

MULTICULTURALISM AND HUMAN RIGHTS IN INDIGENOUS TRADITIONAL PRACTICES: A BRIEF ANALYSIS FROM THE BRAZILIAN LAW PROJECT Nº 1.057/07

O MULTICULTURALISMO E OS DIREITOS HUMANOS NAS PRÁTICAS TRADICIONAIS INDÍGENAS: UMA BREVE ANÁLISE DO PLURALISMO JURÍDICO A PARTIR DO PROJETO DE LEI Nº 1.057/07

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Abstract: The practice by some Brazilian indigenous people of sacrificing children for reasons that go according to each indigenous group led to the creation of Law Project number 1.057/2007, also known as “Muwaji Law”. Such proposal discusses about the criminalization of this practice, which is evaluated harmful as regards the treatment of children. It happens that, for some groups, such cultural manifestations are not conceived as detrimental because they have a different conception of life. Therefore, the discussion focuses on the debate about the (im)possibility of relativizing the right to life, due to the right to difference, to multiculturalism. In this way, the present article aims to analyze, at first, the conception of culture and cultural identity to, from this, deal with cultural diversity, based on the right to difference, as well as the anthropological theory derived from it, the cultural relativism and their divergence from ethnocentrism. Subsequently, the historical construction will be approached for the guarantee of human and fundamental rights, in order to understand the fundamental role of the dignity of the human person for the realization of these rights. Finally, the Law Project nº 1.057/2007 will be appreciated, exposing the arguments of the

existing theories on the subject, pointed out in the other chapters, concluding for the need of a legal pluralism against the plurality of cultures that cover Brazil.

Keywords: Human and Fundamental Rights; Indigenous Infanticide; Legal Pluralism; Multiculturalism.

***Resumo:** A prática por parte de alguns povos indígenas brasileiros de sacrificar crianças por motivos que variam de acordo com a crença de cada grupo indígena motivou a criação do Projeto de Lei n° 1.057 de 2007, também conhecido como “Lei Muwaji”. Tal proposta discorre acerca da criminalização dessa prática, avaliada como nocivas no que se refere ao tratamento das crianças. Ocorre que, para alguns grupos, tais manifestações culturais não são concebidas como lesivas, porque possuem uma concepção diversa sobre a vida. Destarte, a discussão tem por foco o debate acerca da (im)possibilidade de relativização do direito à vida, em razão do direito à diferença, ao multiculturalismo. Desta forma, o presente artigo possui como objetivo analisar, num primeiro momento, a concepção de cultura e identidade cultural para, a partir disso, tratar da diversidade cultural, com base no direito à diferença, assim como a teoria antropológica dela decorrente, o relativismo cultural e sua divergência ao etnocentrismo. Posteriormente, será abordada a construção histórica para a garantia dos direitos humanos e fundamentais, a fim de que se compreenda o papel fundamental da dignidade da pessoa humana para a efetivação de tais direitos. Finalmente, o Projeto de Lei n° 1.057/2007 será apreciado, expondo-se os argumentos das teorias existentes acerca do tema, concluindo-se pela necessidade de um pluralismo jurídico frente à pluralidade de culturas que abrangem o Brasil.*

Palavras-chave: Direitos Humanos e Fundamentais; Infanticídio Indígena; Pluralismo Jurídico; Multiculturalismo.

SUMMARY: 1. Introduction. 2. Multiculturalism and its repercussions. 3. Human and fundamental rights. 4. Law project n° 1.057/07 and its repercussions. Conclusion. References.

1 INTRODUCTION

Brazil is composed, due to historical aspects of colonization, by different ethnicities, beliefs and races, that is, the Brazilian society is coated by a plurality of cultures, so that each one of them has its own set of language, kinship, forms of life, finally, “worldview”. It is from this perspective that is questioned, increasingly, the incompatibility of the right to recognize and validate, on the one hand, in the legal order, several cultural manifestations established by the monist estate and, on the other, the role of this estate ahead of cultural practices that transgress certain rights guaranteed by normative instruments.

An example of this is the Law Project n° 1.057/2017, popularly known as “Muwaji Law”, which is being processed by the National Congress, disposed about the criminalization of some traditional practices of some indigenous peoples, among them, what it was stipulated to call “indigenous infanticide”, which consists in the sacrifice of the newborn by showing some of the requirements determined by the group in which it is inserted. Through this Law Project, it is intended

to inhibit this custom, so that fundamental rights, guaranteed by the Brazilian Constitution, and human rights, guaranteed internationally, are enforced.

