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THE MEASURE OF THE CONTRIBUTION OF MULTICULTURALISM IN CONSTRUCTING THE CURRENT BRAZILIAN CONSTITUTIONAL TEXT

Recognizing the importance of diversity through multiculturalism and its relationship with improvement of democracy through intercultural dialogues has been proposed. It has been considered the notion of multiculturalism and its acceptance with consequent and reaffirmation of human rights, as well as challenges inherent to realization of human rights in multicultural environment established by 1988 constitutional text. It is appropriate to mention the works of Parekh, Santos, and Taylor. With the help of the legal-descriptive method, through bibliographic review, legislative documents and analysis of examples, the relevance of the contribution of the theory of multiculturalism to the affirmation of human rights and the guarantee of a democratic legal state has been demonstrated.

Key words: *multiculturalism, intercultural dialogue, diversity, Brazilian Constitution, democracy.*

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INTRODUCTION. Culturally differentiated groups or traditional communities have clamored over time for recognition of their unique culture. This desire to be recognized as different peoples is not based on universalist policies, but on policies of recognition of differences that will favor the construction of a historical and cultural heritage, and the formation of a national identity.

In several spaces, there are struggles for rights of recognition and belonging to a particular culture or social group. It is these struggles that lead human societies to find a specific way of being, which gives meaning to life and cultural differences. The cultural difference inherent to each social group spread across the planet gave rise to what is called multiculturalism.

The values of modernity, such as freedom, equality and justice, are increasingly disparate for different people or social groups. The consequences arising from the processes of homogenization of society, always based on the idea of equality between different individuals, led to the exclusion of various collective groups from society, as well as the non-recognition of cultural claims exposed by them.

In this way, multiculturalism emerges as a challenge to States strongly supported by the ideal of equality. In this sense, the emphasis on multiculturalism, as a movement opposed to the question of homogeneity, is necessary. The multicultural reality of the planet clashes with the prevailing capitalist system itself, with the phenomenon of globalization that, on the one hand,

plasters and standardizes the cultural, but, on the other hand, allows diversified cultures to approach and discuss the monocultural imposition.

Within this panorama, democracy is the promoter of discussions, as it allows the occurrence of debates and questions about diversity. And reflecting, debating and discussing the issue of multiculturalism, understanding the importance of cultural diversity present in contemporary societies, is a necessary act in the scenario of modernity.

PURPOSE AND OBJECTIVES OF THE RESEARCH. It is precisely from the questioning of democracy through multiculturalism that the need to recognize cultural diversity as a public space of a society is born. In other words, the need for recognition of cultural diversity by public institutions in contemporary societies. Therefore, difference is essential in multiculturalism for the definition of democracy as a genuinely heterogeneous space. The present study aims to contextualize the influences of multiculturalism and the consequent reaffirmation of human rights in the Federal Constitution of 1988¹, with emphasis on the specific protection of the rights of traditional communities, such as indigenous peoples,

¹ Constitution of the Federative Republic of Brazil (October 5, 1988). Official Gazette Federative Republic of Brazil, Brasília, DF, 05 Oct. 1988. URL: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaoacompilado.htm (accessed 10 September 2022).

quilombolas and traditional extractive communities.

The work is organized in three parts. The first presents theoretical considerations about multicultural society and multiculturalism. By way of a definition, its interferences in the globalized world context and the tensions between equality and difference in the democratic environment are discussed.

The second part deals with the influences of multiculturalism in the Federal Constitution of 1988 and its consequences in the normative protection of the rights of traditional communities. The challenges inherent to the realization of human rights in the multicultural environment inaugurated by the Federal Constitution of 1988 will be dealt with in chapter 3 (three). Finally, an interpretative procedural turn is proposed that, on the one hand, contemplates an intercultural dialogue between the groups involved and, on the other hand, overcomes the dichotomy “cultural relativism x ethical universality”, all through the application of diatopic hermeneutics.

METHODOLOGY. The methodology chosen has a legal-descriptive method, with the application of a bibliographic survey, legislative documents, and analysis of examples to stimulate thematic understanding, without delving into a specific multicultural approach.

RESULTS AND DISCUSSION

1. Multiculturalism and multicultural society

The capitalist trend that excelled in social and cultural homogenization was maintained in some parts of the world, however, it did not manage to completely erase or suffocate existing differences.

