communities that lived in Brazilian territory, there were different customs, religions, social organisations, between other particularities. When looking at the entire American continent, it is easy to conclude such diversity, especially when analysing the completely different levels of social complexity that each one of these societies presented. This contrast can be well seen when comparing the Mayas, Aztecs and Incas, which had very sophisticated forms of organisation, with Brazilian Indians, which constituted much simpler civilisations[16]. Faced with such plurality, it is extremely difficult to summarise all those populations in a single portrait. Thus, the creation of this reductionist image, seeks to form the narrative that all native Americans have the same culture and history, being all part of the same social group, the "Indian". Hence, the perception is built that indigenous people have a simpler, less complex culture and, therefore, are less relevant to human evolution[17]. This conception ends up facilitating the formation of a feeling in relation to the Indians of the "other", which makes them less human in the European imagination. In this context, explains the Professor Makau Mutua:

> The view that the "native" is weak, powerless, prone to laziness, and unable on his own to create the conditions for his development was a recurrent theme in Western representations of the "other". Early in the life of the organization, an International Labor Organization report concluded, for example, that indigenous peoples could not by themselves overcome their "backwardness.
> […]
> The savior-colonizer psyche reflects an intriguing interplay of both European superiority and manifest destiny over the subject. The "othering" project degrades although it also seeks to save. [18]

The construction of this vision can be very well observed in the discussion between Bartolomé de Las Casas and Juan Gines de Sapulveda at Valladolid, about the legality and morality of the Spanish invasion of the Americas. On this occasion Las Casas published his defence, entitled "In Defence of the Indians". Sapulveda's arguments, in favour of the Spanish invasion, show with clarity how the image of the indigenous was constructed by the coloniser to justify the exploitation of people and their territories. Las Casas summarised his justifications in 4 main points[19]:

a) Barbarism: it was sustained in the Aristotelian thought of natural enslavement, which stated that some were born to be masters and others to be slaves, this being a predetermination of

[16] Enrique Dussel, Javier Krauel and Virginia C. Tuma (trs), 'Europe, Modernity, and Eurocentrism' (2000) 1:3 Nepantla: Views from the South 465.
[17] Walter D Mignolo, 'A colonialidade de cabo a rabo: o hemisfério ocidental no horizonte conceitual da modernidade' in Edgardo Lander, *A colonialidade do saber: eurocentrismo e ciências sociais: perspectivas latino-americanas* (CLACSO, Consejo Latinoamericano de Ciencias Sociales 2005).
[18] Mutua (n 11).
[19] G. C. Marks, 'Indigenous peoples in international law: the significance of Francisco de Vitoria and Bartolome de Las Casas' (1990) 13 Australian Year Book of International Law 1.

nature and, therefore, morally accepted. In this thought, masters were born endowed with intelligence and servants with strong bodies to serve them[20];

b) Crimes against divine and natural law: Sapulveda believed that some acts of indigenous culture violated Catholic principles as they went against the natural law created by God and, therefore, should be punished. Among the acts the philosopher referred to, were cannibalism, human sacrifice and paganism;

c) Rescue of innocent victims: the Spanish invasion often presented itself as an action to save the Indians from their incivility and paganism. Thus, the philosopher sustains the idea of Salvationism of the enlightened European in relation to the primitive non-European;

d) Evangelisation: considering themselves as the spreaders of the Christian faith, the Spaniards believed it was their moral duty to evangelise the Indians. "They planned to remake the globe in a mission of salvation, fulfilling the supreme task of the white man, who had been destined for it by God: to bring all men in a one single Christianity"[21].

Bartolomé de Las Casas counter-argued such claims by affirming that indigenous people are rational human beings, just like Europeans. In his exposition, he explains that the realisation that the Indians are barbaric and naturally inferior, would be the same as admitting that God is imperfect, since he made a large part of men and women in this way:

> Who, therefore, except one who is irreverent toward God and contemptuous of nature, has dared to write that countless numbers of natives across the ocean are barbarous, savage, uncivilized, and slow witted […]
> Again, if we believe that such a huge part of mankind is barbaric, it would follow that God's design has for the most part been ineffective, with so many thousands of men deprived of the natural light that is common to all peoples. And so there would be a great reduction in the perfection of the entire universe.[22]

It is important to remember that the coloniser's construction of this image about the indigenous people was used not only to justify the exploitation to European society, in order to gain its support. But also, to provide a legal basis for the usurpation of their territories, through the institute of *terra nullius*, which authorised the appropriation of land that had no owner**.** For the purposes of this law, it was considered an empty land, the one where there were people considered naturally inferior, such

[20] Jorge Luis Gutiérrez, 'Aristóteles e a escravidão natural no texto da política y sua recepção na idade média' (2009) 13 Revista Pandora Brasil <http://revistapandorabrasil.com/revista_pandora/aristoteles/jorge_escravidao.htm> accessed 24 May 2022.
[21] Darcy Ribeiro, *The Brazilian People: the formation and meaning of Brazil* (Gregory Rabassa tr, University Press of Florida 2000) 17.
[22] Bartolome de Las Casas, *The defence of the most reverend lord, Don Fray Bartolomé de Las Casas, of the order of preachers, late bishop of chiapa, against the persecutors and slanderers of the peoples of the new world discovered across the seas* (first wrote circa 1552, Poole S (tr and ed) 1974) 35, 36

as "barbarians"[23]. Hence the need to classify the indigenous as savage and irrational, since this condition gave legal permission to European countries to appropriate their territories. For this reason, Las Casas sought to deconstruct this view of Native Americans, in order to defend their property rights over their land:

> They are not ignorant, inhuman or bestial. Rather, long before they had heard the word Spaniard they had properly organized states, wisely ordered by excellent laws, religion and customs. They cultivated friendship and, bound together in common fellowship, lived in populous cities in which they wisely administered the affairs of both peace and war justly and equitably, truly governed by laws that at very many points surpass ours.[24]

Francisco de Vitoria also argued about the rights of native peoples. On this subject, the two authors took the same position in relation to some issues. Among these concurring arguments, is the conclusion that the Indians are rational people and that, therefore, they have sovereignty over their lands [25]. In Vitoria's words:

> […] they are not of unsound mind, but have, according to their kind, the use of reason […] there is a certain method in their affairs, for they have polities which are orderly arranged and they have definite marriage and magistrates, overlords, laws, and workshops […] all of which call for the use of reason.[26]

Thus, Vitoria, together with Las Casas, argue that indigenous people are subjects of the natural right of property over the land where they live, since this right does not depend on religion and must be applied to both Catholics and pagans. Furthermore, according to the jurist, in this case the "right of discovery", alleged by the Spaniards, cannot be enforced, since it should only apply to uninhabited lands, and, therefore, cannot be imposed in the Americas[27].

Moreover, it is important to emphasise the relevance of Francisco de Vitoria for the protection of indigenous rights. This is because he was responsible for establishing a legal status for the peoples conquered by Spain in the Americas, giving them a human and political existence in the eyes of Spanish law. To understand this context, it is necessary to introduce the concept of *jus gentium*, a legal institute derived from natural law, which determined that all individuals would be subject to the same list of basic natural rights inherent to the human person. Although it seemed universal, it was not, as it would not be applied to people considered pagan and barbarian. Thus, Vitoria, by connecting

[23] Karin Mickelson, 'The Maps of International Law: perceptions of nature in the classification of territory' (2014) 27:3 Leiden Journal of International Law 621.
[24] Las Casas (n 22) 42, 43.
[25] Marks (n 19).
[26] Francisco de Vitoria, *De Indis et de Jure Belli Relectiones* (first published 1557 and 1696) reprinted in Scott JB (ed), *Classics of International Law* (Bate J tr 1964) 120.
[27] Marks (n 19).

the institute of *jus gentium* to the Indians in America, universalised the concept and formed the basis of what would become international law[28]. It is important to note, therefore, that despite providing basic rights to the Indians, this law still justified Spanish domination, on the grounds that the Indians should be saved by Spain "from tyranny, human sacrifices, and cannibalism, considered not as sins but serious failures before natural law"[29].

Furthermore, Vitoria defended that Spaniards had some specific rights in the Americas and that, in certain situations, they could use force against native peoples. Among these arguments, is the statement that the Europeans had the right to visit, sojourn and trade freely with the Indians, who, in turn, could not object unless there was an abuse by the newcomers. If the natives did not adhere to these laws and acted against the Spaniards, the colonisers would have the right to declare war against them[30]. As Vitoria exposed:

> […] the latter nevertheless persist in their hostility and do their best to destroy the Spaniards, then they can make war on the Indians, no longer as an innocent folk, but as against forsworn enemies, and may enforce against them all the rights of war, despoiling them of their goods, reducing them to captivity, deposing their former lords and setting up new owners.[31]

2.2. Clashes between the culture of the Brazilian indigenous and the European

Despite seeming simple, the image constructed by the European in relation to the indigenous was the product of a long historical process. During this period, the colonisers created concepts about the societies they were dominating, which were mostly negative and aimed at justifying their exploitation. Many of these ideas about indigenous peoples persist to this day not only in the current Brazilian population, but throughout the world, especially in Western countries. Even though the Indians also built an idea of the European, it ended up not spreading and being largely limited to their communities. This was especially due to the central role of Europe in the construction of a world system, where it could implant its values, which are now disseminated to almost all countries in the world, with greater intensity in Western countries[32].

Hence, in this chapter, some concepts that played an important role in the construction of the perspectives of these two peoples will be discussed, namely: beauty, diseases and sex; religion; work

[28] Dominique de Courcelles. Managing the world: the development of 'jus genitum' by the theologians of Salamanca in the sixteenth century (2005) 38:1 Philosophy & Rhetoric, Penn State University Press 1.
[29] Ibid.
[30] Marks (n 19).
[31] Vitoria (n 26) 155.
[32] Dussel, Krauel and Tuma (trs) (n 16).

and social organisation. The objective of this discussion will be to understand how this encounter took place from the perspective of each of these two macro-ethnic groups, so that we can finally question the image of the indigenous as inferior and, thus, challenge the universality of European values in relation to the way of seeing and placing oneself in the world.

2.2.1. Beauty, diseases and sex

When Europeans arrived in Brazil and saw the Indians for the first time, they were enchanted by their beauty and, at the same time, amazed by their nudity. As Pero Vaz de Caminha writes in the letter addressed to King Dão Manuel I of Portugal in the year 1500, "Their feature is brown, a way of reddish, with good faces and good noses, well made" (translation of the author). When he talks about women he emphasises the sexual attraction of the Portuguese to indigenous of the opposite gender, " one of those girls was all dyed, from bottom to top of that dye; and certainly she was so well made and so round, and her shame (which she didn't have) so graceful, that many women of our land, seeing her such features, had made shame, because they didn't have hers like her"[33] (translation of the author). The Letter of Caminha was the first written document about the arrival of the Portuguese in Brazil and, therefore, expresses well the first impressions of the colonisers.

For the Portuguese, the Indians were beautiful in face and body, this being the limit of their admiration, which did not extend beyond the physical aesthetics. Elsewhere, the Indians were considered inferior and savage, and there was nothing they did that could be an object of admiration for the browsers[34].

In the eyes of the indigenous, those new visitors had their charm, since they came from overseas, with artefacts never seen before. That's why, initially, they thought they were sent by the gods in a magical act. But, at the same time, they were suspicious of this belief because of the physical appearance of the newcomers, who, for the Indians, "were visibly ugly, smelly, and sickly"[35]. Furthermore, it was part of the culture of native-Brazilians to adopt constant hygiene methods. According to Gilberto Freyre that they had "the frequent of at least daily bath, which must greatly have scandalised the sixteenth-century European, who was so filthy in his own personal habits"[36].

[33] Pero Vaz Caminha, *A carta* (Ministério da Cultura, Fundação Biblioteca Nacional 1500).
[34] Ribeiro (n 21) 36, 38.
[35] Ribeiro (n 21) 19.
[36] Gilberto Freyre, *The masters and the slaves: a study in the development of Brazilian civilization* (Samuel Putnam tr, Alfred A. Knopf 1946) 84, 85.

Thus, the impressions were opposite regarding the physical admiration between both peoples.

> The sailors, bearded, hairy, smelly after months of sailing the sea, scabby with the marks of scurvy, looked with wonder at what seemed to be innocence and beauty in the flesh. The Indians, in feathered nudity, splendidly vigorous and handsome, holding their noses against the pestilence, were even more startled as they looked at those creatures coming out of the sea.[37]

In addition to the initial impression of the aesthetic that these peoples had of each other in their first encounters, gradually many other factors ended up influencing the construction of the figure of the indigenous in the European imagination and vice versa. Among them, the following aspects will be addressed: the diseases widely spread by the colonisers in the Americas and the sex used as an instrument of domination.

When discussing the first topic, "the intense spread of diseases by the foreigners towards the natives", it is important to note its relevant role in outlining the relationship between Europeans and Indians, in addition to contributing strongly to the extermination of the local population. Thus, "[i]t has been estimated that, as early as 1570, the Brazilian Indian population had already fallen to 800,000; in other words, to just over a third of its original total"[38]. Moreover, the impacts of this biological genocide went beyond the material field and caused deep psychological impacts, since it helped to build the imaginary of European superiority, as well as, caused a feeling of disbelief among indigenous people in relation to their own religions. Therefore, "Indians were traumatised, finding that their gods had failed them"[39]. And, at the same time, "the behaviour of the conquistadors soon belied any impression that they might be gods, their immunity to the diseases they spread gave them a superhuman profile, enabling them to establish a cultural hegemony as well as material domination"[40]. Despite the various justifications that may have been given at the time, today, it is known that the spread of diseases only had this disastrous result, since the Indians did not have the immune memory to fight those viruses, which Europeans had already faced for many centuries[41]. Furthermore, in America there were very few contagious diseases and so they didn't posed a great risk to the newcomers as they did to the indigenous, which ended up making the biological war a unilateral phenomenon. So explain the philosopher of the Yanomami ethnic group, Davi Kopenawa and the anthropologist, Bruce Albert:

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[37] Ibid 20.
[38] Maria Luiza Marcílio, 'The population of colonial Brazil' in L. Bethell (ed), *The Cambridge History of Latin America* (Cambridge University Press 1984).
[39] N Wachtel, *The vision of the vanquished* (Harvester Press 1977) 5-36.
[40] Alistair Hennessy, 'The nature of the conquest and the conquistadors' (1992) 81:4 The British Academy 5.
[41] Ibid.

> In the time of our ancestors, the white people were very far away from us. They had not yet brought measles, coughing disease, and malaria into our forest. Our people were not sick as often as we are today! They were in good health most of the time and when they died their ghosts were not tainted with the fumes of epidemics. Now, when someone dies of white people's diseases, even his ghost gets sick and returns to the sky's back with fever.[42]

The second topic to be addressed was also a very important factor in the conflict between the indigenous and the Europeans. Thus, sex, in a relationship in which one people sought to impose itself on the other, although it could occasionally be consensual, often took the form of rape. Furthermore, it was not used only as an instrument to impose domination at the psychic level, but also at the practical one, since the children, while populating the land with non-indigenous people, served as manpower for the civilising process. So explains Alistair Hennessy in the context of the Spanish domination:

> If disease and cattle were key weapons in the Conquest, so also was fornication. The "*hacer la América*" mentality of the conquistadors assuming their return to Spain as "*Indianos*" precluded women accompanying the men. Indian women had no protection against Spanish males who indiscriminately sired a mestizo race who expanded faster than Indians through acquiring immunity to disease. One consequence of indiscriminate mating was to strengthen the double standard in sexual relations and to encourage, as the obverse of *machismo* the development of *marianismo* - the identification of subjected women with the sufferings of the Virgin Mary.[43]

The navigators who came to Brazil were essentially men, with few or almost no women. For this reason, the country was largely populated, through sexual domination, by *mamelucos* (children of Europeans with Indians)[44]. Therefore, on the one hand, these children were immune to European diseases and did not suffer the same violence as indigenous peoples, since they were considered less inferior in relation to them. But, on the other hand, they were doubly rejected by their parents. Firstly, by their European father, who saw them as impure and sought to use their work, mainly in the process of civilisation. The second rejection was in relation to their mother, who, because they did not have an Indian father, were not considered part of the indigenous family and community[45]. Consequently, "[u]nable to identify himself with either of his ancestral lines, which both rejected him, the mameluco fell into a no-man's-land out of which he shaped his identity as a Brazilian"[46].

The writer, teacher and indigenous activist, Eliane Potiguara, tells the tragic story of her family, which was continually abused by the European coloniser. Her narrative ends up exposing a portrait of what happened and still happens in many Brazilian indigenous families. According to the

[42] Davi Kopenawa and Bruce Albert, *The Falling Sky: the words of a Yanomami Shaman* (Nicholas Elliott and Alison Dundy trs, Harvard University Press 2013) 157.
[43] Hennessy (n 40).
[44] Ribeiro (n 21) 69.
[45] Ibid 82, 83.
[46] Ibid 70.

author, her great-grandfather, Chico Solón, was murdered by the English colonial family while defending indigenous lands in the Northeast region of Brazil. As a result of his death, his daughters migrated to Pernambuco, where one of them, Maria de Lourdes, Eliane's grandmother, had been raped by the English colonist when she was just 12 years old. Over time, they ended up migrating to Rio de Janeiro, where Eliane was born and lived in very precarious circumstances due to the lack of financial conditions, resulting from forced migrations[47]. This is a common account of what happened and continues to happen with many indigenous families, who are forced to remake their lives several times as a result of the continuous violence suffered in the imposition of the colonial civilising mission. this colonial ambition was never completely eradicated, but only transformed, as will be better examined in the next chapter.

