

THE PARADOX OF DEVELOPMENT: ENVIRONMENTAL LAW AND COMMON GOODS IN CAPITALISM

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ABSTRACT

We can note the advanced stage of the process of globalization and homogenization of the world, which has in the global development project a strategic instrument. However, development is a contradictory concept whose limits are exposed by critical perspectives, a fundamental reflection, since it is the developmental discourse conceived within the capitalist logic and have as consequences the planet environmental tragedy and the disappearance of peripheral traditions and cultures. Industrial design and logic of ownership, components of development discourses, is imposed on countries, redefining public policies and legal systems, as well as including countries in international mercantile relations. The cost of this project is high because it has led to the suppression of ecosystems, a very serious threat to biodiversity. Given the perception of this context, it aims to critically analyze the Western development project, adopting methodological assumptions of the ethics of the liberation of historical-critical review, with which it is expected to highlight the need to decolonize the concept of

development, a task that can reveal in the concept of common goods and in theories of the common paths of resistance to universalize the capitalist values.

KEYWORDS: development; environmental law; common goods; decolonization; capitalism.

O PARADOXO DO DESENVOLVIMENTO: DIREITO AMBIENTAL E BENS COMUNS NO CAPITALISMO

RESUMO

Nota-se o estágio avançado do processo de globalização e homogeneização do mundo, que tem no projeto de desenvolvimento global um instrumento estratégico. Todavia, o desenvolvimento é um conceito contraditório, cujos limites são expostos por perspectivas críticas, uma reflexão fundamental, visto ser o discurso desenvolvimentista concebido dentro da lógica capitalista e ter como consequências a tragédia ambiental planetária e o desaparecimento de tradições e culturas periféricas. Projeto industrial e lógica da propriedade, componentes dos discursos de desenvolvimento, impõem-se aos países, redefinindo políticas públicas e ordenamentos jurídicos, bem como incluindo países nas relações mercantis internacionais. O custo desse projeto é elevado, pois tem conduzido à supressão de ecossistemas, uma séria ameaça à biodiversidade. Diante da percepção desse contexto, objetiva-se analisar criticamente o projeto ocidental de desenvolvimento, adotando pressupostos metodológicos da ética da libertação de revisão histórico-crítica, com as quais espera-se evidenciar a necessidade de descolonizar o conceito de desenvolvimento, tarefa que pode revelar no conceito de bens comuns e em teorizações do comum caminhos de resistência à universalização dos valores capitalistas.

PALAVRAS-CHAVE: desenvolvimento; direito ambiental; bens comuns; descolonização; capitalismo.

INTRODUCTION

Contemporary science is the result of a process that has structured it within the limits of a specific rationality, tributary to the Cartesian tradition and conceived in a well-defined geographic, temporal, economic and cultural context: European capitalist modernity. From the assumptions defined within this eurocentrist scope, scientific, political and juridical paradigms tend to (re) colonize peripheral societies and contribute to the support of an ideology in which the self-declared superiority of a specific "civilized" society is "accepted". One of these debates concerns the issue of *development*. A concept that has occupied, and sometimes set the agenda of several countries. An important concept, since it promotes certain fundamental measures for the improvement of the life of diverse peoples and nations, but a concept that does not have its own monocultural origin, for which reason some critical reflections are proposed.

Technological advances and the process of globalization have brought countries and nations closer together. International organizations and systems have consolidated in the last decades, with the most distinguished nations taking on common projects. Development is one of the concepts that guides these projects, based on the discourse of global solidarity and fight against human misery and suffering, so that development can be said to be one of humanity's greatest projects today. In analyzing the question, despite the attempts to democratize and humanize the idea, development is limited to the conception identified with the civilizational project of Western modernity, which seeks to maintain guidelines such as economic growth, industrialization, scientific development, among others. That is to say, it is a project that recognizes only the development compatible with the values and canons of the capitalist western society and, therefore, when internalized by the different countries, its consequence is the uniformization of the different social, political and legal dimensions among others, on which it is imposed. Human freedom is admitted, provided that it unfolds within the western modernity scope. But the consequences of this project were alarming: the environmental crisis, the failure of the economic growth project, the persistence of planetary hunger, the disappearance of traditions and cultures are some of them.

Given this scenario, the proposal is to reflect critically on the idea of development and the agendas imposed by this "global project". The approach or reasoning follows the proposed methodology of

Enrique Dussel, taking the concept of *development* as a reflexive-critical mediation and the procedure or investigation follows the steps proposed in the critical-historical methodology of Wolkmer. Therefore, in the first instance, different conceptions regarding *development* will be analyzed as mediations (following the methodological proposal of the ethics of liberation), as well as some implications of this debate, such as the ranking of countries and the consequences of developmentalist agendas. Finally, some interpellations produced from a *critical exteriority* will be inserted, such as the defense of the possibility/necessity of an intercultural dialogue between different traditions and the ontological opening to new paradigms.

The debates will be situated in the cut of space and time of western modernity, whose constitutive elements of the specific reality, according to Wolkmer's proposition allow to understand the juridical phenomenon. After all, development discourse has a prescriptive dimension that challenges the very notion of sovereignty by starting from supranational agreements to impose itself on the agendas of nation-states.

