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The Judiciary and slave labor: the geographic criterion and the peasant victim

Poder Judiciário e trabalho escravo: localização geográfica e a vítima camponesa

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Abstract

This article analyzes the leading case constituted by Special Appeal (RE) 1323708, which will be ruled upon by the Brazilian Supreme Court (STF) and is expected to be subject to widespread repercussion. The case will assess whether geographical and cultural criteria should be considered in determining whether an individual has been submitted to conditions analogous to slavery. The issue explored is: how does geographic location, the object of the leading case (RE 1323708), contribute to invisibilize the peasant victim of slave labor? The defended hypothesis is that the Judiciary, in judgments that use geographic location as a basis, is guided by a stigmatized view of the enslaved peasant subject, a victim of the frontier. The work of Warat, Perelman and Foucault are used as the main theoretical framework in the conduction of a qualitative study aimed at generating interpretative hypotheses regarding the meanings associated to peasant citizenship that support the geographic location argument. As a result, a contradictory relationship between the Judiciary and the peasant victim is identified. The main conclusion presented in this study involves an understanding that geographical criteria stem from a judicial vision that both hinges upon and helps to institutionalize the stigmatization of peasants.

Key words: Slave labor; Geographic location; Victim; Stigma; Peasant.

Resumo

Este artigo analisa o *leading case* (RE 1323708) que será julgado pelo STF e trata se critérios geográficos e culturais devem ser considerados para a caracterização da redução da pessoa à condição análoga à escravidão. O problema enfrentado será: como a localização geográfica, objeto do *leading case* (RE 1323708), apaga a vítima camponesa do trabalho escravo? A hipótese sustentada é a de que o Poder Judiciário, nos julgamentos que utiliza como fundamento a localização geográfica, se pauta por uma visão estigmatizada do sujeito camponês escravizado, vítima da fronteira. Utilizará como principais referenciais teóricos Warat, Perelman e Foucault, realizando um estudo de base qualitativa, buscando levantar hipóteses interpretativas sobre os sentidos de cidadania camponesa que sustentam o argumento da localização geográfica. Como resultado apresentará a relação contraditória do Judiciário e a vítima camponesa. A principal conclusão é a compreensão de que o critério geográfico decorre da estigmatização e contribui para institucionalizá-la.

Palavras-chave: Trabalho escravo; Localização geográfica; Vítima; Camponês.



Introduction

This paper will analyze the geographic criterion, which will be subjected to consideration by the Brazilian Supreme Court (STF), in the leading case based on the Extraordinary Appeal (RE) (1323708). The Supreme Court will examine whether, in order to characterize what constitutes slave labor and, consequently, to classify whether a person is submitted to work conditions analogous to slavery (article 149 of the Penal Code), the social and geographic context in which the offense allegedly occurred must be taken into account. In summary, the question that the STF seeks to answer is: is it constitutional to make the concept of dignity more flexible, or contextualize it, observing the social parameters identified in certain Brazilian geographic regions?

The goal of this investigation is to comprehend the meanings and the power relations that underpin this formulation. In other words, what silences allow the geographic criterion to circulate as a legal truth, and what do these silences say about peasant citizenship? Hence, the following problem was formulated: how does the geographic location, debated by the leading case (RE 1323708), contribute to invisibilize the peasant victim of slave labor?

To address this problem, the works of three main authors were used: Luís Alberto Warat and his semiology of power; Michel Foucault and his essay on power and discourse; as well as Chaïn Perelman and his propositions on legal logic and new rhetoric. Based on these works, it was possible to delve deeper into the relationship between power, words and discourse, as well as understand that legal logic does not pertain to the formal field, but to that of persuasion. It is the consensus that precedes discourses, the sharing of an imaginary, of a theoretical common sense, that allows legal truths to be consumed.

The geographical criterion is not just a category, but a legal truth in circulation. It is used by jurists who share the same imaginary about the rural environment and the peasant subject and, therefore, consider it a relevant argument. The methodology that allowed for us to explore the subject matter and reach this conclusion was qualitative.

The article, methodologically, from a qualitative perspective, initially sought to understand what the geographic criterion is, as well as understand the peasant victim of the frontier. A documentary review was carried out, focusing on the jurisprudence that supported the leading case, as well as relevant STF decisions, so as to better understand



the topic. Then, an analysis on the relationship between power and discourse was conducted, interpreting the meanings and imaginaries that permeate the discursiveness of the geographic criterion. Finally, Goffman's sociological studies on stereotypes were used so as to better understand the political role that the geographic criterion plays in relation to the peasant subject and the lack of full recognition of their rights.

