

WHAT ABOUT THE FOURTH WORLD “SELF”? AMERINDIAN COSMOVISION AGAINST EUROCENTRIC SELF- DETERMINATION

E O SUJEITO DO QUARTO MUNDO? A COSMOVISÃO AMERÍNDIA CONTRA A AUTODETERMINAÇÃO EUROCÊNTRICA

Natália Medina Araújo*

Tatiana Cardoso Squeff**

Bianca Guimarães Silva***

ABSTRACT: This paper aims at engaging with Baxi's article "The Dust of Empire: the Dialectic of Self-Determination and Re-colonization in the First Phase of the Cold War" by arguing that self-determination, as defined during the Cold War, does not include indigenous peoples Cosmovision. Considering that Amerindians were not part of the economic pattern imposed to the Third World during that period, the "self" in the eurocentric lens of self-determination excludes indigenous peoples' selves and condemns them to being silenced, excluded, or extinct, that is, permanent victims of epistemicide. This paper uses a deductive method based on a bibliographic analysis to discuss the topic through perspectivism, as well as the Fourth-World Approaches to International Law (FWAIL). On the one hand, perspectivism emphasizes the spiritual relationship between indigenous people and nature, which is part of the amerindian cosmovision. FWAIL scholars, on the other hand, argue that international law fails to recognize indigenous peoples' true collective selves, perpetuating the denial of their rights through the appropriation of their resources, territory and bodies. In this sense, through a critical analysis, it is advanced that such universal view put forward by global north during the Cold War is not only incapable of dealing with the cultural differences that self-determination, seen through the Amerindian cosmovision, implies, but also the reason why they are recurring victims of violations of rights. ILO convention no. 107, the Brazilian legal framework and the country's recurring excluding actions are examples of it. At the end, it is suggested that proper attention given to the indigenous "self" seems to be a better

RESUMO: Este artigo tem como objetivo se envolver com o artigo de Baxi "The Dust of Empire: the Dialectic of Self-Determination and Re-colonization in the First Phase of the Cold War" (A Poeira do Império: a Dialética da Autodeterminação e Recolonização na Primeira Fase da Guerra Fria), argumentando que a autodeterminação, como definida durante a Guerra Fria, não inclui a cosmovisão dos povos indígenas. Considerando que os ameríndios não faziam parte do padrão econômico imposto ao Terceiro Mundo durante esse período, o "self" na lente eurocêntrica da autodeterminação exclui o "eu" dos povos indígenas e os condena a serem silenciados, excluídos ou extintos, isto é, vítimas permanentes do epistemicídio. Este artigo utiliza um método dedutivo baseado em uma análise bibliográfica para discutir o tema por meio do perspectivismo, bem como as Abordagens do Quarto Mundo ao Direito Internacional (FWAIL). Por um lado, o perspectivismo enfatiza a relação espiritual entre os povos indígenas e a natureza, que faz parte da cosmovisão ameríndia. Os estudiosos da FWAIL, por outro lado, argumentam que o direito internacional não reconhece os verdadeiros "eus" coletivos dos povos indígenas, perpetuando a negação de seus direitos através da apropriação de seus recursos, territórios e corpos. Nesse sentido, por meio de uma análise crítica, avança-se que tal visão universal apresentada pelo norte global durante a Guerra Fria não é apenas incapaz de lidar com as diferenças culturais que a autodeterminação, vista através da cosmovisão ameríndia, mas implica, também, a razão pela qual eles são vítimas recorrentes de violações de direitos. A Convenção nº 107 da OIT, o arcabouço legal brasileiro e as recorrentes ações

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* Doctor and Master in Law from the University of Brasília (UnB). Professor of Law at the Federal University of West Bahia (UFOB). Professor of the Postgraduate Program in Human and Social Sciences at the Federal University of West Bahia (PPGCHS/UFOB). Member of the Research Groups Critique and International Law (UnB) and Marginals: Interdisciplinary Research Group on Minorities and Exclusions (UFOB). Main practice areas: International Law, Legal History, Migration Law, Refugee Law and Human Rights. E-mail: natalia.araujo@ufob.edu.br.

** Post-Graduate and Graduate Professor of International Law at the Federal University of Uberlândia (UFU). Brazilian expert appointed by the Ministry of Justice/Senacon to the Hague Conference on Private International Law (HCCH) on the "tourist project". She holds a PhD in International Law from the Federal University of Rio Grande do Sul (UFRGS), with a study period at the University of Ottawa, an LLM in public law from the University of Vale do Rio dos Sinos (UNISINOS), with capes scholarship and a study period at the University of Toronto, with DFAIT scholarship. Email: tatiafrcardoso@gmail.com. ORCID: <http://orcid.org/0000-0001-9912-9047>

*** MA Candidate (University of Brasília Law School). Email: biancaguimaraes18@hotmail.com

way to contribute thoroughly to a true collective self-determination debate.

excludentes do país são exemplos disso. Ao final, sugere-se que a devida atenção dada ao “eu” indígena parece ser uma maneira melhor de contribuir completamente para um verdadeiro debate coletivo de autodeterminação.