1 PARADIGM OF DEVELOPMENT IN THE MODE OF CAPITALIST PRODUCTION

The confluence of certain factors in the context of the present time and space culminates in the formation of a specific juridical phenomenon that is manifested in the western societies, assuming a projection external to the States in the form of discourses of human rights, development, among others. Such discourses, in turn, influence the internal projection of the juridical phenomenon in the hegemonically manifest form of juspositivism. From the methodological contribution of Antonio Carlos Wolkmer, it is possible to gather elements to think critically about the theme and to identify certain contradictions inherent to the Law under analysis: the one that is "shared" in the supranational discourses and that is internalized in the national agendas. The methodological proposition implies the identification of Law as a sociocultural phenomenon, inserted in specific phatic contexts and produced dialectically from human interaction. Once the law is identified, it must be reinterpreted in an interdisciplinary perspective, since law is a reflection of a structure that encompasses the current mode of production, the relations established between social forces, power structures among other factors (WOLKMER, 1999, p. 4; 2005, p. xv-xvi)

From this epistemological basis, one can seek a dimension of the impact that the developmental discourses produce on the Law. It is important to emphasize that modernity assumes the capitalist mode of production, a cultural system from the perspective of postcolonial criticism, or a world-system structured from world-wide economic relations, in the world-system approach (GROSFUGUEL, 2010, p. 470). Capitalism, as a modern mode of production, imposes itself as a decisive element in the orientation of western legal culture and in institutional relations, whether these relations are between States and their peoples or international, since the thematic of this article proposes to analyze projects internally and externally: the different development discourses that have succeeded each other in the last decades have fulfilled - among other functions - to link the agenda and influence the rights systems of contemporary states, especially the peripheral and economically dependent. An example is the progressive opening of states to relations based on economic freedom, consumer power, search (possible?), for increase of income among others. Factors that highlight

Modern liberal-bourgeois culture and the material expansion of capitalism produced a specific form of rationalization of the world. This rationalization, as an organizing principle, is defined as a positive instrumental rationality that does not liberate, but represses, alienates, and makes a "thing" out of a man (Wolkman, 2012, 26).

Through the development discourse the idea is that there are countries in more advanced stages and that, therefore, should serve as a reference for less advanced countries. The practices and theories formulated by the developed countries are disseminated as "paradigms", which in Ludwig's definition (2006, p.26) are models of rationality, theoretical patterns that become hegemonic at specific moments in history, accepted by the adopting community as the basis of knowledge from which one understands reality and seeks solutions. From the development paradigm, a "civilizing" model is consolidated, crossed by the economic dimension (liberal-individualist) but also by other dimensions that give it cohesion, as one will seek to demonstrate.

The idea of "development" enters the economic debates around 1950, almost two hundred years after the publication of *The Wealth of Nations* of Adam Smith and the Industrial Revolution, which circumscribed this debate in the areas of social classes, income, wages, competition and

others of the economic sciences. But although the concept of development originated in an essentially economic context, it quickly crossed these frontiers to compose comprehensive categories of sociology, history, and so on. And when the idea of development came to encompass socioeconomic issues, the challenge came up how to measure it. In this process, the Gross Domestic Product (PIB), which is an indicator of development that began to be adopted in 1947 and is still one of the main indicators of development, faced harsh criticism because it is a purely quantitative indicator, ineffective in the need to include variables such as health, education and others in its field of composition. In this context of criticism, specifically in the United States and the 1960s, a new debate intensified, calling for ways of measuring the well-being of the population. In the following decade, the Kingdom of Bhutan supported by a United Nations Development Program (UNDP) initiative, proposes "Gross Domestic Happiness" as an indicator of human development (SIEDENBERG, 2003, p. 46-47; SALES, et al., 2013, p. 60). This illustrates the extremes between which the developmental debate has orbited: from a strictly economic dimension to a metaphysical dimension and perhaps of impossible measurement, the field of *happiness*. In the midst of these two extremes, other proposals were built, some of which ended up achieving a greater degree of consolidation and, therefore, has exerted a strong influence on the national agendas, be it on public policies, or on the legal systems adopted by the countries.

This is the case of the Human Development Index (IDH), idealized and presented by the Pakistani economist Mahbub ul Haq and the economist and philosopher Amartya Sen, being adopted to this day by the United Nations (UN) (BARBOSA, 2017, p. 297). After decades of debate and controversy over the need for new indicators, in 1990 PNUD presented this Index, which had been applied in the ambitious attempt to compare the regional development of one hundred and thirty countries with more than one million inhabitants. The systematization of the report revealed aspects considered as determinants of quality of life and situated beyond the strictly economic field (SIEDENBERG, 2003, p. 48; 66).

In fact, the IDH represents a fundamental advance in relation to the economist models, as is very clear in the case of PIB. By assuming the paradigm of modernization, PIB instituted urban and industrialized society as its goal, but failed to foster economic and social development. Thus, sustained criticism from various perspectives evidenced its limitations. Among these criticisms was the discrepancy between the data indicated

or even the limitation as an instrument of analysis of the development of countries with a high degree of subsistence, in which it could only offer an "estimate", since PIB is an indicator that does not consider extra-market factors, and therefore does not allow assessing the subsistence, rural or informal economies, often adopted by "marginalized groups", or another critic here considered essential: PIB ignores the ecological costs! (SIEDENBERG, 2003, p. 49-52). Despite the countless and compelling criticisms of PIB, it is still a strategic indicator of development agencies. Currently, development is considered from the economic perspective, which includes indicators such as PIB, Gross National Product (PNB) and Net National Product (PNL)¹ but is also considered under social perspectives, which rely on indicators such as the Human Development Index (IDH), the Human Freedom Index (ILH), the Political Freedom Index (ILP), or the Human Poverty Index (IPH) (SALES, et al., 2013, p. 61).