The conclusion at which we arrived was that the geographic criterion is based on the stigmatization of the peasant subject victim of slave labor. Under the assumption of conferring greater complexity to the application of Law to different realities, the concept under study actually contributes to the institutionalization of different levels of citizenship, thus, contributing to its relativization. It establishes two paradigms of dignity, that of the city and that of the countryside, reinforcing the structural inequality between the urban and rural areas in Brazilian society. In doing so, it reinforces an understanding of the countryside and of its subjects that is not supported by the 1988 Constitution.

1) **Methodological considerations**

In 2021, the Supreme Federal Court (STF) deemed constitutional and applied general repercussions to Extraordinary Appeal (R.E.) 1323708, proposed by the Federal Public Prosecutor's Office (Brasil, 2019). The case is emblematic and relevant for the discussion pertaining the role of the Judiciary in tackling slave labor in rural areas, as well as for the construction of constructive-interpretative¹ hypotheses regarding the relationship between the justice system and peasant citizenship.

According to Theme 1158, which established that which will be judged by the plenary, the STF will analyze two issues: 1) “the evidentiary standard for conviction for the crime of subjecting a person to work conditions analogous to slavery”, that is, what serves as evidence and how it should be produced for the conviction of the defendant when submitting a person to work conditions analogous to slavery; 2) the

¹ For Gonzalez Rey (2005, p.89), qualitative research aims to “[...] construct comprehensive theoretical models with explanatory value on complex systems”. To this end, he argues that constructive-interpretative hypotheses should be formulated based on the qualitative data collected. This is a way of constructing interpretative hypotheses that explain social phenomena. This article will seek to demonstrate that geographic criterion hinges on a stigmatized view of the peasant subject and rural environment.



“Constitutionality of the differentiation of work conditions necessary to classify work as degrading according to local reality” (Brazil, 2021).

The first point to be examined refers to that which should be admitted as evidence, as well as whether it should be produced in criminal actions involving the submission of a person to work conditions analogous to slavery (article 149 of the Penal Code). As Mariana Paes (2016) points out, several criminal actions involving article 149 result in acquittal due to insufficient evidence. There are several trials in which the main evidence, if not the only evidence, are the reports of labor inspectors, considered insufficient by the Federal Court. However, producing other means of evidence, such as questioning victims, who are often not found or who change their testimony, is challenging. There is, therefore, a relevant controversy about what evidence is valid and how it should be produced. Although this is one of the topics judged in the leading case, it will not be the focus of this article (Brazil, 2021).

The second point that the Supreme Court will consider, and the one which is explored in this paper, is the application of the geographic criterion for defining what constitutes slave labor. The ministers will examine whether the concept of decent work should be relativized according to the different socio-geographical contexts of the country (Brazil, 2021).

When judging the geographic criterion, the STF will determine whether the concept of degrading work is the same for the entire country or whether it should be defined taking into account different local realities. The discussion is particularly important for rural areas, especially for states that are part of the national agricultural frontier, where rural work conditions are, as a rule, very precarious (Martins, 2022).

The underlying question that will be answered by the STF is: in a socio-rural context in which it is not uncommon to find agricultural properties without basic sanitation and treated water, where people live in precarious conditions, where the lack of rights is not uncommon, should the concept of degrading work be the same as that which is applied in other regions of the country where social conditions are better?

Methodologically, the analysis of Extraordinary Appeal (R.E.) 1323708 is qualitatively relevant. By virtue of the Constitution and the Code of Civil Procedure, the STF must judge the R.Es that involve constitutional controversies and that are



paradigmatic, that is, exemplary cases that function as a synthesis of the legal controversy present in countless other cases.

In addition to the formal legal recognition of the importance of the controversy and the exemplary dimension of the case, in methodological terms, the choice of a case originating from the Regional Federal Court of the 1st Region (TRF1) as being paradigmatic is significant in itself. The TRF1 is the main Brazilian court in respect to the processing of crimes of submitting a person to work conditions analogous to slavery (Paes, 2016). Thus, the analysis of its jurisprudence, its dominant positions and controversies, in methodological terms, speaks volumes about how the Judiciary understands peasant citizenship and how it acts to defend it.

