

WHAT IS BEYOND COLONIZER'S HERMENEUTIC? EFFECTS OF EUROCENTRISM ON THE BRAZILIAN LEGAL SYSTEM FROM A STUDY OF KURUKANFUGA'S PACT

O QUE HÁ ALÉM DA HERMENÊUTICA DO COLONIZADOR? OS EFEITOS DO EUROCENTRISMO NO SISTEMA JURÍDICO BRASILEIRO A PARTIR DE UM ESTUDO DO PACTO DE KURUKANFUGA

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“Ninguém vai lhe dar a educação necessária para derrubá-los. Ninguém vai lhe ensinar sua verdadeira história, ensinar seus verdadeiros heróis, se eles souberem que esse conhecimento o libertará”
(Assata Shakur)

RESUMO

O presente texto tem como foco principal examinar a influência do eurocentrismo no sistema jurídico brasileiro a partir de uma análise do Pacto de *Kurukanfuga*. Abordar esse assunto é tanto uma pretensão de ampliar a perspectiva acadêmica sobre outros sujeitos sociais como produtores de conhecimento quanto de fazer com que os operadores jurídicos reflitam acerca do lugar social de sujeitos subalternizados, ao reconhecer estes não como meros objetos de estudo, mas como sujeitos capazes de impactar no processo de conhecimento. Esse estudo consiste em pesquisa de caráter descritivo, que visa detalhar a influência do eurocentrismo no sistema jurídico brasileiro quando analisado sob a perspectiva do pacto de *Kurukanfuga*. Com o desenvolvimento desta pesquisa, foi possível concluir que o restrito georreferenciamento europeu do conhecimento jurídico é prejudicial ao desenvolvimento argumentativo dos intérpretes do Direito, o que impacta diretamente a sua linguagem. Ao estabelecer uma comparação entre o ordenamento jurídico brasileiro e o Pacto de *Kurukanfuga*, foi possível concluir que esse Pacto é capaz de auxiliar na mitigação do eurocentrismo acadêmico, visto que é um documento histórico e pioneiro em discussões sobre liberdades cívicas, democracia

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e direitos humanos. O presente estudo é capaz de fomentar o desejo de outros pesquisadores em desenvolver estudos semelhantes a partir de outras ordens jurídicas e documentos históricos dissonantes do conhecimento hegemônico.

Palavras-Chave: Direito Comparado. Constituição. Eurocentrismo. Pacto de *Kurukanfuga*. Hermenêutica.

ABSTRACT

The focus of this text is to examine the influence of eurocentrism on the Brazilian Legal System from an analysis of the *Kurukanfuga*'s Pact. Addressing this subject is both an attempt to broaden the academic perspective on other social subjects as producers of knowledge and to make legal operators reflect on the social place of subordinate subjects, recognizing them not as mere objects of study, but as subjects capable of impacting the knowledge process. This study consists of descriptive research, which aims to detail the influence of eurocentrism on the Brazilian Legal System when analyzed from the perspective of the *Kurukanfuga*'s pact. With the development of this research, it was possible to conclude that the restricted European georeferencing of legal knowledge is harmful to the argumentative development of legal interpreters, which directly impacts their language. By establishing a comparison between the Brazilian Legal System and the *Kurukanfuga*'s Pact, it was possible to conclude that this Pact can help to mitigate academic eurocentrism, as it is a historic and pioneering document in discussions on civil liberties, democracy and human rights. The present study can encourage the desire of other researchers to develop similar studies based on other legal orders and historical documents that are dissonant from the hegemonic knowledge.

Keywords: Comparative Law. Constitution. Eurocentrism. *Kurukanfuga*'s Pact. Hermeneutic.

INTRODUCTION

*“Eu vou falar de nós ganhando.
Porque, pra falar de nós perdendo, eles já falam.”
(Mestre Nego Bispo)⁴*

In Brazil, in recent decades, there has been an academic desire to bring a different perspective to historical events and other episodes that have been overlooked by the hegemonic dimension of knowledge.

This desire has a double meaning: historical and political. Historical because it is a question of reneging on a version of history that is supposed to be official by focusing on the traditions of subalternized peoples, no longer treating hegemonic knowledge as the exclusive parameter of wisdom, that is, of intelligence, aesthetics and moral capacity.

As for the political nature of the expression, it highlights the need for volitional action in this desire to broaden the epistemological bases, since the protagonization of this

⁴In Roça de Quilombo, 2023. Disponível em: <https://www.instagram.com/rocadequilombo/reel/C0WuAEmO0NL/>. Acesso em: 4 jun. 2024.

knowledge produced on the European geopolitical periphery does not occur naturally, but by confronting the centuries-old academic resistance to discuss it.

In this sense, the reason why this production of knowledge is necessary has multiple factors, among which we can highlight the epistemological fatigue of those who enter academia and do not see themselves reflected in the knowledge produced, as well as the need that arises, in a chain, to tell the history of the world from their perspective.

The aggravating factor in the legal field is that the antagonism of subalternized populations is highlighted, both in theoretical study and in the analysis of concrete cases; the individual as a mere anti-subject of a legal system that is deployed to incarcerate them en masse, while this being is understood as incapable of producing knowledge, since their presence in academia is recent and minuscule and, previously, at most, they were mere objects of study, not occupying the position of subjects capable of producing knowledge relevant to the academic environment.

Thus, in an effort to broaden the theoretical framework and potential concrete effects on the legal interpretation of official legal operators, the main focus of this study is to analyze what lies beyond the colonizer's hermeneutics, examining the effects of the Eurocentrism on the Brazilian legal system based on a study of the Kurukanfuga pact.

Thus, in an effort to broaden the theoretical framework and potential concrete effects on the legal interpretation of official legal operators, the main focus of this study is to analyze what lies beyond the colonizer's hermeneutics, examining the effects of Eurocentrism on the Brazilian legal system based on a study of the Kurukanfuga pact.

This pact, also known as the Mandingo Charter, was the result of a meeting between Emperor Sundjata Keita and the General Assembly (Gbara), made up of all the kingdoms that supported Keita in the Battle of Kirina, which resulted in the defeat of the then king Sumaoro Kante.

The aim of this first General Assembly, with the air of a true Constituent Assembly, was to ensure, with the act, a new milestone in that territory, the well-being of Mandinka society, today the Republic of Mali, as well as the defense of the entirety of that Empire.

In this sense, the research problem of this study is: What are the main effects of Eurocentrism on the Brazilian legal system when analyzed in the light of the Kurukanfuga pact? And, as a general objective, the aim is to analyze the influence of Eurocentrism on the Brazilian legal system when analyzed from the perspective of this pact.

In order to achieve the general objective, the specific objectives of this study will be: to conceptualize what Eurocentrism is and its implications in the Brazilian legal system,

when, through case analysis, the Eurocentric semiotic model of the language of the Brazilian legal operator will be examined; to investigate the Kurukanfuga pact, its origin and its effects in its time-space; and to analyze similarities and dissonances of the Kurukanfuga pact with the Brazilian legal system.

This study consists of descriptive research, which aims to detail the influence of the Eurocentrism in the Brazilian legal system when analyzed from the perspective of the mentioned pact.

In line with this objective, the results will be presented in a qualitative manner, based on the collection of information from secondary sources, which include the articles that make up the Kurukanfuga pact, also known as the Mali Constitution, books, articles and significant authors for the exploration of the topic, such as Victor Martins de Souza (2018) and Niane (1982), who have a more robust research on this subject that is little dealt with in the academic environment.

Thus, discussing the effects of the Eurocentrism on the Brazilian legal system based on a study of the Kurukanfuga pact is justified by the fact that European colonization around the world, not unlike Brazil, sought to establish its foundations by eradicating any kind of knowledge produced or subtracted, other than by its own hands.