The Human Rights Index (ILH), for example, was created in 1991 by the PNUD/ONU to ensure that, in accordance with the Universal Declaration of Human Rights and other international conventions, the countries were classified in relation to the level of freedom of their population. In 1992, the Political Freedom Index (ILP) was created by the same program to measure political rights and civil liberties by grouping the categories security, rule of law, freedom of expression, political participation and equality opportunities. Subsequently, in 1995, the PNUD launched the Gender-Related Development Index (IDS) and the Gender-Related Participation Measure (MPS), both with a view to measuring through indicators the differences between men and women, serving as support for future public policies. Already in 2007, PNUD launched the Human Poverty Index, which focuses on poverty conditions and the development of the poorest individuals in society (SALES, et al., 2013, p. 64).

Despite the recognition of the various forms of oppression that operate in contemporary social relations - rascism, patriarchalism, corruption, marginalization of native communities, criminalization of

¹ David (1985, 25-26) defines these economic concepts in a period (1980) in which the PNB prevailed over the others. The author explains that *per capita* PNB can be calculated in any country through "a specific basic set of measurement rules that have been envisioned in industrial countries in the West to measure their aggregate level of income or output." Originally, these rules were not intended to measure development, but only income and production, which imposed intense debate and controversy on the indicator, highlighting the lack of measurement of income distribution. PNB, together with PIB, are two key indicators for economic analysis of development. Krugman (2005, p. 222) explains that PNB is the result of PIB plus income - net income - coming from abroad and although they are composite indicators in different ways, in practice their movement differs little.

social movements, popular and the list remains, by tragedy, much more extensive - and despite the evidence that economic development is not an instrument capable of overcoming these forms of oppression, according to Barbosa (2017, p. 296), PIB continues to be considered, in the sphere of economic sciences, as a standard of living. It should be noted that, even in the economic sphere, as the author explains, it is a limited indicator: it does not cover voluntary work, which benefits the quality of life, does not cover illegal activities that have repercussions on the economy, house working and others. In general, the indicators assume "models", or referential analysis, and from this referential, seek to measure different realities. It is the example of the ILP based on the institutes and categories of Western democracy, or even the idea of poverty, linked to the lack of income, in both cases, indices defined from modern Western culture and applied in peripheral cultures, many of them with traditions pre-dating modernity.

Take the case of the IDH. Given the recognition of deficits in economic indicators, the IDH emerges as one of the main ways in which a global assessment of social development can be made feasible. Therefore, it is expressly recognized by international organizations as an alternative tool to PIB per capita, a "counterpoint" to this indicator. This index, the IDH, is recognized as an improvement over the more strictly economic indicators, but its limitation on the representation of "happiness" or the identification of good "places to live" is also recognized, since this indicator does not include information such as the democratic level of society, sustainability and other factors (PNUD, s.d.b). The UN draws attention to the strong influence of Amartya Sen - the concept of "human development" with the possibility of expanding people's choices, allowing them to develop capacities and access opportunities, to "be what they want to be" (PNUD, s.d.a). Income is still recognized as an important factor, but the idea of identifying development with merely economic factors is now rejected. So income is seen as "one of the means of development" and not as an end. Regarding the construction of the IDH, it informs PNUD that:

Since 2010, when the Human Development Report completed 20 years, new methodologies were incorporated to calculate the IDH. Currently, the three pillars that make up the IDH (health, education and income) are measured as follows:

- * A long and healthy life (health) is measured by life expectancy;
- * Access to knowledge (education) is measured by: (i) average years of adult education, which is the average number of years of education received during life by

persons over 25; and ii) the expectation of years of schooling for children at the age of starting school life, which is the total number of years of schooling that a child at the age of beginning school life can expect to receive if the prevailing patterns of specific enrollment rates by age remain the same during the child's life;

* And the standard of living (income) is measured by Gross National Income (RNB) per capita expressed in purchasing power parity (PPP) constant, in dollars, with 2005 as reference year. (PNUD, s.d.b).

Based on these indicators, the results of the 2016 report pointed to the ten highest indices respectively in Norway, Australia, Switzerland, Germany, Denmark, Singapore, the Netherlands, Ireland, Iceland, Canada and the United States. The United Kingdom was placed in the sixteenth position, followed by Japan. France in the twenty-third. Among the latest positions, the Central African Republic (188th), timidly ascending to Nigeria, Chad, Burkina Faso, Burundi, Guinea... With that said, indices plummet and remain low in this particular geographic location, the African continent. In the case of the Latin American and Caribbean countries, there are significant variations (more than one hundred positions!), among them: Argentina (45th), Uruguay (54th), Cuba (68th), Mexico (77th), Brazil (79th), Ecuador (89th), Colombia (95th), Paraguay (110th), Bolivia (118th) and Haiti (163rd)

(PNUD, 2017, p. 198-201).

