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Popular Advocacy in the 21st Century

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Abstract

The article analyzes the changes needed in the law to include the sectors excluded from modernity: peoples, women and nature. It verifies that legal changes are necessary to include rights, but that they are not sufficient, since legislation may become ineffectual in practice. So, the struggle continues to implement the rights enshrined. This requires theoretical and argumentative grounding by competent professionals, trained in the schools of the system, but with a critical sense and a popular perspective. It analyses popular advocacy since the 19th century and its major transformation at the end of the 20th century and the beginning of the 21st century with the organization of excluded sectors, such as women, indigenous people and quilombolas[1]. It shows how there has been a growth in the number of professionals and the formulation of critical and insurgent legal theories capable of underpinning changes and disputing concepts and decisions. It reveals the importance of social organizations and the presence of popular advocacy, as well as the importance of public training policies, such as PRONERA[2] law courses. It shows that grassroots advocacy made up of well-prepared lawyers has been fundamental to legal disputes and that the trend is to improve this participation more and more.

Keywords

Popular Advocacy, Access to Justice, Critical Theory, Public Policies

1. Introduction

Modern declarations of rights need a command with real force to be enforced.

[1]Under the Brazilian slave regime, enslaved people who resisted oppression and escaped forced labor gathered in *Quilombos*, where they lived in freedom from slave oppression. *Quilombolas*, today, are the people who make up the remnants of the *Quilombos*, maintaining their ethnic, ancestral and social identity that distinguishes them from the rest of society.
[2]PRONERA is the National Program for Education in Agrarian Reform.

Once a right has been recognized by law, administrative structures must be put in place to ensure that it takes effect and that violations are punished. There are huge gaps between the declaration, its effective enforcement and the repression of violations. Freedom was declared the great right of modernity and serves as the first example of these distances. All the constitutions that have formed nation states since the end of the 18th century have proclaimed it as one of the rights that later came to be called fundamental. This proclaimed right, the foundation of modern societies, co-existed for almost a century with slavery in the Americas. The case of Brazil, the country with the longest slavery, is typical and exemplary of the distance between declaration, guarantee and repression.

The Constitution of 1824 declared the right of every citizen to property, liberty and individual security in its article 179, but recognized the slave system, albeit indirectly, by denying freedmen the right to vote in the election of deputies, senators and members of provincial councils, article 94. If there are freedmen, there are enslaved people. The constitution does not deal with slavery, but it does not deny it. By proclaiming freedom for all, it could be interpreted as non-slavery, but it was. The legal trick, in this case, was to not recognize enslaved people as citizens, the only subjects of the right to freedom. In other words, under the 1824 constitution, only those who were already free had the right to freedom. But the nefarious example of the distance between the declaration of the right to freedom and the practice of slavery is not only to be found in an analysis of the constitution. The Law of November 7, 1831, declared all slaves entering Brazil free and imposed penalties on importers, despite recognizing internal slavery and slave labor on ships. The distance between this law and the reality of its application is well known to history, and it is a known fact that despite it, trafficking and the entry of enslaved people did not decrease, but on the contrary increased. The ineffectiveness of the law was recognized to such an extent that nineteen years later the Euzébio de Queiroz Law, Law No. 581 of September 4, 1850, was enacted with similar content. Historical accounts show a decrease in the number of enslaved people entering Brazilian territory, but not their end, as was supposed to happen with the declaration of rights. The entry, even if it was smaller, was done in the open, without any concern for the application of the rule, often with the presence of children of ministers and members of the Imperial Navy (Verger, 2021).

It would be too long to recount all the rules relating to slavery that were systematically violated in imperial Brazil, but it suffices to point out that the aforementioned law of November 7, 1931, was popularly called a "law for Englishmen to see" (Moura, 2013: p. 240). The laws that limited trafficking and trade and guaranteed some rights to the enslaved were so difficult to enforce that Moura (2013) includes in his Dictionary of Black Slavery in Brazil an entry called "Lei do Ventre Livre. Disrespeito à.[3]" in which he reports the publication of offers of enslaved children born after its enactment, adding: "…the Official Gazette of the Province (Bahia) itself reported the fact without the judicial authorities taking the slightest

[3]"Free Womb Law. Disrespect for.".

measure to prevent it…" (p. 240).

The distance between the norm and its application is scandalous in the case of slavery, but it is no less clear in the application of rules on land ownership, the occupation of vacant land by squatters and the violence in the so-called repossession that persisted in the 20th and 21st centuries. The 19th century is only the beginning of this separation between norm and reality, or its source. This distance occurs because those who apply the rule are those who fail to comply with it, as Pierre Verger tells us. The administrative and judicial authorities in charge of enforcing the law had different interests and would suffer supposed economic damage from its application. Those really interested in enforcing the law had neither political strength nor the tools to make it effective.

