The Presence of Structural Racism in Brazilian Culture and the use of Law as a tool of Domination

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Abstract— The present work is dedicated to the study of elements similar to the oppressive structure of the sociocultural relations developed in the Brazilian society that undertake structural racism and its social stains. Therefore, it is intended to rescue the ideas that postulate the cultural and universal identity, revealing the social forces that act in the construction of the Brazilian cultural framework. For this, the main understandings of authors such as Eric Wolf, Frantz Fanon and Lélia Gonzalez will be explored, who expose the hidden bases of national identity, namely, racism and coloniality, both agents in favor of the imposition of a model of Eurocentric culture designed to exclude the "different" and impose favorable behaviors on dominant groups, while silencing the cultural existence of subjugated peoples, as well as the way in which the Law is used to consolidate these relations of domination. Three topics will be presented in this work aimed at achieving the objective described above: at first, the reflection of culture as discourse, undoing the notion that it would arise spontaneously; then, through the exposition of phenomena resulting from structural racism impregnated in Brazilian culture, as well as the way in which manifestations of black culture are appropriated and silenced; finally, with the analysis of Law as a mechanism of power used by this ideology of domination to impose its ideals on individuals.

I. INTRODUCTION

More than a century after the abolition of slavery in Brazil, with the promulgation of the Aurea Law, the social and economic effects that disfavor the black population in direct and indirect ways persist, although the existence of a supposed "racial democracy" that would provide comfortable integration of ethnic groups persists in the imagination of part of the population. Thus, the present work aims to analyze the formation of Brazilian national identity as part of an artificial process aimed at maintaining social relations that impose unfavorable conditions on specific marginalized groups, as well as the structuring conceptions of social racism and the means through which law is instrumentalized to achieve constitutional purposes in the contemporary scenario.

II. BRAZILIAN CULTURAL FORMATION AND EXCLUSION OF THE BLACK POPULATION FROM NATIONAL IDENTITY

The historical and cultural formation of the Brazilian people was strongly marked, among other events, by the regime of slavery that lasted until the end of the 19th century, characterized over time by principles of discrimination and exclusion of the black population, which naturally resulted in a process of self-rejection and marginalization of these individuals as citizens.

In order to understand the conflicts experienced in current Brazilian society and to situate the process of constructing racial identity in the country, it is necessary to highlight the historical process of formation of the "hegemonic" Brazilian culture to try to portray some of the "civilizing mission" and its events of violence suffered by thousands of black enslaved, who over time, tend to be erased from national history.

When they were transported to Brazil, blacks arrived under currents, were different from each other, came from different regions, different languages and different cultures. As soon as they landed in Brazilian ports, the captives were baptized by the priests and marked in hot iron by the lords of ingenuity. As slaves, they were beaten and forced to work days and days in precarious and exhausting conditions. They came almost empty-handed. All his objects, traditions, culture, customs, beliefs, language and his own identity were left behind.

This period left deep marks on the Brazilian social structure and on the life of the black population. For years ethnic-racial origin and socioeconomic conditions

have been and continue to be the main forms used to constitute the processes of inferiorization and hierarchization of social layers, thus tracing different frameworks and statistics that lead to prejudice and marginalization of those who have historically suffered in our society. Thus, this whole system that involves the process of slavery in Brazil is a historical issue of great relevance that reverberates to political and social situations worrying in the recent history of the country. The link between the process of slave economy and the consequent social inequality that still exists in Brazil that affects most of the black population cannot be denied.

The denial about the past slave, racist and hierarchical of Brazilian society produces racism as a symptom. The so-called "racism to the Brazilian", as Lélia Gonzalez (1988, p. 69) points out, "would be the denial of our Latin amefricanity that turns against those who are the living witness of it (black sands and blacks), while saying not to do so ('Brazilian racial democracy')". Thus, to understand race relations and the process of constructing the ethnic-racial identity of blacks, it is necessary to establish some concepts such as race and ethnicity, notions that are often treated as synonymous and misinterpretation.

> Amefricanity, [...] to recognize it is, ultimately, to recognize a gigantic work of cultural dynamics that does not take us to the Atlantic side, but that brings us from there and transforms us into who we are today: Amefricanos. (GONZALEZ, 1988, p. 79).

The Amefrican concept proposes an incorporation into the whole historical process of intense cultural dynamics (adaptation, resistance, reinterpretation and creation of new forms) that is afroencentric. Thus, the author suggests a new look and presents as a milestone in the discussions of the categories race, gender and class, stimulating the reflection and rescue of the stories of those who preceded it, while teaching the valorization of all these cultures, in a sense of providing the construction of new strategies and knowledge for the collective liberation of the black people.