As a reason for the approval of referred Project, there is the guarantee of the most relevant legal asset, life, under the justification that the child is guarded the dignity of the human person. It happens that, through anthropological studies, it was verified that Brazilian indigenous groups do not consider the practices described in the Law Project as harmful, since they have a unique conception of life and human being, different from the meanings of Western culture.

Therefore, focusing on the discussion between the right to cultural diversity and the right to life based on the principle of the dignity of the human person, that this present article aims the reflection on the impasse existing between the customs of different cultures within of a national territory that violate the rights guaranteed in the local legal order and the role of the State in the face of these transgressions with the justification of protecting human and fundamental rights guaranteed throughout history, having as scope the Law Project n. 1.057/2007.

Finally, it is pointed out that, for the accomplishment of this documentary study and qualitative bibliographic of applied nature, the deductive method was used as a form of approach based on general premises and aiming at the analysis of a concrete situation, such as the criminalization of indigenous infanticide.

2 MULTICULTURALISM AND ITS REPERCUSSIONS

The concept of culture is complex, since it encompasses various aspects of human groups. Culture is fundamentally associated with the process of building societies, symbolically, dynamically, which accompanies the development of individuals and social groups, expressing their language, their values, their behaviors, and ultimately their identity.

The anthropologist Geertz (2008, p. 4), following the Weberian line, in which the idea is defended that man is an animal that lives attached to a web of meanings created by himself, maintains that culture is not only this web, as their analysis. Thus, since human beings feel, perceive, reason, judge and act under the command of such symbols and their meanings, human experience is characterized by a meaningful, learned and finally interpreted sensation, so that Geertz (2008, p.21) advocates an interpretive analysis, as if culture were an interpretive science that seeks meaning, formed essentially by semiotics.

Regarding this, one has as:

It is through cultural patterns, ordered clusters of meaningful symbols,

that man finds sense in the events through which he lives. The study of culture, the accumulated totality of such patterns, is therefore the study of the machinery that individuals or groups of individuals employ to guide themselves in an otherwise obscure world. (GEERTZ, 2008, p.150)

It can be affirmed, hence, that culture ends up delineating human behavior, since it produces symbols, that is, instructions of conduct and/or reflections and insightful directions that guide the lives of individuals.

Consequently, the idea is adopted that the formation of a culture is full of elements and meanings that will identify this people and differentiate it from other communities; thus, arising the cultural identity, which is a complex of symbolic relations, which are socially shared throughout history and that establish the connection of determined values, being given by means of manifestations.

That is, cultural identity is constructed (HALL, 2005: 47), so that “a national culture” is a discourse - a way of constructing meanings that influences and organizes both our actions and our conception of ourselves” (HALL, 2005, p.50). For Hall (2005, p.8), identity varies according to the way in which the subject is questioned or represented; it is therefore a dynamic process.

Because of this, one of the greatest difficulties currently encountered in seeking the integration/coexistence of different cultures within the same social context, since each culture has a particular conception about the meanings of its symbology, and it is not always that the perception on the symbols coincide, is associated with the fact that one dominant cultural group (the Western) sees the different with eyes of superiority and the minority groups (the “Other”) being inferior and representing a threat to the preponderant society, because they hurt their own cultural identity (ROCHA, 2009, p.9).

It is in this context that one understands the difficulty in considering the “Other” according to their values, a characteristic of ethnocentrism, which, in Rocha’s words (2009, p.7), is elucidated as:

[...] a vision of the world with which we take our own group as the center of everything, and the other groups are thought and felt by our values, our models, our definitions of what existence is. On the intellectual plane can be seen as the difficulty of thinking the difference; on the affective plane, as feelings of strangeness, fear, hostility, etc.

Ethnocentrism evaluates different cultures according to the standards of their own society, which are used to impart values (whether correct or not) to the customs of the “Other.” In view of this picture, one can perceive that, since it is not allowed to give voice to the different so that it can say of itself, the image of it turns out to be distorted, prejudiced and manipulated, from ideological

longings (ROCHA, 2009, p.17), and the ideals of the “I” group, often harboring a xenophobic, racist, and ethnocidal sentiment.