Contemporary society is extremely diverse and complex, with differences in all sectors of human life. This is precisely why it can be seen that the simplistic logic of equality among all and the universalist project of modernity proved to be flawed, because they were not able to respond to the diverse claims of different peoples and cultures that began to emerge. In this sense, in comparison with human rights, it is worth remembering what the author of this essay already warned in her essay entitled. Human rights beyond dichotomy between cultural universalism and relativism (Hogemann, 2020):

The ethical values of a community vary according to the historical point of view and depend on specific circumstances. If this occurs within the same community, imagine in comparison to the values of different societies. This question is vitally important as regards the debate on the possibility of establishment of universal human rights references for all nations of the globe or not. The search

for an ideal of justice must necessarily consider respect for the other, its history, the context of domination in which it lives or lived, its fullness as a being.

Multiculturalism emerges, therefore, as an indicator of the crisis of the project of modernity, which opens a critical perspective of treatment of the main philosophical, political, and social categories that integrate the process of questioning at the level of multicultural claims and the very concept of difference.

New discussions and questions arise about the existing scientific, legal, political, social, and economic models that can be considered as foundations for the crisis of the universalist project of modernity and that demand, for the reformulation of such a project, as a fundamental requirement for the recognition of the valorization of cultural and multicultural diversity.

1.1. Conceptions about cultural diversity

It is important to consider, based on Parekh's (2006) conceptions, that cultural diversity in modern society presents different forms, of which this author lists at least three, namely: one in which its members share a common culture in a broad character, in which some of its members simultaneously embrace diverse beliefs and practices relating to special areas of life or develop relatively distinct lifestyles. This would be the case with the lifestyle or family arrangements of homosexual couples, considered unconventional, in this order certain riverside communities can also be identified, or even, according to the author, international jet-set executives, artists and others. They all widely share their system of society based on valleys and meanings and seek to build their own spaces for their lifestyles from them. It should be noted that they do not represent an alternative culture but seek to make the existing one plural. Parekh (2006) calls this sub-cultural diversity.

Another form of cultural diversity would be represented by those members of society who are highly critical of some of the central principles or values of the dominant culture and who seek to reconstruct them from their own conceptions. It is in this ballast that feminist struggles are deeply related to the patriarchal tendency, the religious to the secular orientation and environmentalists to the anthropocentric and technocratic tendency. According to Parekh (2006), these and other groups do not represent an example of subculture, as they often challenge the very Basis of the existing culture, pointing out intellectual perspectives on how the dominant culture could be reconstructed; reason why the author calls them as diversity of perspectives.

However, most modern societies also include more self-aware individuals who may be organized, communities that live using their own, and different systems of beliefs and practices. Here we can locate some cultural groups territorially concentrated such as the quilombos and indigenous communities, the Basques, Catalans, among others; as well as including new immigrants and other communities, such as Jews, Gypsies and Amish's. Parekh (2006) calls this community diversity.

It should be noted that, although these three types of cultural diversity share different resources and sometimes overlap them, in practice, they differ on important issues such as patriarchal supremacy and freedom from family arrangements.

Parekh (2006) clarifies that subcultural diversity is involved in a shared culture that intends to be accessible and diverse, but not replaced by another, which does not mean that it is more superficial or easier to accommodate than other types of diversity. Homoaffective unions, cohabitation and affective paternity are deeply controversial topics and, in general, provoke a strong reaction in many sectors of society. However, it must be noted that such issues are directly related and articulated to values such as personal autonomy and choices that derive from the dominant culture itself.

Diversity of perspectives represents a view of life that the dominant culture either completely rejects or accepts in theory but ignores in practice. This is a more radical stance than subcultural diversity, which makes it more difficult to accommodate.

Community diversity, on the other hand, presents itself in a different way, as it derives from and is sustained by a plurality of well-established communities, each with its own history and lifestyles that they wish to preserve and transmit. The diversity involved here is stronger and more persistent, it has well-organized social defenders, and it proves to be easier the more difficult it is to accommodate, depending on their demands and depth.

The terms multicultural society and multiculturalism are generally used in relation to a society that presents all three or other types of diversity, that presents some of them, or that is characterized by the presence of the third form of diversity.

1.2. Definition and characteristics of multicultural society and multiculturalism

It is important to point out that the authors, in the present essay, do not propose to reflect on non-Western traditions of thought, due to their limited knowledge in relation to them and in the sense of promoting a more clearly focused look at

the object of reflection: the experiences within the scope of western societies.