The word "race" came from the Italian razza, meaning category, species, refers to "a subgroup of people whose defined combination of physical characteristics of genetic origin and various degrees of variation by which these characteristics are associated, distinguish them as a subgroup of the human race" (FERREIRA, 2000, p. 50), that is, race is a set of physical characters, such as the shape of the head, the skin, the color and shape of the hair, the shape of the nose, the shape of the eyelid, eye color and height. On the other hand, the word "ethnicity" originates in Greek expression meaning people, referring in group terms, which share a single social and cultural

heritage (customs, language, religion), transmitted from generation to generation. Thus, what determines an ethnicity are cultural factors such as tradition, language, customs, religion, among others (FERREIRA, 2000).

In historical terms, only in Europe after the sixteenth and seventeenth centuries the concept of race began to reflect on social relations. In the eighteenth century, skin color is considered a fundamental criterion in the division of the human species into three races: white, black and yellow, and what will define the difference between these is the concentration of melanin, so individuals are called white because they have less melanin, blacks by concentrating more melanin and yellows constitute traces on an intermediate level between whites and blacks. This division into races persists to this day in the collective imaginary (FERREIRA, 2000).

From the 19th century on, in addition to skin color, other morphological criteria such as the shape of the lips, nose, skull and hair type are added to further deepen this racial division. In the same century, the researcher George Cuvier, uses for the first time in his research the term race, observing the differences between human groups and grouping them into categories, classifying the groups by the characteristics he called racial (Schwarcz, 1993).

It is demonstrated, therefore, as a term race and its classification have no origin or foundation biologically, but rather sociologically in order to externalize the existence of racism – in other words, the idea of race is extremely ideological, because it is intrinsic the relationship of power and domination present in societies. For years the idea of "racial democracy" was sustained, developing a judgment of the mixture of races, of miscegenation, where the blood of Indians and blacks mix with the blood of European colonizers and originate the half-breeds, where it would sustain the dream of a racial democracy in Brazil in which the color of the skin would in no way contribute to classify the citizen in the social pyramid.

According to Gonzalez (1988), this myth of "racial democracy" aims only to deny and blind the hierarchy present in Brazilian society, avoiding conflicts while perpetuating social inequalities. Following this interpretation, the truth is that in "racial democracy" the black population has no place in society because it is a model made for whites and whites. Right and wrong are established by those who are already the holders of control of the population. In practice, black is not included in the scale of society, but as a last priority. And it is from this that one explains the character of "myth" of racial democracy in the country.

On this issue, Santos Neto (2004, p. 72) explains:

Artificiousness is exposed to those who want to see; only one of the elements that constituted it holds all the power at all political-economic and social levels: the white. Whites control the means of disseminating information; the educational apparatus; they formulate the concepts, weapons and values of the country.

Another consequence of color bias is the existence of a huge amount of racial classifications. The ideology of "whitening" assumed by blacks and whites has led black people to move away from the historical matrices of their origin in various ways, thus developing an identity with stigmatized values.

In this, the cultural identity of the black population was built on race relations expressed in the dominating/white and dominated/black binomial, camouflaged by the myth of racial democracy, which contributed to whites presenting themselves as holders of a "unique" or "true" national identity. In this context, the identity of the black people is not understood as something in motion and transformation, both in relation to the concept and its construction, since it is involved by socio-historical aspects that are responsible for hiding it from the cultural basis of national identity.

Moreover, what is observed in the social construction undertaken by these historical processes is that blacks were educated to live together in society, exercising ethics, politics and citizenship. This unification of the way of educating has ideological formation in the State, with the intention of pacifying man and shaping his behavior in a docile and cooperative way. The ideal individual is civilized, according to the hegemonic interests of the State, to standardize the individual ly its collective action (EAGLETON, 2000).

In addition, the cultural construction and racism, according to Eagleton (2000), correlate with problems of humanity, also presenting a cultural side, since culture is also what we live and live for. Culture, in the author's view, also concerns affection, memories, belongings – all these very sensitive issues in the formation of the racial division of Brazilian society.

Consequently, to discuss racism and culture as a discourse in Brazil, is to understand that it is part of a structural element of relations, bringing to light the whole historical process highlighted above that reflects the denial of rights that the black population, in another enslaved time, was constantly submitted.