This homogenization of knowledge, under the aegis of the European humanist civilizational pact, and its quest for the socio-cultural standardization of knowledge, had a major impact on the genesis of the Brazilian legal system.

On the contrary to this continuous process of invisibilization and in a much earlier historical period, the Magna Charter (1235) that governed the Mali Empire, created when Europe was living through the lower middle ages, established parameters of respect for civic freedoms and social duties that today are known as human rights.

In light of the above, it is possible to note that analyzing the effects of the Eurocentrism on the Brazilian legal system based on a study of the Kurukanfuga pact can have a direct and indirect impact on legal operators, from teaching in universities to the practical applicability of the legal system, with regard to conceptions on issues such as human rights and the developments that make up the foundations that constitute the civilizing pacts of society, materialized through normative acts and legal decisions.

This can be achieved by recognizing the importance of broadening the perspectives of knowledge beyond the hegemonic ones, valuing the wealth of principles developed long before the so-called European humanist civilizational pact.

Therefore, it is essential to decolonize the epistemological and hermeneutical bases, promoting socio-cultural justice for groups historically treated only as objects of study, and not as subjects and producers of knowledge. Furthermore, it is necessary to expand the debate on legal alternatives to the standard perspectives present in the curricular and epistemological basis of law operators.

1 EUROCENTRISM AND ITS IMPLICATIONS FOR THE BRAZILIAN LEGAL SYSTEM

This initial topic aims to discuss the influence of the Eurocentrism on the Brazilian legal system. To this end, it is necessary to first analyze which paths this concept takes and what results it consequently achieves.

Regarding the different understandings of the concept of Eurocentrism, Barbosa (2008, p. 46) states:

Existem diversas formas de caracterizar o chamado eurocentrismo. Por vezes, ele é visto como mero fenômeno etnocêntrico, comum aos povos em outras épocas históricas. Mas para a maioria dos autores que tratam atualmente da questão, o eurocentrismo deveria ser caracterizado, diferentemente, como um etnocentrismo singular, entendido como uma ideologia, paradigma e/ou discurso (Barbosa, 2008, p. 46).

The fact is that, despite the concepts taking different paths, there is a unified understanding that Eurocentrism is something that is intended to be strictly civilizing and superior to other experiences of knowledge and morality not understood by the European civilization. In this sense, for Sodr  (2007, p. 42):

a sociedade ocidental apregoa-se como uma esp cie de “n vel superior” da exist ncia humana, que se expande planetariamente no empuxo do colonialismo e na consequente coopta  o de outros grupos  tnicos pelos modelos j  “plenamente civilizados”.

This claim to superiority, to which Sodr  (2007, p. 42) refers, is not only reflected in the social structure, but also, consequently, in the moral and behavioral conceptions of individuals, since, for Souza (2021, p. 71-72):

[...] com a crescente domina  o e expans o dos padr es de comportamento e das institui  es ocidentais por todo o globo, essa hierarquia moral, antes restrita   Europa, se torna o padr o planet rio dominante.

Eurocentrism must therefore be thought of as a systemic and exclusivist project of domination, in which conceptions of virtue, in generic terms, concern a certain group to the detriment of other populations belonging to the European geopolitical periphery.

This systemic character of Western behavioral patterns and institutions, previously mentioned by Souza (2021, p. 71-72), makes evident the different levels of influence of a dominant thought, permeating from social systems to individual conceptions.

In the former, where academic debates and dictates are also present, the theoretical framework is consolidated and considered to be scientifically valid, and therefore complete. In the case of individual conceptions, the dominant concepts spread in such a way as to continually perpetuate what is thought of as civilizational superiority.

In both cases, the feeling of superiority emanating from hegemonic knowledge communicates with the behavior of the individual and establishes a dual character: including what is established as the standard of knowledge while, at the same time, excluding what is not part of this self-referenced place of production. This idea is supported because, for Fanon (2008, p. 34):

todo povo colonizado — isto é, todo povo no seio do qual nasceu um complexo de inferioridade devido ao sepultamento de sua originalidade cultural — toma posição diante da linguagem da nação civilizadora, isto é, da cultura metropolitana.

But when individuals, academics and law practitioners don't even know their cultural originality, as Fanon (2008, p. 34) mentions, what is left for them to do but adhere to the knowledge imposed on them?

It is quite remarkable that the Brazilian legal system was developed from Portuguese experiences due to the colonization process. Lyra Tavares (1990, p. 56) even quotes Professor René David as saying that the Brazilian legal system was a summary of European legal systems, despite the fact that, despite this robust reception, there was originality in its development.

However, this originality does not rule out the influence of the European influence. On the contrary, it shows how close they are, since the Portuguese legal system itself gives rise to this normative and organizational legal originality, as can be seen from the teachings of Canotilho (1999, p. 1.088-1.089):

O sistema jurídico do Estado de Direito democrático português é um sistema normativo aberto de regras e princípios. Esse ponto de partida carece de decodificação: (1) é um sistema jurídico porque é um sistema dinâmico de normas; (2) é um sistema aberto porque tem uma estrutura dialógica (Caliess), traduzida na disponibilidade e capacidade de aprendizagem das normas constitucionais para

captarem a mudança da realidade e estarem abertas às concepções cambiantes da verdade e da justiça; (3) é um sistema normativo, porque a estruturação das expectativas referentes a valores, programas, funções e pessoas é feita através de normas; (4) é um sistema de regras e de princípios, pois as normas do sistema tanto podem revelar-se sob a forma de princípios como sob a sua forma de regras (Canotilho, 1999, p. 1088-1089).

One of the notable examples of how close this description of the Portuguese legal system is to the Brazilian one is the hybridity between norms and principles, when these play the role of rules, implicitly and explicitly, in the Constitution of 1988 of the Federative Republic of Brazil (Brazil, 1988).

More specifically, this is what can be seen when reading the heading of the article 37 of the Constitution of the Federative Republic of Brazil of 1988 (Brazil, 1988) and everything that emanates from it and is reflected in the infra-constitutional order, with applicability to the entire public administration.

On the other hand, despite these changing conceptions, cited by Canotilho (1999, p. 1,088-1,089), the complexities of each country must be observed so that the same solutions are not imported for different problems. This observation was pertinently made by Alexandre (apud Ono, 2017, p. 5), when he criticized the introduction of the new English procedural system to the Brazilian and Portuguese legal systems without due adaptation and observance of the different complexities involving the three systems:

(...) é relativamente estranha a sua introdução num sistema como o nosso em que a tramitação processual é complexa, assente num modelo que comporta fases rígidas e muitas preclusões para as partes. De assinalar ainda que se trata de figura importada de ordenamentos que têm pouco em comum com o português. Refiro-me ao direito inglês, depois das Civil Procedure Rules de 1998 (Alexandre *apud* Ono, 2017, p. 5).

On this issue, it should also be noted that the English procedural rules, when implemented in the Portuguese and Brazilian legal systems, have achieved different results: in England, there has been a reduction in the high procedural cost, while in Portugal and Brazil, it is the right to a reasonable duration of the process that concerns society (Ono, 2017).