In order to classify countries in more or less developed countries, a scale is constructed where the index "one" corresponds to the highest index and the index "zero", to the lower. Between the two indicators are the relative positions of each country. This classification presents differences when compared to other *ranks* defined by *per capita income* and generates some perplexities in the perception of certain scholars, such as the "good relative position of the socialist countries, where human rights were known not always to be respected"² (SIEDENBERG, 2003, p. 67). But the truth is, however variable their components, the results in the overall classification remain the same or very similar. In this sense, it is noted that as in PIB *per capita*, the IDH *ranking* indicates between the first positions basically

2 With regard to this perplexity, the idea that is being defended here is emphasized: that indicators, whether economic or social, are instruments designed by a specific rationality, in this case, modern Western rationality, set in a system economic model: capitalism. Thinking in this way, it must be uncomfortable for central capitalist countries to see good results from socialist states, especially when these states perform well by submitting themselves to criteria incompatible with political and economic conformations from which development indicators are drawn.

the same countries³, an indication of the influence of the economic factor on the ranking of countries considered as more *developed*. Even the third pillar of the IDH, purchasing power *per capita*, can be considered more as a mere indicator of consumption than of human development, since for many cultures commercial transactions do not have the same meaning as for Western capitalist societies. Another indicator of "access to knowledge", when linked to formal education, adopting as a quantitative criterion to measure the years of stay in school, denies to the peripheral cultures the recognition of different forms of knowledge, presuming that valid and indicative knowledge of human development is only that built in official institutions. But in addition to these external oppositions, there are other critiques of the limitations of the IDH, some built internally.

In this sense, the UN itself recognized limits on the instruments applied globally for the assessment and ranking of the general conditions of the countries, so that on July 19, 2011, the UN General Assembly adopted Resolution 65/309, *Happiness: towards a holistic approach of development*, in which it recognizes "that the pursuit of happiness is a fundamental human objective"⁴. (free translation), a *universal goal*. Still among the initial considerations, it presents criticism of PIB, which does not adequately reflect people's happiness and well-being, another critique of unsustainable patterns of production and consumption, and defends the need for "more inclusive, equitable and balanced approaches to economic growth promoting sustainable development, eradicating poverty, granting happiness and the well-being of all peoples". (free translation)⁵. From these considerations, the proposal of the Resolution is to invite⁶ Member States to develop, or continue to develop, measures to promote the "pursuit

3 According to data taken from the International Monetary Fund in April 2017 and published by the Institute for Research on International Relations (IPRI) the highest PIB *per capita* estimated or confirmed in 2016 are, in descending order, of: Luxembourg, Switzerland, Norway, Macau, Ireland, Qatar, Iceland, United States, Denmark, Singapore, Australia, Sweden (IPRI, 2016)

4 "Conscious that the pursuit of happiness is a fundamental human goal"

5 "[...] more inclusive, equitable and balanced approach to economic growth that promotes sustainable development, poverty eradication, happiness and well-being of all peoples"

6 The theme of happiness and the invite of the United Nations drew attention of the derivative component, so that came to transact in 2010 in the Senate a Proposed Amendment to the Constitution, aiming to include in the Constitution the right to happiness. It was the PEC of Happiness! The procedure is closed because the proposal has been closed. The proposal presented by Senator Cristovam Buarque linked social rights and the "search for happiness", a work that individually or collectively, would need to rely on the State, whose duty is to fulfill their obligations correctly, providing social services, among others. Before being shelved, there was an amendment in the wording of the proposition, to prevent the amendment from transposing the social rights into accessories to the "search for happiness", which read: "Alters article 6 of the Federal Constitution to direct social rights to the achievement of individual and collective happiness" (AGÊNCIA SENADO, 2011. Original Highlight).

of happiness”, including them in their public policies, as well as to develop new indicators and measures allowing the share of information on the topic.

The ideal of happiness places a new indicator on the UN agenda: the Gross Domestic Happiness (FIB) index, which, with the support of PNUD was developed in Bhutan in the 1970s, an index that “seeks to measure the progress of society from the domains: standard of living, education, health, governance, culture, community vitality, ecological resilience, balanced use of time and psychological well-being” (MOREL, et al., 2015, p. 84). According to the criteria used to “measure happiness”, the 2014-2016 *ranks* indicates among the top positions, in descending order: Norway, Denmark, Iceland, Switzerland, Finland, Netherlands, Canada, New Zealand, Australia, Sweden. But Brazil advances significantly in this index in relation to the previous ones: it occupies the 22nd position. And among other Latin American countries are: Argentina (24th), Colombia (36th), Ecuador (44th) and Bolivia (58th). In the last position, again the Central African Republic (155th) (HELLIWELL; LAYARD; SACHS, 2017, p. 20-22). It should be noted that, despite the methodological and content variations, in the composition of the classifications basically the same countries remain in the best positions, just as, basically, the same countries remain at the worst.

The difficulty in building a global instrument for measuring development is notorious. The different proposals made are not exempt from contradiction even from internal or “colonial” perspectives. An example is drawn from the analysis of Amartya Sen, whose thinking is marked by liberalism and individualism. Assigning a critique of the concept of “happiness” and its admission as a social indicator, Amartya Sen (2011, p. 317-318) argues that the welfare economy has long adopted happiness as a single criterion to evaluate the well-being. However, he does not consider it possible to relate economic growth to the increase of happiness, because many societies have become richer and have not become happier. On the other hand, constant exposure to deprivation leads the person to adapt to and sustain such deprivations. This shows that measuring simply through happiness or fulfillment of desires could distort important aspects of reality. Rescuing the economic component concludes that “Disregarding the intensity of their disadvantage simply because of their ability to experience a little joy in their lives is not a good way to achieve an adequate understanding of the demands of social justice.” (SEN, 2011, p.318).

