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"SANTERIA", RELIGIOUS FREEDOM AND ANIMAL RIGHTS: A CONFLICT APPROACH UNDER INTERNATIONAL LAW

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ABSTRACT

Animal rights groups have taken prominence in the Brazilian and international media, especially in episodes involving scientific experiments and, more recently, in the initiative of passing laws and pushing the judicial system to prohibiting the practice of ritualistic sacrifice of animals in religious practices of African origin. The deep ecology worldview that animal rights are universal in time and space contrasts sharply with the ritual sacrifice of non-human living beings. This conflict also refers to practices of other equally traditional and centuries-old religious groups related to animals, such as Orthodox Jews and Muslims. In these cases, food prescriptions are reflected in the ritualistic mode of meat slaughter. In Brazil, like many other Western countries, a literal interpretation of the existing rules on animal protection leads to an absolute and non-negotiable state coercion against such religious practices. The apparent confrontation between the positions and, in the underlying way, worldviews between the traditional beliefs and the modern deep ecologism cannot be solved under the same legal order. The central thesis of this paper is admission of the overlapping jurisdictions, as is explicitly provided by the Indigenous and Tribal People Convention (ILO Convention 169), here proposed as the basis for the theoretical path to be followed.

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INTRODUCTION

Frequently the media outlets reported about criticism from experts, local regulations, lawsuits and even violent collective actions that aims to ban ritual animal sacrifices. The fight against this common practice in religions of African origin, although, as is common sense, not exclusive of them, was fiercely assumed by the so-called animal rights activists. Although, mistakenly, according to some proponents of such practices, such attacks on ritual sacrifices come from the usual adversaries - fundamentalist evangelicals - a closer examination of the theme reveals a much larger and more complex context, both in Brazil and in the other Western countries where this conflict has Occurred. As an example, a court dispute between Hialeah's Santeria church and the city ended up being judged by the US Supreme Court. It all started with pressure from animal rights advocacy groups (Elder, et. al, 1998). The practice of sacrificial rites in human cultures dates back to ancient times. Since the prehistory, animals have been slaughtered in their divinatory celebrations. The Judeo-Christian tradition, having as example the Pentateuch, records several times the sacrifice of animals to satisfy the wrath of God. However, in the current Brazilian society, the plurality of ethical views, with special emphasis on the issue of "animal rights" has put into question the very freedom of worship of these groups, their traditions and identities. The problem can be described under the model of Public Choice Theory. Each pressure group has its own idea of society. The pressure of the groups on their representatives in Parliament leads to the promulgation of laws of national and isonomic scope - within and a monistic legal context. Depending on the strength of the

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lobby group, the enacted law may ignore ethnic, cultural, religious and identity differences in general. In such a situation, the desire of the majority ends up creating identity, ethnic, cultural and religious conflicts. The legal system, conceived as intrinsically monistic - one rule for all - does not have a solution that reconciles both interests mentioned in the game. In the conflicts mentioned, or the African originated traditions will have to give up part of their feature, or the idealism of animal rights, from the top of their biocentric universal ethics, will have to give way. According to Kymlicka (et. al., 2014), a "Multicultural Zoopolis" agenda would be inconsistent with conservative or communitarian conceptions of multiculturalism that endow communities with the right to maintain and reproduce their cultural traditions untouched, regardless of the ethical content or justifiability of those traditions. In brazilian case, law enforcement of environmental crimes (Federal Law 9.650/1998) to animal sacrifices in religious practices of African origin on the initiative of Prosecutors and Police Authorities is not an option for law enforcement, but an imposition of law in the viewpoint of a legal system that does not see the conflicts involved. In this regard, the good will of the law agent does not matter. What is needed is to rethink the larger context - the very universal applicability of the rule of law to "comunidades e povos de terreiro" ("Santeria" practicioners), under the paradigm of the ILO Convention 169.