On the other hand, in order to understand the “Other”, arises at the moment when the anthropological study sought a no more comparative and descriptive ethnographic method, the cultural relativism, which is shown by Rocha (2009, p.20), as:

When we see that the truths of life are less a matter of the essence of things and more a matter of position: we are relativizing. When the meaning of an act is seen not in its absolute dimension but in the context in which it happens: we are relativizing. When we understand the “other” in their own values and not ours: we are relativizing. Finally, to relativize is to see the things of the world as a relationship capable of having had a birth, capable of having an end or a transformation. See things in the world as the relationship between them. To see that truth is more in the eye than in that which is looked upon. To relativize is not to transform difference into hierarchy, into superiors and inferiors, or into good and evil, but to see it in its dimension of wealth by being difference.

In this way, the meanings of the dominant group cannot be called “universal truths” when the “Other” is analyzed, that is, one cannot reduce what is different from the moral judgment of one’s practices and customs, but rather to observe it on the basis of its characteristics and its elements. Da Matta (2010, p.15) reflects that relativism seeks the “transformation of the familiar into exotic and from exotic to familiar”. Cultural relativism is therefore a method that consists in the pretension to understand/interpret the symbolic senses given by other peoples/cultures other than their own and therefore must abstain from the ethnocentric view.

As key point to acceptance the “Other”, (Kymlicka, 2010, p.232) argues that:

[...] multicultural demands are interpreted by means of a set of ideas related to cultural authenticity and group identity. “Culture” is typically interpreted in terms of (or reduced to) a number of distinctive practices, preferably “traditional” or “authentic” practices. It is then said that these practices are essential for the identity of the group and therefore for the identity of the members individually considered, and should then be harmonized and protected by multicultural policies.

Souza Filho (2003, p. 77), in turn, explains that multiculturalism becomes essential before a State that protects, recognizes and seeks to convert all rights into individual. This is because society and its legal system have been constructed on the basis of a state limited by individualism, which transforms peoples’ collective rights into individual rights. Thus, multiculturalism plays a fundamental role as an emancipatory object, consisting, for this purpose, in the

defense of identity and cultural diversity, as well as its self-determination, since the intersection between cultures should not be considered as an overlap of a “dominant” tradition in the face of a “minority” culture, so that a multicultural society should be seen as an exchange of experiences among the most diverse communities (APEL, 2000, p.14).

Therefore, multiculturalism becomes indispensable once which seeks to change the societies considered as plurals that are exposed as homogeneous and founded on a single culture (MACHADO, 2010, p.159). And it is for this reason that the proponents of cultural relativism, based on multiculturalism, point out that the consequent differences of cultural diversity must be recognized and accepted, since each culture has its own meaning about symbols (language, art, kinship, clothing, etc.), then abstaining from the ethnocentric view that the dominant culture, the Western culture, is the only one to be taken into account.

3 HUMAN AND FUNDAMENTAL RIGHTS

In spite of the barbarities perpetrated during World War II and in retaliation for the brutalities and horrors committed by Nazism, it was aimed to recognize human rights as a matter of international concern and interest; hence, overtaking the control of the national state or its competence. Piovesan (2010, p. 122) points out that:

At a time when human beings have become superfluous and disposable, at the moment in which the logic of destruction is prevailed, in which the value of the human person is cruelly abolished, it is necessary to reconstruct human rights as an ethical paradigm capable of restoring the logic of the reasonable. The barbarism of totalitarianism meant the rupture of the paradigm of human rights, through the denial of the value of the human person as a source of law. Faced with this rupture, the need to build human rights emerges.

Thus, it is understood that, from the strengthening of the totalitarian state in the 1930s, humanity became aware of the supreme value of human dignity (COMPARATO, 2004, p. 55). And in view of this, the international community has been obliged to reconstruct human rights as an ethical and moral reference, so that it is not restricted only to the internal scope of the State, but also to legitimize it as an international interest (PIOVESAN, 2010, p 122).

The process of internationalization of human rights is based on limiting the sovereignty of the State, since this is one of the main violators of human dignity. An example of this occurred in 1945-1946 with the formation of the Nuremberg Tribunal, a military court, which had the competence to prosecute

those responsible for crimes against humanity and war crimes committed by the military and political authorities in the period of Nazi Germany and in Imperial Japan, it is of great importance for the reconstruction of human and fundamental rights, since it gives individuals the protection of their rights at the international level (PIOVESAN, 2010, pp. 124-128).