Since November 2006, when the STF ruled on RE 398,041, the Federal Court has been defined as having jurisdiction to prosecute and judge the crime provided for in article 149 of the Penal Code (“submission to work conditions analogous to slavery”). In this sense, the TRF1 is especially important, as it has jurisdiction over the following states: Acre, Amapá, Amazonas, Bahia, Goiás, Maranhão, Mato Grosso, Pará, Piauí, Rondônia, Roraima, Tocantins, Distrito Federal and Minas Gerais (which since 2022 has constituted its own Court, the TRF6) (Paes, 2016).

According to data from the Ministry of Labor and Employment (MTE) (2020), the five federative units that had the highest number of people rescued from conditions analogous to slavery in 2020 were: Minas Gerais, Distrito Federal, Pará, Goiás, and Bahia. Similar data was systematized by Mariana Paes (2016), who, also based on information from the MTE, reports that between 2008 and 2013, the states of Pará, Minas Gerais, Goiás, Mato Grosso, and Tocantins were those with the highest number of people rescued. As shown by the data, MTE reports indicate that the states under the jurisdiction of the TRF1 are those in which there is a higher incidence of article 149 of the Penal Code (Paes, 2016).

The jurisdiction of TRF1 covers those federative units that have a strong agricultural tradition and/or are on the frontier of the expansion of Brazilian agribusiness. For José de Souza Martins (2022, p.10), the frontier is a sociological category², but it also provides a

² Regarding the definition of frontier, José de Souza Martins (2020, p.11) explains that the frontier is not limited to the geographical frontier, it is also many different things, it is the frontier between civilizations, spatial, cultural, historical and worldviews. Respecting the context in which the category was formulated, it is



methodological framework, as it is a privileged point of observation. Through it, one can better understand “[...] how societies are formed, organized or reproduced”.

Through the use of the frontier as a methodological category, the threshold of society can be visualized: its constituent processes, its new insertions and exclusions, its reproduction - both the way the rural environment advances and conforms, but also how the Judiciary itself positions itself in relation to the confines of society.

A characteristic that highlights the importance of the frontier as a methodological category is the fact that it is the locus of conflict. In this sense, it is home to the victim, “[...] a central and methodologically explanatory figure [...]”, for two phenomena can be observed there, that of otherness and the visibility of the Other who exists on the frontier (Martins, 2022, p.10).

In the case under study, analyzing the frontier victim will enable us to generate intelligibility on how the Judiciary, when faced with the borderline and its inherent conflicts, understands the Other and reaffirms its otherness. In short, the proposed methodological approach will allow us to understand the ambiguous role that the Judiciary plays in relation to the peasant subject who is a victim of slave labor³.

The analysis will seek answers amidst the power structures that construct the meanings of words. Through it, we aim to investigate the network of meanings that constitute the geographic criterion, amongst which the unsaid meanings that underlie the signs and discourses, thus, seeking to identify evidence of the common sense that enables the circulation of this concept. Through this analysis, we aim to shed light on the paradox of the use of the geographic criterion by the Brazilian Judiciary, in which peasant dignity is recognized but at the same time is flexibilized. The use of this criterion reaffirms the stigmatization of the victim and of slavery, going against the duty of otherness, reciprocity and equality – the very basis of Modern Law (Bendix, 1996; Dworkin, 2003).

believed that it can be used in this study, as it can be interpreted according to its symbolic dimension: that of the social threshold.

³ As demonstrated by Mariana Paes (2016) and Freitas and Mesquita (2016), among the cases that are processed and judged by the TRF1 involving art. 149 of the Penal Code, most result in acquittal decisions, with the geographic criterion being used as one of the arguments for the decision.



2) Slave labor and the geographical criterion

To analyze TRF1's decision that gave rise to the R.E., basis of the leading case that will be judged by the STF, is important in order to understand the geographic criterion is and its complexity. It is an interesting case to be studied, because in addition to its institutional and paradigmatic importance, it brings forth an apparent contradiction: it adopts a progressive perspective on article 149, by not associating slave labor solely with the deprivation of freedom, while at the same time taking a retrograde stance, by excluding the frontier subject from its protection.