The possibility of a nonconflict solution between these two worldviews is possibly a change of the very context in which both are inserted. The legal monism of positivist inspiration - with its centralization of norms and values - has given way to a pluralistic conception of the law sources, or, as referred by La Torre (1999), a plurality of legal orders or a multiplication of sources of law (or both). This paradigm shift is a consequence of the growing recognition that a non-uniform society can not accept a uniform legal order. Brazil ratified Convention 169 of the International Labor Organization, whose premise of legal pluralism is explicit in favor of indigenous and tribal communities. However, it implied the reach of other minority ethnic and cultural groups, such as the so-called "povos de terreiro" (as are referred in Brazil the Santeria practitioners), the ethno-cultural and religious minority related to this work.

Theoretical Foundation: Multiculturalism And Legal Pluralism

The so-called "legal monism" is consolidated in Western countries with the rise of the National States of the Modern Age. In the second half of the twentieth century reaches pretensions of universality, from the narrative of human rights. This ontological aspiration of Eurocentric origin goes against the choice made by several countries, in which cultural plurality imposes the plurality of sources of law. According to dos Santos (2005), the phenomena of Westernization or Europeanization and legal and axiological monism were, from the symbolic point of view, extremely rigorous with the culture, organization, beliefs, customs, languages and law of Latin American indigenous peoples. The official discourse tries its best to, if not ridicule, at least present such culture as inferior. It strives to the fullest to encompass all in a discourse that holds that there is only one way, one truth, one light. A discourse that, claiming to be scientific, is dogmatic and fundamentalist. What was stated in relation to indigenous peoples - the crushing of its distinctions and characteristics as a cultural group - can also be stated in relation to the "povos de terreiro", observant of religious beliefs of African cultural base. Currently, the Latin American Constitutions have expressed explicit recognition of the local law of indigenous peoples. There is in the region a political movement to rescue this intercultural dimension of the Law, specifically with regard to local and community law of indigenous peoples, including criminal law. This autonomy of the indigenous peoples is incompatible with the conception of a unitary and centralizing state of the "jurisdiction", in the model of the National States conceived in Europe of the Modern Age and whose model was transposed to the legal orders of the new world. The model of the Bolivian State, denominated Plurinational, is paradigmatic. The Bolivian State is called Plurinational, because it seeks to overcome the colonial, republican and liberal state. In territorial planning, the Plurinational State is based on the development of indigenous, local or regional autonomies. It is from these that nations and peoples would develop their economies, languages, cultures and political systems and that their Legislative Assembly, its judicial system, etc. would be integrated in the Plurinational State (Schavelzon, 2009).

The imposition of a rule - administrative, criminal or otherwise - that treats in a homogeneous way the question of the religious use of animals ignores a clear civilizational achievement of the dawning of this 21st Century, which is the recognition of the plurality of cultures and, consequently, of normative orders attached to it, a phenomenon that goes against the legal monism that characterizes the National State. Wolkmer (2003) states that it´s possible to consider a new interpretation of the nature of pluralism, that is, its specificity is not to deny or minimize state law, but to recognize that this is just one of the many legal forms that can exist in the society. In this way, legal pluralism covers not only independent and semi-autonomous practices, in relation to current power, but also official/formal regulatory practices and unofficial/ informal practices. Plurality involves the coexistence of different legal orders that define or not the relationships between them. Pluralism can have as its goal, autonomous and authentic normative practices generated by different social forces or plural and complementary legal manifestations recognized, incorporated or controlled by the State.