The expression "multiculturalism" was initially used in Canada, in 1965, aiming to describe a "peculiar" way of facing the coexistence with cultural diversity, and as a political movement it is just over 30 years old. It is important to note that, in the 1970s, Canada began to adopt multiculturalism as a public policy, with the creation of a ministry of multiculturalism in 1972; until the implementation of the Multiculturalism Law in 1988 (Heywood, 2010).

It is worth noting that the term multiculturalism is intended to designate the coexistence of cultural forms or groups characterized by different cultures within modern societies. It is a way of describing cultural differences in a global context. It aims at the institutional recognition of the rights of different values and cultural aspects present in a society. It is based on the terms of a possible relationship between cultures of different communities. The norms that regulate each claim, whether in the social, political, or linked to the principle of justice, cannot be the result of a single culture, but must be open and crossed by an open and frank dialogue between all.

Thus, by definition, a society based on multiculturalism is composed of different cultures or cultural communities with their own and distinct systems of meaning and meaning regarding humanity and the world. This is why an adequate theorization is not possible from the point of view of a single conceptual framework in relation to political theory, which is influenced by it or structurally inclined to a specific cultural perspective, which leads to not doing justice to the others.

Parekh (2006) considers that this does not mean that it is impossible, for example, to build a liberal theory about the multicultural society as Kymlicka (2006) and others did, to explore and deepen the theoretical resources of liberalism and reveal itself as a power of persuasion on liberals but warns that a single theory cannot be substantiated as a coherent and morally acceptable basis for a multicultural society. According to this author, it is necessary to reach a higher level of philosophical abstraction. Thus, it can be pointed out as Gadamer and Habermas, as well as other theorists of deliberative democracy, even if in non-coincidental ways, they seek, like Parekh, the dialogic basis as a major reference. A dialogue between cultural and ethical norms, principles and institutional structures presupposed and resulting from the dialogue.

Multiculturalism designates the "coexistence of cultural forms or groups characterized by different cultures within modern societies" (Santos,

Nunes, 2003), considering that culture refers to a historically created system of self-understanding in terms of which, a group of people confers meaning and organizes their lives in individual and collective terms. Thus, thanks to the human capacity to question oneself and the world and offer different answers to them, and also thanks to their different historical experiences, circumstances and powers to conceive different visions of the good life, different societies give rise to different cultures. It is noteworthy that multiculturalism recognizes the existence of this cultural plurality in the same State, breaking with the dogma of the unique people of modernity, based on the “recognition of difference and the right to difference and the coexistence or construction of a life in common beyond differences of various types” that Santos (2003) will call emancipatory multiculturalism.

In multiculturalism, there is the coexistence, in a specific country, region or place, of different cultures and traditions, there is a mixture of cultures, visions of life and values. Multiculturalism is pluralistic, as can already be seen, because it accepts different thoughts on the same topic, abolishing the single thought. There is dialogue between different cultures for peaceful coexistence and with positive results for both.

Difference is a structural component of social life and multiculturalism must drive the construction of a new paradigm for social relations, through an emancipatory posture, and no longer in the form of capitalist assimilation.

On the subject, attention should be paid not only to the possibility of realization, but also to the form of implementation. Global economic development threatens culture through economic assimilation. The globalization process causes, on the one hand, the homogenization of cultures and, on the other hand, it can be an important path for the construction of new emancipatory paradigms.

The new economy of global capitalism, born as a result of the realization of economic globalization by capitalist countries, multinational companies and global financial institutions, in the search for free trade, only increased poverty and social inequality, through the process of social exclusion, not only of people or cities, but also of different regions of the globe (Santos, 1997).

The doctrine of global capitalism defends the logic of economic expansion, based on the idea that economic growth would reduce poverty, since the benefits would reach all people due to the increase in free trade. It happens that, in practice, this does not happen, aggravating situations of poverty.

In parallel with globalization, there was a strong process of cultural uniformity, with

the massification of cultural patterns. However, in an alternative way, a tendency against the globalizing hegemony of the market has been emerging, as a result of the very practice of the globalization process, as it allows the approximation between cultures. As an example, the movements for environmental preservation and cultural diversity in the world are cited, which open up in search of the collective and fight against a hegemonic globalization.