KEYWORDS: Self-determination; Cosmovision; Amerindian; Fourth World Approaches to International Law (FWAIL).

PALAVRAS-CHAVE: Autodeterminação; Cosmovisão; Ameríndio; Abordagens do Quarto Mundo ao Direito Internacional (FWAIL).

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INTRODUCTION

What is self-determination? More importantly, who determines what self-determination is and who (which “self”) is entitled? And is it possible to think about self-determination in a more promising way? These are some of the important questions raised by Upendra Baxi in his article “The Dust of Empire: the Dialectic of Self-Determination and Re-colonization in the First Phase of the Cold War”, which seems like an invitation to revisit the theme from new perspectives, breaking historical (Eurocentric) ties.

Brought on by these issues, this paper argues that self-determination, as designed and defined in the context of the Cold War, does not reach the demands of the indigenous peoples of the Americas. As the Cold War meant the adoption of a specific worldview, it contained creative ambiguities, and it closed senses and possibilities for different ways of conceiving self-determination. It inaugurated a new epistemology, which divided the world into “Worlds” (First, Second and Third) from the place occupied in the (ethnocentric) ideal of development, and where there was no place for the “Fourth World”. It entailed choices about the future that erased “past” livelihoods. Cold War self-determination sought to overcome colonialism, replacing it with a new form of imperialism. But like the colonization that oppressed them, colonized peoples were also condemned to disappearance, forced to assimilation, adaptation, or extinction. The new Cold War developmental epistemology was thus (one more) way in the long history of annihilation, an “epistemicide”, a language that many peoples of the world could not master without giving up being who they were, their “selves”. Bluntly, the “self” in self-determination excluded the indigenous peoples’ “self”, closing off possibilities for their existence.

How, then, could we think of self-determination in a more promising way (BAXI,

2020)? In search of exploring possible paths, this paper tries to address the concept from the perspective of Amerindians (indigenous peoples from the Americas) cosmovision. At the heart of the Amerindian “self”, perspectivism, that is, the peculiar way of seeing the world and placing oneself in relation to other entities (humans and animals, Nature and Culture) cannot be adequately translated into the epistemology of the Cold War. Amerindian’s “self” seems to be outside self-determination, as assumptions and tacit ideas limit its scope. This paper argues that the indigenous “self” has been silenced and denied by State-centric approaches and that indigenous peoples are permanent victims of epistemicide, which disregards their cosmovisions and the sustainability of their existence, livelihoods and ultimately, survival as such.

1 BAXI’S APPROACH TO SELF-DETERMINATION

Baxi's article brings important reflections on self-determination in a Cold War (CW) developmental epistemology. They are imperative to rethink the aforementioned principle, notably due to the Eurocentric and ethnicist legacy in the field of (International) Law, which "leaves active residues of the injustice of the past, denying any historic justice" (BAXI, 2020, p. 397). In quoting, for instance, that “conquest and colonial globalization” (BAXI, 2020, p. 398) occurred in other ways during the CW, the author expresses that the developments in that period undeniably draw from a colonial past, although circumscribed by other views and discourses¹; however, they lean towards the same end, that is, the support of the opinion of a minority at the global level – which other Latin authors, led by Mignolo (2017), will express as coloniality.

It is in this context that the debate on self-determination is introduced as an “international standard and an internationally recognized human right” (BAXI, 2020, p. 398-399), which would still need to be addressed in the context of CW, especially because in mainstream Eurocentric historiography, it does not appear as an outstanding or even relevant "event" (BAXI, 2020, p. 400-401). Baxi (2020, p. 401) is even effusive in the sense that there is no “world history of the Cold War”. Nevertheless, he shows that there are five aspects in this period whose relevance is generally accepted, such as (a) the emergence of "new" nations based

¹ Notably in terms of "governance, rights, justice and access" (BAXI, 2020, p. 398).

on a right that was 'universally' created/assured after World War II; (b) the imposition of an European tradition on such nations, about which they did not have the opportunity to express their opinion, leading to the maintenance of their epistemic confinement; (c) the predominance of injustices based on a *soft* decision-making structure forged at the UN General Assembly; (d) the inexistence of an environmental and ecological concern, exemplified by the increase of some nations' nuclear power; (e) the assumption that the emergence of “new” subjects in the international arena that would largely depend on the concomitant understanding that “old” subjects would be the paradigm to be reached/targeted (BAXI, 2020). These five observations are key to understanding the post-Westphalia myth.