Cultural heterogeneity requires a relativization of the concept of worldviews and universal norms, and this is the corollary of multiculturalism in its legal dimension. The Eurocentric conception of universal human rights works in practice as a legal roller-compressor that ignores the autonomy of ethnic, cultural, religious, and other self-determining peoples and traditions. As pointed Mutua (1995), one of the most probing critiques of the human rights corpus has come from non-Western thinkers who, though educated in the West or in Western-oriented educational systems, have philosophical, moral, and cultural questions about the distinctly Eurocentric formulation of human rights discourse. They have difficulties accepting the specific cultural and historical experiences of the West as the standard for all humanity.The overcoming of the paradigm of the old homogeneous society by the postmodern plural society led to a profound change of legal treatment for ethnic minorities, especially indigenous peoples. This change definitely broke with the assimilationist model and marked the right to physical and cultural continuity as a triumph of multiculturalism. The guarantee of the human dignity of ethnic minorities is inexorably linked to the preservation of their cultural uniqueness. Thus, multiculturalism is incorporated

into several postmodern Constitutions, rising to the status of fundamental right. The juridical defense of multiculturalism has the purpose of preserving the human dignity of indigenous peoples and other communities that have historically developed a traditional way of life, based on traditions and customs of their own. In this regard, special mention is made of Convention 169 of the International Labor Organization (ILO) - Convention on Indigenous and Tribal Peoples in Independent Countries - which deals, inter alia, with preserving the ethnic, cultural and religious integrity of indigenous peoples, on the lands they traditionally occupy and on the natural resources in them. Convention 169 stands out on the international scene for its multiethnic and multicultural inspiration, recognizing the fundamental value of the right to preserve the ethnic and cultural singularity of indigenous and other traditional peoples, decisively surpassing the old ILO Convention 107 which adopted the superseded assimilationist paradigm (Holder; Silva, 2011).

Although this Convention only refers explicitly to indigenous and tribal peoples, Silva (2007) informs that the Brazilian Constitution treats indigenous peoples and quilombolas (remaining communities of slaves´descendents) as part of a broader special category and worthy of differential treatment – traditional peoples. All these groups that comprise them are characterized by cultural identity, fragilities arising from assimilationism and constitutional privileged treatment. In Brazil, the protection of traditional peoples includes not only indigenous and quilombolas, in the precise terms of Federal Decree 6.040 / 2007, but any community or "culturally differentiated groups that recognize themselves as such, having their own forms of social organization, which occupy and use territories and natural resources as a condition for their cultural, social, religious, ancestral and economic reproduction, using knowledge, innovations and practices generated and transmitted by tradition.". The Decree´s text almost replicate the definition of tribal people presented in ILO Convention 169 (Beltrán, 2000).

The specific case of the "povos de terreiro" is paradigmatic: although they do not fulfill all the hypotheses provided for in Decree 6.040/2007, clearly have the form of a culturally differentiated group, mainly for using religious practices generated and transmitted by tradition. Although it is not possible to attribute a territorial aspect to the “povos de terreiro”, ethnic, cultural and religious identity, above all its traditional aspect, are highlighted, placing above any discussion its characterization within this category of protection. The text of ILO Convention 169, incorporated into the Brazilian legal system by Federal Decree 5.051/2004, provides that "This Convention shall apply to: (...) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sectors of the national community, and which are wholly or partly governed by their own customs or traditions." The international norm therefore applies to peoples who govern, wholly or partially, by their own customs and traditions. In this case, clearly the object of protection of ILO Convention 169 is identified with that of Decree 6.040/2007, which protects traditional peoples, as already mentioned elsewhere.

Animal Rights": Universal

Sources: Contrary to a pluralist conception of the legal system, which respects the cultural differences and local values of the culturally identified groups, the discourse of recognition of nonhumans as subjects of rights, has all the profile to fit as described above: claiming scientific itself, proves to be dogmatic and fundamentalist. The hypothesis that animals and even nature itself should be elevated to the status of subjects of rights has all the characteristics of what in philosophy of law was conventionally termed jusnaturalism. The animal rights have been a philosophical issue that had little influence in the mainstream of the ethical debate in the Twentieth Century. Besides the so-called "Oxford Group" (Trajano, 2007), few authors such as Peter Singer and Tom Regan can be highlighted in the defense of rights recognition thesis nonhumans as, in the latter case, the American professor.