III.   THE STRUCTURAL PRESENCE OF RACISM IN BRAZILIAN SOCIETY

In addition to identifying their presence in Brazilian society, it is essential to recognize that racism is not exclusively an abstract or individual appearance. In several concrete situations, Brazil has witnessed in recent decades the spread of prejudices, the occurrence of slaughters, the exponential increase in violence against blacks, etc.

When addressing the theme of racism in our society, discussions are often generated in various social environments. Even today, many believe and are aware that racist practice remains in various areas of society, since the slave period, but a significant portion of the population still supports theories about the absence of racism. But reality shows another chapter of history marked by the "oppression of color" in clear terms and predominant in The Brazilian territory.

The historical social exclusion directly undertaken in the population that is seen as marginalized or invisible in the pockets of society leaves deep marks. In this context, the black population is undoubtedly inserted in the process built in the cultural core from the colonial period to the present day. This awareness comprises the latent roots that turn to the Brazilian social question, the result of a slave productive system.

The slaves were subjected to hard work, humiliation and corporal punishment, being excluded from social life. Seen only as goods, both for merchants of slave trade, and for landowners exploiting their labor. A situation of total exploitation and underjudgment that deeply degenerate Brazilian social relations (OLIVEIRA, 2012, p.3).

Eric Wolf (2003) was one of the contemporary anthropologists who always sought to correlate issues related to colonial/power processes, their influences and implications surrounding existing cultural paradigms to social manifestations. With the expansion of capitalism, the author brought approaches that encompassed increasingly complex scenarios in the structures that shaped historical circumstances. The political and economic configurations in the colonial period, for example, reflect how the societies of that time were structured around slave organizations that maintained ideals of power, market and subordination.

[...] can be said of Africa. There, the expansion of slave trade provided the emergence of social organizations and companies that owed their origins and distinct characteristics to their role in trafficking. [...]. There were complex political

arrangements and trade networks that facilitated the flow of goods – certainly, gold and a large number of slaves [...]. (WOLF, 2003, p. 295).

A theme that has recently been raised is the discussion about the problematization of whiteness as a historical factor of social construction that reflects on the paradigms of cultural, political and economic domination. SCHUCMAN (2014, p. 56) stresses that "whiteness is understood as a position in which subjects occupying this position were systematically privileged with regard to access to material and symbolic resources, initially generated by colonialism [...]". A belief persists that we live in a "racial democracy" that is far from reaching the ideal level and conquering everything that has been lost, colonized and destroyed more than 500 years ago. In this regard, Silvio Almeida (2019, p. 33) clearly states:

> [...] racism is a result of the social structure itself, that is, in the "normal" way with which political, economic, legal and even family relations are constituted, not being a social pathology or an institutional disarray. Racism is structural. Individual behaviors and institutional processes are derived from a society whose racism is a rule and no exception.

Nevertheless, Fanon (2008) considers that the colonial framework is inserted in the intangibility of the colonized and its alteration would require an absolute change in the "infrastructures" of society. "Historically, the negro, steeped in the inessentiality of servitude, was pardoned by the Lord. He did not sustain the struggle for freedom." (FANON, 2008, p. 182). In this reasoning, colonial practices conditioned racism as a means of dissemination of various forms and prerogatives in societies with significant social inequalities.

In recent years Brazil has experienced a period that "racism" has spread and taken in a global proportion, especially inside boxes mobilized by interconnected social networks. The primary dilemma of racial prejudice is the convictions and sensations of repressing, underphering, attacking and repelling. Racism is understood as a systemic phenomenon that is "assimilated to a more individualized notion of attitude, conceived as beliefs and feelings that generate behavioral tendencies or dispositions" (LIMA, 2019, p. 160).

Authoritarianism and the presence of white colonialism in Brazilian lands in historical moments in the past persist in the Brazilian State, engendering a veiled culture that expresses repressive practices with the ordering of social groups intolerant to differences. It is possible to associate racist practice as a persistent virus in

social ilets that causes degeneration and produces mutations in different forms over time.

Fanon (2008) does not delimit colonization to the tangible subalternity of a people and stresses that the complexity of subordination of the colonized is sustained by the idea and sense of burial of cultural originality, because colonialist ideology is to ignore what the negro holds culturally and historically. Individuals are immersed in colonial projects and processes that are introjected and naturalized into collective and individual utopias that shape behaviors and values.

The heyday of Brazil's racism is consummated by theories and practices that have been part of the construction of national identity for hundreds of years of slavery. Venturi and Paulino (1995, p. 84) state that "Brazilians know there is, deny having, but demonstrate, for the most part, prejudice against blacks". In contemporary Brazilian society, social differences between whites and blacks are clear in economic, educational and social aspects.