Nevertheless, a great question he poses is noteworthy: who was the “self” that would self-determine in this CW post-Westphalian times? In this aspect, the author introduces the difference between self-determination from the perspective of V. Lenin and W. Wilson, expressing that, while the first sought to establish an internal concept of self-determination based on the idea that there could not be minorities being oppressed by majorities, the second defended external self-determination, aimed at creating communities within certain borders when they presented homogeneous characteristics (BAXI, 2020).

On this topic, given the predominance of the second perspective, the author discusses the idea that self-determination would then have been understood as an “instance of counter-power” that would be available to the then “*other*” in relation to the European, which, however, would reject the process of becoming another who could self-determine (BAXI, 2020, p. 407), standardizing all 'the others' as a posed category – “a collective self” (BAXI, 2020, p. 408).

Therefore, in Baxi's view, this is the reason why the principle of self-determination is not centered around the “personality principle”, but rather around the “territorial principle” (BAXI, 2020, p. 407). And, because of this, the independence sustained by the principle of self-determination would be that of the 'other' in relation to the colonial being, and not its right to “secession thereafter from in established territory” (BAXI, 2020, p. 408), culminating in the exclusion of the Indigenous (Amerindian) “self”.

As Castellino (2014) points out, the principle of self-determination is currently forged on the territorial perspective, around some issues of which we highlight two. The first, in relation to the aforementioned prescription being considered a right, which would have been conceived during the American and French revolutions of the 18th century, “as one of

guaranteeing democratic consent within the entity” (Castellino, 2014, p. 29), reinforcing the Eurocentric vision of (International) Law. More precisely, the principle is forged in accordance with European realities, and imposed on other territories without its people’s consent therefore denying the – ‘human’ – plurality of its interior.

The second concerns the current concept of self-determination, based on territoriality (and unity), having been forged during the Latin American independence from Iberian domination, as “such a determination accepted the boundary regimes drawn” by the colonizers (giving rise to the *uti possidetis* principle itself² –, constantly reaffirmed by the International Court of Justice as being the basis for the demarcation of territories in dispute by two countries - PETERS, 2014) consolidating the idea that “all those within such boundaries would become subjects of the emerging independent states”, therefore, disregarding any differences between the beings that inhabited there (CASTELLINO, 2014, p. 29).

The consequence of both issues is the same: to deny Amerindians their collaboration in the formation of Law and their own collaboration in society. This perception is key insofar as the principle of self-determination is built at a time when not only the Eurocentricity of the globe (and its derivatives, such as the recognition of the State, for example, revolve around the constitutive thesis)³ was not challenged just as it persisted in hiding the image of Amerindians within these Latin spaces created, as if the independence of the then colonizer was enough to increase the plurality of these locations, which, as it is known, did not occur due to the internal coloniality immediately implanted in these places, as in Brazil (SOUSA SANTOS, 2007).

This means that ‘internal heterogeneity’ (SOUSA SANTOS, 2007) (that is, linked to the person) was never central to the territorial perspective of self-determination, that is of the formation of the State as a political entity. which corroborates the idea that self-determination, in line with what Baxi seems to consider about the CW period in relation to Africa and Asia,

² Koskenniemi (1994, p. 243), in fact, on the use of the principle to the borders in the post-colonial scenario, states that “lived always somewhat uneasily with the official ideology of decolonisation as a restoration of authentic communities, destroyed by alien rule”.

³ The impression given at that moment was that self-determination was a political issue. In fact, circumscribed to the European ideal/thought – and not to the Law. This position persists over the years. See the judgment of the Aland Islands arbitration case in 1920, as highlighted by Koskenniemi (1994, p. 246): “The opinion by the International Commission of Jurists in 1920 on the Aland Islands affirmed this by making a distinction between normal and exceptional situations, “situations de droit” and “situations de fait”. Self-Determination is a political principle, the Commission argued, and not “une des règles positives du droit des gens”. Since the 1960s, however, it can be said that this is a right, despite its limited application to the context of European departure from Africa and Asia - and not to all, as to Amerindians.

was not concerned with the person – 'the others' –, but with the construction of the post-Westphalian order from what was outlined in Westphalia. The nation-state as a unit – and not plural as it is, given the various Amerindians who survived the genocide carried out by the Europeans since the 15th century (ANNONI, 2016), among other minority groups –, following European standards, has expanded to the entire globe through imperialism (BALLESTRIN, 2017). Nevertheless, it should be noted that the origin of this debate goes back, at least, to the self-determination of the Latin elites in the 19th century, or even to the 'occultations' – including of the Amerindians when considering the American revolution itself – derived from the 18th century.