With regard to the FIB, the 2017 world report details the eight components of the *ranking* (HELLIWELL; LAYARD; SACHS, 2017, p. 17). Some of these components seem to move beyond the strictly economic gaze, such as "social support", which aims to indicate the level of solidarity and interpersonal support. On the other hand, the first component presented is *per capita* PIB, from which the purchasing power of society is measured. Even the "generosity" component is gauged by the response to questioning: "Did you donate money to charity last month?" (free translation)⁷. It is evident that the question thus formulated disregards other forms of cooperation other than economic and financial, established among the community, such as teamwork or communal and voluntary work. The same is true of the "social support" component, since it is limited to solidarity between friends and family, that is: only recognized collectivities in Western modern culture and does not contemplate other collective subjects, such as the *ayllus*⁸, fundamental to pre-colonial Latin American societies. In addition, the structure of the questions addressed to the interviewees, limits the responses to binary options, as yes or no, which can cause a distortion of reality, which is more complex than the Cartesian rationality allows to size.

2 DEVELOPMENT OF SPEECHES: IMPACT ON ENVIRONMENTAL LAW AND RISK TO BIODIVERSITY

From the foregoing elements, it is noted that *development*, as an interpretative and supra-national normative category, maintained in its various manifestations the monocultural conception resulting from the capitalist system and the civilizing myth, which colonizes the forms of life considered uncivilized. It is a contemporary form of domination, also manifested in other times (albeit with distinct contents), by the "civilization/barbarity dichotomy as a sign of power and dependence, center and periphery. Peoples destined to be dominated by being barbarians, that is, because they are not an exact copy of their ruler" (ZEA, 2005, p. 52). In this sense, we highlight two consequences that include among their causes the

7 "Have you donated money to a charity in the past month?"

8 The *ayllus* were small communities covering a set (which could reach hundreds) of families and were united by ties of kinship or alliance. It has its origin in the Incas - especially Quechua and Aymara - of which they were the "cell" of society, ignoring class division or private property. They also adopted cooperative work and mutual aid (Cárceres, 1992, p. 17; 27; JOSE OSCAR, 2000, p. 69).

diffusion of this paradigm.

The first of these concerns a paradox more or less apparent in the different discourses of development, but undeniable in the face of the environmental crisis and the very serious threat to global biodiversity, and which can be summarized in the following question: *How can peripheral countries develop while preserving the environment?*

The paradox is that it is impossible for peripheral countries to reconcile development and environmental sustainability. Even for PIB, IDH or FIB, income - purchasing power - is considered one of the main components. It is interesting to note that the "more developed" states reached their positions from the exploitation of natural resources, including external ones: formerly by colonial domination and contemporaneously by the productive relations established in the context of the world market. Now these societies call on the peripheral and "underdeveloped economies" to respect their forests and groundwater and reach the same levels of development, even if deprived of the means that have served the central countries.

This dynamic creates contradictions within national legal systems, especially with regard to environmental law. Brazil is an emblematic case: in spite of the broad constitutional protection, the ordinary regulation foresees a series of mechanisms of conciliation with the capitalist development that hinder or even impede the realization of the protection of the ecosystem. In fact, the absence or ineffectiveness of environmental preservation standards are common in the legal systems of Western states. The alarming levels of ecological problems are therefore not surprising. According to Dardot and Laval (2017, p. 13) reports by PNUD programs have pointed to "global warming as the most serious and urgent problem humanity has ever faced", so that the patterns of relationship between human society and can lead to intense wars and disputes over natural resources.

The capitalist system maintains its hegemony in the deliberative spaces of supranational organisms and programs, despite the evidence that this model - based on industrial development and expansion of consumer relations - is leading life on earth to collapse. More than this: its civilizing horizon rejects the forms of production and reproduction of life integrated to the other elements of nature and not oriented by the production and consumption of surplus. This leads to the second aspect of development discourse: its success implies the progressive disappearance not only of biodiversity, but also of human diversity.

A more precise criticism is exposed in the words of Celso Furtado (1980, p. 46-47):

Reflection on *economic development* has focused on the study of the cumulative process at the level of the productive forces. Yet behind the quantitative indicators that preoccupy the economist unfolds the vast historical process of diffusion of industrial civilization: the adoption by all peoples of the land of what is conventionally called *patterns of modernity*, that is, the way of living engendered by the industrialization of the countries that lead it. Hence the role of creativity in development has lost its sharpness, as well as any relation between accumulation and the values that govern social life. This simplification conceals the existence of hegemonic modes of development that monopolize inventiveness at the level of ends for the benefit of certain countries (*italics in the original*).

But the idea of economic development does not only face external criticism. From its own comprehensive platform, it has certain boundaries evidenced. This was the case with the criticisms held by Amartya Sen, who contributed or came directly to adopting new methodologies and components in the global indicators, without, however, overcoming the monopoly of the reason imposed from the central countries. Amartya Sen (2000, p. 18-26) in relation to PNB as an indicator of development, identifies it as a *means* of expanding freedoms, but no more than part of a process where other determinants are included. It then assesses that there are sources that hinder the attainment of freedom, the sources of deprivation of freedom: poverty and tyranny, lack of economic opportunity, neglect of public services, and intolerance or excessive interference of the repressive state. Then the sources identified by the author have clear economic and institutional character. An eurocentric perception of freedom that has profound repercussions on the agenda of international organizations, so that the statement of freedom formulated by the UN is based on a very specific basis.