Furthermore, these new conceptions aimed at the collective only take place in a democratic and participatory environment. The same is true of issues involving minorities and traditional communities. Multiculturalism presents itself, therefore, as a challenge for liberal democracies, supported by ideas of equality. However, it should be mentioned that the affirmation of difference alone is not desired, as this can serve as a justification for the exclusion, interiorization and discrimination of those who are different.

From this tension between equality and differences, it is possible to seek democratic multiculturalism as a policy capable of recognizing the uniqueness of each culture, expanding dialogue, and combining constitutional principles of dignity and respect for cultural diversity. And democracy, despite the various existing problems, is still the field where multicultural ideas can be sustained, since it is the space in which debate is allowed and, consequently, the improvement of ideals.

For Taylor (1998), democracy introduced the policy of egalitarian recognition, however, the importance of recognition was changing and increasing from the notion of individual identity. Identity presupposes that each human being has its own characteristics, formed, and negotiated in relationships with others, giving recognition of this identity by others, a fundamental importance. Taylor considers democracy as “the only non-political alternative to achieve the recognition of the other” (1988), that is, of diversity.

Democracy is the form of government in which political power belongs to the citizens. Democracy prevents tyranny, protects fundamental rights, guarantees a framework in which freedom can become reality, and enables a people to achieve self-determination. Citizenship implies a democratic process of participation, human development, political equality, and social responsibility. In the construction of a democratic society, which allows the free development of an effectively inclusive citizenship, capable of allowing a sphere of participation of all and of the new collective subjects, dialogue, public debate, and reflection are essential. Thus, the essential conditions are produced to expand and multiply

the spaces of freedom, equality, pluralism, and solidarity.

It would not be pertinent to conclude this topic on multicultural societies and multiculturalism without presenting some of the criticisms made to the elaboration of these concepts. Its opponents consider that multiculturalism can prove to be harmful to societies and especially harmful to native cultures. This is the case of the American political philosopher Brian Barry, who in his book entitled *Culture and Equality* argues that multiculturalism rejects an enormous intellectual and moral heritage of the Enlightenment and represents a “new form of barbarism”. His sympathizers include liberals and non-liberals, and his attack is initially directed at liberal thinkers themselves. In his view, those who call themselves liberals, but who defend or accept multiculturalism, are apostates or traitors to the liberal cause.

This is because, according to Barry, liberals who are sympathetic to multiculturalism or who redefine liberalism by opening space for it are promoting an initiative that is, at the very least, dangerous and condemned, insofar as this author considers multiculturalism and liberalism as irreconcilable doctrines. and any attempt at conciliation would end up corrupting and undermining the latter.

For Barry (2006), authors like Walzer would be “clearly illiberal”; Kukathas would not be liberal either, nor would Kymlicka; in his later writings, Rawls would have turned his back on liberalism and revealed himself as a true relativist Walzerian, insofar as for these authors the classic basis of liberal autonomy would be nothing more than a mere shadow.

Barry (2006) structures his thinking on the Enlightenment tradition, which he reformulated as “liberal egalitarianism” around fundamental premises: First, no social practice or institution can be considered sacred or self-recognized, insofar as it must be rationally justified and evaluated. critically, having as a filter the principles of equity, justice, and their relationship with public goods. Thus, no cultural practice can be binding simply because it is part of tradition or custom. Second, for this author it is necessary that all human beings share the same interests or conditions for their own development, which would result from the “universal nature of man”. As such, this author cannot conceive how some people prefer to die for Allah rather than for freedom in a corrupt society, reject religious freedom as a “temptation to apostasy”, choose as indigenous peoples and gypsies, in instead of “modern education”, valuing what these groups consider to be

true or consequent, rather than freedom of expression itself.

Parekh (2006) argues that, just as individuals may be materially disadvantaged, they may also be culturally disadvantaged and prevented from enjoying equal rights and opportunities. The author gives the example of a Sikh who is at a disadvantage with the rule prohibiting the wearing of turbans in schools and workplaces and must be exempted from it, to which is added the case of Seventh-day Adventists who cannot perform tasks. Although they are treated differently from others, they are not being privileged, but being equated with others. Barry disagrees, claiming that equal treatment means to treat uniformly and, therefore, the exemption to the Sikh or the Adventist member would constitute a privilege.