The case brought before the STF is based on an inspection carried out in 2005, in which labor auditors freed 43 workers from conditions analogous to slavery from the São Marcos I, II and III farms in Pará. According to the auditors, the rural workers had no prospect of ending their employment relationship; they were subjected to exhausting workdays, including on holidays and weekends; they lived in collective housing, which did not adequately protect them from the cold, rain and insects; they did not have access to drinking water, having to use the murky and fetid water from a local stream for consumption, to wash their clothes and for personal hygiene; they ate low-quality food, sometimes spoiled, served in inadequate conditions, such as in the middle of the pasture; they were subjected to the purchase of overpriced goods; and there was a charge for personal protective equipment (PPE) (Brazil, 2019).

The Federal Court of First Instance accepted the complaint filed by the Federal Public Prosecutor's Office (MPF) and convicted the owner of the São Marcos I, II and III farms for the crime described in Article 149 of the Penal Code. However, the 4th Chamber of the Federal Regional Court of the 1st Region went in the opposite direction. The winning vote questioned the quality of the evidence produced and reaffirmed the geographic criterion:

Although each case must be examined according to its own history and reality, in addition to the social aspects of the problem and the circumstances of time (duration), mode (intensity and circumstances) and geographic location — rural work, *verbi gratia*, always involves an inherent discomfort characteristic to its execution, which consists almost always of manual labor — work in degrading conditions must be considered as that which degrades the worker in their human condition and in which they are subjected to unacceptable economic and personal (moral) constraints.

For example, reference is made to unsanitary housing, with terrible safety and hygiene conditions; to work in deplorable conditions, as if the worker



were a slave; to inadequate or insufficient food, or even spoiled food; to the lack of water in conditions of quality for the worker's needs, including (and where applicable) for preparing food, etc. These elements, which the judgment partly considered, must be considered within the context of Brazilian rural reality, in which employers are often also subjected to them. Housing issues, regarding construction standards —brickwork, mud, wood, straw or even tarpaulins, and roofing made of various materials (straw, tarpaulin, ceramic or asbestos tiles) — vary from region to region.

There are, of course, different interpretations of the phenomenon, in which many legal professionals find the most common discomforts of rural work sufficient to consider work analogous to slavery, especially in contrast to the paradigms of the city, but, in this case, the intense gravity implied by the submission of workers to unacceptable economic and personal (moral) constraints is not considered (Brazil, 2019b, p.7-8).

The winning vote explicitly proclaims the geographic criterion, arguing that rural work is marked by physical discomfort and that rights violations must be considered considering social and economic aspects. The geographic criterion seeks to contextualize the discussion on dignity, citizenship and work in realities in which the deprivation of rights is common and access to public policies is insufficient. The argument defended is that in a rustic agrarian environment, the absence of certain rights is the rule, the normal, the natural, and it does not imply that the worker is submitted to work conditions analogous to slavery.

In an environment where precariousness is common, the bar for defining the violation of dignity ends up being lowered. According to the argument of the winning vote, it would be a mistake to apply the social paradigms of the city to the conditions that characterize certain Brazilian agrarian locations (Brazil, 2019b).

At the center of the TRF1 decision is the victim of the frontier conflict. The geographic criterion is applied to frontiers, marking a clear difference in levels of dignity between the center and the periphery. Thus, an exception is institutionalized aimed at those subjects who live on the symbolic and social margins of the territory. The deprivation of rights at the frontier is used as the foundation that reaffirms the exclusion of the victim, in which segregation is naturalized under the pretense of location (Paes, 2016; Raffestin, 1993).

Mariana Paes (2016) reviewed criminal cases in the TRF1 database. Covering the years 2006 to 2014, she sought to understand the arguments used in acquittal sentences regarding the processing and judgment of article 149. Among the grounds invoked were the “concrete conditions” used by Justice Gilmar Mendes in the judgment of R.E. 398,041,



which defined the jurisdiction of the Federal Court to process and judge the crime of submitting a person to work conditions analogous to slavery:

Likewise, we should not overlook that the very normative structure of the criminal offense described in Article 149 of the Penal Code may give rise to the classification as a “slave labor crime” of numerous acts that, in principle, upon careful analysis of the concrete conditions involved, cannot be considered criminal.

... One should bear in mind, for example, the very common cases in which authorities report as cases of “slave labor” the existence of workers in a location without adequate facilities, such as a bathrooms, cafeteria, etc., without taking into account that the employer himself uses the same facilities and that these are, in most cases, a reflection of the reality of rural Brazil.