This distance is marked by the need for civil or criminal proceedings and judicial discussion of specific cases. Those who enforce and those who break the law are the state itself and its agents, as well as the oligarchy and its officials. In the case of the law of free womb, if the law were in force and effective, children would not be traded, and if they were traded illegally, the perpetrators would be punished.

For laws to be enforced, therefore, there must be agents to enforce them and, if they are not respected, they must be brought before the courts, where there must be judges who are neutral enough to recognize violations, guarantee rights and punish violators. It's a very complex combination for a system dominated by oligarchies who are well established in the economic and political power of society and who command the entire administrative and judicial system of the state.

Since the 19th century and before, enslaved people, exploited but free people, peasants, indigenous people and various social movements have fought to break this impunity and violation of rights, and this has included three actions which, although different, complement each other: the recognition of rights, or their establishment in law; the effectiveness of the recognized right in general, respected by all non-criminal people; and the judicial application of the rule recognizing the right, in specific, illegal cases. Certainly, if there is general efficacy in the recognition of the established right, there are few concrete cases that need to be re-established by the courts. The denial of the right to freedom in the 19th century reveals the system and the lack of recognition of human and peoples' rights in the 20th century is its explicit continuation.

Human rights, whether of women, peoples or citizens in general, have been so permanently violated that they need to be formally recognized by the law. Formal recognition seems absurd. To say that a norm that guarantees people housing, food or dignity is necessary is to doubt the very existence of a society, because the raison d'être of a society is to provide for the needs of its members, and housing, food and dignity are basic needs. Capitalist society realized at the end of the 19th century that, yes, it was necessary to establish these rights in laws, because the society of permanent accumulation of wealth recognizes ethical limits only in the narrowness of the law and individual responsibility for acts carried out with an

explicit causal link, in such a way that the owner of a thousand empty houses does not consider himself responsible nor can he be held responsible for a thousand homeless families, unless the law so stipulates. Once the law has been written, the administration must enforce it or someone with legal standing must go to court. This is the dilemma: the state only acts if the law requires it to do so, and even then, it must comply with all the formal requirements for guaranteeing individual property rights, which come before compliance with the general protective rule. It happened with the enslaved, it happens with human and peoples' rights.

Violations occur dozens of times a minute all over the world and only a few, on a tiny scale, are denounced and prosecuted. This shows that human rights are not generally applied, that they are not the social practice of modern society in its current mode of production and life. Only a few concrete cases reach the judiciary, or the human rights councils set up to understand and apply them. Modern society has reached such a level of dehumanization that it was necessary to establish this cate-gory as a cogent norm. It is astonishing that the law must state that human rights must not be violated! In addition, it was necessary to establish in law how the judiciary was to act, and special councils and bodies had to be set up to monitor ongoing violations. Once the legal system and the formal punishability of violations of human and peoples' rights had been established, it was necessary to train well-prepared, free and conscientious lawyers to bring cases of violation before the courts and councils, because the violators—states, companies, corporations and individuals—always have well-prepared and well-paid defenders. The laws, institutions and people prepared to prosecute concrete situations of violations were forged in the permanent struggle of peoples, classes and social movements who, suffering exclusion, became aware of the need to change the system, first with laws to guarantee it, then with compliance and, finally, with appropriate trials.

This article aims to study this movement of struggle for rights, from exclusion to the formation of defenders of the people, including the creation of protective norms.

2. Those Excluded from the Legal Protection System and Their Struggles for Return

European modernity, by building an individualistic society that owned property, led to exclusions. For the individual to accumulate what is known as lasting, perennial wealth, that which does not deteriorate, as theorized by Locke (2002), he had to disregard any respect for nature, which now had no other function than to be transformed into wealth or into wealth-providing goods. Nature, as a provider of wealth, came to be protected by individual and exclusionary property rights. The exclusion of nature, and its disrespect, has generated unprecedented devastation in capitalist modernity, with its initial marks in mineral extraction, a perennial wealth, and the devastation of forests to produce consumer goods, both of which were the foundations of colonialism exercised in the Americas from the end

of the 15th century, and which formed European capital (Souza Filho, 2015). The consequences of this disrespect have been increasingly felt with the loss of biodiversity, climate change, the critical shortage of drinking water and the destruction of forests. All these so-called environmental problems have reduced the quality of human and animal life, becoming a violation of human rights and, of course, the rights of animals and plants to exist.

But it wasn't just nature, and its right to exist, that was expelled from the system to be transformed into usefulness or uselessness; people were too. All those who insisted on being grouped together in their own, collective societies, producers and providers of their needs, living their spirituality together with nature and their beings, were not welcomed by the modern capitalist system. These societies were first denied in Europe, but the colonialism that drove the individualist system took over this expulsion in the Americas and Africa, with radicalism. African and American communities and their people had to be denied so that enslaved individuals would have no other way of surviving than by producing other people's wealth. This practice, which found ethical justification in excessive racism, was the basis of economic theory and individualist philosophy and its legal system. Therefore, by creating the subject/object dichotomy of law, it had to theorize an absurd denial of human rights to enslaved "human objects". Legally, the enslaved were understood as objects of property rights, commodities that could be exchanged, sold or exterminated, like throwing a vase or an old trinket in the trash. This action was not only devoid of ethics and humanity, but also generated resistance and rebellion in search of rights.