It is important to remember that the views of being "black" and "white" come long before the racial course and symbolize the moral and social distortions that fit in a given context. "From the dawn of the Indo-European languages, white has represented good, beautiful, innocence, pure, divine, while the negro was associated with morally reprehensible, evil, darkness, diabolical, guilt." (HOFBAUER, 2017, p. 2).

The researchers Figueiredo and Grosfoguel (2009), in their studies, point out the existence of a social pyramid that is rooted in the elementary structures of Brazilian society, where it supports racial hierarchies based on the colonial perspective of power. It is worth noting that even the abolition of slavery in Brazil was not enough to rid the country of colonial ties. Nevertheless, there is still the marginalization and exclusion of those exploited and racially dominated, which reflect in research that commonly demonstrates the social imbalance between blacks and whites on issues such as presence in the labor market or in educational environments.

Racial inequality is the result of structural and cultural racism resulting from the circumstances of differentiation of access to goods and products, as well as marginalization due to the engendering of colonialist policies that provide the hegemony of groups considered superior. Society creates prejudiced values that also reflect in indirect forms of discrimination that shape veiled and everyday situations. Although discrimination is an illegal attitude, with punishments provided for by law, it corroborates the apogeal of socially negative morality.

IV. TOOLS OF RACISM IN THE POWER STRUCTURE: THE ROLE OF LAW

Speculating on what the law would consist of, Silvio Almeida (2019) presents conceptual perspectives that permeate its meaning before justice, norm and power -- in the latter case, drawing parallels with theories of Michel Foucault, who sees in law a mechanism of subjection and domination used as a tool by power holders, with concrete demonstration in the racialization of legal issues, the example of the prison population, immigration, the criminalization of conduct commonly found in the peripheries of cities, etc.

> Institutionalist conceptions seem compatible with the right seen as a manifestation of power. If the law is produced by the institutions, which are the result of power struggles in society, the laws are an extension of the political power of the group that holds the institutional power. The right, in this case, is medium and not end; law is a social control technology used to achieve political objectives and to correct institutional functioning, such as combating racism through affirmative action, for example. (ALMEIDA, 2019, p. 65)

However, one should pay close to the fact that the non-finalist conception of law, removing entirely any intrinsic value to give rise to its use only as a means of consummation of interests of the holders of power, leads to the conclusion that, by inserted in a deeply racist culture, their actions will naturally tend to reproduce the exclusionary and discriminatory pattern perceived in other areas of society. In other words, the right as a tool, in a structurally racist community, would logically serve the purpose of reproducing and deepening racism itself.

Advancing in his analysis, Almeida (2019) speculates about the conceptualization of law as a set of social relations between subjects of rights, an understanding that would find protection in the formation of law from the establishment of modern states.

However, the participation of jurists in the construction of modern states meant their contribution in defining resources that would determine what is right and fair to society, thus producing the legitimacy of their instruments through a State identity defined by themselves. Thus, the author points out that in this context law would be "part of the same social structure that reproduces racism as a political practice and as an ideology" (ALMEIDA, 2019, p. 67), although he recognizes that it can be used as a tool to combat racism itself, with the creation of mechanisms for punishing its manifestations.

This interpretation goes against discourses such as that elaborated by Spivak (2010) – albeit in directing the oppression suffered by women in the Indian context – by pointing out how the norms edited in the codification of Hindu law (noddedly those that deal with the sacrifice of widows) generate violence by serving the purpose of consolidating relations of domination and subalternization[1] of specific groups.

For these reasons, the mere judgment of legality of an action/measure cannot be used as a justification to attest to its anti-racist character, because the legislation itself can be based on discriminatory purposes. At various times, in the history of several countries, the law has been used as a tool for segregation and discrimination -- one can cite, for example, the Jim Crow laws in the United States and the Nuremberg Laws in Nazi Germany of the 1930s, which instituted openly racist regimes in favor of blacks and Jews, respectively.

This reality, in fact, has not been limited to legal norms published in past centuries, especially if considered situations such as the still-existing war on drugs, which has had, since its conception, a strong racialized bias, specifically directing itself to penalize perceived conduct in specific groups of the population, as admitted by John Ehrlichman, former head of u.S. domestic policy, in an interview conducted in 1994:

> In Nixon's 1968 presidential campaign, and then in the White House, we had two enemies: the anti-war left and the black people. Did you understand?? We knew we couldn't criminalize who was anti-war or black, but by convincing the population to associate hippies with marijuana and blacks with heroin, and then strongly criminalizing both, we could destabilize both communities. We could arrest their leaders, break into their homes, stop their meetings and slander them every night in the evening papers. Did we know we were lying about drugs? Of course i do." (OLLIVEIRA, 2020, n.p.)