One must therefore be alert to the possibility of abuse in the classification of acts considered to be “slave labor” (Brazil, 2006, p. 61).

The vote of Justice Gilmar Mendes, cited in several acquittal decisions in the TRF1, refers to the concrete social conditions that are “[...] a portrait of the reality of the Brazilian countryside” (Brazil, 2006, p. 61). Brazil’s countryside, especially the frontier regions, are historically areas of great vulnerability (Prado Júnior, 2000). The lack of rights favors new exclusions, including that of article 149. That said, recognizing the deficit of citizenship in the frontier should not serve to naturalize marginalization itself (Paes, 2016).

Although the TRF1 vote uses geographic location as a basis for argument, it has an advanced perspective on what constitutes the submission to work conditions analogous to slavery. It does not associate the typicality of article 149 only with the deprivation of freedom or with moral coercion. It echoes the stance that contemporary slavery is associated with a drastic violation of dignity, in line with the most recent discussions on the subject (Freitas and Mesquita, 2016).

As presented by Freitas and Mesquita (2016), in a case law review conducted in the TRF1 database, the restrictive view of article 149, associating it with the deprivation of freedom or strong moral coercion, was one of the arguments used in the acquittal sentences. Contrary to this stance, there is the paradigmatic vote on this subject matter by Minister Rosa Weber, which associates the submission of the person to conditions analogous to slavery with the violation of dignity (Brazil, 2012, p.1):

To establish a crime under Article 149 of the Penal Code, it is not necessary to prove physical coercion of freedom of movement or even restriction of freedom of movement, as it is sufficient to subject the victim “to forced labor or exhausting work hours” or “to degrading working conditions” - alternative conducts provided for in the criminal offense.



“Modern slavery” is more subtle than that of the 19th century and the restriction of freedom can result from various economic constraints and not necessarily physical ones. Someone is deprived of their freedom and dignity by treating them as a thing and not as a human being, which can be done not only through coercion, but also through intense and persistent violation of their basic rights, including the right to decent work. Violation of the right to decent work impacts the victim’s ability to make choices according to their free will. This also means “submitting someone to a condition analogous to slavery”.

Not every violation of labor rights constitutes slave labor. If the violation of labor rights is intense and persistent, if it reaches blatant levels and if workers are subjected to forced labor, exhausting working hours or degrading working conditions, it is possible, in theory, to classify it according to the crime defined by article 149 of the Penal Code, since the workers are receiving treatment analogous to slavery, being deprived of their freedom and dignity.

The vote of Justice Rosa Weber, which is supported by the TRF1 decision that is the subject matter of the leading case, has been important for the discussion on modern slavery, as it offers a complex view on the subject. The justice emphasizes that the core of article 149 is the intense and persistent violation of dignity, which involves, but is not restricted to, the deprivation of freedom and the complete elimination of the autonomy of will. This perspective contrasts with the jurisprudential trend that, based on a stereotypical understanding of the enslaved subject of the 19th⁴ century, requires as a characterizing element of the criminal type of article 149 the incarceration of the subject and/or their absolute subjection (Paes, 2016).

Even in the 19th century, the institution of slavery was complex, with the figure of, for example, the slave for hire, whose freedom to come and go was not restricted. The enslaved person was a person who was an object of property, whose capacity and dignity were diminished. The minister's vote is in line with this thesis, pointing out that, in modern times, “[...] it is not necessary to prove physical coercion of the freedom to come and go or even the restriction of freedom of movement”, but rather that “...the violation of labor rights is intense and persistent...”, reaching blatant levels (Brazil, 2012, p.1)

In this sense, the TRF1 vote is apparently contradictory, as it represents both a sophisticated view of what constitutes an enslaved subject - someone who suffers a

⁴ As Mariana Paes (2016) points out, even in the 19th century slavery system the legal figure of the slave for hire existed. They were not deprived of their freedom to come and go, carrying out their own work, but had to pay their master a certain the daily wage. Thus, to admit that for modern slavery to exist there must be restrictions on coming and going and absolute subjection is to use a more rigorous criterion than that which defined slavery in the 19th century.



drastic loss of their dignity -, while at the same time adopting the geographic criterion, generating an exception for the frontier subject.