His thinking expresses well the ethical-philosophical premise that underlies the popular activism in defense of so-called animal rights. Regan is an important activist and theorist of the animal movement. Professor Emeritus of Philosophy, North Carolina State University, has dozens of articles and reviews published in specialized journals, as well as several books, including The Case for Animal Rights (1985), Animal Sacrifices: Religious Perspectives on the Use of Animals in Science (1986), Animal Rights and Human Obligations (1989), co-authored with the Australian bioethicist Peter Singer, and The Animal Rights Debate (2001), co-authored with the philosopher Carl Cohen. His writings emphasizing an approach centered on the granting of rights to non-humans have greatly influenced this discussion in both the philosophical, legal and popular spheres, visibly reconstituting many of the basic principles espoused by animal advocates.

Jusnaturalist views depart from a priori premises and construct a non-falsifiable description of the reality that is the object of their attention, which, on the scientific plane, renders them averse to rational debate and, on the political plane, has backed authoritarian regimes and totalitarian experiences. One of the problems of a jusnaturalist position is that this philosophical current restricts the development of law by applying principles of immutability, perpetuity as well as universality into the legal system. Such a path forgets that society is in a constant process of development and mutation, and cannot apply a criterion of immutability, nor apply the same basket of rights to all societies, since this is a historical product which makes it a singular factor. Consequently, it is impossible to construct a law with pillars focused on universality (Cicco Filho, 2005). The pretension of universality contrasts with the historicity of legal discourse, the basis of the gradual abandonment of the premises of natural law and the need to seek other presuppositions other than divinity or nature to solve the old problem of the legitimacy of law as a function of the search for justice. The criticism of the ethical-philosophical foundation of animal activism is analogous to the claim made by the philosopher Hannah Arendt to the claim to universality of human rights on the same ground, namely, that there are no rights derived or deducted from nature. Ultimately, the key point of Hannah Arendt's critique of human rights is the understanding that law, and hence the basis of the political, is of the order of what is given, that is, natural. Sectarians of human rights conceive of legal personality and, with it, the political community itself, in terms of nature. The political categories on the basis of which Hannah Arendt refuses this understanding come from the political daily life of the Greek polis, which opposed the law of universal differentiation of all that is of the order of nature, to the principle of equality of

which human artifice is capable. In Greek understanding equality is not a given, but rather a construct. It is thanks to this capacity that men can engender the sine qua non element of politics, that is, the principle of equality, source of rights and justice. It is only together that man can act upon nature and modify it. Creating, through pacts and mutual commitments, a public space in which all that participate of it become equal by force of the artifice. Nature cannot be a source of rights because it does not legislate.

Only the artifice of which we are capable can assure us rights. Therefore, our legal-political life is based on the assumption that we can produce equality by acting in cooperation (da Silva Oliveira, 2010). Totalizing and all-encompassing visions of the world often justify authoritarian political adventures. The derivation of rights from nature is itself a form of ideology. The implicit jusnaturalism of "animal rights" and their claim to intrinsic universality de-legitimizes, in principle, any possibility of discussion in their particular worldview. That is why it is incompatible with any multicultural dialogue. Supporters of African beliefs, as well as Orthodox Jews and observant Muslims, each in his own way, use animals in religious practices. In this way, they would all be against this new authoritarian worldview of absolute legal protection of animals. In Brazil, within a context of legal monism, this particular animal rights bias achieved legal positivization thanks to the efforts of the pressure groups, making most such religious practices illegal and proscribed.