However, it is important to point out that no advocate of multiculturalism intends to impose unnecessary special rules and does not want exemptions in areas that require uniformity, which is why there is no practical or political difference with Barry’s thinking. The difference that proves to be fundamental is conceptual, insofar as, for multiculturalists, they defend exemptions as a way to equalize individuals in their inequalities over others; Barry would say they involve unjustified unequal treatment.

Finally, it should also be pointed out that Bryan Barry’s attack on multiculturalism, by stating that culture is only of marginal importance and that human nature is sufficient to explain human behavior, is guided by fragility insofar as it is admitted that no cultural practice is immune from criticism, that cultures often legitimize and serve dubious interests, which can be criticized not only internally, but also based on universal values. In this sense, it is worth mentioning the references to Baumanian thought pointed out by Högemann (2020) in the essay:

Bauman (2003) places a particularly lucid position on this alleged polemic, revealing what may at first appear to be an insuperable dichotomy, but which contains, at its core, two political projects of linkage and domination. And he goes further by considering that across lines the new neglect of difference is theorized with the recognition of what he calls “cultural pluralism” who’s informed and defended politics is known as multiculturalism. For this author, liberal-minded multiculturalism is aimed at tolerance both in relation to the rights of communities and the self-affirmation and public recognition of their identities by choice or by tradition.

On the other hand, it is no less opportune to bring up the fact that in addition to the widely known liberal forms of multiculturalism, there are also conservative, Marxist, socialist and even racist

versions. Multiculturalism in its European conception is quite different from the American and both from the Indian, for example. Unlike the USA, in the words of Parekh (2006), European states have long considered themselves nation-states, demand a close relationship between culture and state, tend to be hospitable or even hostile to different types of differences and built their own discourse on multiculturalism. Some of the advocates of multiculturalism. They are relativists, other universalists, still others reject this dichotomy, unproductive and dubious. Some are individualists, other communitarians, in addition to those who are situated between the two or reject them. As seen earlier in the present essay, there are liberals who disagree with their basic wallows and challenge each other's liberal credentials, so does multiculturalism.

Parekh (2006) rightly warns that when an author attacks multiculturalism, it is necessary to be attentive, as he will most likely seek to homogenize its different forms, equate it with a particular aspect of himself and end up misunderstanding those that do not fit into its simplistic version.

2. The multicultural paradigm present in the Federal Constitution of 1988

More than 30 (thirty) years after the promulgation of the Federal Constitution of 1988¹, there is no longer any doubt that Brazilian constitutionalism is pluriethnic and multicultural, and that all law, in its elaboration and application, has this landmark as an inescapable reference.

The central notion arising from the multicultural paradigm is that, within the national community, there are groups with specific identities and that it is up to the law to ensure that they “control their own institutions and ways of life and their economic development and maintain and strengthen their entities, languages and religions within the scope of the States in which they live [...]”.

The influence of multiculturalism is present not only in the protection of creations and cultural manifestations of the different social and ethnic groups that make up Brazilian society, but also permeates the concern of the constituent legislator to ensure cultural and territorial rights to traditional communities.

Multiculturalism seeks to describe the existence of a diversity of cultures in the world that

coexist and influence each other, both within and outside the same State. As a political project, it points to the celebration or recognition of these cultural differences. Emancipatory versions of multiculturalism are based on recognition and the right to difference, as well as the construction of a life in common, beyond differences.

In Latin America, multiculturalism found its translation into the constitutional legal world with the emergence of constitutions that began to recognize the multicultural and pluriethnic character of Latin American countries:

[...] The new constitutions emerged with a strong pluricultural, multiethnic and biodiversity-preserving character. Alongside the homogenizing individualism, a pluralism filled with social, cultural and natural diversity was recognized, in a perspective that can be called socio-environmental. [...] The constitutional legal systems, previously closed to the recognition of pluriculturalism and multiethnicity, gradually recognized that the countries of the continent have a varied ethnic and cultural formation, and that each human group that is organized according to its culture and lives according to its tradition, in accordance with the nature in which it participates, has the right to choose its own development (Filho, De Marés, 2003).

There is, therefore, a break in the individual constitutional paradigm, the emergence of the collective nature of the rights of traditional communities, such as indigenous peoples, quilombolas and traditional extractive communities. The way is opened for the possibility of survival of multiculturalism in a world in which the State only recognizes individual rights.