In Brazil, according to the National Council of Justice (CNJ), it is the execution phase that most increases the length of proceedings. According to Cieglinski (2016)⁵:

na execução dos processos de primeiro grau, o tempo médio atinge oito anos e onze meses na Justiça Estadual e de 7 anos e 9 meses na Justiça Federal. Na Justiça do Trabalho, apesar de menor, a taxa atinge 4 anos e 11 meses. Já a fase de

⁵CIEGLINSKI, Thaís. Fase de execução é a que mais aumenta tempo de tramitação de processos. **Agência CNJ de Notícias**, 14 out. 2016. Disponível em: <https://www.cnj.jus.br/fase-de-execucao-e-a-que-mais-aumenta-tempo-de-tramitacao-de-processos/>. Acesso em: 31 maio 2024.

conhecimento – na qual o juiz precisa ouvir as partes, testemunhas e formar sua convicção sobre o caso para chegar à sentença, – é mais célere nesses três ramos da Justiça, com três anos e dois meses; dois anos e seis meses e um ano e dois meses, respectivamente (Cieglinski, 2016).

The idea, therefore, that Europe is a civilizing antenna of the world is not restricted to the colonial period and the mere importation of norms and systems, as has been shown, is still present today.

The European influence on the Brazilian legal system, moreover, is pertinently demonstrated by Azevedo (1990, p. 190), when he says that in each specific area of the Brazilian law there is a massive European influence:

No direito processual e no direito penal, predomina a Itália; no direito administrativo e no direito internacional, a França; no direito comercial, os Estados Unidos; no direito civil, França, Alemanha e Portugal disputam a primazia; no direito constitucional, finalmente, campo que atualmente preocupa o jurista brasileiro, as soluções francesas são muito citadas, especialmente quanto à forma de governo [...] (Azevedo, 1990, p. 190).

Azevedo (1990, p. 191) goes on to peremptorily contradicting the idea of the originality of the Brazilian law, previously cited by Lyra Tavares (1990, p. 56): “it can therefore be said, paradoxically, that the originality of the current Brazilian law lies in knowing how to copy” (Azevedo, 1990, p. 191).

In light of the above, it is clear how much the development of the Brazilian law is driven by the influence of different models of law established in Europe.

So, after this brief comparison between the systematic and procedural aspects of the different legal systems, European and Brazilian, it becomes pertinent to return to the question that motivated the development of this text.

This reflection aims to highlight the concrete influence of the Eurocentric thinking on legal operators in Brazil, showing how this influence shapes both legal practice and the interpretation of norms, often limiting the incorporation of more plural and diverse perspectives in the field of law.

For this reason, this chapter is not restricted to a mere macro-systematic analysis, but also seeks to observe how the Eurocentric thinking affects the decisions of Brazilian legal operators.

To this end, we will first make a specific analysis of the impact of the Eurocentrism on the words of Vagner dos Santos Queiroz, one of the twelve prosecutors who filed charges against Carlos Edmilson da Silva, who was sentenced to 170 years in prison for allegedly committing twelve rapes.

He was indicted on the basis of photo recognition and only after twelve years in prison he was cleared of all charges (Leite, 2024). The words of Judge Inês Marchalek Zarpelon, of the Court of Justice of the state of Paraná (TJPR), in a criminal sentence that sentenced a black man to prison, will be verified. The judge was later cleared of charges of racism by the National Council of Justice (CNJ) (Mainenti, 2023)⁶. Finally, we will examine the words of criminal Judge Lissandra Reis Ceccon in a sentence analyzed and, consequently, archived by the National Council of Justice (CNJ) (Carvalho, 2020)⁷.

2 THE EUROCENTRIC SEMIOTIC MODEL OF THE LANGUAGE OF THE BRAZILIAN LEGAL OPERATOR: ANALYSIS OF CASES

“O homem negro não é um homem; é um homem negro.”

(Frantz Fanon)⁸

After analyzing the implications of the Eurocentrism in the Brazilian legal system in a macro systematic way, it becomes pertinent to examine the words of Brazilian legal operators, in order to highlight the capillary way in which hegemonic thinking permeates these individuals, their imaginary and their epistemological bases.

Therefore, analyzing the semiotic model of communication of these words is pertinent because they show the hermeneutic structure of legal operators, as well as what underlies the use of their words. Law Judge Dauquíria de Melo Ferreira (2017, p. 13), in her master's thesis, points out the dangers of saying that the act of interpreting occurs unconsciously, which would be similar to saying that it is an act that goes unnoticed.

On the contrary, it should be considered that, in order to achieve the objective of understanding and contextualizing, the path of interpretation follows a concatenation of acts that are not concerned with the results that this may bring. This is why,

Essa uma das fundamentais importâncias da hermenêutica, pois provoca uma análise no campo da compreensão do ato de interpretar, fazendo com que o intérprete perceba os fatos não só na sua imagem, mas também em sua essência (Ferreira, 2017, p. 13).

In harmony with this statement, it is pertinent to analyze that the semiotic model of communication acts as a guiding thread between the interpretation of the case and the

⁶MAINENTI, Mariana. **CNJ não aponta conotação racista em sentença de juíza do Paraná**. Agência CNJ de Notícias, 2023. Disponível em: <https://www.cnj.jus.br/cnj-nao-aponta-conotacao-racista-em-sentenca-de-juiza-do-parana/>. Acesso em: 26 jun. 2024.

⁷CARVALHO, Igor. **Em dez anos, nenhum juiz foi punido por racismo em processos abertos no CNJ**. UOL, 2020. Disponível em: <https://noticias.uol.com.br/ultimas-noticias/brasil-de-fato/2020/09/25/juizes-racismo-cnj-levantamento.htm>. Acesso em: 30 jun. 2024.

⁸FANON, Frantz. **Pele negra, máscaras brancas**. Salvador: Edufba, 2008. p. 194. Tradução: Renato da Silveira.

perception of the images created by the interpreter, because, for Fidalgo (1999, p.16), the semiotic model of communication

[...] é aquele em que a ênfase é colocada na criação dos significados e na formação das mensagens a transmitir. Para que haja comunicação é preciso criar uma mensagem a partir de signos, mensagem que induzirá o interlocutor a elaborar outra mensagem e assim sucessivamente (Fidalgo, 1999, p. 16).

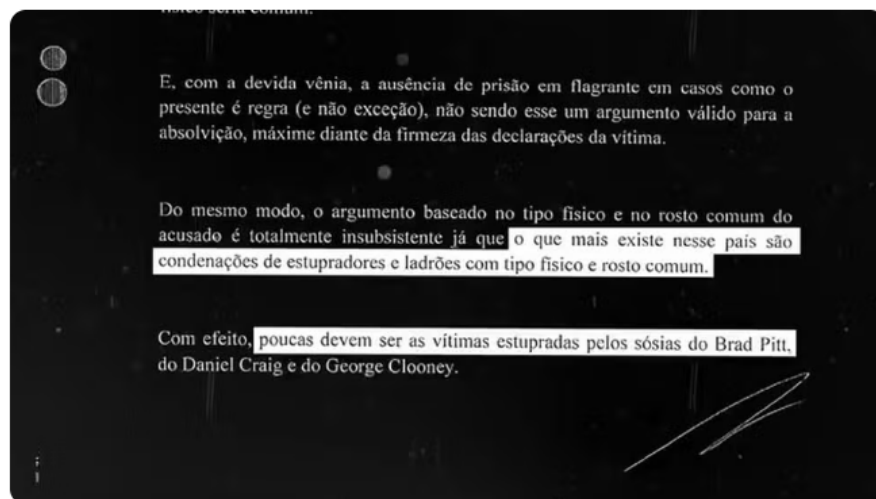
In order to highlight this double objective that permeates both the creation of meanings and the transmission of messages, as Fidalgo (1999, p.16) teaches, it is pertinent to analyze the words of prosecutor Vagner dos Santos Queiroz, one of the twelve prosecutors who filed charges against Carlos Edmilson da Silva, who was sentenced to 170 years in prison for allegedly committing twelve rapes. Carlos Edmilson da Silva was later cleared of all charges (Leite, 2024):

Picture 1 – Words by the Public Prosecutor Vagner dos Santos Queiroz.