The apparent contradiction, however, highlights that the problem of the geographic criterion is not in the definition of what constitutes the submission to work conditions analogous to slavery, but in the understanding of what peasant dignity means. Levels of dignity are created within the same typicality, differentiating the urban from the subjects who is on the “outside of the city paradigm” (Brazil, 2019b).

For those living on the frontier of the territory, geographic location makes the notion of what is intense, persistent, and blatant more flexible, due to the “concrete conditions” of exclusion. The geographic frontier (physical, symbolic, and social) of the territory becomes the place of exception, reproducing, instituting, and prescribing a depreciated understanding of what rural citizenship is (Brazil, 2006; 2019b).

3) Geographical criterion, the Judiciary and the theoretical common sense of jurists

The geographic criterion is a discourse that persuades, circulates and has been used to achieve acquittal in relation to complaints involving article 149 of the Penal Code (Paes, 2016). It is important to understand the role it plays in convincing and in the logic applied to determine the type of criminal offense.

As Chaïn Perelman (1998) argues, the legal logic is not based on a formal syllogism, in which the law is applied through deduction. For the author, persuasion plays a fundamental role in legal logic, as its objective is to form agreements on which law should be applied and on what the best decision in a specific situation is. The application of the law is, therefore, an exercise in persuasion.

Through reasoning, judges seek to garner adherence to the proposed theses in aims to form a pact regarding the plausibility of what would be the appropriate application of law for the concrete case. It is an effort concerning the acceptability of the premises, aimed at the convincement of others. Persuasive arguments acquire prominence in legal logic, since the determination of deontological obligations does not



pertain to the field of veracity, but to the evaluative determination of the best application of the law for a specific case (Perelman, 1998).

A convincing argument does not necessarily aim at veracity, but at persuading a specific audience, to whom the reasoning is directed. The geographic criterion persuades because it is plausible for a certain community of judges. This does not mean that it is a good argument, true or even credible for a wider group of interlocutors.

According to Perelman (1998), persuasion is always associated with the ability to convince an audience. This is because a community of interlocutors share a set of pre-conceptions that make the discourse acceptable (Warat, 1994). In other words, the quality of an argument is directly associated with the complicities that constitute a given community.

The pre-conceptions shared by a community institutionalize a silent order that dictates the circulation of discourses. The meanings that precede words, sometimes explicit but almost always implicit, create rules of permissions and interdictions, of possible and impossible meanings, fixing the meanings of words. A system of inclusions and exclusions is generated, which allows the flow of specific truths and the forbiddance of others.

Foucault (1998) points out that discourses do not circulate in a neutral communicative space. They are not convincing simply because they are good or bad, but rather, adherence to them must be analyzed within a system of hierarchies that constitute communication. There are discourses that can circulate freely, just as there are those that encounter certain difficulties in circulation and even interdictions. This does not depend only on quality, but also on the hierarchies of power that constitute the communicative field, its subjects and its structures.

The circulation of a discourse speaks of the subjects, as well as of the power structures that constitute the Judiciary. There is a communicative structure that precedes enunciation, which will determine what is plausible, reasonable, and convincing, as well as those arguments and people who will be interdicted and those who will be prohibited from speaking (Foucault, 1998). It is the subjects who enunciate, but they do so based on



pre-determined systems of inclusion and exclusion, which shape and induce specific social roles⁵ (Berger and Luckmann, 1985).

Pre-conceptions, which ensures understanding, are not merely an individual product, but rather a communal one. The subject is socially constituted by sharing a horizon of meaning, acquired through the process of socialization. Belonging to a community means sharing a language and its codes, which, as a rule, pre-exists the condition of membership. Subjective existence, the capacity to generate meanings, based on one's own biography, depends on an intersubjectively predetermined field of meaning (Rey, 2003).

Luiz Alberto Warat (1994) developed his research seeking to understand the system of truth production of jurists, their episteme, putting forward hypotheses about the conditions of enunciation and circulation of truths in Law. He sought to understand why consensuses are established and how they institutionalize a system of control and conformation of Justice and its operators.

For Warat (1994, p.13), jurists are strongly influenced “[...] by a constellation of representations, images, preconceptions, beliefs, fictions, habits of enunciative censorship, metaphor, stereotypes and ethical norms that govern and anonymously discipline their acts of decision and enunciation”.

The interpretation of jurists is not carried out through a simple deductive, purely rational, methodically founded logical activity. On the contrary, the legal episteme is inseparable from doxa, a theoretical common sense, a pre-established and almost never enunciated complicity, which allows discourses to be formed, circulated and consumed as the best and most appropriate.