The denial of collectives, and of the right to live collectively, was not limited to slavery, but was also evident in the broader processes of individualization and the shift to wage labor systems, always generating tensions and revolts, from the German peasant wars of the 16th century to the revolutions in Latin America. To exploit nature, extract minerals or plant goods in Latin America, it was necessary to dismantle local, collective social systems, turning individuals into servants or slaves and violently repressing any resistance (Las Casas, 1986). In addition to the kidnapped Africans, the surviving Americans were also not admitted to this society of "rights" or civil society, as Hobbes (2000) called it.

The resistance movements at the beginning of colonization generally did not set out to change the invading legal system, but simply denied colonialism and believed in a completely different order, based on traditional local organization. Most of the great rebellions and resistances of the first three centuries of colonialism in Latin America were about resisting invasion, such as the Confederation of the Tamoios in the 16th century, which was simply about not allowing invasion and enslavement (Quintiliano, n.d.). This was also the perspective of the Mapuche and Aimara resistance, as is very clear in the Tupac Katari rebellion in present-day Bolivia at the end of the 18th century (Valcarcel, 1996). These forms of resistance that deny modern social organization are still alive today and are very well structured by the Quichua thinker Reinaga (2001).

The movements of enslaved Africans since the beginning of the slave trade, on the other hand, were very much marked by the legal structure of slavery, so the struggle for freedom was always a struggle against the colonial legal system. Unlike the indigenous people who defended their own homes, the Africans had to rebuild a house and, at the same time as defending the rebuilt house, they had to resist the system, which is why Moura (1981: p. 87) referred to the quilombos as "an organized reaction to combat a form of work, (…) a basic unit of resistance". This characteristic of struggle against the system is easily observed in the large and small resistance movements of the enslaved, whether in the Quilombo of Palmares or in the Haitian War. The enslaved had no individual rights, they were objects, and even less collective rights, so they were excluded from the system as people and as a collective.

In addition to the exclusion of nature and collectives, modernity was justified by an ideology of separating humans from nature and separated humans into classes, races and genders, excluding the "inferior" and women, building a racist and sexist ideology. This exclusion of nature, collectives, workers and women has as its counterpoint the logic of individual accumulation of wealth promoted by the individual, man, owner. It is not the purpose of this article to delve into these three exclusions, but rather to understand the movements and struggles for the inclusion of rights.

3. The Struggle of the Excluded People

Although modernity has gilded the pill of exclusion with words and concepts such as democracy, freedom, liberalism and justice, the laws that organized the capitalist system made it very clear that the law was not for all people, animals and plants. And from the outset, the insurgency of the excluded was present, stifled most of the time by repression and silence, but with victorious struggles that introduced changes and advances. That's why the legal system created by modernity was extremely restrictive and repressive, with strong protection for private property and formal repression of so-called antisocial conduct, formulating a long list of criminal types, including the criminalization of trade union organizations.

Nature, relegated to the status of the object of property rights, only existed in the system as a thing in the so-called civil law, destined for hunting or gathering, destruction or transformation into utility as individual property or as an ownerless thing, appropriable by whoever came first or wanted it. The destruction was so great and so deep that depletion was felt, and part of humanity began to defend limits on destruction and even the right to the existence of species, including those 'useless' to human beings. The law had to admit restrictions on the abusive use of nature, creating, in the 20th century, what came to be called environmental law. Although it did not expressly recognize rights to nature, it tried to harmonize proprietary and destructive civil law with the preservation and conservation of nature. Changes have occurred in the national laws of practically all countries and in international rules, which are in profusion, but not always sufficient and not

widely applied (Souza Filho, 2015).

Once nature and its elements were included in the law as an object of protection independently of private property and under the name of the environment, changes were needed to the rigid civil procedure, creating new procedures and altering some basic principles since nature, animals, plants, mountains and rivers could not be litigated on their own and could not be represented by an owner or economic stake-holder. It was necessary to create a legal category of diffuse rights in order not to confuse subjects with object and not to disrupt the tidy capitalist law with its little houses and drawers. By guaranteeing the right to exist to things that are unrelated to their owners, the law did not create legal subjectivities for what were unquestionably objects, such as animals and plants, or for those that were outside this private/public order, such as rivers, mountains or forests, but rather a diffuse, unidentifiable subject that would have the right for nature to exist and therefore be able to litigate in its defense. In the proprietary world, these things would continue to be called commodities, things, water, land and wood. Like the rose that grows on the asphalt in Drummond's poem, the lives of nature's beings, rivers, mountains and forests, animals and plants, both large and small, useful and harmful, were introduced into legal systems against the will of the oligarchies and capital, hindering infinite accumulation and in some cases reducing the patrimonial values of wealth measured only in the possibility of exchange (Andrade, 1945).