These cases are opposed to the uses of law, as a tool or means, for the establishment of policies to combat racial discrimination and the practice of racist conduct, a trend observed in Brazil (especially after the promulgation of the Federal Constitution of 1988 - CF/88) and in many other countries of the world, in view of the growing process of internationalization of fundamental rights from the second half of the twentieth century.

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[1] In his publications, Spivak dismisses the use of the expression "subaltern" to any marginalized subject, pointing out that, in his understanding (and also by influence of the meaning given by Gramsci), the term subaltern describes "the lower layers of society, constituted by the specific modes of exclusion of markets, political and legal representation, and the possibility of becoming full members of the dominant social stratum" (SPIVAK, 2010, p. 12).

In a more modern trend, these norms tend, in addition to presenting a prohibition of conduct, in a "negative" character (in the sense of forcing the non-do), to establish "positive" conducts (obligations to do) to be taken by public or private subjects in favor of the black/member population of other historically marginalized groups.

This is what is perceived, for example, with the laws of quotas in universities and public tenders, as well as other affirmative action policies that designate means to compensate for the social and economic imbalance between ethnic groups -- and whose compatibility with the provisions of CF/88 was duly attested by the Supreme Court when tried in cases such as the Charge of Non-compliance with Fundamental Precept No. 186, in which it was stated:

> It does not contradict - on the contrary, prestigious - the principle of material equality, provided for in the caput of Art. 5 of the Charter of the Republic, the possibility for the State to make use of universalist policies, which cover an indeterminate number of individuals, through structural actions, or affirmative actions, which reach certain social groups, in a timely manner, attributing to these certain advantages, for a limited time, in order to allow them to overcome inequalities arising from particular historical situations. (BRAZIL, 2012, p. 2)

Thus, it is revealed with reasonable clarity the structural presence of racism in Brazilian society, which, combined with the absence of an intrinsically racist or anti-racist moral qualification to the law, results in its frequent use as an instrument for realizing the interests of groups that benefit from inequality and discrimination, but also the feasibility of conversion into an important anti-racist tool – albeit in specific ways, while not entirely broken the dominant social paradigm.

In this scenario, the organized mobilization of groups and social movements for the development of theses, theories and policies to combat racism is externalized -- which, in fact, never ceased to happen, even in brazilian society pre-abolition, as evidenced by the performance of illustrious names such as Luiz Gama, a former slave who in the 19th century acted judicially for the liberation of the black population. The possibility of instrumentalization of law should also be seen as an opportunity for its rigging for the benefit of anti-racist causes.

V.   CONCLUSION

For all the above, it is understood that racism, as a structuring social element, establishes a racial and cultural

hierarchy that opposes western white superiority to black-African inferiority. Thus, the inequalities between races[2] experienced today in Brazil are the result of marks left in society since the former slave regime, which presents itself as one of the multiple expressions of the social issue, since it manifests itself both in the socioeconomic and cultural and identity levels, preventing equal access to services, benefits and public policies.

For this reason, it is urgent to assume the black question in Brazilian society to build a praxis of awareness around racial discrimination. Making Gonzalez (1988): "may the ideology of liberation find in ourselves, blacks, conditions to express oneself; that it is not external to us and imposed by others other than ourselves; that it derives from our particular historical and cultural experience."

However, overcoming this problem is especially complex due to the central position adopted by structural racism in Brazilian culture, identity and society, serving, at the same time, as legitimizer of inequalities and a means of social domination -- even if veiled, in many situations, under the mantle of a supposed "racial democracy".

In this context, law has historically been an important tool in the processes of social domination, through segregation and discrimination measures directed at specific social groups (demonstrable by today's persistent policies, such as the war on drugs and the disproportion in the incarceration of certain ethnicgroups), even if a formally egalitarian regime has been established since the Brazilian Federal Constitution of 1988, establishing rules prohibiting discrimination in any way.

The ideological construction of the "races", although in non-conformity with biological foundations, resulted in the social and political process that gave rise to racism, although in many cases it is also associated with other factors, such as the cultural and economic status of the subjects, and found in law a powerful device for the realization of their policies of subalternization of the black population. However, recent experiences show ways in which the ideological application of law can be directed to anti-racist purposes, the result of efforts and resistance from historically inferiorized groups.

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[2] Thus, although based on unfounded biological concepts, as previously stated.

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