In asking for sentencing of black man, prosecutor says “few victims must be raped by Brad Pitt look-alikes”. – Picture: Reproduced by “Fantástico”

Source: Reproduced by “Fantástico”, 2024.⁹

In the words underlined, the prosecutor reproduces the idea of the Western beauty and, more obviously, induces the reader of the message to realize that, in fact, the greatest tormentor of rape victims is the subject who has totally different characteristics from the



Ao pedir condenação de homem negro, promotor disse que 'poucas devem ser as vítimas estupradas pelos sócios do Brad Pitt' — Foto: Reprodução Fantástico

actors mentioned. It is worth returning to the concept by Fidalgo (1999, p.16) of the semiotic

⁹LEITE, Isabela. **Ao pedir condenação de homem negro, promotor disse que 'poucas devem ser as vítimas estupradas pelos sócios do Brad Pitt'**. Fantástico, 2024. Disponível em: <https://g1.globo.com/fantastico/noticia/2024/05/21/ao-pedir-condenacao-de-homem-negro-promotor-disse-que-poucas-devem-ser-as-vitimas-estupradas-pelos-socios-do-brad-pitt.html>. Acesso em: 3 jun. 2024.

model of communication, mentioned earlier, to make it clear that the words of the prosecutor not only convey a message, but also deleteriously stimulate the interlocutor to create meanings from the group of people who share the same phenotypical characteristics as Carlos Edmilson da Silva.

What is important to say here, in fact, is that the benchmark of the Western beauty is white and, at a gallop, it would be no different in Brazil. What goes hand in hand with this, therefore, is not the mere subtlety that defines what is palatable to the senses, but the - perhaps hidden, but certainly strategic - use of beauty as one of the bases for constructing the concept of morality, because, according to the prosecutor, “there must be very few victims raped by Brad Pitt, George Clooney and Daniel Craig look-alikes”, all white men, since, according to the prosecutor, “the most common convictions in this country are of rapists and thieves with average physiques and faces” (Leite, 2024).

According to Immanuel Kant, “Beauty is the Symbol of the Morally Good” (apud Guimarães et al., 2016, p. 73), which is why beauty makes up the trilogy of dimensions of the concept of spirit for the West, along with intelligence and morality. Everything that differs from the spirit, therefore, resides in the realm of the affections, the animalized body and, because it is devoid of spirit, can be objectified. In line with this thinking, Souza (2021, p. 212) argues that in the Eurocentrism,

[...] o essencial é a vinculação da “brancura” com o “espírito” na sua conotação secular, ou seja, como inteligência, moralidade e beleza, e da “negritude” com o corpo animalizado das paixões irrefletidas, não confiáveis e enlouquecidas (Souza, 2021, p. 212).

Carlos Edmilson da Silva is a black man who has suffered in the diabolical limbo that exists between the difficulty of producing evidence in crimes against sexual dignity, which, in this situation, overrides reckless photo recognition, and the word of the victim. The word of the victim against a man who is presumed to lack morality; a man who is primarily susceptible to mistrust, according to the words of the prosecutor, mainly because he doesn't have the aesthetic standards of a man produced in Europe.

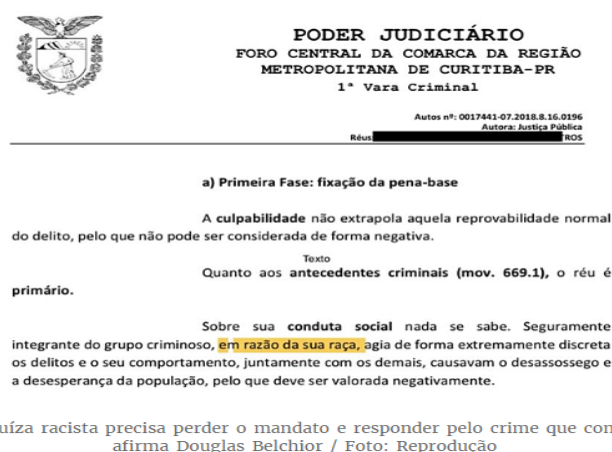
And if there are no phenotypical traits in his complexion, anything that refers to the European humanist civilizing pact, it is assumed that this being occupies the prison because he is not a man, but a black man (Fanon, 2008). When criticizing a text in which Sociologist Fabiane Albuquerque (2024) contests the idea that black men are incapable of reproducing

deleterious behaviors¹⁰, Restier and Zacarias (2024), in an article published on the *Diplomatique website*¹¹, make it clear that

[...] qualquer acusação contra um homem negro, seja ela verdadeira ou não, é quase que prontamente aceita como verdade. O imaginário que associa esse grupo a todos os vícios morais é tão profundo que até mesmo segmentos dos movimentos negros organizados compactuam com estas ideias (Restier; Zacarias, 2024).

In light of the above, it is clear that the issue of stereotyping and the social place of black men generate dissent even in progressive debates, and that it is necessary to increasingly discuss issues related to this, and above all, the practical impacts that judicial decisions can have in this regard. After analyzing this first case, we will now examine the words of Judge Inês Marchalek Zarpelon, of the Court of Justice of the state of Paraná (TJPR) in a criminal sentence that sentenced a black man to prison:

Picture 2 – Words of Judge Inês Marchalek Zarpelon, of the Court of Justice of the state of Paraná (TJPR)



"This racist judge needs to lose her mandate and answer for the crime she committed", states Douglas Belchior/Picture: Reproduction. Source: Reproduced by UOL News¹².

In this case, they are words used in a criminal sentence that convicted a black man called Natan Vieira da Paz, who was 42 years old at the time of the sentence.

¹⁰ALBUQUERQUE, Fabiane. Frantz Fanon usado para justificar o machismo de homens negros. [S. l.], 30 set. 2024. Disponível em: <https://diplomatique.org.br/frantz-fanon-usado-para-justificar-o-machismo-de-homens-negros/>. Acesso em: 22 out. 2024.

¹¹RESTIER, Henrique; ZACARIAS, Vinícius. Homem negro não é um homem? Entre ser tema e ser vida: Eis a questão. [S. l.], 21 out. 2024. Disponível em: https://diplomatique.org.br/homem-negro-nao-e-um-homem-entre-ser-tema-e-ser-vida-eis-a-questao/?removed_item=1. Acesso em: 22 out. 2024.

¹²CORREGEDORIA em SP arquiva caso da juíza que escreveu que réu não tem 'estereótipo de bandido': Trecho faz parte de sentença proferida em 2016, em Campinas (SP), contra réu condenado por latrocínio e tentativa de latrocínio. Caso teve repercussão em março e CNJ analisa decisão. Campinas e Região: G1, 1 ago. 2019. Disponível em: <https://g1.globo.com/sp/campinas-regiao/noticia/2019/08/01/corregedoria-em-sp-arquiva-caso-da-juiza-que-escreveu-que-reu-nao-tem-estereotipo-de-bandido.ghtml>. Acesso em: 11 jul. 2024.

The recalcitrance of the deleterious terms demonstrates consonance and, this time, more directly, creating meanings about morality. This can be seen in the following excerpt from the sentence: “[...] because of his race, he acted extremely discreetly [...]”.