Thus, it can be concluded that the domination of Europe in South America was not based only on enslavement, spread of diseases and cultural imposition, in the field of language, religion, customs and ideas. But it was also a sexual domination, in which Europeans appropriated the bodies of indigenous women, thus ensuring at the same time the procreation of this new race to populate the region and the satisfaction of their sexual desire. The same thing happened, a few years later, with the black women brought from Africa, who were also largely subjected to sexual exploitation, giving rise to the "*mulatos*" (children of Europeans with African women), who also had a great contribution to the formation of the Brazilian people. Besides that, African women were largely used for reproduction purposes, once they could give birth to children who could later be sold as slaves by the masters[48].

2.2.2. Religion

The most evident contrast between the European and the Indian is certainly that concerning cultural and religious differences. It was mainly based on these characteristics that the discourse of Europeans about the inferiority of native peoples was built. Thus, the colonists sought in religion to justify the need for invasion and domination over the indigenous, claiming that they were pagan and barbaric in their customs. In this way, the European religious argument was based on two main points: i) serious violations of Christian laws committed by local customs, as can be noticed in Sepulveda's speech, especially when he argues about the need for the Spanish conquest, to save the Indians from

[47] Eliane Potiguara, *Metade cara, metade máscara* (Global 2004).
[48] Sérgio Buarque de Holanda. *Roots of Brazil* (University of Notre Dame Press 2012) 24, 25.

their incivility (mentioned at the beginning of the chapter)[49]; and ii) the belief that Catholics had a duty to expand their faith[50].

Thus, the first point was based on the affirmation that some indigenous traditions were extremely absurd and directly violated Christian teachings. An example of the practices condemned by the Europeans was the anthropophagy, which was widely adopted by the Tupi tribes, among others. The tradition consists of eating their enemies in battle, with the belief that, through this act, they would absorb their virtues. Therefore, only the braves were eaten and, those who showed fear in the face of death, were excluded from the ritual, due to the assumption that they would pass, through their flesh, their cowardice[51]. For Europeans this was an extremely absurd practice, which was in completely discordance with the Catholic religion and, for this and other reasons, religious conversion had an extremely salvationist air, supported by the idea that the Indians were victims of their incivility. This affirmation can be seen in the letter by Pero Vaz de Caminha when proposing the role that should be adopted by the Portuguese in relation to the Brazilian natives: "the best fruit that can be produced there [in Brazil] seems to me to be saving these people. And this must be the main seed that Your Highness must sow in them" (translation of the author)[52]. Moreover, according to Francisco de Vitoria, although indigenous people have universal reason and, therefore, must be subject to the law of *jus gentium*, because of their backwardness and incivility, they do not meet universal standards and, therefore, must be sanctioned. Furthermore, according to Vittoria's thought,

> It is precisely whatever denotes the Indian to be different -- his customs, practices, rituals -- which justify the disciplinary measures of war, which is directed towards effacing Indian identity and replacing it with the universal identity of the Spanish. These sanctions are administered by the sovereign Spanish to the non-sovereign Indians.[53]

Furthermore, this salvationist discourse extended to several other elements of European domination, aiming not only at the appropriation of indigenous territories through the claim of *terra nullius*, but also at justifying the imposition of forced labour. In this context, according to Domingos Jorge, conqueror of Palmares and explorer of the State of Piauí, forced labour "was the only way to ensure that the Indians would receive what they needed for their eternal salvation through the light of God and through the mysteries of the sacred Catholic religion"[54].

[49] Marks (n 19).
[50] Anghie, Antony, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005) 17.
[51] Ribeiro (n 21) 29.
[52] Caminha (n 33).
[53] Anghie (n 50) 29.
[54] Holanda (n 48) 98.

The other pillar to argue for the religious purpose of the invasion was the belief in the need for expansion of the Christian faith. So explains the Professor Antony Anghie

> the Pope exercised universal jurisdiction by virtue of his divine mission to spread Christianity. Consequently, sovereigns, the rulers of Europe, relied upon the Pope's authority to legitimize their invasions of heathen territory; in expanding the Christian world by military conquest, these rulers were making real the jurisdiction which the Pope possessed in theory.[55]

In addition, as stated in the letter of Pero Vaz de Caminha, at first, the Portuguese believed that the Indians had no faith or religion and, therefore, would easily assimilate the Catholic beliefs as their own. In his words:

> If the degraded people, who will stay here, learn your speech well and understand them, I have no doubt that they, according to Your Highness' holy intention, will become Christians and believe in our holy faith, to which Our Lord is pleased to bring them, because, of course, these people are good and of good simplicity. And any stamp you want to give them will be lightly imprinted on them. And since Our Lord, who gave them good bodies and good faces, as to good men, brought us this way, I believe it was not without cause.
> Therefore, Your Highness, who so much desires to add to the holy Catholic faith, must take care of its salvation. And it will please God that with little work it will be so.[56] (translation of the author)

Later, the Portuguese would discover that there were, and still exist, several indigenous religions. It is actually the spirituality that have always regulated social life of many indigenous communities, constituting not only the customs, but also the laws of each one of them. As an example, we can observe the law adopted by the tribes of Guarani origin[57]. These tribes prioritise collective rights to the detriment of individual rights, so both the norms and the sanctions imposed must, first, observe the well-being of the group and, in a subsidiary way, look at the individual plan. In these societies, jurisdiction and religion are closely linked and, therefore, breaking the law is not only punished by the community, but also by the Gods, who, in turn, according to the Guarani belief, would punish the entire tribe. According to the norms adopted by these peoples, when someone commits a serious infraction, which affects the entire society, the *Aty Guassu* (a large assembly) will be convened and must declare a sentence. However, if the infraction is of lesser offensive potential, the case will be resolved by the head of the family, by the political or religious leader of the tribe or by the council of the elderly. Thus, Guarani law is very fast and, in this sense, extremely efficient[58].

[55] Anghie (n 50) 17.
[56] Caminha (n 33).
[57] Almires Martins Machado and Rosalvo Ivarra Ortiz., 'O sistema jurídico guarani: história, memória e cosmologia'(2018) 20:40 Revista jurídica UNIGRAN 61.
[58] Ibid.

As a comparison, European law at the time also had religious bases. According to Francisco de Vitoria it "relied on three different types of law: divine law, human law and natural law"[59]. Of these three, the most relevant to medieval Europe was divine law, in such a way that the other two legislations were also deeply connected with religious precepts[60]. Despite beliefs constituting the basis of the thinking of the two peoples, this was manifested in radically different ways.

As an example, in contrast to European law, the Guarani, like that of any other Brazilian indigenous tribe, was not literate, which was often used by the colonisers to argue their cultural backwardness[61]. Furthermore, it is important to highlight that the significance of literature for the constitution of cultures around the world is greatly overestimated[62], once culture has a much broader manifestation than the limits of literature. In addition, literacy was also widely used, by Europeans in the colonial period and by Western countries in the current world, as a parameter to assess the degree of culture of a person or population. In this conception, the more complex and valued writing is in a community, the more cultured it will be considered[63]. From this point of view, illiterate societies are uneducated and uncivilised, because they do not write. From the perspective of the Yanomami Indians on writing, Davi Kopenawa and Bruce Albert expose that

> The white people's way of thinking is other. Their memory is clever but entangled in smoky and obscure words. The path of their thought is often twisted and thorny. They do not truly know the things of the forest. They contemplate paper skins on which they have drawn their own words for hours. If they do not follow their lines, their thought gets lost. Our elders did not have image skins and did not write laws on them. Their only words were those pronounced by their mouths and they did not draw them. So their words never went far away from them and this is why the white people have never known them. I did not learn to think about the things of the forest by setting my eyes on paper skins.[64]

Moreover, regarding European and Native-Brazilian law, there were some similarities, such as the religious principles premise mentioned above, and some differences, such as the written basis present only in the European system. But even religiosity in the legal field being a point in common between the two societies, it was manifested in such a different way that it was difficult to even notice that it consisted of a similarity. Even the content of these religions having some similar characteristics, the interpretation given in the period in which they came into contact (from 1500 onwards) made them drastically different.

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[59] Anghie (n 50) 17.
[60] Ibid 17.
[61] Mignolo (n 17) 112 and 129.
[62] Hennessy (n 40).
[63] See Walter D Mignolo, *The darker side of the renaissance: literacy, territoriality and colonization* (2nd ed, The University of Michigan Press 2003).
[64] Kopenawa and Albert (n 42) 23.

It is important to emphasise that each ethnic group in Brazil had and still has a different religion, so, although there are similarities between them, it would be a mistake to think of them as if they were just one[65]. Thus, we will examine, by way of illustration, the beliefs of the Yanomami peoples, which in many means represent general characteristics of the various indigenous religions that existed and exist in the country.

For the Yanomami, Omama is the creator god of all things, being responsible for conceiving man and the forest, which provides their livelihood. This god is also responsible for creating the xapiri spirits, who live in the forest and protect their community. Most Indian tribes have a religious leader. For the Yanomami, this leader is the shaman, who is responsible for seeing and talking with the xapiri spirits, in addition to guiding, through this interaction, life in the tribe. According to their belief, the first Yanomami shaman was the son of Omama himself. When passing on his teachings to his son, Omama directed him the following words:

> With these spirits, you will protect human beings and their children, no matter how many there are. Don't let the evil beings and jaguars come devour them. Prevent the snakes from biting them and the scorpions from stinging them. Divert the xawara epidemic smoke from them. Also protect the forest. Prevent the river waters from flooding it and the rains from mercilessly drenching it.[66]

Thus, according to the Yanomami religion, the creator god made the forest so that human beings could live well, with plenty of food and water. But, despite man being able to make use of these resources, both the forest and the other animals are considered sacred, since they are Omama's own creation. In this regard Kopenawa and Albert explain that according to the Yanomami's beliefs:

> When the yarori animal ancestors were metamorphosed in the beginning of time, their skins became game and their images became xapiri spirits. This is why the xapiri always consider animals to be ancestors, like them, and this is how they refer to them! But though we eat animals, we also know they are ancestors turned game! They are in habitants of the forest as much as we are![67]

This conception of nature as a sacred entity, which must be respected by men, is not limited to the Yanomami belief, being present in all indigenous tribes, which end up establishing a relationship of deep intimacy with the environment where they live. Thus, according to the beliefs of the Guarani peoples,

[65] Machado and Ortiz (n 57).
[66] Kopenawa and Albert (n 42) 32.
[67] Ibid 61.

> the earth is more than a piece of ground with its mega-sociobiodiversity, it is an entity with life, spirit, soul, in whose entrails the Guarani genesis as a human being is written and with which it maintains a holistic bond.
> It is the land that allows the perpetuation of their way of life, it is responsible for their survival, it is considered mother, sister, sacred ground, without which it is impossible to continue reproducing their way of life and exist as a distinct people.[68] (translation of the author)

In this way, we can observe that the Catholic religion and the Yanomami are not entirely different, since both believe in a main creator god and in smaller entities in charge of protecting human beings. Furthermore, when dealing with nature, in both beliefs, although both man and the environment are divine works, people are allowed to use their surroundings for their own sustenance. Thus, according to these religions, the fact that nature is considered sacred does not prevent its use by man. Nevertheless, this interaction was developed in completely different ways by European religion and indigenous ones.

In this way, Catholicism differs by emphasising the hierarchical superiority of men in relation to nature and other animals. Also in the Yanomami religion, human beings occupy a central role in relation to other beings, but in a much less hierarchical way compared to the Catholic one. According to the first book of the Bible, Genesis: “Then God said, 'Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground’”[69]. This idea that man must dominate other creatures is not limited to the fragment mentioned above, being reinforced many other times throughout the biblical text. In verse 9:2 of the same book, this idea becomes even clearer:

> The fear of you and the dread of you shall be upon every beast of the earth and upon every bird of the heavens, upon everything that creeps on the ground and all the fish of the sea. Into your hand they are delivered. Every moving thing that lives shall be food for you. And as I gave you the green plants, I give you everything.[70]

However, even though the Bible emphasises the dominating role of man over the environment, this is not an idea that does not exist in the indigenous beliefs and can be clearly observed in the Yanomami religion. What makes the result of behaviour between Europeans and indigenous people in relation to nature drastically different is the interpretation given to the religious teachings transmitted. While the Yanomami interpret that man has a duty to respect all Omama's creations, medieval Europeans clung to their duty to dominate other creatures. Thus, from the Catholic religion, together with technological innovations, an interpretation was gradually created that human beings

[68] Machado and Ortiz (n 57).
[69] The Holy Bible (Douay-Rheims Version 1609, 1582) Genesis 1:26.
[70] Ibid Genesis 9:2.

are naturally superior to other animals[71]. In the religious sphere, this concept came about mainly through the belief that man is the image of God himself, being, therefore, closer to the divine. As for technological innovations, there is the understanding that human inventions are clear manifestations of their superiority because, through them, they can control and transform nature to their advantage. This idea is widely criticised by several indigenous leaders, among them the philosopher Ailton Krenak:

> Throughout history, humans, in fact, this exclusive club of humanity - which is in the universal declaration of human rights and in the protocols of institutions -, have been devastating everything around them. It is as if they have chosen a caste, humanity, and everyone outside of it is sub-humanity. It is not just the *caiçaras* [traditional communities living on the coast of Brazil], *quilombolas* [descendants of fugitive slaves] and indigenous peoples, but all life that we deliberately left aside. And the path is progress: this forward-looking idea that we're going somewhere.[72] (translation of the author)

It is interesting to analyse how the Western gaze continually seeks to separate man from nature, as if they were two different things. Thus, for the individuals of this culture, nature represents everything that is not made by man, which turns these two concepts as opposite to each other, since the understanding of the environment is defined by human absence itself. This idea is absurd for the indigenous, who understands nature as everything on Earth. In their view, it makes no sense to separate people and their inventions from nature, because, since humans are animals, all their products are also natural. According to the indigenous philosopher, Ailton Krenak,

> Many people say that what distinguishes us from other beings is language; the fact that we speak, have discernment and create social relationships. But, if the main mark of humans is to distinguish themselves from the rest of terrestrial life, this brings us closer to science fiction that argues that the humans who are inhabiting the Earth are not from here.[73] (translation of the author)

Thus, contrary to the European conception, indigenous religion is based on the understanding that nature is sacred, since in addition to providing food and water to men and women, it is also responsible for their own existence. Thus, according to Yanomami belief:

> Omama 's image told our shaman elders: "You live in this forest I created. Eat the fruit of its trees and hunt its game. Open your gardens to plant banana plants, sugarcane, and manioc. Hold big reahu feasts! Invite each other from one house to another, sing and offer each other food in abundance!" He did not tell them: "Abandon the forest and give it to white people so they can clear it, dig into its soil, and foul its rivers!"[74]

[71] Will Kymlicka, 'Human rights without human supremacism' (2018) 48:3 Queen's University, Canadian Journal of Philosophy 763.
[72] Ailton Krenak, *A vida não é útil* (1st ed, Companhia das letras 2020) 9, 10.
[73] Ibid 55.
[74] Kopenawa and Albert (n 42) 23, 24.