Precisely because of these bases, when reappearing as “the vehicle of choice for decolonization” within the scope of the United Nations (CASTELLINO, 2014, p. 30), especially in the Pacts of 1960s, the principle of self-determination would not be a new civilizational standard, if not just the continuation of a (modern!) process that began in a period long before the CW being the examples of the 20th century in Africa and Asia (and the problems arising from them), already observed in the Latin-American precedent (when internal coloniality was sustained). Here, therefore, we see a double concealment of Latin America. At no time the possibility of Amerindians located in Latin-American States to self-determine – or even if this claim existed – was discussed within the scope of the CW developmental epistemology.

For instance, take the example of Brazil. Since the beginning of the XX century, part of the territory has been laid down as “indigenous land”. However, this conception has not been seen as a genuine move, as it sought to integrate Amerindians into Brazilian society, and, thus, dissolve indigenous organizational forms, which led to a troubled relationship between the State and the original inhabitants (KRENAK, 2019). In spite of previous legislative manifestations, the legal framework towards Amerindians was Decree No. 8.072 from June 20th, 1910 (BRASIL, 1910), which created the Indian Protection Service (SPI, in the Portuguese acronym). In a nutshell, this program aimed to assimilate Amerindians into the national culture in order to build a “strong Brazilian nation” (GIROTTI, 2007; SQUEFF, 2016).

Furthermore, the Civil Code, published in 1916, confirmed this agenda. In reference to article 6, the relative incapacity to certain acts were attributed to the indigenous peoples, which aimed for their “adapt[ation] into the civilization of the country” (BRASIL, 1916). It is equally

important to mention that they were subject to the guardianship regime. Although in 1928 the legal situation of Amerindians was modified, the perspective of acculturation remained in the Brazilian Constitutions of 1934, 1937 and 1946 (SQUEFF, 2016, p. 48). It is important to note that the institutional absence of Amerindians was noted in one of Levi Carneiro's Legal Opinion as Legal Advisor of the Brazilian Ministry of Foreign Affairs. In 1950, he expressed his opinion on racial minorities and asserted that “it is well known that in Brazil there [was] no problem of ‘minorities’” (MEDEIROS, 2000, p. 547). Because of that, he argued that there was no reason for special laws to protect such groups, corroborating the idea that Amerindians were not right-holders when seen by the lens of assimilation or elimination.

Similarly, not only in Brazil, but the acculturation approach was also present in the international community at the time. Integrationist views can be illustrated by the Convention No. 107 of the International Labor Organization (ILO) of June 5th, 1957. Regarding this document, International Law was an instrument to integrate and protect indigenous population. In reference to a progressive and linear way, it aimed to assimilate these peoples into the national society of their countries. On top of that, “protection before being an end in itself, was temporary and in service of integration as well” (DAL RI JR; ZIMMERMAN, 2016, p. 162-163). Nevertheless, the use of the self-determination approach was restricted to the civilized people of former colonies that became independent - not indigenous peoples, who were unable to form a nation state in modern concepts. For them, the only options were to integrate into civilization through assimilation into national societies or to die.

Latin-American “self-determination” was – and, by the way, is – a fact taken for granted (by the mainstream authors⁴). However, “indigenous peoples have [had] their territory occupied by settlers from outside their territory and, in many circumstances, have lived as quasi-colonial subjects on their own land” (CASTELLINO, 2014, p. 33). In Latin-America, specifically, “indigenous people were deprived of their own land through subterfuge. [...] [T]he concept of freedom and independence specifically excluded them, treating them as objects rather than subjects of law” (CASTELLINO, 2014, p. 36-37).

⁴ To even name one emerging from Europe, for instance, there is not much debate in the doctrine related to the example brought by Van Langenhove (1956) called the “Belgian thesis”, which relates to the debates that took place in 1954 in the UN on the “limits” of self-determination that preceded the approval of Resolutions 1514(XV) and 1541 (XV), both of 1960, arguing that the right to self-determination should be extended to all peoples who do not have own government, citing, on occasion, the indigenous peoples.