The meaning attributed to race, in the passage quoted, reinforces the stereotype of marginality and strongly imputes cunning, cleverness and dissimulation to the defendant and the race to which he belongs, inducing one to think that they are typical of those far removed from the moral virtues of the standard of man already evidenced in the analysis of the previous case. This pattern of constructing meanings continues in harmony in the third case that will be presented here:

Picture 3 – Words by criminal Judge Lissandra Reis Ceccon



Trecho de sentença proferida em Campinas viralizou — Foto: Reprodução

It is worth noting that the defendant does not have the standard stereotype of a bandit, he has light skin, eyes and hair, and is not easily mistaken for one. An excerpt from a sentence handed down in the city of Campinas went viral – Picture: Reproduction. Source: Reproduced by Campinas and Region – G1 – EPTV¹³

In the words of criminal Judge Lissandra Reis Ceccon, the path is reversed, but it has the same purpose: the stereotype of the standard is first evidenced, and then it is demonstrated

¹³**CORREGEDORIA** em SP arquiva caso da juíza que escreveu que réu não tem 'estereótipo de bandido': Trecho faz parte de sentença proferida em 2016, em Campinas (SP), contra réu condenado por latrocínio e tentativa de latrocínio. Caso teve repercussão em março e CNJ analisa decisão. Campinas e Região: G1, 1 ago. 2019. Disponível em: <https://g1.globo.com/sp/campinas-regiao/noticia/2019/08/01/corregedoria-em-sp-arquiva-caso-da-juiza-que-escreveu-que-reu-nao-tem-essereotipo-de-bandido.ghml>. Acesso em: 11 jul. 2024.

what is different from that standard: "[...] the defendant does not have the standard stereotype of a bandit, he has light skin, eyes and hair, and is not easily confused with the stereotype of a bandit."

In light of the cases analyzed, the consonance present in the words of the legal operators highlights the effects of the Eurocentrism in the Brazilian legal system and how the absence of a different theoretical framework contributes to the systematic reinforcement of this prototype.

This scenario perpetuates injustices and makes it essential to incorporate new perspectives of knowledge that go beyond hegemonic approaches, with the aim of expanding the debate and promoting new possibilities of thought and argumentation.

This can reveal the principiological richness of legal systems originating outside the European geopolitical center, favoring the construction of sociocultural justice in the field of knowledge. In doing so, historically subalternized groups are recognized as subjects in the epistemological field, and not merely objects of study.

In this sense, the next topic seeks to make this effort, focusing on the analysis of the Kurukanfuga Pact, the Constitution of the Mali Empire.

Although largely ignored in the theoretical framework of legal studies in Brazil, it is recognized as one of the first constitutional models in the world. Its civilizing characteristics, considered modern from a Euro-centric perspective, demonstrate the importance of broadening the theoretical scope and including legal experiences that challenge the hegemony of the Eurocentric thinking.

3 THE KURUKANFUGA PACT, ITS ORIGIN AND ITS EFFECTS ON ITS TIME-SPACE

The Kurukanfuga Pact, also known as the Mandinka Charter, was recognized as an intangible heritage of humanity by UNESCO in 2009 and as one of the first constitutions in the world. This pact is a pioneer in the discussion of the rights of peoples and it brings a series of rights and duties to the community that is reflected in what was later attributed to Europe: the condition of conceptualizer of the idea of human rights (Souza, 2018, p. 174).

The emergence of the Pact, and this is worth mentioning in an adjunct way because it is not the main focus of this work, contradicts the Western idea that African peoples lived in isolation and savagery. On the contrary, it was on the heated trade of the West Africa that the

great articulator Sundjata Keita achieved a decisive feat for what would become the Mali Empire: the unification of twelve kingdoms around a common goal (Souza, 2018).

What determined this unification was the desire of the kingdoms to defeat the powerful army of the King Sosso and leader of the blacksmith clan, Sumaoro Kante, great rival of Sundjata (Souza, 2018).

According to oral traditions, Sumaoro Kante deliberately terrified practically all the kingdoms: “He caused terror to reign in the Manden to such an extent that “men no longer even dared to talk, for fear that the wind would carry their words to the king” (Niane, 2010, p. 142). In addition to popular accounts, Sumaoro Kante appeared to be a major threat to Islamic trade relations, “having defeated and killed nine kings” (Niane, 2010, p. 143). It is important to mention that, for Silva (2015, p. 15):

Nesse período, o sucesso das revoluções islâmicas fulas no Futa Toro e no Futa Djalon haviam aberto novas perspectivas para toda a comunidade islâmica da África do oeste. Conforme Aziz (2010), o palco dessas revoluções, que os historiadores e geógrafos denominaram “países dos negros”, ficava no deserto do Saara, de norte a sul, em uma zona de clima inóspito (Silva, 2015, p. 15).

After the defeat of Sumaoro Kante, in the famous Battle of Kirina, the great leader and winner Sundjata Keita, together with his allies, managed to access trans-Saharan trade routes that were crucial to the development of what would become the Mali Empire (Souza, 2018, p. 80). It was then that, as Mota Junior argues (2019, p. 171):

depois da vitória sobre Sumaoro Kante, o rei Sosso (UNESCO, 2010), na célebre batalha de Kirina, em 1235, Sundiata Keita convocou a Assembleia Geral de Manden Cekun (levando aos homens) para submeter à aprovação, em uma “verdadeira assembleia constituinte que reuniu os aliados depois da vitória” (UNESCO, 2010, p. 173), a nova Carta Manden, em 1236 (Njane, 2009) (Mota Junior, 2019, p. 171) tradução nossa¹⁴.

The constituent assembly (Gbara), referred to by Mota Junior (2019, p. 171), gave rise to the Kurukanfuga Pact when, in a conciliatory manner, the Maghan (emperor) Sundjata Keita, returned the kingdom to each of its respective kings and, with them, established strong economic, political and social organization relations in the, from then on, Mali Empire. According to Niane: “the flexible nature of his administration meant that the empire was more like a federation of kingdoms or provinces than a unitary organization” (2010, p. 153).

Despite following the African oral tradition of transmitting knowledge to facilitate its insertion into the Western world, as Souza informs us: “the Mandinka Charter today is divided

¹⁴“[...] después de la victoria sobre Sumaoro Kante, el rey Sosoe (UNESCO, 2010), en la batalla célebre de Kirina, en 1235, Sundiata Keita hizo convocar a la Asamblea General de Mandem çekun (llevando a los hombres) para someter a la aprobación, en una “verdadera asamblea constituyente que reunió los aliados después de la victoria” (UNESCO, 2010, p. 173), la nueva Carta Manden, en 1236 (Njane, 2009).”

into forty-four articles, which are sometimes confused with the Oath of the Hunters (Donsolu Kalikan), which served as its inspiration” (2018, p. 17).

The main effects of the Kurukanfuga Pact on the society of the Mali Empire were to establish peace among peoples and to dissipate solutions through wars (Souza, 2018), but in addition to this, and which is of great interest to the development of the following chapter, the Constitution of the Mali Empire established parameters of social harmony and participation of the population that were unimaginable for other continents in the middle of the 13th century. The Kurukanfuga Pact, contrary to hegemonic thinking, highlights subalternized peoples as producers of values and virtues that can have a significant impact on post-modern societies, due to their “invaluable contribution to the history of thought, democracy and human rights” (Niane apud Souza, 2008, p. 174).

Given the importance of the Kurukanfuga Pact for the society of the Mali Empire, especially in terms of promoting peace, social harmony and popular participation, it is imperative to establish a comparative analysis with the Brazilian legal system.

Despite the temporal and contextual differences, this comparison reveals both similarities and dissonances, especially in terms of the construction of democratic principles and the protection of fundamental rights.

In the next chapter, this analysis will allow us to identify how a historically marginalized pact can offer valuable contributions to contemporary legal thinking and to the understanding of law in Brazil.

4 SIMILARITIES AND DISSONANCES BETWEEN THE KURUKANFUGA PACT AND THE BRAZILIAN LEGAL SYSTEM

By examining the issues surrounding the Kurukanfuga Pact, the aim is to promote new perspectives that challenge the dominant paradigms and make a significant contribution to the development of a more plural and inclusive legal thinking, especially when this analysis is based on comparison.