In this way, in order to strengthen this process was created in 1945, the United Nations, marking a new international order for the maintenance of peace and international security (PIOVESAN, 2010, p. 130), so that, from this conception, contemporary thinking is inaugurated, recognizing and affirming the natural rights of men (COMPARATO, 2004, p. 222).

The Universal Declaration of Human Rights, approved by the United Nations General Assembly on December 10, 1948, having as pillar ideals of the French Revolution, recognized, in the universal sphere, the supreme values of equality, freedom and fraternity among men (COMPARATO, 2004, 222), contained in Article I, which states that “all people are born free and equal in dignity and rights. They are endowed with reason and conscience and must act in relation to each other in the spirit of brotherhood”.

Having begun with the Declaration of Independence of the United States and the Declaration of Man and the Citizen of the French Revolution, the Universal Declaration of Human Rights sustains the culmination of a long ethical process that culminated in the equality of all human beings in their dignity as a person as universal recognition, that is, as a source of all values, regardless of race, color, language, sex, religion, opinion (COMPARATO, 2004, p. 225).

Thus, human rights came about as a result of the association of diverse sources, from the traditions rooted in the numerous civilizations to the union of philosophical-juridical thoughts (MORAES, 2011, p.2), theorized from the dissemination of the natural “justicians” and illuminist views, insofar as certain indispensable and inalienable rights were recognized to an individual for simply being part of the human species.

Fundamental rights, in turn, erupted only at a time when human rights precepts were constitutionalized, that is, they were incorporated into the Constitutions of the states-nation from which they became adherents. In a simple way, they were consecrated from the need to establish a minimum relation of human rights in a written document, derived from the popular will.

On the existing approaches between human rights and fundamental rights, Sarlet (2001, p.29) discipline that, “there is no doubt that fundamental rights, in

a sense, are also always human rights, in the sense that their holder will always be the human being, although represented by collective entities". Although used as synonyms, and even having as the basic point the focus and protection of the dignity of the human person, the terms have the greater distinction that fundamental rights refer to those rights of the man recognized and codified in the constitutional scope of a given State, while human rights concern the legal positions that are recognized to the human being, in the international sphere, independently of its connection to a specific constitutional order; and therefore, aiming at universality (SARLET, 2011, p.29).

In this way, Sarlet (2011, p. 32) points out that:

[...] human rights are related to a jusnaturalist (justicialist) conception of rights, whereas fundamental rights relate to a positivist perspective. In this sense, human rights (as inherent in one's own human condition and dignity) end up being transformed into fundamental rights by the positivist model, incorporating into the positive system of law as essential elements.

In addition, human rights and fundamental rights, according to Bobbio thought are necessary presuppositions for the functioning of the instruments that define the democratic regime, regardless of its foundations, that is, the constitutional norms which proclaim these rights are introductory rules that allow the unfolding of the game in a State and in a society, that seeks democracy (BOBBIO, 1997, 72).

With regard to the dignity of the human person as a core element of human rights, in view of its jusnaturalist conception, it is a foundation of the State, since it establishes one of the bases that legitimates and, at the same time, restricts its action, that is, in which it is objectively prevented that the public power commits violations of individual dignity of its citizens, determines that the State always has the scope to promote and guarantee a life with a minimum of dignity for all. That is to say, by using the dignity of the human person as a task, the State is obliged, in addition to the obligation to respect, the duty to promote conditions that provide and remove the barriers that make living with dignity difficult (SARLET, 2002, p. 109).

Therefore, one indulges in the possibility of establishing limits and restrictions on the dignity of the human person, in order to relativize it when faced with another cultural system, such as the indigenous question to be addressed below.

4 LAW PROJECT Nº 1.057/07 AND ITS REPERCUSSIONS

The practice by some Brazilian indigenous peoples of sacrificing children, whether for abandonment after birth, or by burial, among others, that meet the requirements stipulated by the community, as being a carrier of some physical or mental weakness, led the federal deputy Henry Afonso (PT/ACRE) to present the Law Project nº 1.057/2007, also known as “Muwaji Law”.

This proposal addresses the fight against these indigenous practices, which are considered to be harmful to the treatment of children; pretending, consequently to prevent them, with the aim of implementing human and fundamental rights, as well as all the normative instruments for the protection of life and childhood, which are conjectured in our legal system.