It wasn't enough, however, to introduce the category of "diffuse rights" and small, insufficient changes to civil proceedings. It was necessary for women and men concerned about nature and its rights to be willing to fight to guarantee them, with protection programs, organizations and projects, bringing together professionals capable of using civil proceedings to take the application of the legal norms imposed on the system to court. Nature protection organizations needed lawyers.

Not unlike this trajectory and practically at the same time, the collectives expelled from modernity insisted on returning and, in order to do so, they had to change national laws and international rules. It is true that in relation to people there are two times and ways that must be separated. In the positive legal construction of modernity, at the end of the 18th century, there was a legislative orientation towards the exclusion of the collectives that existed in the ancient regime and those that would be formed from the class struggle of industrial capitalism. In 1791, the Loi Le Chapelier was published in France on June 7, banning the formation and cancelling existing organizations or reorganizations of collective bodies, preventing the organization of future unions and workers' guilds. A few years later, in 1810, the French penal code made it a crime to organize unions or proselytize about them, articles 291 et seq (France, 2022). In the colonized and enslaved regions of Latin America, this exclusion was much more profound, with the denial of indigenous peoples and any organization of enslaved people.

The ban on collectives within the system, trade unions, was not accepted passively. The workers' struggle during the 19th century was intense and permanent

and history records major rebellions, such as the Paris Commune, which would change the logic of the system (Merriman, 2015). At the end of the 19th century, trade union organizations were admitted, and changes were made to the contractual legislation for salaried work, enabling the creation of labour law with the state interfering in the contract to ensure greater fairness in the labour relationship. This change in law, fueled by the European proletarian struggle, fulfilled exactly the three steps indicated: the demand for the inclusion of law in the legal system and the creation of judicial processes and procedures, forming a branch of law with the so-called material part and the appropriate formal or procedural part, and, finally, the formation of a legal body capable of acting in concrete cases. These changes were not an improvement on the capitalist system, but real class conquests with collective action and permanent social movement, creating a less unfair and less leonine labor relations law. It is no coincidence, therefore, that the oligarchies dream of diminishing these rights, which they call pure demagoguery and populism (Camargo, 2011: p.123), returning to so-called individual free negotiation, in a clear anti-collectivist idea, seeking to make absolute contractual freedom the principle of labor relations, as it was in the 19th century, before the Commune.

While the internal collectives, workers, promoted this intense struggle in the heart of capitalism in the 19th century, the collectives on the colonial periphery, indigenous peoples, quilombolas and other traditional peoples in Latin America, fought to maintain the existing traditional organization. The indigenous peoples fought a real war of position, defending their territories, and the quilombolas, while defending the territories they had built, maintained a permanent struggle within the system for the end of slavery and the liberation of the enslaved (Moura, 1981). The tactic of both was to survive as far away as possible from the interference of the system, claiming only protection for their territory, lifestyle and relationship with nature. The difference was that the quilombolas were permanently promoting incursions into the hegemonic world to undermine the slave system by freeing people and offering support for resistance.

When nature became a problem for capitalism and there began to be an internal insurgency to protect it, a new contradiction arose between collective peoples and the hegemonic legal system. Some sectors of capitalism began to promote the creation of national parks to protect human life, but these areas were generally occupied by traditional peoples who were expelled in order to protect nature, as in the case of the Iguaçu National Park (Caleiro, 2021). From that moment on, traditional peoples understood that the struggle for their existence involved transforming hegemonic society and its legal system. Legislation had to be changed, especially in relation to territorial rights, which meant maintaining the close relationship between culture and nature. In other words, the legal protection of the ecosystem as a guarantee of the people's culture (Cárdenas & Correa, 1993).

In the 20th century, the struggle of traditional peoples became about changing the capitalist legal system in order to introduce the recognition of collective rights

to existence and territoriality into the law. This struggle for rights spread throughout Latin America and the results appeared on two very clear fronts: national legal systems and international regulations. The constitutional reforms of the late 20th century began to include the right to exist of these peoples and, as a corollary, their territoriality or, as the law calls it, the right to land. Until then, the most that legal norms allowed was some right to exist and to land until the community was dissolved with the entry of its members into the individuality of labor relations. This was also the case with international norms regulated not by the human rights system, but by the International Labor Organization, in resolutions that prohibited forced labor, but imposed public policies on national states to assimilate individuals into wage labor. The strength of social movements, especially indigenous ones, in Latin America brought about changes at both levels. In 1988, the Brazilian constitution pioneered the recognition of the collective rights of peoples, including territorial rights, and in 1989 the ILO approved Convention 169 at its General Assembly (Souza Filho, 2017).