According to Ovídio (1984, p. 161): “comparative legal research makes a marked contribution to the evolution and broadening of the frontiers of legal knowledge”. In line with this broadening of knowledge, it is important to present what Carvalho (2008, p. 140) argues:

um determinado conhecimento científico só se concretiza quando transpõe os denominados obstáculos epistemológicos e só se mantém de pé ao resistir a novos paradigmas que o colocam à prova (Carvalho, 2008, p. 140).

When considering comparative law as a science, nothing is more exciting than putting a legal system to the test by comparing it with a body of law from the periphery of the European geo referenced knowledge.

This is because, as discussed in the previous chapters, the Brazilian legal system has its origins in European systems. Thus, the practice of merely reiterating research that compares Brazilian laws with European ones is equivalent to constantly comparing a fruit with its tree. To enrich this paradigm, therefore, it is essential to establish comparisons with norms that are not limited to the hegemonic ones, and to find similarities and dissonances in this normative comparison.

The Kurukanfuga Pact, also known as the Mandinka Charter, is an extremely important document for the Malian society, and its dictates have been passed down to the present day through the traditional oral transmission of knowledge, as it is common in many regions of Africa.

From a Western perspective, it is common to question the validity of this transmission of knowledge, given that the European tradition is to transmit knowledge in written form. What happens is that this oral knowledge is not transmitted randomly, but through people who have been assigned the task of preserving the essential values of the community.

In the Manden society, this knowledge is transmitted through the jeli, or djeli. Souza (2018, p.56) argues: “[...] jeli means blood, because like blood, jeli runs through all the veins of the social ‘body’” (Souza, 2018, p. 56). This is because the jeli plays an extremely important role in the organization and development of that society, as it is in charge of transmitting, through words, the entire axiological process that makes up the values of that community.

According to Souza (2018, p. 56): “one can see, from the distinctive way in which the jeli presents himself, his importance within the community, above all through the exercise of his craft, which consists of being a master of the word”.

So, in order to make it feasible to study, despite the traditional transmission of knowledge through orality, the Kurukanfuga Pact was embodied and organized into forty-four articles, distributed into four sections.

The first section establishes the social organization; the second concerns property and forms of ownership in that society; the third establishes the preservation of nature; and the

fourth brings final provisions¹⁵. From a general overview, it can be seen that the Kurukanfuga Pact establishes two different forms of relations in the Mandinka society.

The first, in a broad sense, seeks to maintain the integrity of the Empire through a systematized division of groups and their respective roles in society. This division demonstrates a fundamental conciliatory aspect because, in order to be elevated to the command of the Manden community, Emperor Sundjata Keita had to establish several alliances based on strengthening his political and economic relations.

This conciliatory character, present in the Article 1, is what made the Mali Empire similar to a block made up of a federation of kingdoms (Niane, 2010, p. 153), and not to the idea of a European Empire, mainly made up of isolation and unitary organization.

From another perspective, the Kurukanfuga Pact establishes relationships in the strict sense, through the regulation of community life, always aimed at resolving conflicts and good social coexistence (Souza, 2018, p. 163). After this overview, the first similarity that can be observed, specifically, is the presence of the *tontajon* (holders of aljavas) in the Article 1, who, in addition to being hunters, were people appointed to maintain the territorial inviolability of the Mali Empire.

The obligation to maintain peace and territorial integrity in the Mali Empire is similar to the obligation for military service (art. 143 of the Constitution of 1988 of the Federative Republic of Brazil) in Brazil.

The class condition, evident in the Article 3 of the Law No. 4.375 of 1964, which was accepted by the Constitution of 1988 of the Federative Republic of Brazil, demonstrates a concern to initiate young people into military service, in order to demonstrate the importance of their act of citizenship in the development of peace and the defense of national sovereignty. In addition, in order to compare norms, it is essential to consider the ideological, historical, social, economic and philosophical context in which they are inserted in a given legal system.

In this sense, both Article 1 of the Kurukanfuga Pact and Article 143 of the Constitution of 1988 of the Federative Republic of Brazil reflect a social desire for revitalization. In the case of the Mali Empire, this desire stemmed from the rise of an emperor capable of reconciling the interests of several kingdoms that were suffering under the tyranny of the previous king. In Brazil, on the other hand, it was motivated by the collective desire to build a democratic regime after twenty-one years of military dictatorship.

¹⁵A partir deste momento, vários artigos do Pacto serão analisados e comparados com o ordenamento jurídico brasileiro. A versão completa do Pacto de Kurukanfuga (Carta Mandinga) pode ser lida, **nas páginas 159-162**, em SOUZA, Victor Martins de. **A alijava e o arco: o que a África tem a dizer sobre os direitos humanos – um estudo da Carta Mandinga**. São Paulo, 2018, 244. Tese de Doutorado. Programa de Pós-Graduação em História Social, Pontifícia universidade Católica de São Paulo (PUC-SP). Disponível em: <https://repositorio.pucsp.br/jspui/handle/handle/21110>. Acesso em: 2 nov. 2024.

Along these lines, the morikanda lolu, present in the articles 2nd¹⁶ and 3rd¹⁷, according to the Kurukanfuga Pact, they are brought in as masters and educators in Islam, and everyone must show them respect and consideration.

It should be noted that this relationship with Islam is supported by the economic relations that the Mali Empire wanted to establish with the resumption of the trans-Saharan trade routes (Souza, 2018, p. 80). By way of comparison, the sole paragraph of the art. 4 of the Constitution of 1988 of the Federative Republic of Brazil¹⁸, among other terms, establishes that Brazil will seek economic and cultural integration with Latin America.

Both of these relations of integration came about as a response to historical episodes of political and economic mismanagement: in the Mali Empire, due to the unsatisfactory flow of commercial relations directed to that territory; and, in Brazil, due to the economic crisis at the time of the military dictatorship, as evidenced by Coelho (2016, p. 138) when he states that Brazil, by provoking an internal recession, had as a result:

[...] em 1981 (-3,1% de crescimento do PIB) e em 1983 (-2,8%), fato que não ocorria com a economia brasileira desde o fim da Grande Depressão, ainda no começo da década de 1930 (Coelho, 2016, p. 138).

With regard to the role of young and old people in the Mandinka society, the article 4th¹⁹ shows a separation by age groups, ensuring the presence of a chief in the Gbara (General Assembly) to represent the interests of each of them. Social protection for the specific group of elderly people, in a modern context, is related to the fact that the principle of equality must find ways of being put into practice. In this sense, the recognition that there are social groups at a representational disadvantage in relation to others, for Paz and Goldman (2006, p. 12),

[...] levou, no final do século XX, ao surgimento de leis e estatutos, que foram desenvolvidos exatamente para garantir o espaço e a igualdade material de chances, frente a desvantagens existentes em relações legais, como, por exemplo, o Estatuto da Criança e do Adolescente (Lei 8.065/90), o Código da Defesa do Consumidor (Lei 8.078/90) e, agora, o Estatuto do Idoso. Dessa forma, o tratamento desigual dos desiguais possui exatamente o objetivo de levar a uma sociedade mais justa (Alonso, 2005) (Paz; Goldman, 2006, p. 12).

Marco Antonio Vilas Boas, commenting on the National Policy for the Elderly, created by the Law No. 8,842 of 1994, argues as follows:

¹⁶Artigo 2º: Os morikanda lolu devem dizer a verdade aos chefes, serem seus conselheiros e, por meio da palavra, defenderem as regras estabelecidas e a ordem sobre a Assembleia do reino.