The Federal Constitution of 1988² follows the multicultural paradigm, as it recognized territorial and cultural rights to traditional communities, breaking with the previous model. The constitutional notions of collective ownership of rights, shared use and possession of natural resources and territories and respect for cultural differences gained strength.

And the multicultural orientation of the Federal Constitution of 1988 takes place precisely in the recognition of collective rights of traditional communities as culturally differentiated peoples. An important expression of the reception of multiculturalism is in article 215, §1, of the Federal Constitution of 1988, which determines the protection of popular, indigenous and Afro-Brazilian cultural manifestations and requires “[...] the valorisation and diffusion of these special cultures” (Silva, 2008).

¹ Constitution of the Federative Republic of Brazil (October 5, 1988). Official Gazette Federative Republic of Brazil, Brasília, DF, 05 Oct. 1988. URL: http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm (accessed 10 September 2022).

² Ibid.

In harmony with such protections, Law No. 11,645, of March 10, 2008, stands out, which, by amending article 26-A of Law No. 9,394, of December 20, 1996, made it mandatory in elementary and medium, public and private, the study of Afro-Brazilian and indigenous history and culture, with programmatic content that contains several aspects of history and culture that characterize the formation of the Brazilian population, from these two ethnic groups, such as the study of history of Africa and Africans, the struggle of blacks and indigenous peoples in Brazil, Brazilian black and indigenous culture and blacks and Indians in the formation of national society, rescuing their contributions in the social, economic and political areas, relevant to the history of Brazil.

Article 231 of the Federal Constitution of 1988¹, which specifically deals with the indigenous issue, is also very clear about the reception of pluralism, as it recognizes the indigenous social organization, the natural multiethnicity, their customs and traditions, thus basing the relationships between Indians and non-Indians with clear respect for differences.

Therefore, the Federal Constitution of 1988, possessing an innovative and democratic character, protected cultural diversity and gave way to the affirmation of legal pluralism and a Multicultural State.

3. Challenges to the realization of human rights in the light of the constitutional multiculturalism of 1988

In view of the multicultural paradigm guiding the Federal Constitution of 1988, there are, however, some challenges for the realization of human rights. The first concerns the application of infra-constitutional law to groups whose social, economic and cultural conditions establish their own forms of expression that distinguish them from other sectors of the national community.

It is a fact that the pre-existing right to the Federal Constitution of 1988 did not contemplate them, as they did not even present themselves as subjects of rights in the face of it. However, international law and several conventions already incorporated into our legal system ensure that members of these groups enjoy the rights that national legislation grants to other sectors of the Brazilian population.

Applying this right without considering its specificities, in addition to accentuating and perpetuating the framework of exclusion, empties the multiculturalist achievements achieved since 1988. It is a true denial of dignified human existence.

Thus, it is necessary to consider that all this existing legal body can and must be mobilized to ensure the full and immediate exercise of human rights. It is necessary to choose the instrument with the widest and most rapid effectiveness, adapting it to the specificities of these rights, with a legal reinterpretation that considers the socio-cultural differences of the groups then involved.

The second challenge resides in the need to establish a relationship with the norm that is not of mere interpretation, in the sense of the reflexivity of the thought that returns on itself, given the pluralism embraced by the Federal Constitution of 1988.

Therefore, interpretation according to the traditional scholastic view, in which the interpreter assumes the position of a spectator endowed with a certain competence, who watches the show that is presented to him and, from his point of view, captures what seems essential to him and places it within the framework of the norm, which he also pre-understands. In an authentic interpretive procedural turn, it is necessary, initially, to undo the notion that the interpreter, for a given competence, is able to decipher, by himself, the norm in the abstract. There is no such act of prior deciphering. Norm and practice challenge each other all the time, and the former only makes sense in view of the latter.

Then, by constitutional mandate, it is necessary to recognize the group and its members' expressive freedom, with the establishment of an intercultural dialogue that contemplates the different knowledge and cultures of the groups involved. There is, here, a shift from the third to the first person, that is, from the interpreter to the members of the group. They are the ones who present the environment in which the norm is used and the attention it gives to it.

Only then, understanding the context of use revealed by the agents themselves and, from there, the meaning of the norm, will it be possible for the interpreter to build a decision that respects the multicultural paradigms involved and, effectively, protects the interests and legal interests in question.