For the UN, freedom and human development imply the possibility of every human being "be what he wants to be." Nevertheless, it analyzes and classifies the most different countries applying the same criteria. The income or consumption power component, for example, is a constant in the various indices, including the IDH. This same index covers the education pillar, which considers the length of stay in schools for its quantitative definition. But they are only components of the state education

system. According to these criteria, multinational States, such as Latin American, whose traditional education systems do not meet the criteria of the IDH, are disadvantaged in the global ranking, as it does not recognize the official education of the State as the only valid form of knowledge. The human development paradigm deriving from the IDH refines the economic perspective, but does not surpass it, as it does not mean an alternative to the hegemonic Western model, which advances in the uniformization of politics, economy and law, despite the perverse effects it produces.

So it seems that a better formulation for the "international community" idea of freedom would be: "Free to be what you want to be as long as you fulfill what modern Western rationality determines." This is the myth of modernity that assumes a civilizing horizon based on the capitalist economy, the abstract individual, the monopoly of science, among other factors that culminate in what Dussel calls the "en-cover" of the other. The negation of otherness by the totalization of a given system. As the presuppositions of the modern capitalist system are naturalized as the only way to the development of freedom - more clearly: they do not recognize freedom without capitalist economic development - it is necessary to expose the contradictions and effects of this same system, whose values are neither natural nor universal.

The ethical-critical reason discovers in the phenomenon of the totalization of the system the "originating evil". It is a system that is indifferent to the feasibility of the reproduction of life and participation of the victims. The paradigm, whatever its designation (Luhmann's System, Hegel's Identity, Heidegger's World, Hayek's Market) closes about itself and becomes unable to recognize the otherness and autonomy of the victim (the en-cover of the Other through the myth of Modernity). This closed system, the totality, is directed towards collective suicide, as can be seen in the ecological problems, the debts invented and unpayable in Latin America, among others. And the corporality of the pain of the victims - an undeniable material dimension, since pain is the moment of the neurocerebral system - is the material origin of all possible ethical criticism: it allows critical judgment: "it does not allow the reproduction of life" and normative critical judgment: "it is bad because it does not allow the reproduction of life" (DUSSEL, 2012, p. 305-306).

The process of transformation of this system does not necessarily require a revolution, since transformations can occur daily, according to the Ethics of Liberation proposal, which "is an everyday ethic." This process,

which has different levels, according to Dussel, begins with the denial by the victims of the forms of alienation that reach them, by the affirmation of the life denied, by the discovery of an ethico-critical consciousness from which critical judgments will be formulated before the institutions and unjust and perverse systems. The second moment is the one in which the victims deepen their conscience through reciprocal interpellations and express their solidarity with those victims who have not yet assumed their own conscience. Critical dialogue now surpasses the community of victims and spreads through other fields, where militant collaboration emerges that extends the practical-critical community to the system. So the awareness and scientific explanation of the causes of victim denial constructs, in an early and affirmative way, possible alternatives for the exercise of utopian reason (that between anarchy and conservatism). At the top of the process, there is a deconstructive denial of the systemic denials of the victims with transformative and ethically feasible actions and the construction of new moments (actions, norms, institutions) from feasible criteria: this is the strict moment of the liberation *praxis* (DUSSEL, 2012, p. 310-312).

Dussel, who starts from theories and systems as reflective mediations, does not assume that, due to their perverse effects, they must be emphatically and totally denied, but rather a dialectical evolution that recognizes the advances and limits of a given scenario to critically transform it. Development, here assumed as an object of reflection, needs to be confronted critically and from the perspective of victims who do not build the consensus and paradigms whose effects they face. In this perspective, Herrera Flores's (2002, p. 21) critique of human rights also applies to the horizon of *development*: both are scientific and political abstraction that seeks to impose a universal horizon for humanity, based on a universalism that imposes not only as the point of arrival, but it is already the starting point.

The necessary moment as a starting point - the particularism of tradition - is not sufficient reason to exclude the possibility of intercultural and critical dialogue. For the ethics of liberation, there is a **universal material principle** that is the reproduction and development"of the life of each human subject in community", from which, with suitable formal conditions, a dialogue between traditions can be corrected of external interpellations (critical exteriority) and internal (from a material principle: human life) (DUSSEL, 2012, p. 117).

The only valid universalism consists in the respect and creation of social, economic and cultural conditions that allow and promote the struggle for dignity: in other words, it consists in the generalization of the value of freedom, understood as the "property" of those who never "existed" in the construction of hegemonies (HERRERA FLORES, 2002, p. 27).

Both authors agree that intercultural dialogue offers conditions for escaping from universalisms and totalizing processes. The developmental perspectives, even the most progressive, are constructed from internal criticism and are not effectively subjected to critical externality. Other paradigms are possible, such as collective and not only individual subjectivity, such as the worldview and recognition of full human integration to nature as an alternative to the civilization \times nature dichotomy, or communal and subsistence work, in addition to the capitalist production of surpluses and consumption (consumption that is fatally unlimited in the capitalist model), whose values radiate over the legal orders and political processes of countries across all continents, through development agendas.

3 COMMON GOODS AND *DECOLONIZATION OF DEVELOPMENT*

New theoretical and scientific perspectives have manifested themselves revealing the complexity of the issues related to the environment and the normative limits of state tutelage - legal or jurisprudential - in the matter. A platform that brings together several concepts, more or less related and possibly used as synonyms, is the idea of "common" or "commons" or even "common goods". Within this debate, common international spaces are recognized and removed from the political domain of any nation-state. In these spaces are the "global commons" (High Seas, Atmosphere, Antarctica and Outer Space). From another perspective - that of the critics of the capitalist system - the term "common" has been proposed to designate practices, struggles, institutions, and research beyond capitalism (RUSCHEL, 2018, p. 109-111).