Regarding this, Castellino (2014, p. 31) seems right when defending that “cases where self-determination was achieved and those where it was denied, [vary upon] a number of political factors”, being the marginalization of Latin America a 'dominant' fact for its non-occurrence (in this case, the self-determination of Amerindians). The *travaux préparatoire* of the International Covenant on Civil and Political Rights (ICCPR), which brings in art. 1 the right of self-determination, made it clear this possibility was only allowed at the time of independence from “colonial powers” (CASTELLINO, 2014). The debates that took place within the Committee for the ICCPR when editing General Comment n. 12 in 1984, go in the same direction, openly excluding the possibility of indigenous peoples to use the right of self-determination contained in art. 1 of the Covenant, unless they were “territorially based” (or when related to the subsistence of indigenous peoples, as highlighted by the Committee in the case n. 78/1980 of the same year) (CASTELLINO, 2014).

Another possibility of self-determination would be when States authorize Amerindians to become independent (CASTELLINO, 2014). What happens is that internal coloniality would certainly be an impediment for this to happen, so that, in the end, the very normativity of the principle could be questioned, being available only to the European or to whomever he/she granted it, going back to the idea that this has always been a political - and, thus, arbitrary, issue. This is what Koskeniemi (1994, p. 242) prescribes: “the domestication of national self-determination by limiting it to decolonisation has always seemed somehow arbitrary”.

It is in this space that even the theory of the Fourth-World Approaches to International Law (FWAIL) emerges. It correctly questions the “predatory role of international law that perpetuates the exploitation of the [...] Fourth World”, pointing “through the state government of the Third World country acting as the intermediary agency” that indigenous communities were left beyond the margins of any state (FUKURAI, 2018, p. 224).

The denial of the Amerindians and their rights, the use of their territory and appropriation of their resources, culture and ideology (FUKURAI, 2018) through their exclusion as 'persons' by the rules of modern international law (past and current) would be a consequence both of the partial Latin-American independence in the 19th century and the lack of attention to this cause when the incorrect interpretation of self-determination in the 20th century emerged, leaving the main focus to be the peoples who were under the tutelage of the First World and, thus, forgetting that even when they became members of the Third World, as

independent countries, their internal plurality would not be considered, due to the Latin American example itself.

For FWAIL, in fact, not only International Law contributed to their subordination, but domestic law also collaborated to this end by ignoring “the welfare of indigenous and aboriginal communities” (FUKURAI, 2018, p. 227). Despite it, this approach seeks a way to circumvent the obstacles within International Law, having as its starting point the struggle for territory (FUKURAI, 2018) – not for the formation of a State, but for the construction of a nation, “not as the political apex of the government and its authoritarian bureaucracy”, but “as a collective of people” who share ancestors, traditions, culture, history and psychological aspects (FUKURAI, 2018, p. 226). And here is, perhaps, where Baxi’s perception – and critique – of the standardization of the collective self meets the debates of the Amerindian invisibilization and silencing, since this collectiveness ended up highlighting more the Third-World selves instead of literally bringing together individuals who share the same traditions, culture, etc. (the actual “other self”), which includes Amerindians.

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2 THE CASE OF THE FORGOTTEN AMERINDIAN “SELF”

Indigenous self-determination cannot be regarded as a state-centered one, but, instead, as providing the maintenance of an indigenous society and jurisdiction that reflect the way they exist in this world. The famous anthropologist Pierre Clastres has since many decades ago coined a definition which, until this day, is extremely influential. His ethnographies reveal that Amerindians are not societies without State, as ethnocentric anthropology would suggest, pointing to an alleged primitivity of Amerindians. Instead, for Clastres (1974), Amerindians are societies “against” the State, that is, in opposition to an institutionalized command-obedience relationship. Although political power is present, it is different, as it is not exercised in accordance with any State-centric framework (ARANHA & FREIRE, 2016).

As the “state” is distinctly separate from the “nation” (FUKURAI, 2018), states tend to narrowly frame self-determination, highlighting the political and legal aspects of it. Discussions regarding indigenous territories, livelihoods, natural resources, languages and culturally based practices are put aside. As Corntassel rightly argues, the focus on political and legal recognition of indigenous self-determination “will not lead to a self-determination process that is

sustainable for the survival of future generations of indigenous peoples” (CORNTASSEL, 2008).

The indigenous ‘nations’ – including the sustainability of indigenous “self”, concerned with the transmission of cultural practices to future generations, community health/well-being, among other peculiar aspects of indigenous livelihoods, are generally not taken as important when discussing self-determination (CORNTASSEL, 2008), but they are crucial to an indigenous self-determination that is sustainable over time, since the disappearance of this livelihoods and cultures by assimilation, acculturation, exploitation and expropriation of territory and natural resources without consideration for spiritual connections that may exist between peoples and their lands, among other forms of violence, put indigenous ‘selves’ in serious risk of extinction.