Accordingly, the content of said Project addresses “the fight against harmful traditional practices and the protection of fundamental rights of indigenous children, as well as belonging to other so-called non-traditional societies”, and exemplifies in its article 2 traditional practices which are considered to be harmful.

There is also criminal liability for non-Indians, attributed in the content of this Project in its articles 4 and 5, regarding the crime of omission of relief, that is, when one is aware of the situations described and does not communicate to the authorities established in the text, which are FUNASA, FUNAI, Guardianship Council, judicial and police authority, so that these entities, in case of knowledge about the facts without adopting appropriate measures, will also be held responsible for the same crime.

In cases where the group to which the child is inserted persists in the maintenance of the traditional practice considered to be harmful, article 6 states that it is the duty of the competent authorities to withdraw it provisionally; thus, placing it in shelters maintained by governmental and non-governmental entities, or further away from the conviviality of their parents. In addition, it establishes the unique paragraph of such article that, if the options are frustrated, the child can be directed to the adoption.

In this way, the Law Project introduces the issue of relativization of the right to cultural diversity, established in article 231 of the Brazilian Federal Constitution, since the interpretation of the validity of cultural manifestations must be made in accordance with the legal system (non-Indian and created by this).

For these reasons, since its dissemination, the Law Project nº. 1.057/2007 has been criticized and generated controversy not only among the indigenous communities involved, but also among human rights defenders, such as jurists

and religious entities, and anthropologists and indigenists for limiting the cultural manifestation of indigenous peoples who practice such customs considered harmful on the basis of the predominance of the dignity of the human person, built from a non-indigenous Western reality.

According to the research carried out by the anthropologist Marianna Assunção Figueiredo Holanda, in her master's dissertation entitled "Who are the human of the rights? On the criminalization of indigenous infanticide", life in the indigenous sense is usually given through a social construction, that is, it is through interaction with the group in which it is inserted that the child gradually has a character of person (HOLANDA, 2008, p.16), so that it is:

It is important to note that, unlike our biomedical convictions, among Amerindians there is no causality, or even simultaneity between "birth" and belonging to social life. A child who is "born" is not immediately made human, and therefore procreation is not a guarantee of kinship. This is because, for them, the consubstantiality that makes us consanguineous and related is not a fact, it is not a gift, but a condition to be continually produced by exchanges and relationships. That is why we talk about the elaboration of the person or of the personality, a continuous process of learning to be human being.

In this context, it is worth noting the prominence that the social and community conviviality has in order to conceptualize indigenous life. The meaning of what is to be human, as well as the organization of the community, for the indigenous peoples, are mainly attributed to the fundamental role that the body plays (SEEGER, DAMATTA, CASTRO, 1987, p. 13), a manner that conception of life affects the social and collective sphere, insofar as the perception of the individual is associated with corporality, that is, it is related to the exchanges, the reciprocities and the interactions (SEEGER; DAMATTA; CASTRO, 1987, p. 19), be it with the components of the same group, or with nature, with the non-Indian (HOLANDA, 2008, p. 37).

Therefore, it is possible to infer that the condition of being human is produced by the course of socialization. Thus, Holanda (2008, p. 38) explains that:

The status of person in Amerindian ontologies is not exclusive to humans beings, just as there may be human beings who are not going to become people. The relational dynamics that will form (or not) a personality, through the body reference, goes through the appearance: a continuous process of relationship and differentiation. It is the belonging to a community of substance (material and immaterial) that makes us people and bodies in elaboration, a movement that is condition for life.

The child may not be declared human by Amerindian society if some cases are evidenced, such as being the son of a single mother, has a physical and/or mental disability, is a twin, among others (HOLANDA, 2008, p. 59), since “it is the relations that will tell who is able or not to transform, to humanize or not to make social sense. It is the social that gives rope to the Amerindian world, which is the basis of its conceptions of what it should be” (HOLANDA, 2008, p. 44).

For this reason, for indigenous people, if the child is included in one of the hypotheses, it will be seen as incapable of reaching the human condition, so it cannot remain alive. And if the child is not considered a person, there is no occurrence of a crime, since, for that, the death of an individual is assumed. It is in this sense that Holanda (2008, p. 44) argues that:

[...] we are talking about *systems in which to die is necessary, rather, to belong*. This indicates that in order to think of the denial of the status of person to some beings we are not talking about death, crime or movement. The awakening of the social universe is as gradual a process as the acquisition of humanity; this is even the function of funeral rites, to withdraw the consubstantial. Rights that are not made for newborns that never belonged. No social mark is registered in these beings (g.n.)