2.2.3. Work and social organisation

While medieval Europeans saw their religion as a burden, full of obligations and with the constant fear of sin, Indians believed that life was a gift from the gods and, therefore, they should make the best of it. This shock was especially experienced during the colonisation period. In this context, explains Professor Darcy Ribeiro:

> For the Indians who were there, naked on the beach, the world was a luxury to live, [...]. In their wise and simple conception, life was a gift from good gods, who gave them splendid bodies, good at walking, running, swimming, dancing […].
> The newcomers were practical, experienced, suffering people, aware of their guilt arising from Adam's sin, predisposed to virtue, with a clear notion of the horrors of sin and eternal damnation. The Indians knew nothing of this. They were, in their world, innocent, trusting, without any vicarious conception, but with a clear feeling of honour, glory and generosity, and capable, as no other people ever were, for solidarity coexistence.[75] (translation of the author)

This same shock occurred regarding man's relationship with the economy. The Portuguese sought in their navigations valuable goods that would make them rich and, thus, gain power in relation to other countries of their region[76]. So, when they arrived in Brazil, they filled their boats with *pau-brasil* (a wood that produced red paint, very valuable at the time), species of exotic animals and, later, gold and agricultural products, such as sugar and coffee[77]. At the same time, the Indians did not understand what led navigators to undergo all that suffering of arriving in a land so far away just to collect some simple goods. This misunderstanding of the Brazilian Indian regarding the meaning of work for the European can be exemplified in an interesting conversation between a Tupinambá Indian and a European coloniser, first published in 1578 in the book "Histoire d'un Voyage Faict en la Terre du Brésil, autrement Dite Amérique". In the words of the Indian to the European:

> [you] are great fools, because you cross the sea and suffer great discomfort, as you say when you arrive here, and you work so hard to accumulate riches for your children or for those of you who survive! Is not the land that nourished you enough to feed you too? We have fathers, mothers and children whom we love, but we are sure that after our death, the land that nourished us will also nourish them, so we rest without further care[78]. (translation of the author)

Thus, while for the Portuguese work was an obligation to which everyone should submit, for the Indians there was no reason to strive beyond what was necessary. For this reason, on the one hand, in the eyes of the newcomers, those people were loafers and had no purpose in life. And, on the other

[75] Darcy Ribeiro, *O povo brasileiro* (3rd ed, Global 2015) 36.
[76] Dussel, Krauel and Tuma (trs) (n 16).
[77] Ribeiro, *The Brazilian People: the formation and meaning of Brazil* (n 21) 10.
[78] Jean de Léry, *Viagem à terra do Brasil* (7, Martins, Biblioteca Histórica Brasileira 1960) 151, 161.

hand, for the natives, Europeans worked for things they didn't need, they subjected themselves to unnecessary suffering[79]. Along these line, Ailton Krenak exposes that

> [t]he empty thinking of white people cannot live with the idea of living aimlessly in the world, they think that work is the reason for existence. […]
> The possible world that we can share doesn't have to be hell, it can be good. They are horrified by this, and say that we are lazy, that we did not want to civilise. As if "civilising" were a destiny.[80] (translation of the author)

Furthermore, the difference between the treatment of property for the Indian and for the colonist is clear. On the one hand, indigenous peoples have a strong sense of community that governs the way they organise and communicate, being manifested in law, as mentioned above, but also in every other aspect of tribal life. In the Guarani tribes, for example, most things belong to everyone, with a very limited amount of private goods. In this way, theft is rare, but in some smaller Guarani communities, when it does occur, it is usually easy to identify the offender, because each family puts its stamp on objects that belong to them. Thus, despite the existence of an idea of property in the Guarani communities, this concept never came close to the one conceived by the Portuguese. In this way, through this more communal way of life, the Guarani tribes ended up also constituting extremely sympathetic societies[81].

Thus, for the Indians, most things belong to everyone and those few goods that are not public still do not have as strong an individualistic demarcation as for the Europeans. As an example, we can see the description of the houses of the tribes made by Pero Vaz Caminha when he first arrived in the territory.

> [The houses] were as long, each one, as this flagship. They were of wood, and the sides of boards, and covered with straw, of a reasonable height; all in one piece, without any division, they had many supports inside; and, from post to post, a hammock tied by cables, high, in which they slept. […]
> They said that in each house thirty or forty people were gathered.[82]

Moreover, in Europe the right to property was one of the most important in the legal system. Institutionalised in the Roman Empire, property initially constituted an unlimited right over an object or a space[83]. From the fall of the Roman Empire to the invasion of American territories, this concept was modified and adjusted to the society in which it was established, but its strength was always of great relevance in European law. Today, this right is provided in almost all national constitutions in

[79] Ribeiro *O povo brasileiro* (n 75) 36.
[80] Krenak (n 72) 113.
[81] Machado and Ortiz (n 57).
[82] Caminha (n 33).
[83] Aderbal da Cunha Gonçalves, 'Da Propriedade Resolúvel'(1979) Revista dos Tribunais 21.

the world. It is also present in article 17 of the European Charter of Fundamental Rights, thus being considered a fundamental right for the countries of the Union.

> 1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
> 2. Intellectual property shall be protected.

2.2.4. Conclusion

In conclusion, it can be seen that the interaction between European and Native American peoples was extremely complex and conflicting. After the colonial process, with the declaration of independence of the colonies, European culture became a constituent part of most countries in the world. According to Enrique Dussel, "[b]eginning in the nineteenth century, this "modern Europe," which since 1492 occupied the center of world history, defined all other cultures as its periphery for the first time in history"[84].

Thus, an idea was built that everything that involves Europe, such as its values, laws and ways of living and organising itself, constituted universal concepts, rather than perceptions of a specific culture that was successful in imposing itself in most societies on the planet. As a result, these concepts and values now seen as universal served as the basis for the perpetuation of these cultural conflicts, resulting in acts of violence against native peoples and of erasure of their traditions, languages, beliefs and histories[85].

[84] Dussel, Krauel and Tuma (trs) (n 16).
[85] See Walter D. Mignolo and Catherine E. Walsh, *On decoloniality: concepts, analytics, praxis* (Duke University Press 2018)

CHAPTER III - CONSEQUENCES OF CULTURAL CLASHES BETWEEN EUROPEAN AND INDIANS IN MODERN BRAZIL

The numerous conflicts between Europeans and indigenous people at the time of colonisation of Brazil, ended up moulding the way these two peoples relate to each other today. Furthermore, through these encounters, a narrative was gradually created in relation to each of these two macro-ethnic groups and their function in human history and modern society. Thus, to understand the role of the indigenous in the world and in the Brazilian State, it is essential to study colonial history and understand how the coloniser's relationship with the natives was structured. Furthermore, the direct influence of colonialism on the various forms of violence that native peoples have been suffering, with the attack on their lands, bodies and traditions, will be investigated in the following.

In this chapter, some of the consequences of the clashes between the indigenous and the Europeans in the colonial period, which ended up being essential for the formation of Brazilian society, will be addressed. Thus, this theme will be divided into four main points: (i) construction of the image of the indigenous as inferior, savage and backward and, therefore, considered an obstacle to human evolution and civilisation; (ii) indigenous extermination in modern Brazil, its causes and relations with colonialism; (iii) the endless struggle for land tenure between the Indians and the white people; and (iv) the sexual exploitation and objectification of indigenous women's bodies as a form of domination.

3.1. Indigenous people as an obstacle to western civilisation

Throughout the colonial period in the Americas, Europeans began to construct an idea of the Indian as savage, barbaric, inferior, and backward. Thus, the colonisers formed an extremely linear narrative of time, connected to the evolutionary discourse, where the indigenous represents the past both in the history of the world and in human evolution. In this sense, the Native Americans would be the opposite of European modernity and the world system created by them. Quijano explains that:

> since they [Europeans] attribute the rest of the species to a category by nature inferior and consequently anterior, belonging to the past in the progress of the species, the Europeans imagine themselves as the exclusive bearers, creators, and protagonists of that modernity. What is notable about this is not that the Europeans imagined and thought of themselves and the rest of the species in that way—something not exclusive to Europeans—but the fact that they were capable of spreading and establishing that historical perspective as hegemonic within the new intersubjective universe of the global model of power.[86]

[86] Anibal Quijano, 'Coloniality of Power, Eurocentrism, and Latin America' (2000) 1:3 Nepantla: Views from South 533.

In this way, despite the civilising missions, based on the theory of racial superiority, having officially existed only during the colonial period, they are still very present in the world today, shaping the relationships between nations, between States and their populations and between individuals. In this sense, as Jean-Paul Sartre explains,

> the mother country is satisfied to keep some feudal rulers [in its former colonies] in her pay; there, dividing and ruling she has created a native bourgeoisie, sham from beginning to end; with settlers and exploited at the same time. Thus Europe has multiplied divisions and opposing groups, has fashioned classes and sometimes even racial prejudices, and has endeavoured by every means to bring about and intensify the stratification of colonized societies.[87]

Thus, it is important to emphasise that the continuity of colonial relations, in a movement almost identical to the civilisational mission invested during the colonial period, is perpetuated not only by the former metropolises, but also by the elites of the former colonies, which are composed of the descendants of the colonisers themselves.

> The dreadful result was that the postcolonial state continued a lot of the oppressive practices of the former imperial overlords. Postcolonial states often brutalise indigenous peoples sometimes to the same degree as settler states. This way of concentrating power, organising it in bureaucratic hierarchy, of ruling over territory; the practice of disciplining people and excluding others; this preoccupation with economic development and market forces was and remains brutal not just in the Third World but as a universalised state practice in nearly all countries.[88]

The election of Brazilian President Jair Bolsonaro in 2018 can serve as an example of this role of coloniser worn by the country's elite. When he was still a little-known politician, in 1998, he stated, in a speech in the Chamber of Deputies, that "The North American cavalry were the competent ones because they decimated their indigenous people in the past and today, they don't have this problem in their country"[89]. This statement, although old, demonstrates very clearly the limited vision of European superiority perpetuated by the Brazilian elite. This is because, for this social group, the form of existence and organisation brought and imposed in the colonial period is the only valid one, since, supported by the idea of western hegemony, any other culture is considered less evolved[90].

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[87] Jean-Paul Sartre, 'Preface' in Frantz Fanon, *The wretched of the earth* (Constance Farrington tr, Présence Africaine, Pinguin Books 1963).
[88] Michael Fakhri, 'Third world sovereignty, indigenous sovereignty, and food sovereignty: living with sovereignty despite the map' (2018) 9:3-4 Transnational Legal Theory 218.
[89] Tom Phillips, 'Jair Bolsonaro's racist comment sparks outrage from indigenous groups' *The Guardian* (24 January 2020) <https://www.theguardian.com/world/2020/jan/24/jair-bolsonaro-racist-comment-sparks-outrage-indigenous-groups> accessed 23 May 2022.
[90] Enrique Dussel, Javier Krauel and Virginia C. Tuma (trs), 'Europe, Modernity, and Eurocentrism' (2000) 1:3 Nepantla: Views from the South 465.

In this same perspective, the president declared in 2020 that: "[i]ndians are undoubtedly changing … They are increasingly becoming human beings just like us"[91]. Here it is clear the understanding of human evolution as a line that starts from primitive man, which is closer to the animal, to a modern and almost divine individual, which sees himself as superior to the nature of which he is part of. Thus, colonial hegemony was not only built between human beings, but also between man and nature. Therefore, "[t]he relationship between colonialism and nature was no different in essence. Imperialism subjugated both peoples and nature in equal measure"[92]. Thus, according to the imperialist perspective, civilisation is what defines the condition of current man, being an essential element of the human species. In this sense, native people are considered the past, closer to the animal, trapped in incivility and, therefore, less human, since they are far from the understanding of the modern individual. This is what Bolsonaro said when defending the liberation of economic activities in indigenous territory: "The Indigenous person can't remain in his land as if he were some prehistoric creature"[93].

In addition to the phrases of the Brazilian president, many politicians from across the American continent reproduce the same position. Among them, Alberto Fernández, elected president of Argentina in 2019, who, on a visit by the Prime Minister of Spain, seeking to pay homage to the country's European heritage, declared that "Mexicans emerged from Indigenous people, Brazilians emerged from the jungle but we Argentines arrived on boats. On boats from Europe"[94].

The phrases of political leaders summarise the policies that have been adopted regarding indigenous peoples in many countries in the region, which are supported by a large part of the continent's population. However, it is important to emphasise that this vision is not limited to the government and the Latin American elite, being very resonated in the former metropolises, since they are the creators of the ideology itself. As an example, we can cite the response of Spanish politician Pablo Casado (of the Popular Party) to calls for Spain to apologise for its colonial past. According to him, the Spanish domination of the Americas was "the most important event in history after the Roman empire". In a video posted on Twitter, he states: "[d]oes the kingdom of Spain have to apologise because five centuries ago it discovered the New World, respected those who were there,

[91] Katie Surma, 'Bolsonaro should be tried for crimes against humanity, Indigenous leaders say' *NBC News* (24 June 2021) <https://www.nbcnews.com/news/world/bolsonaro-should-be-tried-crimes-against-humanity-indigenous-leaders-say-n1272193> accessed 22 May 2022.
[92] Bhupinder Singh Chimni, 'The Past, Present and Future of International Law: a Critical Third World Approach' (2007) 8:2 Melbourne Journal of International Law 499.
[93] Ernesto Londoño and Letícia Casado, 'As Bolsonaro keeps Amazon vows, Brazil's indigenous fear 'ethnocide'' *New York Times* (19 April 2020).
[94] Daniel Politi and Ernesto Londoño, 'Argentine president offends with comment: 'Brazilians emerged from the jungle'' *New York Times* (10 June 2021).

created universities, created prosperity, built entire cities? I don't think so.” In addition to Casado, Santiago Abascal, leader of the Spanish Vox party, also stated: “[h]ow proud we can feel about what our ancestors did," and when describing the Spanish colonies, mentions them as "the empire of human rights"[95].

These phrases are some examples of how the relationships built in colonial society are strongly established in the current world and continue to be part of the thinking of both ex-colonies and ex-metropolises. Ensuring the perpetuation of the “civilising process”, which at the same time imposes the European way of life on all societies and also disseminates a discourse of ethnic superiority.

3.2. Indigenous Extermination

This idea that the Indian is less human, since they are not considered part of modern society, motivates the most diverse forms of violence, ranging from hate speech to mass murder. According to a report on violence against indigenous peoples in Brazil, at least 145 peoples suffered some type of aggression against their territory and 182 indigenous people were murdered in 2020, 61% more than the number recorded in the previous year[96].

Genocide against indigenous peoples has been practiced around the world since the colonial period, based mainly on a narrative of ethnic superiority and a sense of civilising mission. Thus, according to data released by the Brazilian government, in 1570 the aborigines already accounted for 40% of its original population, with the death of 1,800,000 Indians since the arrival of the Portuguese in 1500. In 2010, Brazil had less than 818 thousand native people, that is, 0.26% of the total population of the country. The following chart shows the demographic data of the indigenous population in Brazil. The table is divided into five columns, the first presents the reference year, the second the total number of the indigenous population on the coast of the country, the third the number of aborigines in the interior of the territory, the fourth shows the total population of native people in Brazil. And the last column presents the percentage of Indians in relation to the total population of the country in that year. Thus, we can observe, for example, that in the year 1500 in Brazil there were 2 million Indians living on the coast and 1 million in the interior, adding up to a total of 3 million native people, which would correspond to 100% of the population that inhabited the territory. The

[95] Guy Hedgecoe, ‘Spanish right attacks Biden over Columbus and conquests’ *BBC News* (Madrid, 12 October 2021).
[96] Lucia Helena Rangel (ed), ‘Relatório violência contra os povos indígenas no Brasil dados de 2020’ Conselho Indigenista Missionário – CIMI.

year 1957 has the lowest number of indigenous people in the graph, with a total of 70 thousand individuals, corresponding to 0.1% of the Brazilian population at the time[97].

Dados demográficos da população indígena no Brasil				
ano	pop ind/litoral	pop ind / interior	total	% pop total
1500	2.000.000	1.000.000	3.000.000	100,00
1570	200.000	1.000.000	1.200.000	95,00
1650	100.000	600.000	700.000	73,00
1825	60.000	300.000	360.000	9,00
1940	20.000	180.000	200.000	0,40
1950	10.000	140.000	150.000	0,37
1957	5.000	65.000	70.000	0,10
1980	10.000	200.000	210.000	0,19
1995	30.000	300.000	330.000	0,20
2000	60.000	340.000	400.000	0,20
2010	272.654	545.308	817.962	0,26

Fonte: Azevedo, Marta Maria. 2013

(Table 1 - demographic data of the indigenous population in Brazil)

To obtain a better understanding of this graph, it is important to point out that it was only in 1894 that the first president of Brazil was elected. Until then, the country was ruled by the Portuguese elite, even after assuming its independence in 1822[98]. Thus, at the beginning of Brazilian political independence, more than 90% of the Brazilian population was already composed of people from overseas. But even after 126 years of the first Brazilian president elected, the extermination continues, as does the supremacist ideological base that motivates it.

In this context, we can mention the extensive enslavement of the Indians during the rubber cycle that lasted approximately between the mid-19th century until its collapse in 1910. Rubber is produced using latex, coming mainly from a typical tree of the Amazon region. Long before the arrival of the Europeans, the Indians were already producing a variant of the product, which began to be exported with Portuguese domination. But, despite already being commercialised, rubber only received real export value after 1839, when Charles Goodyear discovered the vulcanisation process, which transformed rubber, which was soft, into a hard material. This process greatly expanded the use of the product, which began to be used to insulate electricity, manufacture tires, among many other things. After that date, rubber exports multiplied and Manaus, the capital of the state of Amazonas in Brazil, became an important industrial hub[99]. However, the high demand for the substance did not match the amount of available workforce in the region, which made companies,

[97] Brazil, 'Quem são' *Fundação Nacional do Índio* (12 November 2013, updated 18 November 2020) <https://www.gov.br/funai/pt-br/atuacao/povos-indigenas/quem-sao> accessed 25 March 2022 and 22 May 2022.
[98] Teresa A Meade, *Brief History of Brazil: Brief history of Brazil* (2nd ed, Inforbase Learning 2009) 69, 92.
[99] Ibid 90.

supported by the Brazilian government, impose forced labour on thousands of Indians across the country. Furthermore, encouraged by the opportunity for economic growth, many poor people from the Northeast of Brazil went to the Amazon to work in rubber exploration. Upon arrival, these people ended up enslaved along with the indigenous population. The businessmen claimed that the situation was due to debts, which should be paid through work[100]. The cycle only ended when the British smuggled the seeds out of Brazil and started planting the trees in their colonies in Asia, especially in Malaysia and Sri Lanka[101].