Final Considerations

At the outset, it´s established the premise that the solution of the conflict was not in sight before the established legal framework. There was a shift in perspective - ahead of the classical notion of legal monism, in the sense of admitting that traditional peoples may have their own normative sources and legal precepts. In light of the apparent novelty, the present study was based on Convention 169 of the ILO, in force in the Brazilian legal system, which recognizes the right of indigenous and tribal peoples to legal self-determination as a starting point for political and normative viability for the admission of a legal pluralism in the Brazilian constitutional order. It remained also demonstrated that, for Brazilian law, "povostribais" is anexpression identified to "traditional peoples." Thus, the protection given to the first category extends to the second one. The corollary of the argument put forward is simple: traditional peoples should be recognized the possibility of expending their own laws and rules of coexistence. This possibility has already been explicitly foreseen by the above-mentioned Convention:

Article 8º
When applying national legislation to the peoples concerned, dueregard shall be paid to their customs or customary law.

As for the "povos de terreiro", the ancestral practice of ritualistic sacrifices is intimately linked to the community identity, attracting the incidence of legal and normative protection provided for in ILO Convention 169, which prevents the application of the criminal law relating the protection of animals against alleged maltreatment.

The very concept of traditional peoples has been treated as non-exhaustive, open and inclusive category, in order to reach groups that, by their habits and customs, reach cultural differentiation in the midst of social homogeneity. In addition to protecting indigenous peoples and other traditional peoples, the need for legal autonomy of Islamic-based communities should be recognized, for example. It is necessary to extend the autonomy granted by ILO Convention 169 to these communities, recognizing their right to the application of "Sharia" (Islamic law) in the rules of marriage and rearing of children. Such communities have all the normative requirements for a categorization as "tribal," and the claim for the application of ILO Convention 169 in their favor is more than justified. Multiculturalism has no way back.

REFERENCES

Beltrán, J. 2000. Indigenousand Traditional People and Protected Areas. Best Practice Protected Area Guidelines series, (4), 133.

Cicco Filho, A. J. 2005. Colaboração do jusnaturalismo para o surgimento do fenômeno da codificação e dos direitos universais. Revista Jurídica da Presidência, 7(75), 01-17.

da Silva Oliveira, C. J. 2010. Jusnaturalismo: Alvorecer e Ocaso da Ideia de Direitos Naturais. Argumentos-Revista de Filosofia, 2(3).

dos Santos, R. M. 2005. Pluralismo, multiculturalismo e reconhecimento: uma análise constitucional do direito dos povos indígenas ao reconhecimento. Revista da Faculdade de Direito UFPR, 43.

Elder, G., Wolch, J., & Eme l, J. 1998. Race, Place, and the Bounds of Humanity. Society &Animals, 6(2), 183-202.

Holder, J., & Silva, M. D. R. F. 2011. Proteção à identidade indígena e quilombola: uma análise à luz do multiculturalismo e da abertura constitucional. Revista Digital Constituição e Garantia de Direitos, 4(02).

Kymlicka, W., & Donaldson, S. 2014. Animal rights, multiculturalism, andtheleft. *Journalof Social Philosophy,* 45(1), 116-135.

La Torre, M. 1999. Legal pluralism as evolution ary achievement of community law. Ratio Juris, 12(2), 182-195.

Mutua, M. W. 1995. The ideology of humanrights. Va. J. Int'l L., 36, 589.

Schavelzon, S. 2009, As Categorias Abertas da Nova Constituição Boliviana. Formação do Estado Plurinacional: Alguns Percursos Intelectuais. Revista Lugar Comum, (27), 35-60.

Silva, M. O. 2007. Saindo da invisibilidade–a política nacional de povos e comunidades tradicionais. Inclusão social, 2(2).

Trajano, T. 2007. Direito Animal e os Paradigmas de Thomas Kuhn: Reforma ou Revolução Científica na Teoria do Direito?(Animal Law andthe Thomas Kuhn Paradigms: Revolution orReformandthe Legal Theory?). Animal Law andthe Thomas Kuhn Paradigms: Revolution orReformandthe Legal Theory, 239-270.

Wolkmer, A. C. 2003. Pluralismo jurídico: nuevo marco emancipatorioen América Latina. M. Villegas, & C. Rodríguez, Derecho y sociedaden América Latina: Un debate sobre losestudios jurídico críticos, 247-259.

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