The third challenge is to reconcile the respect for diversity resulting from multiculturalism with the universalism required for certain values. The theme, in short, has been analysed from two theoretical perspectives, namely, that of multicultural relativism and that of ethical universality.

Starting from the premise of the inexistence of universal values inherent to the human world society, multicultural relativism defends the existence and the necessary respect for the specific values and practices of different cultures. In

¹ Ibid.

the opposite direction, ethical universality seeks to standardize the common thinking of citizens, regardless of their cultural specificities, having as a paradigm the existence of universal values common to human society, such as morality, dignity, group survival and the search for continuity of individual life.

Taylor (1998) explains that each human being has its own unique way of being, in its own measure and emphasizes that:

Before the end of the 18th century, no one had thought that differences between human beings could assume this kind of moral importance. There is a certain way of being human which is my way. I am obligated to live my life, accordingly, not imitating someone else's life.

It is precisely this unique and original way of being of different minority groups, with differentiated identities, that must not be oppressed. The foundations of the ideals of multiculturalism have the power to introduce a new concept in the search for respect for the dignity of the human person and human rights.

Ethical universality, by not valuing cultural diversity, provides a real clash of civilizations, with the sacrifice of local legitimacy and the prevalence of typically Western assumptions, a phenomenon called hegemonic globalization (Santos, 1997).

The complexity of the subject does not allow conflict resolution through unilateral visions, with the simple application of existing legal texts and the use of traditional interpretive methods. It is necessary to recognize the right of peoples to dialogue among themselves in order, from then on, to establish legal-institutional mechanisms compatible with the multiple understandings of life and human existence and, consequently, effective before social groups.

Diatopic hermeneutics understood by Sousa Santos as a fundamental way of translating knowledge - notably those produced in North and South "regions" - and proposed by Raimon Panikkar as a methodology of intercultural dialogue, aiming at a practice of interpretation and translation of the dialogue between cultures is absolutely suitable for this purpose, as, in addition to increasing awareness of the incompleteness of each culture involved in the dialogue, it enables the construction of hybrid, collective, interactive, intersubjective and reticular legal forms that are richer and more widely shared.

Panikkar (2002) defends diatopical hermeneutics as a methodology for intercultural dialogue. To be guided by this methodology is much more than the mere application of an interpretation technique. Knowledge matters with the operationalization between conceptual distinctions,

which sustain and legitimize it, such as concept/symbol, logos/mythos, alius/alter, multiculturalism/interculturality. The explanation and adequate articulation of these conceptual pairs, among others, form the categorical framework presupposed by diatopical hermeneutics.

There are several research groups that approach the issue of Human Rights to the so-called critical multiculturalism. Among these groups, Souza Santos is one of those that refer to diatopical hermeneutics and the concept of homeomorphic equivalents, proposed by Raimon Panikkar (2002). The initial and fundamental assumption is that the use of these concepts is not reduced to a simple technique of interpretation, but that this theoretical framework is the product of a certain hermeneutic philosophy, whose focus is intercultural dialogue. Panikkar is one of the exponents of this philosophical current, which calls itself "intercultural philosophy" (Hogemann, 2015).

The titling procedure for lands occupied by remnants of quilombo communities is a practical example of the application of diatopic hermeneutics within the Brazilian constitutional order. The establishment of the institute of common property, until then non-existent in the Brazilian property right, in addition to protecting Afro-Brazilian cultural manifestations and intangible cultural heritage, as established in articles 215, § 1 and 216, of the Federal Constitution of 1988, gave adequate legal treatment of the tensions then existing between the recognition of differences and the material realization of equality, materializing the so-called emancipatory multiculturalism (Santos, 2003).

CONCLUSIONS. The proposal of modernity imposed a homogeneous character to humanity, based on always egalitarian standards. It so happens that the surface of the planet is made up of several completely different cultures, races and genders that have begun to demand their recognition.

It was not long before emancipatory struggles and claims based on multicultural ideals began to emerge on the world stage. Such ideals stand out for the recognition of difference and diversity, pointing out the need for cultures to be respected in their own manifestations, without any kind of fragmentation or cultural homogenization.

The multicultural perspective promotes the preservation of identities, the enrichment that comes from considering the positions and experiences of others, from knowing how to give and receive, from expressing and listening to opinions, in short, from assuming an interculturality in practice.

Recognizing and respecting traditional communities, deepening the notion of democracy, constitutes a basic premise to achieve the true

emancipation of these peoples, as well as to guarantee that their cultural rights are respected by the Democratic State of Law.