The changes brought about by these social movements were profound because they introduced collective rights that had always been denied. The laws that recognize these rights shamefully do not call them collective rights or collective subjects of rights, which would require very detailed regulations, including on processes and procedures, and would clash with the still predominant individual right to property. Despite this, the continuity of peoples' struggles has led to important changes in national courts and international courts, but it is still a right in dispute. Once the right was recognized, it was not enough to continue militating for the law to be applied in the courts, and it was necessary to train lawyers in the quantity and quality required to these rights' hermeneutics, often creating paths and teaching solutions to unreceptive ears (Araújo, 1995).

In addition to the people's struggle for changes in the legal system, there is also the ancient struggle of the rural people, which has not always gone hand in hand in Latin America. Under pressure from these struggles, the modern legal system introduced the category of the social function of property and its consequence, land reform, at the beginning of the 20th century. It was modernity that invented land ownership with its absolute character, turning it into a special commodity. As land increases in value regardless of the work applied to it, it can be kept as a reserve of future value, without producing and, on the other hand, as it doesn't lose value when used in production because it doesn't transfer value to the commodity produced, it can be used to exhaustion, with the absolute destruction of nature. The modern system of land ownership thus has three problems: the expulsion of people who produce for subsistence, enclosures; income without production from public investments such as roads, ports and energy, unproductivity; the destruction of nature for the maximum production of goods, environmental destruction (Souza Filho, 2021). These three congenital problems of the system were exacerbated in Latin America by large estates and slavery. In the 20th century, with the introduction of the legal category of the social function of property

and agrarian reform, the right to access to land became disputed and the conflicts became legal. The social movements in the countryside, the protagonists of this conflict, had to organize themselves and form legal teams to fight in the courts.

Women, excluded from modernity by the absolute contempt for all work that did not produce merchandise, have always moved and been punished in the search for the inclusion of rights, as exemplified by the execution of Olympe de Gouges in 1793 for having proposed the Declaration of the Rights of Women and Citizens in which she coined the expression: "women have the right to climb the scaffold; they must also have the right to climb the Tribune" (Gouges, 2020).

Women's struggles follow the same route as those of other excluded people: first they demand the inclusion of their rights in the law, then the effectiveness of the established law, and then the dispute over its interpretation and application by the courts. This was the case with the great suffragette movements and continues to be the case today with the repression of violence against women. There is a coincidence between women and enslaved people in the 1824 Constitution: everyone's right to freedom excluded enslaved people and everyone's right to vote excluded women. The Republican Constitution of 1891 enshrined universal suffrage for everyone over 21, not beggars or illiterates, but the interpretation was that women were excluded and were only recognized as voters in the Electoral Code of 1932.

4. People's Rights in Court

The lack of formal recognition of rights prevents the Judiciary from enforcing them, and even when they are recognized, they depend on provocation. The judiciary is expensive and requires the participation of a qualified professional who knows the procedures, deadlines, formalities and rites. The defense of the excluded lacks an organizational and professional structure. Popular advocacy, however, has always found selfless people who have taken the defense of rights as their mission, just to take the example of Luís Gama and Deocleciano Martyr.

Luís Gama, after advocating on his own behalf, demonstrating in court that he had never been enslaved and that all the contracts that had him as their object were null and void, began to dedicate his life to defending manumission rights and against illegal enslavement. He would never accept a case, even if apparently just against enslaved people. It was an advocacy with which some of his work is illustrated. At that time, the penalty for an enslaved person who murdered someone was life imprisonment. Luís Gama was defending a murderer, but the master had hired another lawyer to prove the slave's innocence so that he wouldn't stop being a slave and become a prisoner. Luiz Gama's client preferred to be a prisoner not only because the workload would be less, but also because he wouldn't be killed by working beyond his strength in his approaching old age. Luís Gama had no hesitation in defending his guilt. Another case was of manumission whose master was an anti-slavery friend who kept a person enslaved. Because he was anti-slavery, he treated Luís Gama's client well, who had a decent room and

reasonable food, but told the lawyer that he would rather starve free than eat like a slave. Luís Gama arranged the manumission and freed him against his friend's wishes (Azevedo, 2010).

At the beginning of the 20th century, Deocleciano Martyr created the Legal-Military Assistance to defend the wronged. During the Contestado Revolt in 1914, he filed a request for Habeas Corpus in favor of the peasants of Taquaruçu, which was the main center of the peasants and functioned as a real city, which was being attacked just as Canudos had been. Deocleciano claimed that the peasants were being persecuted for their religiosity and appealed for the right to assembly and freedom of conscience. The persecution was being carried out by the Public Forces of Paraná and Santa Catarina. The rulers of the two states, which were in territorial dispute, joined forces in the Supreme Court and argued that the peasants were being criminalized. The Supreme Court not only denied the request for Habeas Corpus but legitimized the violent actions of the state. That violent action in Taquaruçu, which resulted in a massacre, kept the war going for another two years and only ended when the territory was considered unoccupied (Vanali, 2017).