In the context of the rubber cycle, violence against indigenous people was numerous. Among them was the event known as 11th Parallel Massacre, where the company Arruda, Junqueira & Co, with the help of the Brazilian government, eliminated the Cinta Larga peoples, who inhabited a region rich in rubber trees and minerals, especially diamonds. In order to remove the tribe from the territory the company planned to explore, the businessman organised a massacre that involved offering food poisoned with arsenic to the Indians, distributing toys infected with the flu, measles and smallpox virus, dropping small bombs on the village by plane and, finally, sending men with machine guns to kill the survivors. These crimes were accompanied by several cases of torture, assaults, robberies, and rapes. In total, about 3,500 Indians were killed. The massacre was initially reported by the Figueiredo Report, which investigated massacres and torture against indigenous peoples that had the direct participation of the Indian Protection Service (SPI), a former Brazilian government agency dedicated to protecting indigenous peoples[102]. The report investigated several crimes against the Indians between the years 1950 and 1967, totalling more than 7,000 pages. After the document was published in 1969, Norman Lewis, a famous British journalist, published an article in the Sunday Time called "Genocide", denouncing some of the atrocities exposed by the report[103]. The article gave international repercussion to the crimes committed by the Brazilian government and motivated the creation of the non-profit organisation, Survival International, which exists to this day[104].

Several crimes of genocide, such as the one mentioned above, have occurred over the years, wiping out entire indigenous tribes. More recently, we can cite a case that took place in April 2022, in which a 12-year-old girl from the Yanomami tribe was kidnapped and raped to death by miners and another 3-year-old was thrown into the river, on the same occasion, and remained missing. When

[100] E. Bradford Burns, *History of Brazil* (3rd ed, Columbia University Press 1993) 286 and Carlos Alexandre Barros Trubiliano, 'Exploração da força de trabalho indígena na formação dos seringais em Rondônia' (2017) 21:3 Revista do Departamento de História e do Programa de Pós-Graduação em História da Universidade Estadual de Maringá 51.
[101] Meade (n 98) 91.
[102] Brazil, 'Relatório da Comissão de Investigação do Ministério do Interior, Relatório Figueiredo' 1967.
[103] Norman Lewis, 'Genocide' *Sunday Times Magazine* (23 February 1969).
[104] Survival international, 'Our history' <https://www.survivalinternational.org/info> accessed 07 June 2022.

the police arrived at the scene to investigate the incident, the village was on fire and completely empty. For two weeks it was not known for sure whether the members of the community had been killed, kidnapped, or had fled, since it is part of the Yanomami culture to set fire to the village and change location when someone is murdered[105].

Persecution of native people dates from the colonial period to the present day. But the setback to their protection and their lands during the Bolsonaro government is remarkable. The president has been denounced several times in the International Court of Justice for crimes against humanity and genocide, sometimes for his irresponsible conduct during the coronavirus pandemic, sometimes for his collaboration with the extermination of indigenous peoples. The fourth complaint was prepared by the Articulation of the Indigenous Peoples of Brazil (APIB) and accuses the president of genocide against native peoples[106]. According to the Articulation, the documents that prove the president's intention date back to the beginning of his term. In an interview with the Deutsche Welle Brasil newspaper, indigenous lawyer Samara Pataxó states that in the indictment "We demonstrate the lack of demarcation of lands, the president's incentive to practice deforestation, prospecting, and mining in indigenous territories. This shows that there are indeed signs of the crime of genocide, as these events contribute to the destruction of peoples, increase in violence and death" (translation of the author)[107].

The ongoing crime of genocide against indigenous peoples is clear, since it corresponds to policies and delicts motivated by hate speeches based on the idea of ethnic cleansing and by a concept of "progress" that sees the Indians as obstacles to be overcome[108]. It is important to emphasise, however, that the crime was not committed only by Brazilian people and Brazilian entities but was and still is a crime with several international agents. This happens in two ways: the first is direct exploitation, especially of minerals and agricultural products, by foreign companies in areas close to indigenous territories. And the second is the massive international investment in the illegal exploitation of products from these regions. As an example, we can mention the Norwegian company Hydro, which has been exploring Amazonian minerals for decades. The company that had already

[105] Christian Poirier and Ana Paula Vargas, 'Illegal miners terrorize Brazil's Yanomami communities' *Amazon Watch* (19 May 2022) <https://amazonwatch.org/news/2022/0519-illegal-miners-terrorize-brazils-yanomami-communities> accessed 07 June 2022.
[106] APIB, 'Unprecedented: APIB denounces Bolsonaro before the ICC, in the Hague, for indigenous genocide' (*APIB*, 09 August 2021) <https://apiboficial.org/2021/08/09/unprecedented-apib-denounces-bolsonaro-before-the-icc-in-the-hague-for-indigenous-genocide/?lang=en> accessed 07 June 2022.
[107] Nádia Pontes, 'Indígenas denunciam Bolsonaro em Haia por genocídio' *DW Brasil* (09 August 2021) <https://www.dw.com/pt-br/ind%C3%ADgenas-denunciam-bolsonaro-em-haia-por-genoc%C3%ADdio/a-58806111> accessed 25 May 2022.
[108] Krenak A, *A vida não é útil* (1st ed, Companhia das letras 2020) 10.

owed fines to the Brazilian environmental agency (Ibama) since 2009, was convicted in 2018 of two other environmental crimes. The first was a massive leak of lead, arsenic and mercury that contaminated the waters of several communities in the state of Pará, Brazil. In addition, a hidden pipeline was also discovered that purposely dumped waste in other parts of the river. It is also important to point out that at the time the controller of the company and its largest shareholder was the Norwegian government itself[109].

Another example is the Italian company Chimet SPA, one of the most profitable companies in Italy. In 2021, through an operation by the Brazilian federal police against the illegal extraction of minerals, it was discovered that the company participated in the illegal removal of gold from the Amazonian soil in the Kayapó indigenous land[110]. Chimet bought the ore from Coouperouri (Cooperativa de Garimpeiros e Mineradores de Ourilândia and Region) and "legalised" it through fraud before leaving Brazil[111].

To sum up, we can observe that indigenous extermination is a process in which many countries and companies are part and benefit from. Driven by the desire for economic exploitation, along with a vision of the Indian as savage and less human, businessmen see native peoples as obstacles that must be eliminated.

3.3. Land

Land was the source of much dispute in all European colonies, as settlers sought to exploit it and expel native peoples. Among the purposes most desired by the colonists to give to those lands were the extraction of ores, the plantation of tropical products (such as sugar and coffee), the removal of products from the forests (such as rubber and wood)[112], and the imports of population surpluses from the metropolises, as was the case of the United States of America and Canada[113]. For the native-Brazilians, the land and the forest have another importance. Firstly, because the place where they live is also where their ancestors lived, who taught them important lessons about the plants, animals, and

[109] Ricardo Senra, 'Mineradora norueguesa tinha 'duto clandestino' para lançar rejeitos em nascentes amazônicas' *BBC Brasil* (23 February 2018) <https://www.bbc.com/portuguese/brasil-43162472> accessed 21 May 2022.
[110] Brazil, 'Operação desolata desarticula organização criminosa especializada em extração e comércio ilegal de ouro no sul do Pará' (27 October 2021) <https://www.gov.br/pf/pt-br/assuntos/noticias/2021/10/operacao-desolata-desarticula-organizacao-criminosa-especializada-em-extracao-e-comercio-ilegal-de-ouro-no-sul-do-para> accessed 07 June 2022.
[111] Guilherme Henrique and Lucas Ferraz, 'Ouro ilegal de terra indígena da Amazônia termina em gigante italiana' *Folha de São Paulo* (São Paulo, 10 February 2022) <https://www1.folha.uol.com.br/ambiente/2022/02/ouro-ilegal-de-terra-indigena-da-amazonia-termina-em-gigante-italiana.shtml> accessed 07 June 2022.
[112] H L Wesseling, *The European Colonial Empires: 1815-1919* (Taylor & Francis Group 2004) 29.
[113] Ibid 10.

environmental conditions of the region. This knowledge is essential to maintain their way of life, as they use the environment as a source of subsistence. Another reason is the indigenous beliefs. They believe that the land is sacred, once it is a divine manifestation, created by the gods[114]. Thus, for these peoples, the land must always be an object of enormous respect, since they have the clear understanding that this is the source of human life and, therefore, all human beings depend enormously on it for their survival[115]. For Frantz Fanon, "[f]or a colonized people the most essential value, because the most concrete, is first and foremost the land: the land which will bring them bread and, above all, dignity"[116].

As explained in the previous chapter, Europeans believed they had the right to own all "empty" lands. For them, owning a territory meant using it for the same economic purposes as they did on their continent, that is, exploiting it as the owners of European fiefdoms did at the time. Thus, since several indigenous people did not give the same use to the territory, "[t]he lands of Native people were seen by settlers as blank and empty, and waiting to be penetrated and occupied"[117]. Kris Manjapra presents an example from the mind of the English coloniser at the time:

> The colonist and land-grabber John Winthrop, governor of the Colony of Massachussetts for periods between 1630 and 1648, told himself and his settler constituency that he was creating a new out post for human civilization amidst "waste-lands" and within what he called the *vacuum domicilium*, or the "vacuum of inhabitation". This "vacuum" supposedly awaited the technology, knowledge, science, and pioneering agency of European men and their "incorporated wives"[118].

In this context, for Europeans, the presence of man on earth necessarily presupposed its exploitation. Thus, the lighter the ecological footprint of a people, the greater the settler's inclination to consider that territory empty and unoccupied[119]. This is because, as the colonisers considered that their form of social organisation was superior to all others, they did not admit any other use of the land other than that reproduced in the metropolises. Thus, land that was not used to produce goods economically valued by Europeans was considered uninhabited and empty. In this context, Mickelson explains that it was especially for this reason that Australia was the place where "*terra nullius*" was most applied. According to the author, this was because "indigenous Australians did not conform to

[114] Davi Kopenawa and Bruce Albert, *The Falling Sky: the words of a Yanomami Shaman* (Nicholas Elliott and Alison Dundy trs, Harvard University Press 2013) 22.
[115] Ibid 406.
[116] Frantz Fanon, *The wretched of the earth* (Constance Farrington tr, Pinguin Books 1963) 34.
[117] Kris Manjapra, *Colonialism in Global Perspective*, (Cambridge University Press 2020) 49.
[118] Ibid 49.
[119] Karin Mickelson, 'The Maps of International Law: perceptions of nature in the classification of territory' (2014) 27:3 Leiden Journal of International Law 621.

Western notions of the cultivation and control of nature that made it easier to downplay and deny their connections to the land."[120]

The perceptions built in the colonial period, and continued over the years, regarding the land conflict, is perhaps one of the most evident manifestations of the continuity of colonial relations today. Thus, it is essential to note the similarities between the discourses and thoughts of the colonisers, with those of the current dominant society. In Brazil, indigenous territories are still seen as empty and unusable lands, since they do not fulfil the economic value defined by the westernised population. Hence, the invasion of these lands is constant, seeking the expulsion of the indigenous people, to allow it exploitation and the enrichment of the invaders. According to CIMI, in 2020 alone, there were 263 cases of "possessory invasions, illegal exploitation of resources and damage to heritage values"[121], representing an increase of 141% compared to 2018. The report also points out that 2020 was the fifth consecutive year that reported an increase in crimes of this nature[122].

The struggle for indigenous lands is a phenomenon with many faces. This is because, it goes far beyond the property itself, also consisting of a conflict of identity and way of life. Thus, the Indian is seen by whites as a threat not only for not capitalising the land they own, but also for constituting a portion of society that does not share the same economic and social values as the rest of the population. In this way, the indigenous way of thinking does not only represent a blockage to economic development, but also a threat to the western way of life, which since the beginning of its expansion had as its main characteristic a violent homogenist movement, which sought to annihilate differences and hierarchise races.

On the one hand, a large part of the Brazilian population believes that the economic exploitation of indigenous lands is a way to enrich the local society. On the other hand, the reality is that agricultural and mining exploitation tends to be concentrated in the hands of its few owners, generating low wage distribution, and concentrating profits on a small number of people[123]. This fact is especially present in Brazil since it is one of the countries with the most unequal distribution of land in the world. Thus, according to official data, the 10% largest rural properties occupy about 73%

[120] Ibid.
[121] Rangel (n 96).
[122] Ibid.
[123] Leandro Vergara-Camus and Cristóbal Kay, 'The agrarian political economy of left-wing governments in Latin America: Agribusiness, peasants, and the limits of neo-developmentalism' (2017) 17 Wiley Journal of Agrarian Change 415.

of the country's agricultural area[124]. In this way, despite the popular thought that indigenous lands are a block to the economic development of the State, their exploitation has little effect on improving the quality of life of the population as a whole, as it ends up remaining concentrated in the hands of a few rural landowners. Thus, the solution to the country's economic problem would be better achieved through agrarian reform than through the acquisition of new areas to produce.

Another important point to be mentioned on the subject is the crimes motivated by this land conflict. This situation ends up motivating the incidence of violent acts against the Indians, including physical aggression, murder, and threats. According to the report published by CIMI, in 2020 there were 13 cases of attempted murder, two of them against entire communities, in which both villages were attacked by several shots. In the same year, 182 cases of murder against indigenous people were recorded, an increase of 61.06% in relation to the previous year[125]. The document emphasises that "the attacks are related to dispute over territories, discrimination and prejudice against Indigenous peoples"[126]. Thus, the desire to remove the Indians from their land is based on the understanding that they are an obstacle to development and that they are not part of society, since they have different values from the rest of the population. Thus, the struggle for territories in Brazil is, and has always been, extremely violent, motivating attacks against entire communities and threatening the indigenous way of life, with the quest to eliminate it completely.

3.4. Sexual Exploitation and Objectification of Non-European Women's Bodies

European colonisation was a very broad set of acts of domination, which included various types of violence, such as the expulsion of Indians from their lands, to later appropriate them, the inferiorisation of their traditions and customs and the marginalisation of the native peoples of the historical narrative of human society. This violence occurred and still occurs in conjunction with different types of physical aggression, such as enslavement, torture, murder, and sexual abuse. Each face of this repression demonstrates some aspects of how Europeans were building the hegemonic and capitalist society that exists today. Among them, sexual domination explains the patriarchal relationship between white men and non-white women, which in Brazil consisted mainly of black and Indian women.

[124] Ceará, 'Estudo mostra o mapa da desigualdade da distribuição de terras no Brasil' *Instituto do Desenvolvimento Agrário do Ceará – IDACE* (13 May 2020) <https://www.idace.ce.gov.br/2020/05/13/estudo-mostra-o-mapa-da-desigualdade-da-distribuicao-de-terras-no-brasil/> accessed 30 May 2022.
[125] Rangel (n 96).
[126] Ibid.

Control over sexuality could be used in a variety of ways, including the procreation of slaves, birth control of non-white races, the destabilisation of dominated societies, and the use of women as objects of pleasure. Although this work focuses on the impact of colonialism on indigenous peoples in Brazil, it is essential to mention the effects of this process on black people as well. Thus, when analysing these points, the effects on both indigenous and black women will be considered, since, despite both being objectified at similar levels, with their bodies used as an instrument of domination, this result occurred in very different ways for each of them.

Sexual domination for the procreation of slaves was a phenomenon especially present in African slavery, since the trade of enslaved black people became an extremely profitable business. To give an idea, in 1810, a slave bought for 70 thousand réis (Brazilian currency at the time) in Luanda, was sold in Minas Gerais for up to 240 thousand réis, that is, for almost three and a half times the price paid for him or her in Africa[127]. Thus, having slave women could be very advantageous for the coloniser, because even though they represented a less valued workforce in the fields, they were extremely used for domestic work and for the procreation of new slaves. In this context, as the slave trade was a very profitable business, the pregnancy of black children could bring some economic benefits. Thus, possessing black women and inseminating their wombs served as a means of enrichment[128]. It is imperative to note that the gestation of babies to be sold as slaves was still much less profitable than their importation, this is because the investment of time and money to support a baby until he or she reached productive age was much higher compared to importing a slave from Africa[129]. Nevertheless, the practice demonstrates the domination of the white man over the body of black women at the time, since the female body was considered the exclusive property of slave masters.