The desire of traditional communities is supported by an awareness of origin, a cultural and ethnic identity that opens paths and motivates the struggle for democratic emancipation and the conquest of space and recognition.

The participation of traditional communities in discussions and debates favors the construction of a country and a democratic political regime based on social, political, and cultural pluralism that considers and respects different conceptions and cultural diversity. Only a pluralistic and multicultural conception can reflect positively on history and society, because it welcomes cultural and social diversity, as well as offers a more authentic perspective of representation for culturally differentiated groups and traditional communities, in a heterogeneous and complex

process of sociopolitical formation of democratic society.

Today, multiculturalism is one of the biggest challenges imposed on the State, due to its own cultural diversity and conflicts within a country in search of social unity. This brings to the fore the need to incorporate these differences into current democratic systems, as well as the need to demystify an alleged constructed cultural homogeneity, striving for respect for difference.

Therefore, the construction of identity and protection of the differentiated culture of culturally diverse groups, especially traditional communities, must be promoted through an interpretive procedural turn that, on the one hand, contemplates an intercultural dialogue between the groups involved and, on the other, overcome the dichotomy “cultural relativism x ethical universality”, all through the application of diatopical hermeneutics.

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**СТЕПЕНЬ ВКЛАДА МУЛЬТИКУЛЬТУРАЛИЗМА В ПОСТРОЕНИЕ ТЕКСТА
ДЕЙСТВУЮЩЕЙ КОНСТИТУЦИИ БРАЗИЛИИ**

Предложено признать важность разнообразия через мультикультурализм и его связь с улучшением демократии через межкультурный диалог. Рассмотрены понятия мультикультурализма и его принятие с последующим подтверждением прав человека, а также вызовы, связанные с реализацией прав человека в мультикультурной среде, установленной в тексте Конституции 1988 года. Уместно вспомнить работы Пареха, Сантоса и Тейлора. С помощью юридически описательного метода, путем библиографического обзора законодательных документов и анализа примеров продемонстрирована актуальность вклада теории мультикультурализма в утверждение прав человека и гарантирование демократического правового государства.

Ключевые слова: мультикультурализм, межкультурный диалог, разнообразие, Конституция Бразилии, демократия.

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**СТУПІНЬ ВНЕСКУ МУЛЬТИКУЛЬТУРАЛІЗМУ В ПОБУДОВУ ТЕКСТУ ЧИННОЇ
КОНСТИТУЦІЇ БРАЗИЛІЇ**

Запропоновано визнати важливість різноманіття через мультикультуралізм та його зв'язок із повагою до демократії через міжкультурний діалог. Розглянуто концепцію мультикультуралізму та її прийняття з подальшим і відповідним підтвердженням прав людини, а також виклики, властиві реалізації прав людини в мультикультурному середовищі, встановленому в тексті Конституції 1988 р. Доречно згадати роботи Бхіху Пареха, особливо його дослідження мультикультуралізму в книзі «Переосмислення мультикультуралізму – культурне розмаїття та політична теорія», де він розглядав концепції мультикультурного космополітизму, захищені португальським соціологом Боавентурою де Суза Сантосом, через застосування діатопічної герменевтики, як це бачив Раймонд Паніккар, і концепції визнання в демократичному та мультикультурному сценарії, ідеалізовані Чарльзом Тейлором, співвідносячи їх із текстом Конституції 1988 р. Використано такі методи, як юридично описовий аналіз, огляд літератури, законодавчих документів та тематичних досліджень для демонстрації актуальності внеску теорії мультикультуралізму в утвердження прав людини та захист демократичної правової держави.

Цей текст побудований на появі нових питань і запитань про наукові, правові та існуючі політичні, соціальні та медичні основи, які можна вважати основами для кризи універсалістського проекту сучасності та які вимагають переформулювання такого проекту як фундаментальної вимоги або визнання та оцінки різноманітності культур і мультикультур. Мультикультуралізм виникає, вказуючи на кризу проекту сучасності, відкриваючи критичний погляд на трактування основних категорій, філософських, політичних і соціальних аспектів, які є частиною процесу сумніву між культурними претензіями та концепцією відмінності.

Ключові слова: мультикультуралізм, міжкультурний діалог, різноманітність, Конституція Бразилії, демократія.

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