In this perspective, the "common" theme emerged in the 1990s in social and political struggles as a principle of struggle and resistance to capitalism and the dominant tendency of private appropriation of all spheres of society, culture and life. It is not a *resurgence* of communist idea, as it turns its back on state communism, but on the *emergence* of a new form of contestation of capitalism. The term "common" is referred

to in the term "commons" as opposed to the second advance of enclosures that covered fields and grasslands by suppressing collective appropriations and uses of (communal) lands that were instituted in a multisecular process. This includes the effort to develop "common" forms of shared resources management (both natural and knowledge), the protagonism of collectivities and beyond the market and the state. Among the theorists who have dedicated themselves to this task, the pioneers are Michael Hardt and Antonio Negri, who from the concrete experiences "of the common ones" abstracted the conception of "common" that has come to designate struggles, practices, institutions and research aimed at a non-capitalist future (DARDOT; LAVAL, 2017, p. 16-18).

In October 2005, the Second International Seminar on Cognitive Capitalism was held at the Federal University of Rio de Janeiro (UFRJ), where Antonio Negri gave a lecture (TOJAL, 2008), later published in Colombia in a compilation of the author's texts. In the chapter referring to this conference, entitled "The Constitution of the Common", Negri (2012, p. 186) characterizes the common as

[...] fundamentally articulated, in the fullest sense of the word, with the movement and communication of singularities. There is no common one that can be attributed simply to organic or identity elements. The common is always constructed by a recognition of the other, by a relationship with the other that develops in this reality. Sometimes we call this crowd reality, because when one speaks of a multitude, in fact, one speaks of a series of elements that objectively are in it and that constitute the common one (free translation⁹).

With such characterization, the Italian philosopher approaches common, otherness and interculturalism, more precisely, intercultural dialogue, fundamental concepts in the processes of resistance to capitalism and Eurocentrism. In a rereading of Negri's ideas and pointing to several elements that evidence this need for resistance, Dardot and Laval evaluate that there are not enough forces against capitalism. The working class is weakened, xenophobic hatred and nationalism grow, the Communist State has failed, among other factors, which raise the question of

9 [...] fundamentalmente articulado, en el sentido más pleno de la palabra, con el movimiento y la comunicación de las singularidades. No existe un común que pueda ser referido simplemente a elementos orgánicos o a elementos identitarios. Lo común es siempre construido por un reconocimiento del otro, por una relación con el otro que se desarrolla en esa realidad. A veces llamamos a esa realidad multitud porque cuando se habla de multitud, de hecho, se habla de toda una serie de elementos que objetivamente están allí y que constituyen lo común.

alternative models to this economic system, which, while continuously demonstrating the inability to solve the crises it produces, continues to develop its logic and extending its dominion over society. But the situation is increasingly intolerable, because this system is destroying the conditions of planetary life and promoting the destruction of man by man himself. The emergence of neoliberalism, since the 1980s, extended the logic of competition throughout society, imposed the logic of overcoming and infinite performance, infinite accumulation, which transforms societies, their relationships and subjectivities (DARDOT; LAVAL, 2017, p. 11-14).

The concept of development, by failing to cross the frontiers of the capitalist economic system and modern liberal-individualist rationality, imposes itself as one of the instruments by which this logic that threatens planetary life and rejects forms of production and reproduction of life alien to supposedly universal values. For this reason, the discourse of *development* must be "decolonized", so that the political discourse and the juridical discourse that reproduces the civilizational horizon defined by capitalism can also be decolonized.

One of the foundations of development is the idea of "property" that defines even the human perception of nature, which in Western anthropocentrism is considered as "object of law" or "common good" at the disposal of human societies in their progress march. According to this perception, the human being is not part of nature, but is separated from it in the civilizing process. For this reason, caution is necessary in identifying the meanings of the concept of common good, which can have both a decolonial character and reproduce the capitalist logic: thus **common goods**, in general is a concept adopted to designate natural resources object of property, but can also designate communal properties. **Common good** in turn, in the legal sphere, imposes itself as the purpose of the normative system, the purpose of laws that bring people together, usually within a specific territory. Approaches to the concept of public interest. The **common good of the land or humanity** in certain perspectives - such as François Houtart's - is a concept based on alternatives to capitalism, as an economic model that dominates all areas and dimensions of human existence, and its justification is linked to the need to revise the paradigm of life imposed by capitalist logic (RUSCHEL, 2018, p. 112-114). In any case, overcoming the proprietary logic of capitalism is considered as a condition of possibility for the maintenance of human diversity, ecosystems, biodiversity, and ultimately life on the planet.

It is the individual proprietor who will guide the development of Western law from its origin in the Roman experience of the fifth century AD, to its contemporary expressions, whose ideology is still produced by the proprietary classes and which are still widespread in law schools in a hegemonic way. Such a context makes common goods a marginal idea, incompatible with Western legality, which takes up Roman law and requalifies it to meet the needs of capital. This results in a juridicity based on the "universal and exhaustive combination of private ownership and state ownership, recently read with the eyes of the rhetoric of individual rights" (NEGRI, 2012, p. 195-197). So natural commons can be conceived beyond the public-private dichotomy and, therefore, not open to appropriation, monopoly and exploitation, meaning that they will be beyond capitalism. On the other hand, beyond this conception - one of those that can be constructed in the field of the common - are the biocentric or ecocentric perceptions, for which nature is not a resource, it is not a good, but components of life, just as it is the human being himself.