In addition to providing the enrichment of the white man, black women were also used to satisfy their sexual desires, since they were seen as mere objects to fulfil the coloniser's interests. As explained by Gilberto Freyre, once they were responsible for domestic work, black and mulatto women (daughters of blacks and whites) raised the colonisers' children, serving as milkmaids (breastfeeding them), taking care of their injuries, giving them food, playing with them, among other tasks. As a consequence, these women represented the source of the first physical love of white boys

[127] Laurentino Gomes, *1808: como uma rainha louca, um príncipe medroso e uma corte corrupta enganaram Napoleão e mudaram a História de Portugal e do Brasil* (3rd ed, Globo 2014) 237.
[128] Sérgio Buarque de Holanda. *Roots of Brazil* (University of Notre Dame Press 2012) 24, 25.
[129] Darcy Ribeiro, *The Brazilian People: the formation and meaning of Brazil* (Gregory Rabassa tr, University Press of Florida 2000) 122.

in Brazil[130]. Furthermore, according to Freudian theory, physical contacts at the beginning of life have an enormous role in the development of human sexuality, being the act of suckling the human being's first contact with sexuality[131], which will be gradually developed during their growth. Thus, in the thinking of Gilberto Freyre, the black woman becomes a sexual object of the white man in two opposite ways, firstly, because she is seen as a mere instrument to be used by the dominant race and secondly, because she is part of the affective memory of the white child's unconsciousness of his first maternal love[132]. As a result, the black woman ends up being over-sexualised by the white man, both because of slavery objectification and a childhood fascination created in the colonial period. Thus, this sexualisation is essentially based on slaveholding thinking, in which the black woman is a servile object, having the obligation to satisfy her master's sexual desires. In this context, Gilberto Freyre explains that "[t]here is no slavery without sexual depravity. Depravity is the essence of such a regime. In the first place, economic interests favor it, by creating in the owners of men an immoderate desire to possess the greatest possible number of *crias*"[133].

It is important to note that this objectification was not limited to Brazil but extended to almost all European colonies. In Africa, Dr. Karl Oetker, the German Health Officer who worked during the construction of the highway between Dar-es-Salaam and Morogoro in the colonial Tanzania, stated that

> every European man who has intercourse with black females has to take care that such a union remains sterile in order to prevent a mixture of races, such a mixture would have the worst effect for our colonies, as this has been amply proved in the West Indies, Brasil and Madagaskar. Such relationships can and should only be considered as surrogates for marriage. Recognition and protection by the state, which marriages among whites enjoy, have to be withheld from such unions.[134]

This discourse demonstrates the explicit concern of the colonists that black people gain property and social power through relations with whites. Thus, a clear understanding is drawn that black women should be used only for the sexual satisfaction of the white man, who, in turn, could not see her as anything other than a mere object of pleasure. This is because, for the colonisers, admitting relations with these women would threaten the division of property and, consequently, the racial hegemony built in the colonial world[135].

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[130] Gilberto Freyre, *The masters and the slaves [casa-grande and senzala]: a study in the development of brazilian civilization* (Berkeley, University of California Press 1986) 278.
[131] Sigmund Freud, *Edição standard brasileira das obras psicológicas completas de Sigmund Freud: Um caso de histeria, três ensaios sobre a teoria da sexualidade e outros trabalhos (1901-1905)* (vol. 7, 1st ed, Imago Editora 2006) 171.
[132] Freyre (n 130) 278, 279.
[133] Ibid 278.
[134] M Mamozai, Herrenmenschen: Frauen im deutschen Kolonialismus (Rowohlt 1982) 98.
[135] Maria Mies, *Patriarchy and Accumulation on a World Scale : Women in the International Division of Labour* (Bloomsbury Academic & Professional 2014) 98.

In the case of indigenous women, it happened differently, because, despite having carried out domestic work, raising some of the colonisers' children, this labour lasted for a much shorter period and did not constitute such a large and profitable business, as it was in African slavery. Thus, the body of the Indian women was much more used as an instrument of procreation, with the aim of populating the colony and facilitating the civilising process[136]. The ships coming from Europe to Brazil, brought almost only men. There are very few records of European women coming to the territory in the first centuries of colonisation[137]. In this way, to satisfy the sexual desire of white men who came to the continent and to populate the land with children of their blood, Europeans sought to reproduce in the wombs of Indian women as much as possible. As result of this conjunction, came the Mamelukes (children of Indian and European), who despite being considered inferior to whites, were still superior to Indians and, therefore, served to populate Brazilian territory and spread the civilising process, once that their paternal culture was introduced to them with much greater intensity, as explained in the previous chapter (sub-chapter 2.2.1)[138]. Relations with Indian women took place mainly in two ways. One was through the marriages of Europeans with native women, carried out from the method of *cunhadismo*. *Cunhadismo* was a practice adopted by many indigenous societies, in which when a stranger married a woman from the tribe, this person automatically became part of the community, establishing close relationships with all its individuals. Thus, it was widely used by the colonists to establish alliances with local societies, mainly aiming to satisfy the interest of both parts, such as fighting enemies from other tribes and settlers of other European nationalities, who also occupied Brazilian territory. Furthermore, the culture of indigenous peoples allowed polygamy, which made it possible for each European to establish *cunhadismo* with several communities at the same time, further expanding the gestation of Mamluks[139]. The other was through the kidnapping of Indian women from their communities, in order to rape them. This practice is still very common today, being carried out mainly by people who are in the region to extract ore or agricultural products.

Thus, many indigenous women were separated from their tribes, either through kidnapping or marriage, leaving few options for the men of the community. This situation resulted in a dramatic decrease in the birth rate of Indians and an increase in the number of Mamluks. As a consequence, sexual domination over non-white women was used by the settler as a form of birth control for races considered inferior and for the expansion of their peoples or ethnicities. In the case of indigenous women, this instrument was used to de-Indianize native-Brazilians, limiting sex among Indians and

[136] Ribeiro (n 129) 23.
[137] Ribeiro (n 129) 69.
[138] Ibid 69.
[139] Ibid 63, 64.

making it almost exclusive between indigenous women and white men[140]. This made possible the formation of a new race, which would be, on the one hand, introduced to European culture and on the other hand, pushed away from the indigenous one. These would be the Mamelukes, who would serve as the basis for the formation of the Brazilian people.

> No Indian raised in the tribe, I believe, has ever become a Brazilian, so irreducible is the ethnic identification. But, the Indian child, generated by a stranger, white or black, would ask himself who he was, if he was no longer an Indian, neither white or black. Would he be the proto-Brazilian, constructed as a negative made of his lack of ethnicity? Seeking a recognisable group identity to stop being nobody, he was forced to generate his own identification. (translation of the author)[141]

[140] Ibid 109.
[141] Darcy Ribeiro, *O povo brasileiro* (3rd ed, Global 2015) 98.

CHAPTER IV - TWAIL CRITICISM OF INTERNATIONAL LAW

The Third World Approaches to International Law (TWAIL) is a scholarship, which seeks to criticise international law, in order to bring third world concerns to the global level. Thus, TWAIL proposes to deconstruct "a racialised hierarchy of international norms and institutions that sub ordinate non-Europeans to Europeans."[142] In explaining TWAIL, Makau Mutua states that "[t]he regime of international law is illegitimate. It is a predatory system that legitimises, reproduces and sustains the plunder and subordination of the Third World by the West."[143] Hence, the authors of this movement aim to question international systems, as well as their historical context, interests, structure, and results.

According to these researchers, international law is not only a product of the West, but is also directly regulated by it, pursuing its interests as its main scope. These are norms that are born from the experience and values of the dominant population, seeking to impose themselves on the rest of the world, through the claim of universality[144]. As Antony Anghie explains, despite the fact that international law was from the beginning a set of rules that intent to regulate relations between States, its application began to gain universality only in the 19th century. Only from this moment on, this set of rules created in Europe started to be applied in all States of the globe, regardless of the specificities of each cultural and historical context[145]. It is important to emphasise that the 19th century was marked by European imperial expansionism, especially in Africa, which was divided in 1878 by the Treaty of Berlin and colonised almost in its entirety at this time. In this context, the universalisation of international law was a direct consequence of the European will to impose itself on other peoples and place their values and worldviews as superior.

It was at this same time that positivism replaced naturalism as the main jurisprudential doctrine used to interpret and apply international law. According to the positivist understanding, the State is the main actor of international law and, only through its existence, a people could claim sovereignty over its territory. It is important to note that at this time it was Western states that, based on their own understanding of nation and land use, determined whether a people was sovereign or not. Thus, many peoples were considered non-sovereigns of their own territories, which prevented

[142] Makau Mutua and Antony Anghie, 'What is TWAIL?. Proceedings of the Annual Meeting' (2000) 94 American Society of International Law 31.
[143] Ibid.
[144] Anghie, Antony, 'The Evolution of International Law: Colonial and Postcolonial Realities' (2006) 27:5 Third World Quarterly 739.
[145] Ibid.

them from having legal personality, since they did not constitute States under European eyes. In summary, through positivist thinking, it was understood that European countries had the right to exploit and subordinate other peoples, who, without sovereignty, did not have the legal personality to oppose[146]. According to Antony Anghie

> Within the axiomatic framework of positivism, which decrees that European states are sovereign while non- European states are not, there is only one means of relating the history of the non-European world, and this the positivists proceed to do: it is a history of the civilizing mission, the process by which peoples of Africa, Asia, the Americas, and the Pacific were finally assimilated into a European international law.[147]

In contrast, naturalism presupposed that legal personality came from natural law, in other words, it was born from the natural conditions of the human being. For naturalists, these conditions were delimited mainly by the use of reason and, at times, customs. Thus, despite guaranteeing legal personality according to "natural" human conditions, Europeans did not attribute it to all peoples, since they considered many of them devoid of reason and with absurd and irrational customs[148]. Francisco de Vitória was very important in this context, once he advocated that the Indians of the Americas were endowed with reason and, therefore, had legal personality according to natural law[149]. Despite the existence of important jurists who defended that the Indians were subjects of natural law, as Francisco de Vitoria and Bartolomé de Las Casas, the understanding of the European States was the opposite. This is because this theory was fundamental to justify the enslavement and extermination of these peoples, as well as the invasion and exploitation of their territories.

In this way, it is possible to conclude that both positivism and legal naturalism were used to exclude non-European peoples from the legal world and, thus, allow their colonisation.

> It was simply and massively asserted that only the practice of European states was decisive and could create international law. Only European law counted as law. Non-European states were excluded from the realm of law, now identified as being the exclusive preserve of European states, as a result of which they lacked both membership and the ability to assert any rights cognizable as legal.[150]

Human rights were born as an arm of international law, becoming a binding legal system only after the Second World War. Thus, although these rights differ greatly from other areas of international law, they are still part of this system and, therefore, bring many of its characteristics, in

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[146] Antony Anghie, 'Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law ' (1999) 40:1 Harvard International Law Journal 1.
[147] Ibid.
[148] Ibid.
[149] G. C. Marks, 'Indigenous peoples in international law: the significance of Francisco de Vitoria and Bartolome de Las Casas' (1990) 13 Australian Year Book of International Law 1.
[150] Anghie, 'The Evolution of International Law: Colonial and Postcolonial Realities' (n 144).

particular, the model and obligations of the European liberal state[151]. In this way, as well as international law, human rights were also born on the basis of a vision of a hegemonic model of power[152], in which Europe has values and laws that are superior to those of the rest of the world and which, therefore, must be imposed on other peoples.

It is important to emphasise that in its origin, human rights were not aimed at the Third World, but at Europe itself. That's because they came after the holocaust to contain wars and exterminations within the continent and bring basic humane treatment regulations. Only a few years later human rights began to turn to non-European peoples[153], forming the metaphor created by Makau Mutua of Savages-Victims-Saviours (SVS). The author argues that human rights are based on this three-dimensional narrative. In this understanding, for human rights, the savage is the State, which, by adopting illiberal, authoritarian or policies that are contrary to human rights, becomes considered a "bad" State. Thus, human rights appear as the salvation of these governments, which must introduce these rights in order to save themselves. But, on the other hand, Mutua argues that underneath this attribution of the evil state is the understanding of a wrong and savage culture that corrupts the state by making it evil[154]. In his words,

> While the metaphor may suggest otherwise, it is not the state per se that is barbaric but the cultural foundation of the state. The state only becomes a vampire when "bad" culture overcomes or disallows the development of "good" culture. The real savage, though, is not the state but a cultural deviation from human rights.[155]

In this theory, the victim narrative in human rights would be helpless, powerless and innocent people, violated by the savage. It is important to recall here the Valladolid dispute between Juan Gines de Sepulveda and Bartolomé de Las Casas around 1550. In his speech, Sepulveda defended the invasion of the Americas by Spain, arguing for the salvation of people victims of their own savagery. For the jurist, the Indians were victims of their backwardness and the Spaniards should civilise them as a kind of salvation. Thus, in his understanding, the Spanish invasion was a civilising humanitarian mission necessary for the development of inferior cultures[156].

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[151] Makau Mutua, *Human Rights standards: hegemony, law and politics* (State University of New York Press 2016) 12.
[152] Balakrishnan Rajagopal, 'Counter-Hegemonic International Law: Rethinking Human Rights and Development as a Third World Strategy' (2006) 27:5 Third World Quarterly 767.
[153] Mutua, *Human Rights standards: hegemony, law and politics* (n 151) 16, 17.
[154] Ibid 11.
[155] Ibid 11.
[156] Marks (n 149).

The last dimension of this metaphor is the saviour, "the good angel who protects, vindicates, civilizes, restrains, and safeguards"[157]. In this narrative, the saviour promises to free the victim from the oppressive culture and the savagery imposed on him[158].

> In the human rights story, the savior is the human rights corpus itself, with the United Nations, Western governments, INGOs, and Western charities as the actual rescuers, redeemers of a benighted world. In reality, however, these institutions are merely fronts. The savior is ultimately a set of culturally based norms and practices that inhere in liberal thought and philosophy.[159]

This SVS metaphor created by Makau Mutua seeks to expose a narrative created by human rights, which gives continuity to the civilising process started in the colonial period. Thus, according to Bhupinder Chimni

> The inability to govern is projected as the root cause of frequent internal conflicts and the accompanying violation of human rights necessitating humanitarian assistance and intervention by the North. It is therefore worth reminding ourselves that colonialism was justified on the basis of humanitarian arguments (the civilizing mission). It is no different today. The contemporary discourse on humanitarianism not only seeks to retrospectively justify colonialism but also to legitimize increasing intrusiveness of the present era.[160]

It is undeniable that human rights can help tackle human suffering, which is one of its goals. But it is also undeniable that the foundational values and norms of these rights are intrinsically western and combined with economic liberalism. In other words, these rights end up serving as an instrument for the continuity of a civilising process, which sees non-Western cultures as inferior and, therefore, to blame for their own suffering. In this context, the implementation of Western culture in these places is seen as a way of saving individuals from a backward culture[161].

The development discourse enters this narrative supporting the idea of the need to save the Global South from its backwardness. The term came to be used in this socio-political sense after the famous speech by President Truman in 1949, who first used the expression "underdeveloped" with this connotation for Third World societies. Before that, the word "development" was used basically to indicate the biological process of living beings, through which they would reach their genetic potential. In this sense, development described a natural process, which, if interrupted, would be considered a genetic anomaly, a pathology. Thus, his understanding was applied to the human being to draw the idea of an evolutionary line where Western culture is the natural evolution of all humans.

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[157] Mutua, *Human Rights standards: hegemony, law and politics* (n 151) 11.
[158] Ibid 11.
[159] Ibid 11.
[160] Bhupinder Singh Chimni, 'Third World approaches to International Law: A Manifesto' (2006) 8:1 International Community Law Review 3.
[161] See ibid.

Therefore, other cultures are seen as backward in relation to this evolutionary line and should be helped by advanced cultures to achieve their natural development. In this sense, the "backwardness" of non-Western cultures is seen as a pathology and the interference of the West, as a necessity for their salvation[162].

In this context, human rights and this idea of development are used to perpetuate this hegemonic colonial vision, in addition to serving as an instrument for the continuation of the imposition of Northern culture on the Global South. The UN Sustainable Goals are a clear example of this, as they seek to eradicate poverty through the implementation of liberal policies, such as economic growth (Goal number 8) and industry, innovation and infrastructure (Goal number 9). As Esteva explains, Western capitalism creates needs that did not exist before, thus making human beings dependent on its system[163]. Therefore, the imposition of the western way of life makes underdeveloped people miserable, since they are not able to meet these new needs that they did not have before. According to Esteva,

> in the early 1970s, the recognition that the development enterprise was causing hunger and misery everywhere produced the Basic Needs Approach. The goal became to satisfy a package of 'basic needs'. There was no consensus about the definition of those needs, but such orientation still characterises most development efforts ... and shaped the UN Millennium Goals and the Sustainable Development Goals (SDGs) today.[164]

Furthermore, human rights see Western life as the ideal standard of living, the one they seek to bring the rest of the world to. It is for this reason that the countries of the West are called "developed" and the others as "underdeveloped", a nomenclature that suggests that the former have the model of life desirable to humanity, since they are more "developed" in relation to the others. In Esteva's words,

> The industrial mode of production, which was no more than one, among many, forms of social life, became the definition of the terminal stage of a unilinear way of social evolution. This stage came to be seen as the natural culmination of the potentials already existing in neolithic man, as his logical evolution. Thus history was reformulated in Western terms.[165]

In this context, human rights are presented with the aim of bringing solutions to develop non-Western countries, introducing them to Western values and way of life, once they are considered preferable for the quality of human life. This idea can be exemplified with the Human Development

[162] Gustavo Esteva. 'Development' in Wolfgang Sachs (ed), *The development dictionary: a guide to knowledge as power* (Bloomsbury Academic & Professional 2009).
[163] Gustavo Esteva and Arturo Escobar, 'Post-development @ 25: on 'being stuck' and moving forward, sideways, backward and otherwise' (2017) 38:12 Third World Quarterly 2559.
[164] Ibid.
[165] Esteva, 'Development' (n 162)

Report of the United Nations Development Program (UNDP) published for the first time in 1990. This Report built the Human Development Index, which seeks to compare the level of development of 130 countries, placing them in a numerical list that goes from the most to the least developed[166]. In other words, the document aims to determine "how far from the most successful national case are the other countries"[167], in order to classify almost all nations in the world according to a single understanding of development.