As far as the right to cultural diversity is concerned, because Brazil is a multicultural country, the Brazilian Federal Constitution of 1988 has introduced in its article 231 the recognition of cultural plurality and multi-ethnicity, in order to guarantee the obligation of state power to respect and protect the cultural, economic and social rights of indigenous communities:

Thus, the Constitution is innovative because it breaks with the integrationist tradition, in the sense that indigenous communities are guaranteed the possibility of managing their own legal and administrative systems in their territories, in order to attest to the respect on the part of the State of the Brazilian Amerindian peoples to be able to express their identities (SOUZA FILHO, 2008, p.19).

Another international instrument used to guarantee collective and individual rights to the indigenous peoples is Convention 169 of the International Labor Organization, approved in 1989 and incorporated into the Brazilian legal system in 2004, which included the participation of representatives and indigenous organizations and which recognized the Indians as collective subjects of law, possessing ethnic identity and imprescriptible historical rights, as well as deliberated on the duties and responsibilities of the State to guarantee indigenous rights (SOUZA FILHO, 2008, p. 11).

In this aspect, Barbosa (2001, p. 228) points out that it was by virtue of this convention that indigenous peoples sought to recognize their ability to

control their own institutions, forms of life, identity, language and economic development. Thus, there is an international concern to ensure the rights of indigenous peoples, and their cultural manifestations being valid.

However, since there is not only a single concept of what life is, for example, since symbolic meanings vary from one culture to another, the right to cultural diversity is not fully realized within our juridical order, because it maintains the understanding that the monist state is only the producer of legality.

About that, Beltrão (2009, p. 5) asserts that:

They are ethnically differentiated communities, that are subject to the ethnocentricity of the society non-indigenous and, therefore, state legislations and policies that often do not understand and respect cultural diversity (...). Indigenous peoples cannot sit on the dock and be summarily “accused” of condemned practices in the Western world (...). The accusations not clarified, allow the return of authority and the limitation of freedom and rights.

As for the problem exposed, questioning the universalism of human and fundamental rights in relation to the nets of symbolic meanings of each culture in Brazil is pertinent, and the Law Project is one of the most diverse examples of conflict between human and fundamental rights and cultural diversity. It is observed that societies are not completely isolated (LÉVI-STRAUSS, 1952, p.17), that is, even if distant, the transfer of knowledge and information between different societies will always naturally happen, however in different degrees (COLAÇO, 2008, 44). Thus, only through alterity and tolerance, insofar as “by accepting the existence of the ‘Other’, one ends up recognizing in the world a place of many peoples” (KRENAK, 2001, 72) creating a greater and effective equality between different societies.

It is in this sense that the divergences between cultural relativism and human rights must be based, seeking as a solution the valorization of the dialogue between the different cultures, in order to overcome conflicts and agreement between them. According to Boaventura de Souza Santos (1997, p. 112), “all cultures tend to regard their maximum values as the most comprehensive, but only Western culture tends to formulate them as universal”. That is, each culture ponders its own meanings of the symbologies as the correct one, nevertheless the western one has like characteristic first the fact of wanting to impose its validity before the “Others”.

And it is on the basis of this judgment that the anthropologist maintains that human rights must admit an emancipatory policy of general domination

and local legitimacy. This refers to the need for human rights to operate in a cosmopolitan manner, that is, to assume a multicultural rather than a universal dimension (SANTOS 1997, p. 112). This is why multiculturalism is a condition for a harmony between not only local and global relations, in order to provide a counter-hegemonic human rights policy (SANTOS, 1997, p. 115).

Through this perspective the intercultural dialogue has, as a reference, the exchange of cultural information, that is to say, the transference between knowledge of systems of different symbols, so that, for this to happen, it must be recognized that each culture has its own conception of the dignity of the human person, as well as to recognize the incompleteness in relation to these conceptions (SANTOS, 1997, p. 116).

It is from this understanding that pluralism is linked to alterity and cultural diversity as a counter-hegemonic form, since it stimulates, effectively, the relation between the new subjects and the institutional power, creating a participatory community process, so as to establish more pluralist resources for the exercise of democracy (WOLKMER, 2008, p.186).