In the middle of the 20th century there were two legal situations that went hand in hand in Latin America and required the self-denial of lawyers. Dictatorships were set up across the continent, pushing back progress on the agrarian question and land reform, among others, and to do so they used strong repression against any opposition, violating not only land rights but also human rights. The 1960s and 1970s were marked by dictatorial governments that were visibly opposed to the people of the countryside, seeking to impose an agribusiness model based on big investments and ownership of large tracts of land with few or no people. Peasants were repressed and expelled from the land, and with them those who defended them. Judicial procedures were adapted to serve this repression, such as Decree No. 314 of March 13, 1967, which was replaced whenever there was a need to increase repression, and which transferred the trial of so-called crimes against national security to the Military Justice.

While, on the one hand, social movements were fighting for the inclusion of the rights of indigenous and traditional peoples, women, nature and other marginalized sectors, on the other they were fighting against police repression and human rights violations. In this context, groups of people associated or not with universities began to be created, with funding from international solidarity to protect violated rights.

Most of the organizations did not have a legal structure per se and their actions were much more humanist in terms of protecting the most vulnerable, often directly linked to sectors of Christian churches, mostly Catholic.

In Brazil, the first organization of this kind was *Operação Amazônia Nativa - OPAN,* in 1969, amid the Brazilian military dictatorship, dedicated to protecting the rights of indigenous peoples. In 1971, José Lutzemberg created the Associação Gaúcha de Proteção ao Ambiente Natural—Agapan. Neither of them had any legal action, although they dealt with human and nature rights. At the same time,

the Center for Documentation and Information (CEDI) was created in 1974 from the merger of evangelicals and Catholics persecuted by the dictatorship. The serious situation of peasants repressed and expelled from their lands by actions encouraged by the dictatorship led to a proliferation of humanist defense organizations within the churches and left-wing political organizations. One lawyer from the peasant leagues stands out, Miguel Pressburger, who, after spending a few years imprisoned as a subversive, created the AJUP Institute for Popular Legal Support in 1985. Other groups of professionals then began to emerge to articulate the defense of human rights and rights linked to land and territory. In Latin America, the Latin American Institute of Alternative Legal Services (ILSA) was created, based in Bogotá, with representatives from various countries on the continent on its board. Organizations similar to the AJUP were created in many countries.

These institutions began to have more or less organic relations with universities and, through meetings, debates, publications of journals and books, they began to establish a legal theory for the changes that would be proposed directly by the indigenous and land peoples' social movements in Latin America. The AJUP's publications are numerous and important, and ILSA's El Otro Derecho magazine stands out. Not only did the number of lawyers who began to act in the defense of popular interests and rights increase, but so did the quality. At first, it was people from law schools and members of the intellectualized middle classes, generally urban, selfless and consciously militant, like Miguel Pressburguer.

As an example, the Indigenous Rights Center (Núcleo de Direitos Indígenas—NDI), created to put the nascent 1988 Brazilian Constitution into practice, was made up of non-indigenous lawyers, although it had important leaders on its board who had participated in the constituent process, such as Ailton Krenak and David Kopenawa, indigenous thinkers with no legal training. The first indigenous lawyer, Paulo Pankararu, graduated in Goiânia, with the support and permanent assistance of the NDI, in 1994.

5. Changes in the Law and Legal Action

At the same time as this was happening, the indigenous peoples of the Americas were also beginning a process of civil organization to confront hegemonic society. Not always formally organized, these institutions played a leading role in the constitutional changes that began in 1988 with the Brazilian Constitution. The first Latin American organization was the Confederation of Indigenous Nationalities of Ecuador CONAIE, which was to have a strong influence on Ecuador's internal politics. In Brazil, the Union of Indigenous Nations and the Alliance of Forest Peoples were formed, which were later replaced by regional organizations and the Articulation of Indigenous Peoples-APIB.

The indigenous peoples understood that it was necessary to change hegemonic rights so that they could consolidate their struggles. At the same time, theorists of transformative social rights, such as Miguel Pressburguer, were building a legal militancy in social practice based on the idea that if modern, bourgeois law exists

in the law, two movements are necessary: changing the law, but also, and intensely, applying the law, using the law and reinterpreting it. Pressburguer called these two movements Insurgent Law and Combat Positivism. Many currents were born, Alternative Law, Alternative Use of Law, etc. The theories came together under the general umbrella of Legal Criticism (Pressburger, 1991), that is, the possibility of considering an alternative law and an insurgent legal practice.

The laws were being changed by the actions of social movements, with special emphasis on indigenous peoples, defenders of nature and women. The black movement, a victim of the most perfidious racism, despite great intellectual leaders like Abdias do Nascimento, found it very difficult to change the normative statutes. The peasant movement, whose demands attacked the core of dependent capitalism, also faced great difficulties in changing legislation (Ribas, 2015).