Indigenous peoples (in particular, Amerindians), have a distinct relationship to the natural world, as for the fact that Nature is not at all a resource for them. Amerindians see no such thing as a separation between Nature and humans. What we call Nature, for Amerindians have spirit and affections. Theirs is an animist world, where the body one inhabits makes it possible to capture different natural realities. In Amerindians cosmovision, a person can become an animal, and there is a human quality that subsists in the natural world (CASTRO, 1996).

“Perspectivism” is the anthropological concept which explains how the beings (human or animals) see different natures depending on their affections in the Amerindians cosmovision. As Viveiro de Castro defines, "this is the concept, common to many peoples on the continent, according to which the world is inhabited by different species of subjects or people, human and non-human, who apprehend it from different points of view" (CASTRO, 1996, p. 115). The categories of Nature and Culture, in Amerindians thought, have a different content and status when compared to their Western analogues, since “they do not designate ontological provinces, but point to relational contexts, mobile perspectives, in short, points of view”. (CASTRO, 1996, p. 116)

According to Viveiros de Castro (1996, p. 118-119), the thesis of an original status of differentiation between humans and animals is virtually universal among Amerindians. Their myths “are populated by beings whose form, name and behavior inextricably mix human and animal attributes, in a common context of intercommunicability identical to that which defines the current intra-human world”. The common condition between humans and animals is not a

shared animality, as a Naturistic Western cosmovision would perhaps understand, but, on the contrary, a shared human condition. This is what explains a complex “eating etiquette”:

The past humanity of animals adds to their current spirituality hidden in visible form to produce a pervasive complex of dietary restrictions or precautions, which now declares inedible certain animals mythically consubstantial with humans, now it requires the shamanistic desubjectivation of the animal before it is consumed (neutralizing its spirit, transubstantiating its flesh into vegetable, semantically reducing it to other animals less close to human), under penalty of retaliation in the form of disease, conceived as a cannibal counterpredation taken effected by the spirit of the prey turned predator, in a deadly inversion of perspectives that transforms the human into an animal. (CASTRO, 1996, p. 119)

In short, for Amerindians, nature and culture are part of the same socio cosmic field (CASTRO, 1996). It seems at odds with any variant of universal cosmovision, be it colonial, imperial, western or eastern. As Krenak, an important Brazilian indigenous leader, translates it into a more palatable language, “The Rio Doce (Sweet River), which we Krenak call Watu, our grandfather, is a person, not a resource” (KRENAK, 2019, p. 21).

Given the centrality of (what we call) Nature in the Amerindians ‘self’, one should question if the principle of permanent sovereignty over natural resources is indeed an anti-colonial one, especially in a State-centric post-Westphalian world dominated by CW developmental epistemology. The idea of natural resources itself is, depending of course on its usage, part of an ongoing epistemicide, that disqualifies Amerindians thought and limits the emancipatory dimension of the principle (SANTOS, 2010). As an alternative, Amerindians knowledge and cosmovision, oppressed once by colonial Christian domination and again by developmental ideology, offers a path to the survival of the Earth, “anticipating the fundamental lessons of ecology” (CASTRO, 1996, p. 124). “Indigenous peoples’ cosmovision challenges the meaning of development, since the relations between all beings (human and non-human) *is a relation between subjects*” (FUENTES; FERNANDEZ, 2020, p. 3). Krenak once again translates it perfectly:

When we depersonalize the river, the mountain, when we take their senses from them, considering that this is an exclusive attribute of humans, we release these places to become residues of industrial and extractive activities. From our divorce from the integrations and interactions with our mother, the Earth, it results that she is leaving us orphans, not only those who in different degrees are called Indians or indigenous peoples, but everyone (KRENAK, 2019, p. 24).

So, reflecting on Baxi's important question, how could we think about self-determination in a more promising way? Maybe the indigenous 'self' has much to contribute to this matter. For instance, epistemicide of indigenous perspectives (and perspectivism) and ecocide (the killing of what we westerns call Nature) tend to go side by side. It is well established that the destruction, assimilation and genocide of Amerindians go far back to the Colonial Encounter in the XVI century (ANGHIE, 2005; TODOROV, 2010). How can Amerindians survival (except, of course, for those for whom "the end of the world" occurred in the XVI and following centuries) be explained? Again, using Krenak's words, "we resisted by expanding our subjectivity, not accepting this idea that we are all the same. There are still approximately 250 ethnic groups that want to be different from each other in Brazil, who speak more than 150 languages and dialects" (KRENAK, 2019, p. 15).