¹⁷Artigo 3º do Pacto de Kurukanfuga: Os morikandas lolu são nossos mestres e nossos educadores no Islã. Todos devem a eles respeito e consideração.

¹⁸Art. 4º da Constituição da República Federativa do Brasil: A República Federativa do Brasil rege-se nas suas relações internacionais pelos seguintes princípios: Parágrafo único. A República Federativa do Brasil buscará a integração econômica, política, social e cultural dos povos da América Latina, visando à formação de uma comunidade latino-americana de nações.

¹⁹Artigo 4º do Pacto de Kurukanfuga: A sociedade está dividida em “classes” de idade. Para representar cada uma delas será eleito um chefe. Fazem parte de cada classe de idade, pessoas (homens ou mulheres) nascidas no período de três anos consecutivos. Os kangbés (jovens e velhos estrangeiros) devem ser convidados a participar na tomada de grandes decisões a respeito da sociedade.

[...] se o idoso pode decidir os destinos da nação, com o voto, como qualquer eleitor, pode também participar na política de seu próprio atendimento. A Política Nacional do Idoso (como esboço do Estatuto do Idoso) lhe repetiu esse direito: participação do idoso, através de suas organizações representativas, na formulação, implementação e avaliação das políticas, planos, programas e projetos a serem desenvolvidos. (Boas, 2015, p. 20).

Article 4 of the Kurukanfuga Pact also emphasizes the importance of respect for the elderly in the Mandinka society, which is in line with its own article 18²⁰. The article on respect for the rights of primogeniture makes it clear that respect for the elderly is intrinsic to the ideological aspect that surrounded the making of the Pact, since this respect, without reservations, would fall on any ethnicity or class that made up that kingdom.

Another point that should be highlighted is the way in which the Kurukanfuga Pact deals with the gender issue. As evidenced by the report produced by CELHTO (*apud* Souza, 2018, p. 166):

Sejam eles portadores de aljava, príncipes, nyamakala, marabu ou servos, todos que são da mesma faixa de idade estão submetidos as mesmas regras sem distinção de sexo. (CELHTO *apud* Souza, 2018, p. 166)

This CELHTO report unequivocally observes not only the article 4, but also article 16 of the Kurukanfuga Pact: “Women, beyond their daily occupations, must be associated with all our governments”. Here, and in the context of the articles 14²¹ and 15²², the Kurukanfuga Pact makes it clear how women are treated as subjects of rights in the Mandingo society. The opposite is true for Brega Filho and Alves (2009, p. 132):

Na cultura ocidental de um modo geral a mulher sempre foi marginalizada, quer por conta da tradição judaico-cristã que é machista, quer pela divisão sexual do trabalho e a construção de um ideal de mulher restrita à esfera doméstica, limitada ao cuidado do lar etc. (Brega Filho; Alves, 2009, p. 132)

This is in line with what Cunha (2014, p. 151) explains: “[...] the male sex is seen as strong, dominating, rational, head of the family, while the female sex is the fragile, dominated, domesticable, emotional and docile sex.” In other words, the Kurukanfuga Pact is an important paradigm in which the West can refer to in order to make corrections to its historical trajectory, with a view to guaranteeing fundamental rights and gender equality.

Brazil demonstrated this commitment through the Law No. 14.611, of July 3, 2023, by amending the Consolidation of Labor Laws to guarantee compensation for off-balance sheet damage related to discrimination “on the grounds of sex, race, ethnicity, origin or age”, as

²⁰Artigo 18: Respeitemos o direito da primogenitura

²¹Artigo 14: Não ofender jamais as mulheres, nossas mães.

²²Artigo 15: Nunca colocar a mão sobre uma mulher casada, não sem antes, ainda que sem sucesso, ocorrer a intervenção de seu marido

well as establishing measures that institute “mechanisms for wage transparency and remuneration criteria²³”.

With regard to the general system of servitude (kōn gbèn wölö), present in the Mandinka society and mentioned in the article 6th²⁴ of the Charter, which should be read in line with the article 20 of the Treaty on the Functioning of the European Union²⁵, it is necessary to read carefully so as not to make criticisms that are not in line with the existing evidence. According to the CELHTRO report (*apud* Souza, 2018, p. 167):

[...] em alguns períodos da manhã, as famílias eram visitadas e os jovens ociosos ou preguiçosos eram levados aos campos ou às oficinas. Os contraventores eram denunciados frente ao conselho dos mais velhos. Essa prática, de fato, contribuiu para a prosperidade do Império. (Celhtro *apud* Souza, 2018, p. 167)

Souza (2018, p. 167) points out that this measure had nothing to do with slavery because it was a way of keeping young people away from idleness, and that all families in the empire, without exception, were susceptible to this practice. It so happens that before the Mali Empire was formed, there was slavery in that region. However, Souza (2018, p. 171) argues that:

com a ascensão de Sundjata, a escravidão foi proibida no mandinga, ao mesmo tempo que as condições nas quais os servos deveriam realizar os trabalhos foram melhor especificadas pela Carta, conforme estipulado pelos artigos 4, 5 e 6, e, de forma mais direta, pelo artigo artigo 20: “alu kana lu kono jon nu jakankata” (jamais maltrate o seu servo) (Souza, 2018, p. 171).

The serfs, in some sense, were those people who came from the peoples defeated at the Battle of Kirina and who were absorbed by the Empire, which is why, for Souza (2018, p. 171), the article 20 does not resemble a system of modern slavery, but it is in fact in line with the system of serfdom and the regulations of the modes of work instituted in the Pact.

Another point that should be highlighted in this regard is the role of the *mofé molu*, who mediated the interests of the serfs before the community and the royalty, with this exercise guaranteed in the article 1st.

The wording of the articles 20, 33, 35 and 36 is noteworthy in this regard²⁶, which carry a certain air of pioneering spirit when it comes to social welfare, eradicating poverty and

²³Art. 4º A igualdade salarial e de critérios remuneratórios entre mulheres e homens será garantida por meio das seguintes medidas: I – estabelecimento de mecanismos de transparência salarial e de critérios remuneratórios;

²⁴Artigo 6º: Para alcançar a prosperidade, é instituído o kōn gbèn wölö (um modo de subserviência) para lutar contra a preguiça e a ociosidade.

²⁵Artigo 20: Nunca maltrate o seu servo, dê-lhes um dia de descanso por semana e ordene que eles cessem os trabalhos em momentos razoáveis. Somos mestre do servo e não da bolsa que ele carrega.

²⁶Artigo 20: Nunca maltrate o seu servo, dê-lhes um dia de descanso por semana e ordene que eles cessem os trabalhos em momentos razoáveis. Somos mestre do servo e não da bolsa que ele carrega;

Artigo 33: A quarta novilha nascida de um único parto torna-se propriedade de um guardião;

Artigo 35: De cada quatro ovos, um pertence ao guardião da galinha poedeira; e

Artigo 36: Satisfazer sua fome não é roubo, se nada carregar em seu saco ou em seu bolso.

proposing what would come to be known in the West as the rights of workers. Article 20, specifically, refers to what is known as the right to paid weekly rest (art. 7, XV, of the Constitution of 1988 of the Federative Republic of Brazil). According to Leite (2024, p. 455):

O repouso semanal ou hebdomadário tem origem religiosa e seu escopo é propiciar ao trabalhador o refazimento das energias despendidas durante uma semana de trabalho. O repouso semanal remunerado é estendido aos dias considerados feriados civis ou religiosos.

Article 33 of the Kurukanfuga Pact, on the other hand, stipulated that the guardian owned the fourth heifer out of every four that were born, i.e. a quarter of the fruit. Similarly to the article 35, which stipulated that the guardian owned a quarter of every four eggs of the laying hen.