In this context, it is important to emphasise that the Global North is responsible for 92% of excess global CO2 emissions, according to the analysis of data from 1850 to 2015[168]. Thus, the western standard of living desired for all people by human rights, is not only negative in the sense of erasing other cultural identities, but also impossible in the material world, as it encounters natural limits. The 2020 Human Development Report acknowledges this fact, but does not completely abandon Western views of an ideal human life based on liberalism. Human rights, together with the aforementioned report, maintains the position that the western way of life is preferable for all people and sees sustainability combined with capitalism as the solution to the ecological problems arising from it[169]. As Esteva explains, "in its mainstream interpretation, sustainable development has been explicitly conceived as a strategy for sustaining 'development', not for supporting the flourishing and enduring of an infinitely diverse natural and social life."[170] In the same sense, economist Peter Edward defends the need to reduce the economic development of the countries of the Global North, proposing a new division of the world into over-developed, appropriately developed and under-developed countries. For the author, the development discourse should not be summarised "as one of catch-up for the developing world", but should advocate for the Global North to "'catch-down' to lower levels of consumption"[171].

In this sense, the UN's Millennial Goals, as well as the human rights framework designed by international institutions, ignore obvious facts related to the natural resources required to maintain this desired lifestyle for the entire population, as they continue to see economic and technological growth as a solution for the well-being of the global population.

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[166] Ibid.
[167] Ibid.
[168] Jason Hickel, 'Quantifying national responsibility for climate breakdown: an equality-based attribution approach for carbon dioxide emissions in excess of the planetary boundary' (2020) 4:9 Lancet Planet Health, University of London 399.
[169] Esteva, 'Development' (n 162).
[170] Ibid.
[171] Peter Edward, 'The ethical poverty line: a moral quantification of absolute poverty' (2006) 27:2 Third World Quarterly 377.

CHAPTER V – HOW THESE IDEAS REFLECT IN BRAZILIAN LAW

5.1. Colony and empire of Brazil

Law is a term that is difficult to define, since it seeks to outline not only the essence of the legal system that prevails in current states, but also those applied in different types of societies, which existed and still exist on the planet. For the great name of the Positivist School, Hans Kelsen, legal order can be defined as "a normative order of human behavior - a system of norms regulating human behavior"[172]. For him, this normative order can be explained as a "system of norms whose unity is constituted by the fact that they all have the same reason for their validity; and the reason for the validity of a normative order is a basic norm – as we shall see – from which the validity of all norms of the order are derived"[173].

The fact is that the law as known and applied by the States today comes from the European experience, which at the time of colonisation was transferred to the colonies. Thus, in the period of the domination of the Americas, there were discussions among European jurists, especially between the Spaniards, about which legal organisations should be considered law and which should be excluded from this status. In the context, some scholars, including Francisco de Vitoria, as mentioned in the previous chapters, understood that the Indians lived under the organisation of their own legal rules, which demonstrated the complexity of their societies and the presence of reason in their way of life (page 14). These arguments were used to defend the sovereignty of the natives and, consequently, their rights. In opposition to this thought, other jurists argued that their customs were barbaric and lacking in reason, living in lawless societies, thus being non-sovereign peoples and therefore subject to legal domination by the Spaniards[174]. In this context, starting from the hierarchical view of the European, the set of rules to which they were submitted in their continent, which they called Law, was understood as superior to the other systems present in non-European societies.

Thus, on the one hand, European thinking was that indigenous peoples and their ways of life were extremely inferior to their own, which motivated the action of numerous civilising missions, seeking extermination or forced assimilation. On the other hand, the Brazilian colonial state recognised the sovereignty and some rights of the Indians, as the right to land and self-determination.

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[172] Hans Kelsen, *Pure theory of law* (Max Knight (tr), University of California Press, Berkeley and Los Angeles 1967) 4.
[173] Ibid 31.
[174] G. C. Marks, 'Indigenous peoples in international law: the significance of Francisco de Vitoria and Bartolome de Las Casas' (1990) 13 Australian Year Book of International Law 1.

This occurred through Portuguese crown laws, which often recognised the rights of Indians over the lands they occupied[175]. Otherwise, sovereignty was established in this period in the context of discussions about the enslavement of the Indians[176]. This is because sovereignty defined the possibility or not of enslavement. Thus, with the first law that prohibited indigenous captivity, in 1570[177], the sovereignty of these peoples were recognised at the same time. This initial law allowed Indians to become captives only as a result of just war[178].

In addition, the Indians' possession of their lands was also guaranteed in colonial Brazil. In this sense, the Royal Charter of 1718 explains: "… (the Indians) are free, and exempt from my jurisdiction, which cannot force them to leave their lands, to take up a way of life that they will not be pleased with…"[179] (translation of the author).

Even with the existence of several laws protecting the freedom and lands of the Indians, dispossession and the application of forced labour continued in such a way that in 1741, Pope Benedict XIV published the Brief "*Immensa Pastorum Principis*" to the clerics of Brazil, renewing the apostolic Briefs of 1537 and 1639. This document instituted a penalty of excommunication for those who enslaved the Indians, deprived them of their goods or took them outside their lands[180]. This ecclesiastical decision only demonstrates how the laws did not correspond to what was happening in the reality of the time, which were often circumvented in order to violate the rights of these populations. Another example was the war against the Botocudos of Paraná, declared through the Royal Charter of November 5, 1808, which determined that those who apprehended an Indian from the Botocudo tribe could freely use them for forced labour, thus allowing their enslavement. This war was declared under two main justifications. One of economic interest under the lands that these Indians inhabited, which were very fertile for plantation and with many mines of precious metals[181]. The other for civilising reasons, as stated in the official letter:

> There is no way to civilise barbarous peoples, except by linking them to a strict school, which for a few years forces them to leave and forget their natural rudeness and make them know the benefits of society and appreciate the greatest and most solid good, which results from the exercise of the moral faculties of the spirit, much superior to the physical and corporeal ones: having verified in my royal presence the uselessness of all human means, by which I have ordered to attempt to civilise them and reduce them to villages, and enjoy the permanent

[175] Manuela Carneiro da Cunha, *Os direitos do índio: ensaios e documentos*. (Editora brasiliense 1987) 58.
[176] Ibid 59.
[177] Brazil, 'Território brasileiro e povoamento' *IBGE - Instituto Brasileiro de Geografia e Estatística* (2022) <https://brasil500anos.ibge.gov.br/territorio-brasileiro-e-povoamento/historia-indigena/politica-indigenista-do-seculo-xvi-ao-seculo-xx.html> accessed 27 June 2022.
[178] Cunha (n 175) 59.
[179] Carta Régia 09 March 1718 (Portugal).
[180] Cunha (n 175) 61, 62.
[181] Carta Régia 05 November 1808 (Portugal).

> benefits of a peaceful and sweet society, under the just and human laws that govern my peoples. (translation of the author)[182]

Even with the existence of norms that recognised the sovereignty of the Indians, prohibiting their enslavement and guaranteeing some rights, such as the right to land, the period of colonial Brazil was responsible for the largest indigenous massacre in the country's history. From the beginning of the colony in 1500 to the beginning of the Empire of Brazil, with the declaration of independence in 1822, more than 2 million Indians were killed, decimating, until 1825, approximately 88% of the original population[183]. Nonetheless, this period guaranteed more rights to indigenous peoples than in the following period of the Empire of Brazil, which lasted from 1822 to 1889.

According to Carlos Frederico Marés de Souza Filho, this regression of the rights of the Indians was mainly due to the fundamental concepts of State that emerged from the bourgeois revolutions. As the author explains, the bourgeois state is based on the culture of individualism, in which states are made up of citizens, each one equally holder of individual rights[184]. In the writer's words:

> it was not possible to conceive of enclaves of human groups with their own collective rights, neither recognised nor integrated into the system of State Law. Indigenous peoples should be forgotten, to give the right to free citizens, always individual, always with an individual will, always a person. Being a person, the State or the indigenous individual, would be the holder of rights and would have them guaranteed. (translation of the author)[185]

Thus, this individualistic conception, which serves as the basis for the bourgeois state model, translates into the need for assimilation and integration of different cultures into a single national culture. This is because "each State should correspond to a single nation"[186] (translation of the author), with a single legal, political and economic system, in addition to adopting a single set of values and aspirations for the entire population. Hence, individualistic culture makes it necessary to assimilate different peoples into a single national identification, submitting them to the same rights, duties and values applied to national society.

In this way, the model of the bourgeois State cannot allow the sovereignty of other peoples besides the nation in which they are located, which differs greatly from the format of feudal and colonial States. The latter, despite having numerous civilising missions to bring the Indian closer to

[182] Ibid.
[183] Brazil, 'Quem são' *Fundação Nacional do Índio* (12 November 2013, updated 18 November 2020) <https://www.gov.br/funai/pt-br/atuacao/povos-indigenas/quem-sao> accessed 25 March 2022 and 22 May 2022.
[184] Carlos Frederico Marés de Souza Filho, *O renascer dos povos indígenas* (1st ed, Editora Juruá 1998) 62.
[185] Ibid 62.
[186] Cunha (n 175) 64.

the Western individual, recognised, through laws, the existence of different peoples with their own social, political and economic organisations within a single State[187]. Thus, in the words of Souza Filho, "[t]he existence of special laws for certain strata of society was common in feudal or colonial society, but inconceivable in bourgeois society, the bourgeois State and its Law would have to be one and generators of their source itself"[188] (translation of the author).

5.2. Brazilian Constitutions before 1988

The first Brazilian parliamentary experience took place in 1823, with the Constituent and Legislative General Assembly, which aimed at discussing and drafting the country's first Constitution. The legislative project prepared by the assembly never got off the ground, as it was dissolved by the Portuguese Emperor of Brazil, Dão Pedro I, who did not want to have his powers diminished. Notwithstanding this, the draft Constitution was very important, as it served as an inspiration for the elaboration of the first Constitution of Brazil, which was approved in the following year, in 1824[189], and exposed the first legal aspirations of the country's elites.

At the time, Brazil had about 4.5 million inhabitants, of which 800,000 were indigenous, 1 million were whites, 1.2 million were enslaved blacks and 1.5 million were mestizos[190]. Nevertheless, in the entire text of the constitutional project of 1823 there was only one mention of the Indian, that being in its article 254, under Title XIII – "On Public Instruction, Charity Establishments, Correction Houses, and Work". The article read as follows: "It shall be equally careful to create Establishments for the catechism, and civilisation of the Indians, the slow emancipation of the blacks, and their religious, and industrial education"[191] (translation of the author). Despite being present in the legislative project, article 254 was excluded and, therefore, was not part of the official text. As a result, the Constitution of 1824 did not have any reference to the aboriginal people[192], as well as the following Constitution, of 1891, which would be the first of Brazil's Republic[193].

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[187] Souza Filho (n 184) 63.
[188] Ibid 63.
[189] Brazil, 'Conheça a história da Assembleia Constituinte de 1823' *Câmara dos Deputados* (17 October 2018) <https://www.camara.leg.br/noticias/546341-conheca-a-historia-da-assembleia-constituinte-de-1823/> accessed 27 June 2022.
[190] Ibid.
[191] Brazil, 'Diário da Assembléia Geral Constituinte e Legislativa do Império do Brasil – 1823, Tomo II' (2003) 6 Congresso Nacional, Edições do Senado Federal 699.
[192] Cunha (n 176) 65.
[193] Alcir Gursen de Miranda, *O direito do índio* (CEJUP 1994) 58.

The Constitution of 1934 was the first to quote the Indian in its official text. There are two mentions in total[194]. The first demonstrates the assimilationist aspect that the State adopted at the time, seeking to integrate and assimilate the Indian to the dominant society, as article 5, XIX, "m" of the Constitution determines:

> Article 5. It is the exclusive responsibility of the Union:
> […]
> XIX - legislate on:
> […]
> m) incorporation of forestry people into the national community. (translation of the author)

The second reference the document makes to the Indians is more important regarding their rights. Article 129 recognises the possession of indigenous lands: "[t]he possession of land by forestry people who are permanently located there will be respected, although its alienation will be prohibited"[195] (translation of the author). Otherwise, the following Constitution, of 1937, removes the idea of incorporating the Indians into the dominant society, being silent on the subject and, at the same time, maintains the recognition of the possession of lands of native peoples in its article 154. Furthermore, the constituent of 1946, not only maintains the Indians' right of possession over their lands, which is now regulated by article 216, but also returns with the idea of their incorporation in the dominant society, under article 5, XV, "r".

The Constitution of 1967, prior to the current Constitution of 1988, brings greater regulation on the subject. In addition to bringing the two articles that remained almost the same since 1934, the text of 1967 also brought the recognition of the right of the Indian to the exclusive usufruct of the resources of their lands (Article 186) and also included the lands occupied by the native peoples to the goods of the Union (Article 4, IV).

The Brazilian Constitutions from 1824 to 1967 and other various laws of the Brazilian State of that period used the term "*silvícola*" or "*selvícola*" (in English "forestry people") to refer to the Indians. This term refers to the inhabitants of the jungle, but as the anthropologist Manuela Carneiro da Cunha explains, it is a term "etymologically, inappropriate from the beginning: many indigenous people inhabited not the "jungle" but the cerrado biome"[196] (translation of the author). Furthermore, the word boosts the Indian's imagination of inferiority, "that being that lives in the jungle, walks

[194] These facts can be observed when analysing the official Constitutions of Brazil of 1824, 1821 and 1934.
[195] Ibid.
[196] Cunha (n 175) 15.

naked, is fierce, primitive… or, on the contrary, is in a living museum, is the "good savage""[197] (translation of the author).

The current Constitution of 1988 was part of a movement that took over the entire Latin American region, which is called "Latin American Constitutionalism". This movement changed the way in which the Indian was treated within the national States and, therefore, the subject will be treated with greater attention later on (in the Subchapter 5.6).

5.3. *Serviço de Proteção aos Índios* – SPI ("Indian Protection Service")

The Indian Protection Service (SPI) was created in 1910 as a response to several controversies involving indigenous extermination in Brazil. Among them is the position of the German researcher Hermann von Ihering, then director of an important museum in São Paulo (*Museu Paulista*), who defended "the extermination of indigenous people who resisted the advance of civilisation"[198] (translation of the author). This is because, for the scholar, the German colonists should be better protected by the Brazilian government against the Indians, so that they could advance with the German civilisation of southern Brazil[199]. In the author's words, "one cannot expect serious and continued work from civilised Indians and as the wild Caingangs are an impediment to the colonisation of the regions of *sertão* they inhabit, it seems that there is no other way, which can be used, but their extermination"[200] (translation of the author). Furthermore, von Ihering believed that "those Indians who joined the Portuguese immigrants left only a malefic influence on the habits of the rural population"[201] (translation of the author). Such statements were published in the museum's magazine in 1907, generating many revolts on the part of academics and positivists, among them Sílvio de Almeida and Horta Barbosa, who published articles expressing their indignation. Still, von Ihering's position was common in a significant part of the scientific community. In this context,

> [f]or Hermann von Ihering, as for most of his colleagues, the Indian was primarily something to be observed and classified, almost as if they were an inanimate object. Its gradual disappearance was considered inevitable and was regretted, not exactly from the point of view of human loss, but mainly because it took away from scientists the opportunity to analyse, at will, their primitive culture and thus research the confused directions of their past.[202] (translation of the author)

[197] Helder Girão Barreto, *Direitos indígenas: vetores constitucionais* (Juruá, 2003) 36.
[198] Cunha (n 175) 78,79.
[199] David Hall Stauffer, 'Origem e fundação do serviço de proteção aos índios (III)' (1960) 21:43 Revista de História 165.
[200] Hermann Von Ihering, 'A antropologia do Estado de São Paulo' (1907) 7 Revista do Museu Paulista 202.
[201] Ibid.
[202] Stauffer (n 199).

These controversies created the context in which the SPI was born, but the trigger for its creation was the denunciation made before the XVI Congress of Americanists, which publicly accused Brazil of promoting a massacre against the Indians. The Congress that met in Vienna in 1908 had as one of the main agendas in the discussions the situation of indigenous populations in Brazil, which proved to be catastrophic before the international community[203]. Thus, as a reaction to these events, the SPI was created, as an organ of the Ministry of Agriculture, Industry and Commerce, under the direction of General Rondon[204].