The problem of difference is an old one in International Law. Imperialism is a cultural system that since the colonial encounter deals with the assimilation of the non-European world (ANGHIE, 2005). Thus, even more than an exploratory political or economic system, imperialism is "a cultural structure that constitutes subjectivities and maintains the relationships that perpetuate the western domination of the global system" (PHAM, 2006, p. 1). International law, as the result of the colonial encounter that continually reproduces itself in various forms of empire, is "incapable of living with difference" (GALINDO, 2013) and, more specifically, incapable of living with cultural difference. In other words, it ends up imposing a universalistic discourse that endangers indigenous peculiar 'self'.

Even when particular country constitutions, whether in Kenya or Colombia, outline clear guidelines for the protection of indigenous knowledge, intellectual property, and community lands, and protection from the exploitation of natural resources within indigenous territories, these rights are compartmentalized to the point of detaching the issue of promoting sustainable livelihoods from questions of protection of indigenous knowledge. Additionally, despite the multilevel strategies indigenous peoples employ to change existing [international] human rights norms, in many instances energy is being diverted away from community regeneration efforts and channeled into the global indigenous-rights discourse without any noticeable impact locally (CORNTASSEL, 2008, p. 113).

This can be seen in Brazil as pointed out above, where the recognition of the rights of indigenous peoples did not promote autonomy or security; on the contrary, it reinforced the acculturation agenda – a movement of national integration aimed at eradicating ethical and

cultural heterogeneity (DAL RI JR.; ZIMMERMAN, 2016) that has its roots in the internalization of ILO Convention No. 107 in 1966 through Decree No. 58.824, and continued with the replacement of SPI by the National Indian Foundation (FUNAI, in the Portuguese acronym).

Although one might think the publication of the Figueiredo Report by the Parliamentary Inquiry Commission in 1967 with over 7.000 pages and 30 volumes of corruption claims in SPI and the denunciation of crimes perpetrated by the authorities against Brazilian indigenous peoples from 1910-1967⁵ could be considered a step forward towards the visibility of their “self” within the domestic order, the abuses of power and acculturation persisted with FUNAI’s establishment. After all, FUNAI was founded during the military Dictatorship (1964-1985), seeking, as SPI, a ‘pacification’ agenda.

As Brazilian 1967 Constitution and the Indian Statute (Law No. 6.001/1973) were published, the objective of “preserv[ing] [Amerindian’s] culture and integrat[ing] them, progressively and harmoniously, into the national communion” was made even more explicit (BRASIL, 1973 – free translation). On the one hand, in reference to Brazilian Constitution of 1967, native lands belong to the Brazilian State and only transitory status of territorial possession is granted to indigenous community. On the other hand, concerning the Statute, the term “Indian” refers to a legal status with limited rights and duties, besides an indicative of cultural stance, both of which have meanings of primitiveness⁶ (SILVA; LORENZONI, 2012). This scenario of violence highlights not only the international indifference towards the theme (since this topic is nowhere to be found in the CW mainstream agenda), but also the continuance of the domestic understanding of indigenous acculturation, thus, culminating in a double obscurity that form the basis of the often-forgotten Ameridians’ claims for (a truly collective) self-determination.

⁵ The reports highlight the misery of native peoples, criminal misappropriation of indigenous lands and abuses of the SPI’s authorities (BRASIL, 1967).

⁶ In short, the Brazilian legal framework applies an evolutionary process to the indigenous peoples, seeking to lead them from barbarians to civilized (SILVA; LORENZONI, 2012), particularly, with a positivist conception that rank the indigenous populations as isolated, in the process of integration or integrated (BRASIL, 1973, art. 4). Likewise, concerning articles 3 and 4 of Law No. 6.001/1973, the definition of “Indian” is ethnocentric considering the different existing indigenous societies and their varied modes of existence.

3 FINAL REMARKS

The main purpose of Baxi's article was to debate self-determination and what "self" was entitled to it, in particular in the context of the Cold War, where a great number of former colonies were aiming at acquiring their independence from the imperial/occidental/European powers. And although the author brought up to the discussion a critique regarding the collective "self" that was entitled to self-determine in that period, it seems that a main issue was still missing: the peoples of the fourth world. Nevertheless, when taking into consideration the mainstream historiography of International Law and the assimilation and annihilation through which Amerindians and other native peoples were submitted to by the Europeans since the turn of modernity, it is quite understandable that their cosmovision was not even considered by the discussions of self-determination in the above-mentioned period.