Article 36 is more generic in that it does not define the object or the active subject: “satisfying your hunger is not theft, if you carry nothing in your bag or pocket”, which is similar to the definition of theft by starvation, when the material typicality of the conduct is removed if the theft of the food is for immediate consumption, which is supported by the principle of human dignity, the minimum intervention of criminal law and the items I and III of the article 3 of the Constitution of 1988 of the Federative Republic of Brazil²⁷.

In short, all the articles mentioned demonstrate a commitment on building the prosperity of the Empire through a fairer and more supportive social environment, with a view to eradicate poverty, as it is evident in the article 30 (“Help should be given to those in need”).

As far as civic relations and peaceful solutions to conflicts are concerned, there is a possible connection between these objectives and the desire for female emancipation. Just take a systematic look at the articles 11 (“When your wife or child runs away, never chase them into your neighbor's house”); 14 (“Article 14: Never offend women, our mothers”); and 16 (“Article 16: Women, beyond their daily occupations, must be associated with all our governments”). For Souza (2018, p. 169), it makes the following clear:

[...] não somente preocupação em relação à convivência, harmônica entre pessoas próximas, mas também entre membros de uma mesma casa ou espaço. Assim, o vizinho, no mais das vezes, poderia se constituir enquanto um possível mediador para a reconciliação familiar.

The preventive solution to conflicts and the desire for harmonious coexistence in the Kurukanfuga Pact are also evident from the article 21²⁸, which guides the avoidance of

²⁷Art. 3º Constituem objetivos fundamentais da República Federativa do Brasil: I – construir uma sociedade livre, justa e solidária; III – erradicar a pobreza e a marginalização e reduzir as desigualdades sociais e regionais;

²⁸Artigo 21 do Pacto de Kurukanfuga: Não possuas assiduidades às esposas do chefe, do vizinho, do marabu, do feiticeiro, do amigo e do sócio

adultery (“Don't be assiduous with the wives of the chief, the neighbor, the marabout, the wizard, the friend and the partner”); and in the article 24 (“Never harm foreigners”).

This last article mentioned, in harmony with the article 25 (“That one who undertakes a mission should risk nothing in the mandinga”), was well observed by Souza (2018, p. 172) as a very sophisticated perception of the State for its time, and which is in line with modern provisions such as the Vienna Convention of 1961, promulgated in Brazil through the Decree No. 56,435 of June 8th, 1965²⁹.

This demonstrates the pioneering spirit of the Kurukanfuga Pact in dealing with issues in different areas that today constitute the fundamental objectives of modern states. Another point dealt with in the Pact that until then had been unprecedented is the preservation of the environment. The Mandinka Charter makes the protection of nature an ongoing community duty, as stated in the article 38 (“Before setting fire to the forest, do not look at the ground, but raise your head towards the treetops”).

In this respect, there is a parallel with the principle of intergenerational environmental solidarity, which states that present generations must defend and preserve the integrity of nature so that future generations can enjoy it. This is what can be extracted from reading the art. 225 of the Constitution of 1988 of the Federative Republic of Brazil³⁰. In the same vein, Souza (2018 p. 173) demonstrates:

[...] da Carta emerge a ideia de natureza como um bem comunitário, podendo-se dizer que os caçadores, responsáveis pela proteção da fauna e da flora, antecipam a ideia de sustentabilidade respaldada pelo princípio da unidade cósmica.

This comparison shows how much the Kurukanfuga Pact is a historical document that should be taken into account in discussions on the various areas of law, since the Charter “...broadens perspectives on customs, values, ethics and political philosophy, in relation to knowledge of life among African peoples” (Souza, 2018, p. 174).

In this sense, without forgetting, of course, the didactic-scientific autonomy that universities enjoy³¹, this broadening of perspectives, referred to by Souza (2018, p. 174), can be applied analogously and voluntarily in superior education through the Law No. 10.639 of 2003, which makes the teaching of the Afro-Brazilian history and culture compulsory in

²⁹Artigo 29 do Decreto nº 56.435, de 8 de junho de 1965: A pessoa do agente diplomático é inviolável. Não poderá ser objeto de nenhuma forma de detenção ou prisão. O Estado acreditado tratá-lo-á com o devido respeito e adotará todas as medidas adequadas para impedir qualquer ofensa à sua pessoa, liberdade ou dignidade.

³⁰Art. 225 da Constituição da República Federativa do Brasil de 1988: Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá-lo para a presente e às futuras gerações.

³¹Art. 207 da Constituição da República Federativa do Brasil: As universidades gozam de autonomia didático-científica, administrativa e de gestão financeira e patrimonial, e obedecerão ao princípio de indissociabilidade entre ensino, pesquisa e extensão.

secondary and elementary schools, since the intention of the legislator with this Law is to repair historical disparities through access to non-hegemonic knowledge.

When commenting on the need for democratization and, therefore, the expansion of the interpretation of law, Soares (2023, p. 253) argues the following:

Os atores sociais que são alcançados pela norma constitucional ou infraconstitucional devem ser considerados como forças produtivas da interpretação, i.e., intérpretes *lato sensu* da Carta Magna e da totalidade da ordem jurídica. Como os intérpretes oficiais não são os únicos que vivenciam o ordenamento jurídico, obviamente, não podem monopolizar a sua atividade interpretativa.

This monopoly on interpretative activity does not arise merely from the will of the official interpreter, but from the self-referencing of academic activity itself and the way in which knowledge is produced in the West.

An isolationist epistemological basis, which rules out possibilities other than hegemonic ones, tends to contribute significantly to the progressive maintenance of this monopoly of interpretative activity referred to by Soares (2023, p. 253). In this sense, the Kurukanfuga Pact, when adopted as a basis for study, offers an “invaluable contribution to the history of thought, democracy and human rights” (Niane apud Souza, 2018, p. 174).

This contribution stems both from its similarities and dissonances in relation to the Brazilian legal system and its ability to broaden the epistemological horizons of academics from vulnerable social groups.

These groups, when faced with the hegemonic epistemological curriculum, often find themselves reflected only as objects of study - represented in prison, underemployment or socioeconomic misery - and not as subjects and normative interpreters, endowed with their own bases, originating from their cultures and traditions.

CONCLUSION

As presented throughout this text, it is clear that it is important to broaden the academic epistemological bases in order to consider other perspectives and driving forces for interpreting and referencing the legal order, which are different from the hegemonic bases.

This impact is not restricted to academic discussions, as it is capable of reaching the very interpretative activity of official interpreters of the law, especially when perspectives other than European geo-referencing are considered, as well as expanding the conditions that each social actor, encompassed by the legal system, occupies in society, when they can recognize the contribution of a legal process that comes from their people.

As the main results of this research, it became evident that, as in other Western countries, Brazil references its normative development in the knowledge produced in Europe.

The research showed that this is capable of impacting the language of Brazilian legal operators, from the use of terms that are harmful to a certain vulnerable group, to the very result that is achieved through the application of the norm by reinforcing social and racial stereotypes.

On the other hand, by demonstrating the importance for the development of important legal concepts such as democracy, citizenship and human rights, which were later recognized as intangible heritage of humanity by UNESCO, the Kurukanfuga Pact can make a significant contribution to changing this paradigm, both by showing itself as an alternative possibility for referencing and by being knowledge produced on the periphery of European georeferenced knowledge.

The lack of studies that look for alternative references and examine a story told from different perspectives proved to be an obstacle in the development of this work.

It is therefore recommended that research be carried out on similar themes, with the aim of exploring the relevance of other non-Western legal systems, cultures and civilizational traditions. Examples such as the Kurukanfuga Pact can offer valuable contributions to language, the history of thought, democracy and the interpretation of the Brazilian legal order.

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