As a result, the importance of pluralism is to understand the different multicultural elements, so that, because by having a society formed by multiculturalism, pluralism must be implanted as an instrument that recognizes the collective values consolidated in the cultural extension of each community, thus encouraging the participation of minority peoples and ethnic groups (WOLKMER, 2010, p. 41).

It is, in this perspective, that legal pluralism is defined as a counterpoint to the extremes of legal monism, since it is based on autonomy, difference, tolerance and interculturality (WOLKMER, 2010, p. 42; SQUEFF, 2016, p. 185-190). Thus, pluralism “has as its intent, autonomous and authentic normative practices generated by different social forces or plural and complementary legal manifestations, whether or not can be recognized, incorporated or controlled by the State” (WOLKMER, 2008, p 189).

Legal pluralism, in addition to discussing the possibility of a set of different centers of elaboration of juridical norms within a same society, that is to say, they sustain the existence of legal confirmations not only came from the State, admits the viability of the individuals being subject to interdependent and autonomous norms (SANTOS, 2009, p.38). Hence, legal pluralism is sought as an alternative, an effective way out of some social problems, which is determined by the presence of a right not deriving from the State.

CONCLUSION

Based on the present research, it can be seen that culture is conceived as a web of meanings about symbols that are observed particularly by each community, involving art, music, the way of living, language, kinship, among others factors. Brazil, due to its political-economic-historical-social aspect, is composed of vast cultural diversity, which, although guaranteed by the Federal Constitution of 1988, finds difficulties for the maintenance of its traditions.

In this respect, theories were developed in order to questioning the universality of human rights, as supported by a Western hegemonic view. Thus, we have relativistic doctrines, which do not accept the presence of universal values, and we must observe the individuality of each culture according to its conceptions about a certain subject. In contrast to the aforementioned doctrine, there are human rights defenders, who justify the universal jusnaturalist character of these rights in the sense that all men, regardless of the culture in which they are inserted, are intrinsically entitled to rights. The problem that can be seen after approaching the two theories throughout this work is the fact that they are not enough.

The argument used to approve the Law Project nº 1.057 / 2007 is that, although the right of indigenous peoples to recognize and practice their traditions is constitutionally recognized, article 231, of the Federal Constitution, must be analyzed according to the principle, basis and foundation of the Democratic State of Law, which is the dignity of the human person, as well as in accordance with fundamental rights and other norms conjectured in the Brazilian legal system that ensure and protect the child. Whereas, for the anthropological conception of relativism, such an article should be interpreted as having scope in the meanings between the most diverse cultures, since the indigenous have different conceptions about legal norms, about the concept of life, and, finally, about symbols.

Given that culture drives human behavior, we must provide inquiries and understand that there are many ways of perceiving the concepts of being human, of life, of justice, since Brazil has a vast plurality of cultures. It is in this sense, after reflections and questions brought from the formulation of this work, that the traditional indigenous practices, set forth in Law Project nº. 1.057/2007, cannot be criminalized, since it is verified that the measures proposed by the Law Project nº 1.057/2007 are based on Eurocentric and hegemonic meanings, ignoring the indigenous conceptions.

It should also be noted that the indigenous peoples involved in the debate did not participate in the preparation of the aforementioned project, which have the

right to participate in the legislative and political procedures that concern them, in accordance with ILO Convention 169, which determines the right of indigenous communities to consultation. Given these considerations, it is therefore possible to understand the meanings that are found in indigenous communities in Brazil, even before seeking a response to the demarcation.

Through dialogue, indigenous peoples should be given a voice, listening to what they have to say, so that cultural particularities cannot be overlooked, since they cannot be deprived of their right to self-determination and must be respected, with focus in tolerance and alterity, the differences, so that there is no need for legislative measures to “combat” these traditional practices called “harmful”.

From the establishment of a multicultural state, the full recognition of indigenous cultural self-determination and respect for cultural diversity can be given in Article 231 of the Federal Constitution of 1988 and in Convention 169 of the ILO.

In this perspective, in the context of legal pluralism, the State should appreciate the legal systems of each culture, so as to abstain from the absolute and unquestionable subjection of Eurocentric, colonialist, white and patriarchal state power, so that, if conflicts arise by virtue of interaction among peoples, should not impose a single plausible solution without ascertaining all other possibilities arising from legal pluralism rooted in the cultural plurality of the Brazilian State.

Thus, the multiplicity of cultures encompassed in Brazil is still ignored by state power and society as a whole, so that the pursuit of equality and justice is important for the realization of legal pluralism.

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