This happens because the discourse at that time "sold" by the Global North was that, for a (Third World) nation to develop, it should engage into a certain economic pattern⁷ that disregarded native peoples' rights and perspectives over Nature – seen only as a natural resource – that was not only out of its reach (AFONSO, 2019), but also very detrimental to Amerindians cosmovision. And the Third World, believing that if they incorporated such developmental standards they would have the same fate as the countries of the North, simply disregarded the existence of other "selves" other than those that could add to the potential achievement of the economic standard maintained by central/western nations. In other words, they were not in the scope of the CW developmental epistemology; it was only their territory – seen as a finite/economic resource – that was.

Therefore, it was noted in this comment that Amerindians suffered from a double exclusion of Latin America in mainstream historiography, since they ceased to exist because of both the presence of the European in their territory in the past, and their fate being placed on

⁷ "An anticipated solution for or Third World, in general lines, would be its development through industrialization. It should be noted that proposals such as the Economic Commission for Latin America and the Caribbean (CEPAL, in the Portuguese acronym), in which emphasized the need to establish conditions for industrialization and structural reforms led by the states of the region between the 1950s and 1970s, as a way of economic development and, consequently, for the reduction of external dependence. This would be the existing alternative in light of the world economy, which subjects Latin America to specific roles due to its "peripheral" position, that is, worldwide producer of oscillating goods and services, but mainly importer of goods and services of the "center", as well as of its patrons of consumption" (AFONSO, 2019, p. 206 – free translation).

the hands of the then-called “others” since the 1960s who were more concerned with development than the Amerindian “self”. After all, Amerindians livelihoods faced growing precariousness, with the absence of public policies, assassination of leaders in disputes over land, the extraction of the natural resources at any cost, among other serious crimes (KAXUYANA, 2020).

It should be recalled this situation was brought about by International Law itself, not only by limiting the right of self-determination in the discussion held at the United Nations, but also by ILO Convention No. 107. We even suggest that this international legal basis was crucial to the promotion of internal colonialities and the continuous basis of fourth world silencing. Brazil is a living example of this exclusionist perspective. Brazilian legislation suppressed any possibility of indigenous articulation as political subjects or the acceptance of their cosmovision, subjecting them to State’s guardianship as a legal mechanism of control, whether based upon the Civil Code of 1916, the Constitution of 1967 or the Indian Statute of 1973.

Nonetheless, if there was no Amerindian *self* to be considered then, there is still no Amerindian “self” to be currently considered either, being this a consequence of imperialism that turned into coloniality. Although the Brazilian Constitution of 1988 inaugurated a new framework for indigenous peoples, the fourth world is still not heard. Indeed, the core of the constitutional order is “the physical and cultural reproduction of indigenous peoples without a day to end, rejecting the arrival point of a final assimilation” (BARBOSA, 2018 – free translation). The current Constitution recognizes the original rights over traditionally occupied lands, which are in permanent possession of indigenous peoples. (BRASIL, 1988, article 231). In theory, this means that indigenous peoples would have exclusive use of natural resources, without any subordination to the national development project (BARBOSA, 2018).

However, there are numerous obstacles to the implementation of the constitutional framework, ranging from the absence of public policies to restrictive interpretations that in practice limit the rights of indigenous peoples. For instance, in spite of the anachronism, Law No. 6.001/1973 is considered to be in line with the Brazilian Constitution of 1988 (SILVA; LORENZONI, 2012, p. 14). Besides, recent cases such as the construction of Belo Monte’s hydroelectric without the proper – and lawful⁸ – consultation of the indigenous communities,

⁸ We should note that the lawfulness of Consulting indigenous populations derives from ILO Convention No. 169 of 7th June 1989, introduced at the end of the CW and that replaced ILO Convention No. 107, giving the bases for

the Mariana's Dam collapse on Rio Doce River and Brumadinho's Dam collapse on Paraopeba's River environmental transgressions are often referred to as "disasters", exempting the responsibility of the State and of economic powers and displacing indigenous populations. Such environmental crimes are effectively crimes against indigenous peoples and cultures survival.

As a result of this history, the Amerindians occupy an ambivalent place in the Brazilian imagination as noted by Silva and Lorenzoni (2012): native to the land, but alien to the nation. After all, developmentalism always seems to take precedence over the rights of the original inhabitants of the Americas. The last – and most ironic – development is the position recently adopted by the Federal Supreme Court in favor of the so-called "time frame", an interpretation according to which the occupation of traditional lands by indigenous peoples, for demarcation purposes, must be proven at the time of October 5, 1988, date of promulgation of the Constitution. Understood in this way, the 1988 Constitution (re)inaugurates time, causing, once again, the erasure of the past, and with it of the indigenous peoples. Hence, as a final observation, we shall say that progress, development and oblivion go together implementing the mission of extermination once presented by modernity, both in time and space, of those whose "self" is deemed too wide and too old to still exist.

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