For this reason, the Andean ancestral worldview, as opposed to anthropocentric rationality, brings together assumptions that allow us to think of forms of resistance to capitalism and anthropocentrism. The struggles carried out by the Andean peoples reached even important achievements, such as formal transformation¹⁰ of legal systems and political processes in the countries where they were set off. Negri (2012, p. 190-191) defines resistance in Latin America and other colonized countries as "formidable experiences of resistance in colonial countries", resistances triggered by communities that, even though they lived in defeat, suffered repression, they continued to propose alternative models; not utopias, but oppressed realities that can build the new.

The opposition of the perception of the concrete collective subjects to the paradigm of the abstract individual, the recognition that nature is not a mere object or legal thing, but a subject of rights, as well as the recognition that the human being integrates nature, communal work to maintain life as one of the alternatives to salaried work to produce surpluses, among other values, imply an intercultural and decolonial openness in normative systems. They are values inserted in constitutional texts in Latin America, challenging what the Argentine constitutionalist

¹⁰ It is important to underline the formal transformations, in the strict sense of new enunciations in the texts of the norms, because the concrete transformations, that is to say, material, are subject of increasingly intense controversies, as far as respect for the rights of the nature, regarding respect for the right of self-determination of pre-colonial Latin American communities (FERRAZZO, 2015).

Alejandro Medici defines as reification of the nature and commodification of life (FERRAZZO, 2015, p. 256-266). It is from this perspective that it is considered urgent to rethink the discourse of development. Allowing the convergence of the perception of the common beyond the capitalist logic of reification of nature, contemplating processes and struggles that allow the development of other reasons, other ways of organizing life and other ways of understanding the world.

CONCLUSION

The proposal of reflection outlined as a method of approach or reasoning the proposal of Enrique Dussel in his Ethics of Liberation, which from certain categories, establishes mediations by which the reality is problematized and understood. In this case, the modern standard of development, from which there is a prescriptive form that links public policies, democratic space and the system of law of countries on all continents, especially environmental law, where a paradox is evident: conciliate the preservation of ecosystems with the needs of capitalist development. From the impossibility of meeting both, they result in precarious norms in their effectiveness, filled with gaps or permissive spaces of environmental exploration, as perceived in Brazilian environmental law, with the mechanisms of environmental compensation.

The analysis of the main indicators adopted by international organizations, especially the UN, reveals that, however disparate they appear to be, they all reproduce the capitalist logic and do not recognize alternative forms to the paradigms arising from this logic, such as the accumulation of income and property, consumption, abstract individualism.

It was therefore sought to outline some forms of presentation of Eurocentric paradigms based on the global impact that the idea of *development* causes. This is because the agenda set for the different countries from the different developmental conceptions and their respective indicators leads to the same social and institutional models, so much so that the classification established from the different indicators leads to similar or identical results. In different contexts, basically the same countries are the *best* or *most developed* (the so-called *central countries*) and the same are the *worst*, *least* or *underdeveloped* (the *peripheral countries*). The indicators, through its *rankings* of the *most developed* countries with *higher* economic growth, the *happier*, express a conception closer to competition

than cooperation and give start to a perverse race where the peripheral countries need to achieve a high level of development, but without using the same procedure that allowed the central countries to achieve their own development: the exploitation of natural resources.

Of course, it is not the notion of ecological preservation that is problematized - this is more than necessary, it is crucial for the maintenance of life - but the unfathomable industrial and capitalist assumptions of development, of this Western conception specifically, as Celso Furtado pointed out, is an expression of the "way of living engendered by the industrialization of the countries that lead it". Because of this conception, predominant within the UN, the "same rule" has been used to measure different things. Therefore, peripheral realities are being suppressed and cultures led to disappearance, just as the risk of the disappearance of life on earth becomes more serious.

The paradox - or trap - posed by development is that in all the forms by which it manifested itself within the framework of international institutions, it always led to the same paradigm: property, consumption, capitalism, even if expressed in the attenuated version of "sustainable development". This paradigm is not a horizon within the reach of the spoiled societies, many of which had their lands sucked to the point of complete exhaustion, leaving to them deserts and misery artificially constructed by the greed. Therefore, it is important to realize that if development goals allow in some ways some improvement in people's living conditions, the same goals produce as a consequence the subsumption of life forms, their practices and rationalities, to the same model of civilization, as if none other was not possible. That is why critical resistance is so important. In the common, in the ethics of liberation, in the decolonial debates, new horizons are proposed, new ways of producing and reproducing life are revealed.

The different critical perspectives, although diverging in numerous points, converge, therefore, to allow the estrangement of a reality that is being naturalized as it advances in the construction of its hegemony. And in the face of this universalizing march, we sought to contribute to the presentation of a problematization - intended from a decolonial perspective, from a critical exteriority, such as the contribution brought by the debate of the *common*, defined by the resistance to the universalizing capitalist logic, as a possibility and necessity of decolonization of the concept of development and its consequent openness - which must be permanent, as

Negri proposes, to the different rationalities, allowing the distinction to always exist.

With precision, Herrera Flores (2002, p. 21) stated that “*If universality does not impose itself, difference is not inhibited*”.

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