In this way, the SPI was born with the aim of calming the public outcry, both national and international, about the indigenous situation, demonstrating the Brazilian government's willingness to offer a solution to the problem. Thus, with the creation of the Indian Protection Service, "Brazil has placed itself at the forefront of indigenous law"[205] (translation of the author). Although the initiative was revolutionary and seemed very promising, the SPI ended up not bringing the law into practice. The agency not only failed to offer effective solutions to reverse the situation of violence against native peoples, but also contributed to the perpetuation of new problems.

From the beginning, the objective of the SPI was already contradictory. On the one hand, it sought to offer protection to the Indians against the advances of western development. But, on the other hand, it aimed to guarantee the expansion of this same development[206]. Thus, while the agency pursued the protection of the original peoples, it also sought to guarantee the interests of western peoples on their lands. This situation already predicted the role that the institution would assume in subsequent years. Furthermore, one of the main points of the agency was the introduction of Indians and national workers into the production process and combating rural exodus[207].

One of the most important actions of the SPI was the delimitation of indigenous reserves, which considered the following factors: area with the highest concentration of Indians - which often did not correspond to the traditional land, as a result of the work they carried out outside the villages -; availability of land, that is, the non-existence of other people interested in that space; quality of the land for agriculture. Thus, the institution's main concern was not to delimit territories that corresponded to the Indians' interest in occupying their ancestral land, but to establish a demarcation

[203] Ibid.
[204] Cunha (n 175) 78, 79.
[205] Ibid 21.
[206] Ana Carolina Alfinito Vieira and Sigrid Quack, 'Trajectories of transnational mobilization for indigenous rights in Brazil' (2016) 56:4 Revista de Administração de Empresas, FGV/EAESP 380.
[207] Angélica Ricci Camargo, 'Serviço de Proteção aos Índios e Localização dos Trabalhadores Nacionais' (Arquivo Nacional, 23 May 2019) <http://mapa.an.gov.br/index.php/ultimas-noticias/686-servico-de-protecao-aos-indios-e-localizacao-dos-trabalhadores-nacionais> accessed 28 June 2022.

that agreed with the capitalist aspirations of the dominant population[208]. It is important to emphasise that the recognition of the Indians' possession of their lands dates back to the colonial period and, therefore, did not begin with the SPI. In this way, the agency identified and demarcated the lands, in order to make them officially recognised in the period of the Republic of Brazil, so that they could become an object of protection by the Indian Protection Service. It will only be in the Constitution of 1934, 24 years later, that the recognition established by the SPI's law will gain constitutional support.

Despite the protectionist policies and countless other criticisms that can be made about the SPI, the body, and the laws arising from it, were certainly very advanced for the period. The Indian Protection Service offered a new look at native peoples and demonstrated a state concern for these communities never before expressed by the Brazilian government. Many academics, idealising indigenous protection and containment of the advance of Western culture in these communities, joined the Indian Protection Service in its creation, among them the anthropologists Darcy Ribeiro and Georg Grünberg[209].

From 1950 onwards, the SPI administration began to decline with the numerous corruption scandals, abuses of power and acts of violence against the rights of the Indians[210]. At the end of the decade, many of the researchers who had joined the organisation left it, disappointed with the direction that had been taken[211]. The crimes committed by the SPI came fully public with the publication of the Figueiredo report, a product of the investigation conducted by Federal Prosecutor Jader de Figueiredo Correa, which identified several violations of rights against indigenous people committed in the period[212]. Among them, the agency's collaboration in the 11th Parallel Massacre mentioned earlier in Chapter 3.2.

The SPI has also created posts in many indigenous communities with the aim of providing assistance to its members. However, these Indigenous Posts ended up being used as a tool to "civilise" and control the Indians. Thus, the posts on the lands of the Kaiowá and Guarani peoples, for example,

> offered education, medicines, tools for agricultural production, making indigenous communities progressively dependent on the services offered by the agency. Within this context, the person in charge of the post had as its main objective to transform this population into small peasants or rural producers, thus meeting two objectives of the SPI: freeing up

[208] Eranir Martins de Siqueira and Neimar Machado de Sousa, 'A atuação do serviço de proteção ao índio e a história dos Guarani/Kaiowá' (2005) XXIII Simpósio Nacional de História – ANPUH.
[209] Vieira and Quack (n 206).
[210] Souza Filho (n 184) 89.
[211] Vieira and Quack (n 206).
[212] Clovis Antonio Brighenti, 'Agitadores e subversivos: repressão, perseguição e violações dos direitos indígenas pela ditadura militar' (2020) 38:1 Perspectiva, Revista do centro de ciências da educação 1.

> territories for agricultural expansion and inserting the natives into regional society. (translation of the author)[213]

5.4. Civil Code of 1916

The Civil Code of 1916, in force only 6 years after the beginning of the Indian Protection Service, represented a major setback in terms of Indian rights. Its most striking provision on this subject is in its article 6, III, which places "forestry people" on the list of relatively incapable people, along with those aged between 16 and 21 and the prodigals. The sole paragraph of this same article determines that, "[t]he forestry people will be subject to the tutelary regime, established in special laws and regulations, which will cease as they adapt to the civilisation of the Country" (translation of the author). This provision clearly demonstrates the general objective of integrating the Indian into the dominant society. Thus, the identity of "forestry people" was seen as a transitory condition, which would later be replaced by the identity of a participant in Brazilian civilisation[214].

Subsequently, the relative incapacity of the Indian would also be incorporated into the Indian Statute of 1973, which remains in force to this day. It is important to point out that relative incapacity means that in order to carry out some civil acts, that individual should be accompanied, tutored, by a third party. In the case of the Indian, guardianship is the responsibility of the Union and must be exercised by a federal agency[215], being from 1910 to 1967 the SPI and from that date onwards the FUNAI. This body must assist the Indians in carrying out various acts of civil life, including the management of their own assets, as well as the Indigenous Found granted to the tribe (art. 42 of the Indian Statute). Furthermore, the Indian Statute regulates in its article 9 that Indians may request their release from the tutelary regime, that is, become fully capable of performing all civil acts, only if they meet the following requirements:

> I - minimum age of 21 years;
> II - knowledge of the Portuguese language;
> III - qualification for the exercise of useful activity, in the national community;
> IV - reasonable understanding of the uses and customs of national communion.[216]

Regarding the guardianship established by Brazilian law in relation to the Indian, there are two positions. The first is based on the fact that Indians have languages and historical and cultural contexts different from that of the dominant population and, therefore, it is understood that they need

[213] Siqueira and Sousa (n 208).
[214] Rosane Lacerda, *Os povos indígenas e a constituinte* (CIMI - Conselho Indigenista Missionário 2008) 14.
[215] Cunha (n 175) 28.
[216] Ibid.

assistance to carry out some acts of public life[217]. Furthermore, guardianship does not replace the will of the ward, which must always prevail. Researcher Manuela Carneiro da Cunha defends both positions as valid, for her, despite the positive and necessary aspects in this system, "[t]he figure of guardianship is also imperfect insofar as it can suggest to public opinion (as it has even suggested to specialists in Criminal Law) an alleged "childhood" of the Indians or an incomplete or deficient mental development"[218] (translation of the author). Furthermore, it is important to point out that

> [t]he conception of indigenous incapacity, anchored in the Civil Code of 1916 and, later, in the Statute of the Indigenous Peoples of 1973, was consolidated as a stereotype that marked indigenous peoples in different spheres of their lives, and not only in the acts of their civilian life. In other words, this incapacity was seen both by society in general and by agents of public bodies as absolutely natural, extending to the scope of their political life ("Indians vote?") and their criminal responsibility ("Can Indians be arrested?").[219] (translation of the author)

This reasoning extends to criminal law, as it encompasses some discussions about the imputability of the Indian. In this sense, "Damásio de Jesus maintains that the Indian has an incomplete mental development or not yet completed, which is why he is considered unimputable"[220] (translation of the author). Although the native people are considered imputable under Brazilian law, the Indian Statute regulates in article 56 that "[i]n the case of conviction of an Indian for a criminal offense, the penalty must be mitigated and in its application the Judge will also take into account the degree of integration of the forestry person" (translation of the author). Thus, the Statute maintains this thought of the Indian's mental incapacity demonstrated in the aforementioned guardianship system. This implies the subordination of certain actions and wills of the Indians to the representation of agents such as the SPI and FUNAI, who often act in their own interest rather than providing assistance to the Indian, in order to ensure that the will of the ward always prevails. An example of this is the case of the indigenous leader, Mário Juruna, who was invited to participate in the Russell Court in the Netherlands and was denied the creation of his passport by the government, by decision of FUNAI. According to Mario Andreazza, Minister of the Interior, to whom FUNAI was subordinate, indigenous people could not go to an event abroad that their guardian was also not invited to[221].

The current Civil Code of 2002, revoked the article that defined the Indian as relatively incapable, but defined in the sole paragraph of article 4 that his or her capacity should be fixed by

[217] Cunha (n 175) 28
[218] Ibid 30.
[219] Lacerda (n 214) 16.
[220] Damásio de Jesus, *Direito Penal* (1st vol., 25th ed, Saraiva 2002) 41.
[221] Cunha (n 175) 29, 30.

special legislation. The special law that regulates the rights of Indians is, since 1973, the Indian Statute, which defines in Chapter II the submission of the Indian to the assistance or guardianship of FUNAI for the performance of various acts of civil life, thus making the Indian relatively incapable in the Civil Law to the present day. According to article 8 of the Statute, "acts practiced between the non-integrated Indian and any person outside the indigenous community when there has been no assistance from the competent guardianship agency"[222] will be considered null and void.

5.5. *Fundação Nacional do Índio* – FUNAI ("National Indian Institute")

With the publication of the Figueiredo report and the consequent denunciation of the various crimes committed by the SPI, the body was dissolved in 1967, being replaced by the National Indian Institute (FUNAI) in the same year. The institute was born during the military dictatorship, which had begun in 1964 and would end only in 1985. In this way, it was created with the aim of ending corruption and, at the same time, "eliminating any possibility of seeing indigenous people involved with groups opponents of the regime"[223] (translation of the author). Thus, the institute's primary interest in controlling native peoples, rather than expanding their rights, was blatant. In this way, it did not distance itself from its predecessor in terms of prioritising the interests of Brazilian elites to the detriment of those indigenous peoples. Among the various forms of violence carried out by FUNAI against the rights of indigenous people is the excessive control that has been applied to indigenous lands. Indigenous posts came to be headed by low-ranking military personnel, who controlled who entered and left that territory. In this sense, "any displacement of indigenous people to visit a relative in another land or even for business in the city, required the "ordinance" issued by the head of post, with the individual's name, date, time, destination, motivation and time of return"[224] (translation of the author). Any disobedience to this rule could result in imprisonment, forced labour or torture[225].

Another example of the abuses committed by FUNAI are the various contracts signed by the institute to the detriment of native peoples. As an example, we can mention the agreement signed between FUNAI and the Elf-Aquitaine oil company, which allowed for oil prospecting in the Santaré-Maué and Munduruku areas, in Amazonas, in flagrant disagreement with indigenous interests[226]. These cases are clear examples of abuses arising from the role of tutor performed by FUNAI in

[222] Ibid.
[223] Brighenti (n 212).
[224] Ibid.
[225] Ibid.
[226] Cunha (n 175) 29, 30.

relation to the Indians conferred by the Civil Code of 1916 and continued by the Statute of the Indian of 1973.

5.6. Brazilian Constitution of 1988

The current Brazilian Constitution was enacted in 1988 and represented a milestone in the country's history regarding the expansion of indigenous rights and the break with the assimilationist policy that had been applied until then, in addition to representing a landmark in the redemocratisation of the country. After a long period of military dictatorship, which ended only in 1985, it became necessary to draft a new constitutional text that would give voice to the new democratic State. It was in this context of claim for democracy and human rights that the 1988 Constitution was born, expressing these characteristics in several of its legal provisions. As the Brazilian jurist Flávia Piovesan explains, this Constitution gives extraordinary importance to human rights, which "becomes a fundamental issue on the country's international agenda"[227] (translation of the author). Furthermore, "it is worth considering that the 1988 Charter, as a legal framework for the transition to a democratic regime, significantly expanded the field of fundamental rights and guarantees, placing it among the most advanced Constitutions in the world with regard to the matter"[228] (translation of the author).

Among the advances brought by the Constitution regarding the expansion of indigenous rights is the relevant participation of these peoples in the Constituent Assembly of 1987 and 1988. Their presence in this legal process represented a drastic change in the role of the aborigines within the Brazilian State. In this context, the Indians could not only participate more actively in national politics, bringing their claims and perspectives to the common justice. But the State has also changed the vision adopted in relation to these peoples, who were previously considered inferior and less capable, but who have come to be recognised as part of the multicultural and pluriethnic diversity of the Brazilian State[229].

Among the greatest achievements of the new constituent is the break with the assimilationist policy applied by the laws and policies of the Brazilian State until then. As Julio José Araujo Junior exposes:

> The 1988 Constitution was innovative in the treatment of indigenous peoples, compared to previous constitutional texts. By consecrating the plural character of Brazilian society and moving away from the assimilationist paradigm previously in force, the new constitutional

[227] Flávia Piovesan, *Direitos humanos e o direito constitucional internacional* (17th ed, Saraiva 2017) 98.
[228] Ibid 98.
[229] Lacerda (n 214) 141, 142.

> order emphasises the autonomy of these peoples, with respect to their ways of life, customs, traditions and through recognition of the lands they traditionally occupy.[230] (translation of the author)

Therefore, the 1988 Charter abandons the integrationist policy used until then, which aimed to bring the Indians closer to the Western men and women so that they could thus be part of Brazilian society, previously understood as a single thing. In its place comes the paradigm of interaction, which respects the cultural diversities of native peoples. In this sense, the relationship between the dominant and the indigenous societies becomes horizontal, in other words, they start to interact in a condition of equality based on the right to difference. Thus, the State begins to embrace the plurality of Brazilian peoples, which should no longer be understood as monocultural[231]. In this way, the new constitution, unlike the previous ones, seeks to protect the right to be an Indian, in other words, it aims to guarantee the right to difference and no longer that of equality[232].

The advance of the 1988 Constitution towards the protection of indigenous rights is evident. Initially, it should be noted that for the first time an entire chapter is dedicated to the issue (Chapter VIII), which already in its first article (231) recognises the right of these peoples to live under their own "social organisation, customs, languages, beliefs and traditions" (translation of the author). Furthermore, the same article recognises their "original rights over the lands they traditionally occupy, and it is up to the Union to demarcate them, protect and ensure respect for all their assets" (translation of the author). In this sense, lands traditionally occupied by Indians are considered:

> 1. Those inhabited by them on a permanent basis; 2. Those used for their productive activities; 3. Those essential to the preservation of environmental resources necessary for their well-being; and, 4. Those necessary for their physical and cultural reproduction. Everything, according to the uses, customs and traditions of the natives themselves.[233] (translation of the author)

Other achievements accomplished by the new constitutional text can be seen from the demarcation of new indigenous lands, mainly in the Amazon region, the expansion of public policies aimed at protecting indigenous rights and the numerical growth of these peoples[234]. While in 1957 there were a total of 70,000 Indians living within Brazilian territory, in 1995 this number had already grown to 330,000 individuals[235].

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[230] Julio José Araujo Junior, 'A constituição de 1988 e os direitos indígenas: uma prática assimilacionista?' in Manuela Carneiro da Cunha and Samuel Rodrigues Barbosa (eds), *Direito dos povos indígenas em disputa* (Editora Unesp 2018) 175.
[231] Barreto (n 197) 104, 105.
[232] Souza Filho (n 184) 107.
[233] Miranda (n 193) 68, 69.
[234] Araujo Junior (n 230) 179.
[235] Brazil, 'Quem são' (n 183).

Despite the clear advances in relation to the rights of the Indians, the practice did not follow with such intensity what was written in law. Although the Constitution broke with this reasoning of assimilation of the Indian to the dominant society, this thought remained very much alive in the non-indigenous population, which ended up being continuously reproduced by the Legislative, Executive and Judiciary powers. In this way, despite the Legislative having been responsible for important laws in the protection of indigenous rights, such as Law n. 9836/1999, which creates an indigenous health system, it is also responsible for drafting several laws that seek to restrict these same rights, especially in the last decade[236]. As an example of this, the proposed amendments to the constitution 215 and 76/2011 can be cited, which aim to transfer the competence for the demarcation of indigenous lands from the Union to the Congress and facilitate the use of water resources in indigenous lands, respectively. Thus, despite the fact that the Constitution brought clear legal advances and exposed a concern regarding indigenous peoples never experienced before in the history of Brazilian law, it is still far from being translated into social practice[237].

[236] Araujo Junior (n 230) 207, 208.
[237] Ibid 207, 208.

The Brazilian Constitution of 1988 followed a regional movement of constitutions that sought to expand indigenous rights, break with assimilationist policies, and give voice to the desires of traditional peoples through the availability of greater participation in national politics. This was Latin American constitutionalism, a process that allowed, in the words of Raquel Y. Fajardo, "to question, progressively, central elements of the configuration and definition of the Latin American republican states outlined in XIX century, and inheritance of the indigenous colonial tutelage, proposing a long-term decolonising project"[238] (translation of the author).