The Brazilian Constitution of 1988 was spearheaded by social movements, achieving significant advances in the indigenous and nature proposals. The women's proposals made less progress, but they started from a different level, since equality had been legally postulated long before it was implemented, unlike the indigenous people who had to break the paradigm of assimilation (Souza Filho, 1989). The black movement achieved the great feat of including the rights of quilombolas, albeit in the Transitional Constitutional Provisions Act (art. 68 of the ADCT) and with wording that allowed for multiple interpretations, almost thirty years later positively consolidated by the Federal Supreme Court as a result of the continuity and growth of the movement. The peasant movement, despite being the most numerous and very well organized, suffered serious setbacks in the constitutional text.

All the social movements together made great strides in collective rights (Art. 6 and others), such as housing, food, work, consumer rights, among others, as well as recognizing the right to culture, its manifestation, memory and preservation (Arts. 115 and 116). With care, the social movements managed to include procedural pro-visions in the Constitution that allowed them to appeal to the Federal Supreme Court whenever the social and human rights enshrined in the Constitution were not applied, such as the Mandate of Injunction and the Claim for Failure to Comply with a Fundamental Precept (Articles 5, LXXI; and 102, §1).

At the end of the 20th century, law in Latin America took on its own dimensions with a consistent Critical Theory that was thought out locally, anti-colonial, in defense of the land, territory and nature, and which in practice became what came to be called Latin American constitutionalism, with its socio-environmental dimension (Souza Filho, 2017). All theory reflects, to a greater or lesser extent, this powerful movement of excluded sectors. The constitutional changes took the disputes to the parliaments in the formulation of new regulatory laws and in the fight to prevent setbacks permanently proposed by the oligarchy. Following in the footsteps of Miguel Pressburguer, positivism had to fight for interpretations in the courts. The NDI was created to propose paradigmatic lawsuits that would strengthen the 1988 Constitution's understanding of indigenous rights (Araújo,

1995). This understanding came to be known, 20 years later, as strategic actions. But this battle lacked a legal body, which was tiny and persecuted in the 1980s, but has grown, although it has not ceased to be persecuted.

Among the movements that emerged strongly at the end of the 20th century to formulate and guarantee rights, two stand out: the quilombola movement and the women's movement. In 1996, eight years after the constitutional recognition of quilombola rights, the National Coordination for the Articulation of Quilombos was created, which institutionally represents Brazilian quilombola communities. Women's movements have been growing since the end of the dictatorship, along with environmental and peoples' movements.

Changes in society and the law are constantly reacted to by oligarchies who are aware that their privileges can be affected by mobilizing society and transforming it, so racial violence, violence against women and environmental aggression, while receiving greater legal protection, suffer more attacks and the legal structure is not enough to prevent them, but the work of legal professionals has taken a leap in quality in the 21st century.

6. Popular Advocacy, the New Force in Law

Entities, organizations and social movements understood the need to have legal bodies to discuss regulatory laws and debate their application in the courts. The old civil organizations of lawyers, such as the AJUP, which had the genius and work capacity of Miguel Pressburguer, gave way to networks such as the National Network of People's Lawyers—RENAAP. In 1995, a Seminar in Defence of the Peoples of the Land was organized, which became known as the First National Meeting, giving rise to the National Autonomous Network of People's Lawyers—RENAAP. The seminar brought together professionals and law students to fight in defense of the peoples of the land, waters and forests, exchanging knowledge, experiences and legal and political training (Tavares, 2006).

The indigenous, quilombola and peasant movements have made great efforts to promote and encourage the organic formation of legal staff. In 1997, the Landless Rural Workers' Movement (MST) organized the 1st ENERA (National Meeting of Agrarian Reform Educators) to publicly present and consolidate their experiences in education and training, while demanding access to education in the countryside under decent conditions. In response to the massacre at Eldorado do Carajás, in Pará, in 1996, the government created the National Program for Education in Agrarian Reform—PRONERA, at the National Institute for Agrarian Reform—INCRA.

In 2007, through PRONERA, the Federal University of Goiás opened the first law course on its campus in the city of Goiás, in partnership with INCRA and based on a proposal from rural social movements. The Federal Public Prosecutor's Office opened a civil inquiry to analyze the legality of opening the course and requested an opinion from the Legal Education Commission of the OAB/GO Sectional Council, which approved it by a narrow majority, 15 to 12. The MPF closed

the investigation, but recommended that PRONERA broaden the student base, originally only for Agrarian Reform settlers, to include family farmers (Vuelta, 2013: p. 70).