The author divides Latin American constitutionalism into three phases: multicultural constitutionalism (1982-1988); pluricultural constitutionalism (1989-2005); and plurinational constitutionalism (2006-2009)[239]. This division demonstrates a gradual path towards the expansion of indigenous rights and the emancipation of people oppressed by colonial culture. When introducing the concept of Latin American constitutionalism, Julio José Araujo Junior explains that "[r]ecognising the ills of coloniality presents itself as a primordial task to verify the limits of western political culture and ensure a social emancipation that is built from the South, not from the North. A symbolic "South" of the oppressed, not a geographic one"[240] (translation of the author).

Although multicultural constitutionalism is, according to Raquel Y. Fajardo's division, the pioneer, introducing the movement into Latin American legal history, it is also the most timid in terms of reaching its goals. According to the author, these first Constitutions were born out of the emergence of multiculturalism and growing indigenous demands. In her words, "[i]n this cycle, the constitutions introduce the concept of cultural diversity, the recognition of the multicultural and multilingual configuration of society, the right –individual and collective- to cultural identity and some specific indigenous rights"[241] (translation of the author).

Furthermore, Convention No. 107 of the International Labour Organisation of 1957 also influenced the new legislations[242]. The so-called Indigenous and Tribal Populations Convention of

[238] Raquel Z. Yrigoyen Fajardo, 'El horizonte del constitucionalismo pluralista: del multiculturalismo a la descolonización' in César Rodríguez Gravito (ed) *El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI* (1st ed, Veintiuno Editores 2011).
[239] Ibid.
[240] Julio José Araujo Junior, 'A constituição de 1988 e os direitos indígenas: uma prática assimilacionista?' in Manuela Carneiro da Cunha and Samuel Rodrigues Barbosa (eds), *Direito dos povos indígenas em disputa* (Editora Unesp 2018) 194.
[241] Fajardo (n 238).
[242] Pedro Lenza, *Direito Constitucional esquematizado* (23th ed, Saraiva Educação 2019) 77.

1957 constituted the beginning of international protection of indigenous rights. Its objective was to "establish international parameters for the protection of indigenous peoples" (translation of the author) and opened the door for the elaboration of international texts on the subject. Despite its pioneering spirit, it suffered numerous criticisms due to its clear integrationist approach, with an explicit assimilationist intention[243]. In this context, we can observe the provisions of the Preamble of the treaty:

> Considering that there exist in various independent countries indigenous and other tribal and semi-tribal populations which are not yet integrated into the national community and whose social, economic or cultural situation hinders them from benefiting fully from the rights and advantages enjoyed by other elements of the population

Article 2 of the Convention also exposes the integrationist objective:

> 1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.
> 2. Such action shall include measures for--
> […]
> (b) promoting the social, economic and cultural development of these populations and raising their standard of living;
> […]

Another important point about Convention n. 107 is the view of inferiority adopted in relation to the Indian. Thus, when conceptualising who are the subjects of the rights defined by the Convention, article 1 sets out:

> 1. This Convention applies to--
> (a) members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
> (b) […]

Convention n. 107 outlined the international context in which the Constitutions of the first cycle were adopted. Thus, its principles and norms ended up influencing some aspects of the constitutional texts approved at the time. Nevertheless, the Charters of multicultural constitutionalism managed to break with the integrationist and assimilationist vision offered by the treaty, anticipating what would be the future of international law.

[243] Flávia Piovesan, *Direitos humanos e o direito constitucional internacional* (17th ed, Saraiva 2017) 316.

The 1982 Constitution of Canada was the first of this cycle, due to the recognition of the country's multicultural heritage and the incorporation of indigenous rights. The other Charters that were part of this first phase of the movement were the Constitutions of Guatemala (1985), Nicaragua (1987) and Brazil (1998). As the last of the cycle, the Brazilian Constitution of 1988, ended up being in the shadow of plurinational constitutionalism, preceding some of its characteristics[244].

The second cycle includes the Constitution of Colombia (1991), Mexico (1992), Paraguay (1992), Peru (1993), Bolivia (1994), Argentina (1994), Ecuador (1996/1998) and Venezuela (1999)[245]. Raquel Y. Fajardo defines this moment of the movement as one in which "the constitutions affirm the right (individual and collective) to cultural identity and diversity, already introduced in the first cycle, and also develop the concept of "multiethnic/multicultural nation" and "pluricultural State""[246] (translation of the author). Furthermore, pluralism and cultural diversity are no longer mere concepts that surround constitutional texts and are effectively transformed into constitutional principles, in order to allow the adoption of the rights of indigenous and Afro-descendants peoples and other collective rights. In addition, many other indigenous rights are incorporated, mainly influenced by Convention n. 169 of the International Labour Organisation on Indigenous and Tribal Peoples in Independent Countries of 1989[247].

Convention n. 169 was the result of the review process to which Convention n. 107 was submitted from 1980, after the numerous criticisms suffered on account of its integrationist and assimilationist aspect. Thus, the new treaty sought to

> introduce a new paradigm for understanding the rights of indigenous peoples. This new paradigm is characterised by the right to diversity, the recognition of indigenous peoples' own identity, their right to participation, the right to land, as well as the principles of ethnodevelopment and self-determination. Convention no. 169 innovated by recognising the right to respect for the identity of indigenous peoples, their specificities and cultural diversity.[248] (translation by the author)

Thus, the new Convention broke, at the international level, with the integrationist paradigm, adopting the "right to difference", in order to recognise indigenous peoples' right to self-determination and to maintain their beliefs, rights, languages and way of life. This new perspective contextualised the endorsement of the Constitutions of the second cycle of Latin American constitutionalism and allowed the expansion of indigenous rights, such as the officialisation of native languages and lands,

[244] Fajardo (n 238).
[245] Lenza (n 242) 77.
[246] Fajardo (n 238).
[247] Ibid.
[248] Piovesan (n 243) 317.

consultation of indigenous peoples for some governmental acts and the adoption of new forms of political participation[249].

Another fundamental point of pluricultural constitutionalism was the introduction of legal pluralism, which seeks to break with the monist model of the State adopted until then. Legal pluralism recognises the diversities present within the national society itself and, from that, understands that the State cannot be the only source of Law, as in the monist model. According to author Antônio Wolkmer, "[t]he State is not the only place of political power, nor the exclusive source of the production of Law. Legal pluralism expresses a clash of normativity, leaving the poor, as new historical subjects, to fight to "make their law prevail""[250] (translation of the author). Thus, in this new moment, the indigenous political organisation is recognised, that is, their own authorities, laws, procedures and jurisdictions[251]. In this sense, legal pluralism brings an important guarantee of self-determination, which allows the Indians the power to establish their own institutions and organisational models, not only political, but also social and economic. This is fundamental for the real effectiveness of respect for difference, which does not seek to integrate all people and communities into a single format of society, but allows the coexistence of cultural diversity, without imposing a dominant culture on the others[252].

Antônio Wolkmer also explains that

> [t]he pluralism as a "philosophical" conception is opposed to the deterministic unitarism of modern materialism and idealism, as it advocates independence and the interrelation between different realities and principles. It is assumed that there are many sources or causal factors to explain not only natural and cosmological phenomena, but also the conditions of historicity that surround human life itself. The philosophical understanding of pluralism recognises that human life is constituted by beings, objects, values, truths, interests, and aspirations marked by the essence of diversity, fragmentation, circumstantiality, temporality, fluidity and conflict.[253] (translation of the author)

Legal pluralism was further deepened by the last phase of the movement, plurinational constitutionalism. This cycle covered only two Constitutions, that of Bolivia (2006-2009) and that of Ecuador (2008), and proposed a refoundation of the State, in order to make room for the plurinational State. This new form of government is based on the "explicit recognition of the ancient roots of indigenous peoples ignored in the first republican foundation and pose the historic challenge of

[249] Fajardo (n 238).
[250] Antonio Carlos Wolkmer, *Pluralismo jurídico: fundamentos de uma nova cultura no Direito* (3rd ed, Editora Alfa Omega 2001) 203.
[251] Fajardo (n 238).
[252] See Wolkmer (n 250) 171-175
[253] Ibid 172.

ending colonialism"[254] (translation of the author). Thus, indigenous peoples, who were previously understood as "diverse cultures", subject to rights and capable of originating rights, are now considered as original nations, granted self-determination and free determination[255]. Hence, the right of self-determination, introduced in the constitutions of the previous cycle, was expanded and better regulated, becoming an essential part of the model of these new States.

In this way, indigenous peoples become important subjects in the elaboration of the constitutional text and, from that, they have the power to define the new model of State that will be adopted, as well as its legal principles, institutions, etc.[256]. In this context, the indigenous vision is incorporated into the constitutional text. As an example, we can mention the incorporation of nature as a subject of law in the Constitution of Ecuador, the "*Pachamama*" ("Mother Earth" in the Quechua language), which breaks with the anthropocentric view from western society and brings the ecocentric vision adopted by the native Ecuadorian peoples[257]. Another example is the introduction of the theory of "*buen vivir*" ("living well" in English) in these two constitutional texts. This concept seeks to introduce a relationship with nature in which man does not try to dominate it, but understands himself as an integral part of it[258]. Thus, it seeks to break with the capitalist understanding of quality of life, which derives from economic growth and industrialisation, to give way to the indigenous understanding of well-being as the balance and good coexistence of the individual with his or her community and with nature. Thus, it is possible to conclude that "the constitutions of XXI century are explicitly part of a decolonising project and affirm the principle of legal pluralism, the equal dignity of peoples and cultures and the interculturality"[259] (translation of the author).

Furthermore, it is important to assert that the third cycle took place in the context of the approval of the United Nations Declaration on the Rights of Indigenous Peoples (2006-2007), which "emphasises - even more than Convention no. 169 - that indigenous peoples have the right to preserve their cultural identity" (translation of the author). In this way, the Declaration guarantees the right to self-determination, autonomy and self-government in various matters. But, despite the document being a great advance in relation to the protection of indigenous peoples at the international standard, especially at the United Nations level, it is important to highlight that to date there is no binding treaty

[254] Fajardo (n 238).
[255] Ibid.
[256] Ibid.
[257] Ibid.
[258] Louis J. Kotzé and Paola Villavicencio Calzadilla, 'Somewhere between Rhetoric and Reality: Environmental Constitutionalism and the Rights of Nature in Ecuador' (2017) 6:3 Transnational Environmental Law 401.
[259] Fajardo (n 238).

on the matter within the UN. This is due to the difficulty of reaching a consensus among States on some indigenous rights, especially in relation to the right to land and self-determination.

In this way, it is undeniable the countless advances towards the recognition of indigenous law, at the national (in Brazil), regional (in Latin-America) and international (especially within the UN and ILO systems) levels. Otherwise, despite the explicit achievements, there are still many flaws, in the legal and practical field, so that these rights are effectively safeguarded and the aboriginal peoples can live without Western imposition on their language, beliefs, customs and way of life. Thus, although Latin American constitutionalism offered a necessary opportunity to break with the colonial models adopted by the States in Latin America, it was still not enough to contain the imposition of Western culture on other peoples of the continent and establish a balance and a complete acceptance and respect for its multiculturalism.

CHAPTER VII - CONCLUSION

This research sought to delineate the issue of the indigenous peoples from different points of view to build a complete understanding of how colonial relations influence these populations to play a vulnerable role in the national and global scenario. At the beginning of the research, aspects of the relationship between the European and the Brazilian Indian were brought up, as well as their perspectives on each other (Chapter 2). There were several cultural clashes between the two social groups, dating back to the moment of their first meeting, with conflicting perceptions of beauty/ugliness[260], work[261] and religion[262], for example. With the time of interaction, these understandings reached deeper aspects of these societies, presenting dual views related to the way each one of them organises itself socially[263], relates to the environment[264], establishes property and uses the land[265]. These conflicts were fought on both sides and ended up shaping the way in which each of these macro-ethnic groups interact and observe each other.

Furthermore, this dissertation has analysed how these cultural differences were used to build an understanding of the superiority of European culture over others. Within this idea, the conception of the West and the elites of the South about the indigenous as a primitive, inferior and backward being, since they represent the past in the historical line constructed by the colonial narrative, was examined[266]. This understanding was taken to the Brazilian reality, which since the beginning of the State has been based on countless violence against these peoples, whether in the aspect of physical aggression, such as land expropriation, erasure of different cultures and social exclusion.

In Brazil, the elite has always been formed by the colonisers and their descendants and, therefore, their values and thoughts are very well reproduced in the portion of the population that holds power in the country. Thus, the Indian remained as the one who represents an obstacle to the advances of civilisation, not only because they prevent the economic exploitation of their lands, but also because they represent a part of Brazilian society that conflicts with the interests of the rest. As

[260] Darcy Ribeiro, *The Brazilian People: the formation and meaning of Brazil* (Gregory Rabassa tr, University Press of Florida 2000) 19, 20.
[261] Ibid 36.
[262] Pero Vaz Caminha, *A carta* (Ministério da Cultura, Fundação Biblioteca Nacional 1500).
[263] For an example of the social organisation of the Guarani tribe: Almires Martins Machado and Rosalvo Ivarra Ortiz., 'O sistema jurídico guarani: história, memória e cosmologia'(2018) 20:40 Revista jurídica UNIGRAN 61.
[264] See Ailton Krenak, *A vida não é útil* (1st ed, Companhia das letras 2020.
[265] Karin Mickelson, 'The Maps of International Law: perceptions of nature in the classification of territory' (2014) 27:3 Leiden Journal of International Law 621.
[266] Anibal Quijano, 'Coloniality of Power, Eurocentrism, and Latin America' (2000) 1:3 Nepantla: Views from South 533.

a result, Brazil is experiencing a continuous scenario of extermination against native peoples, in addition to the perpetual struggle for their lands (Chapter 3).

International law, as well as human rights, perpetuate at the international level this colonial relationship of imposing Western thinking on others. Thus, scholars from the Third World Approaches to International Law movement criticise this branch of law because of its imperialist and hegemonic character. Despite the movement admitting that there are benefits in international law and human rights, they present criticisms regarding its predominantly western character and its universalisation, claiming to have strong similarities to the civilisation processes invested in the colonial periods[267].

In this context, the historical evolution of Brazilian law regarding the indigenous issue was analysed. Thus, the gradual inclusion of these rights in the Brazilian Constitutions over time was demonstrated, which evolved from an integrationist and assimilationist perspective to an understanding of the right to difference and recognition of the multiculturalism of the State in the 1988 Constitution[268].

At the end of the research, the theme of Latin American constitutionalism was brought up, of which the Brazilian Constitution of 1988 was part. This movement was particularly interesting because its main objective was to break with colonial relations, through the expansion of indigenous rights and the autonomy and political participation of these peoples. This process encompassed many of the region's Constitutions and represents the need to recognise the multiculturalism and plurinationality existing in these territories[269].

Thus, this thesis sought to demonstrate the importance of recognising Brazil's colonial past to understand the place of the indigenous in Brazilian society, as well as the origin of their situation of vulnerability. Issues such as expropriation, violence, environmental degradation and suffering resulting from poverty are problems that should not be solved singly, but must be understood as part of a larger issue. That is, these conflicts do not occur separately and, therefore, should not be resolved separately. This is because they stem from the historical and social context of the Brazilian State,

[267] See Bhupinder Singh Chimni, 'Third World approaches to International Law: A Manifesto' (2006) 8:1 International Community Law Review 3 and Makau Mutua, 'Savages, victims and saviors: the metaphore of human rights' (2021) 45:1 Asian studies review 48.
[268] See Rosane Lacerda, *Os povos indígenas e a constituinte* (CIMI - Conselho Indigenista Missionário 2008).
[269] Raquel Z. Yrigoyen Fajardo, 'El horizonte del constitucionalismo pluralista: del multiculturalismo a la descolonización' in César Rodríguez Gravito (ed) *El derecho en América Latina: un mapa para el pensamiento jurídico del siglo XXI* (1st ed, Veintiuno Editores 2011).

where Western culture has been imposed on native peoples since the colonial period. This imposition occurs through the constant attempt to form a unique national culture for the entire Brazilian society, in addition to seeking the integration of indigenous populations into that dominant one, thus resulting in the vulnerability of these peoples[270]. As an example demonstrated by the research, this situation was an explicit reality in the Brazilian Constitutions prior to 1988 and in the ILO's Convention n. 107 (Chapter 5.2 and 6).

It is possible to conclude that movements that seek to break with these colonial power relations and give voice, rights and capacity of self-determination to non-Western cultures are extremely important, as they open space for the existence of different cultures and ways for people to be and to organise themselves. This ends up mitigating many humanitarian problems that result from western imposition, such as the dispute over land and violence against indigenous peoples, which comes from the idea of superiority of white peoples in relation to others. Thus, breaking with colonial thinking and power structures is essential for a more diverse and healthy world, where the countries of the Global South are not considered inferior for failing to achieve the values chosen by Europe, but seek solutions to achieve the aspirations of each of its own people.

[270] See Carlos Frederico Marés de Souza Filho, *O renascer dos povos indígenas* (1st ed, Editora Juruá 1998) 62.

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