The law courses were an absolute success. The curriculum was the same as the course offered by the university. There was, however, a counter-hegemonic formation articulated by the students who made up the classes, with seminars, lectures and courses with guests. There were six classes in all, distributed as follows: 1st Evandro Lins e Silva Class at the Federal University of Goiás. 51 students. Made up of 21 women and 30 men. Black and indigenous students: 43% of the total class. Diverse regions of the country: 19 states (Moraes, 2011). 2nd Elizabeth Teixeira class at the State University of Feira de Santana, with students from 11 states (Maia, 2019). 37 students graduated, 28 declared themselves male and only 09 female. 3rd Eugênio Lyra class at the State University of Bahia, 45 students. Composed mostly of students from the state of Bahia and students from the states of Sergipe, Rio Grande do Norte, Ceará, Maranhão and São Paulo. A total of 6 states (Maia, 2019). 18 women (40%) and 27 men (60%). 32 students consider themselves black (71%), 12 consider themselves white (27%) and one student considers himself indigenous (2%). 4th Nilce de Souza Magalhães class at the Federal University of Paraná: 47 graduates in total. 28 women and 19 men, with more than 65% blacks in the class, 5 of whom are quilombolas. Diversity of regions—15 Brazilian states; incorporating 2 Haitian and 1 Venezuelan student (Pereira & Miranda, 2018). 5th Fidel Castro class at the Federal University of Goiás, with a diversity of regions from 14 Brazilian states (Maia, 2019). 6th Frei Henri class at the Federal University of South and Southeast Pará, with 50 students enrolled.

From 2000 to 2012, the Ford Foundation ran a scholarship program for black and indigenous people for master's and doctoral degrees, which awarded 308 degrees (Artes & Mena-Chalco, 2019: p. 9). The number of students in applied social sciences was 45, mostly in law. This demonstrates not only the creation of training alternatives, but above all the efforts of social movements to promote technical training that makes it possible to interfere in the legal world. Since the graduation of the first indigenous lawyer, Paulo Celso de Oliveira Pankararu, in 1994, from the PUC in Goiás, who was later awarded a Ford scholarship to complete his master's degree at the PUCPR in 2006, many indigenous people who organize the National Network of Indigenous Lawyers (Rede Nacional dos Advogados Indígenas, RNAI) have been graduating and doing postgraduate studies. APIB has a legal department made up entirely of indigenous lawyers, coordinated by Luiz Eloi Terena and Sa-manta Pataxó.

The social movements of those excluded by modernity have been making a steady comeback in the 21st century. One significant example has been the participation of women in parliaments. In 2020, Cuba, Nicaragua and Mexico had more than 50% women in parliament, and Chile joined this group in 2021, according to data from the Inter-Parliamentary Union published by the UN in 2021. Brazil, although it registered an increase from 5.3% in 1986 to 15% in 2018, ranks

very low in the international ranking (Da Mata, 2022: p. 37). The participation of women in parliaments tends to reduce legal exclusion and leads to the formulation of laws that are better suited to gender balance. In 2021, according to the records of the Federal Council of the OAB, the number of female lawyers in Brazil surpassed that of male lawyers, which demonstrates the intense struggle for rights undertaken by women.

On September 1, 2021, the STF began the trial of RE 1017365, which discussed the rights of the Xokleng people over a territory claimed by the State of Santa Catarina to form a State Park. The case gained General Repercussion because the state claimed that on October 5, 1988, the date of the promulgation of the Constitution, the Xokleng people did not retain possession of the area, characterizing the so-called temporal milestone thesis which interprets indigenous territorial rights as existing only when there was possession on that day, disregarding the violence, expulsions and territorial injustices that took place until 1988. Due to the importance of the trial, numerous amici curiae were presented in defense of indigenous rights and against it, of which 22 amici orally supported the right of the peoples and 11 defended the time frame. The difference between the people's defense and the corporate defense was striking. On the side of the peoples, there were 12 women and 10 men: on the other side, only 2 women. In addition, there were at least five indigenous lawyers and many others from PRONERA's law courses, including the main lawyer in the case, Rafael Modesto dos Santos, who defended the Xokleng people. On that day, it became clear not only the results of the legal training policies for the peoples, but also their excellence.

The people and their organizations can defend the rights of the excluded before the courts, they are new forms of the same struggle.

7. Final Considerations

The struggle for the rights of those excluded from capitalist modernity has undergone necessary national and international legal changes and continues in the regulation and application of these rights, which are generally contradictory to individual property rights and the sexist and racist barriers of the dominant ideology.

The leading role in the inclusion of rights, their implementation and judicial guarantees is necessarily played by the excluded, peoples and women themselves, who join their struggles with the protection of nature. Of course, all these movements have allies in sectors and people who are part of hegemonic society and who help to disseminate and theorize socio-environmental rights.

The 21st century has been marked by a significant increase in the participation of these sectors and the protection of nature, but it has suffered harsh setbacks and setbacks in the public policies that are necessary and strategic for the recognition and application of rights. But precisely because they have solid organizations and movements, they have resisted and improved their participation and intervention in society and legal structures.

Judicial disputes will no longer be one-sided or unrepresentative in the defense

of the excluded. On the contrary, Miguel Pressburguer's dream of having a lawyer defending every human right that has been violated is coming closer to reality, even if it is no guarantee of recognition and victory.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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