It is the naturalization of doxa that makes interpretation possible and will allow the hermeneutic process to be understood as a simple grammatical analysis or just a formal logical-deductive operation. In this way, the very power system and game of interests that lie behind legal activity are obscured.

⁵ The acceptance of a discursiveness permeates both subjects and structures. To personalize the acceptance of the criterion of geographic location in people, their biographies and places of speech, is admissible, but there is a risk of incurring in subjectivism. To understand it solely as a reflection of an institutional structure, there is the risk of falling back into a structuralist perspective, which denies the role of the subject. There is a constitutive tension between subject and institution (Rey, 2003).



The complicity that binds “[...] the boundaries of words before they become audible and visible, which regulates discourse [...]” and which enables the creation, circulation and consumption of truths in the field of Law, was defined by Warat (1994, p.13) as the “theoretical common sense of jurists”. The complicity established by legal doxa sets the conditions for enunciative creation, but it also forges a system of hierarchies, shaped by representations, stereotypes and institutionalized enunciative censorship. It is a symbolic ordination, which establishes an imaginary complicity and a hidden game of exclusions and inclusions, that is, of power relations, which precede the enunciation of the words of law.

The rationality of legal decisions permeates the sharing of symbolic and emotional relationships that constitute a field of meaning specific to judicial institutions and their subjects, “[...] through which the acceptability of reality is determined” (Warat, 1994, p.14). The rhetorical achievement of conviction does not result solely from the quality of the argument used, but from the pre-established complicity between those who will consume such reasoning as fair, reasonable and as the best application of law to the specific case. It is through the management of deviant truths, conformation of social roles, institutionalization of habits of meaning and emotionalization that power is exercised (Rey, 2003; Warat, 1994).

In this sense, the geographic criterion should not be understood only as a category, but also as the imaginary expression of how part of the Judiciary represents the peasant subject who lives on the frontier and is a victim of slave labor. Methodologically, it is a key to access the regime of inclusion and exclusion that underlies the jurisprudence. Its analysis makes it possible to understand fragments of the legal imaginary and part of the web of meanings that make up the complicity resulting from the leading case. It is a way of investigating how peasantry and rural citizenship are conceived and disregarded in the system of production, circulation and consumption of legal truths (Warat, 1994).

4) Between two dignities: the exclusion of the peasant victim

The TRF1 ruling (Brazil, 2019b) is explicit in affirming two paradigms of dignity: it defines the rule, the city paradigm, and its exception, that of the rural environment, in which the



notion of suffering, submission and social and economic constraints are contextualized according to the rustic context of the countryside.

The geographical criterion is the creation of the exception disguised by the affirmation of dignity. It is the reinforcement of exclusion under the argument that it is contextualizing equality. This is possible by naturalizing the degradation of work and stereotyping the frontier and the peasant subject. Part of the Judiciary relativizes the concept of dignity, going against the duty of otherness, reciprocity and equality that characterizes Modern Law, clinging to a stereotypical view of the rural environment and the peasant subject. It is based on the premise of a demeaned subject, defending inequality as equality, in a logic that condemns workers and frees their bosses⁶ (Bendix, 1996; Dworkin, 2003).

The geographic criterion is based on a stigmatized social representation of the peasant and the Brazilian agrarian reality. For Goffman (2013, p.7), the stigmatized subject is that has an attribute that is socially perceived as negative, that who “[...]is ineligible for complete social acceptance”. Due to their condition, they are not considered as an equal subject, and are not, therefore, deemed, by those who stigmatize them, deserving of being recognized as full members of the community to which they belong. In other words, these subjects are understood as unworthy of the same rights and of equal treatment. A political game that, in addition to denying rights, can effectively “[...] and often without realizing, reduce their chances in life” (Goffman, 2013, p. 15).

Stigmatization legitimizes discrimination and limits recognition. By representing a given member of a community by a defect or difference that makes them ineligible for recognition of their equal dignity, the path is paved for the naturalization of discrimination and mitigation of exclusion. Segregation becomes justifiable allowing for the formation of an imaginary pact that deems it acceptable.

As previously emphasized, the problem with the TRF1 vote, which gave rise to the leading case, is not the concept of slave labor defended, which is draws from the statement by Justice Rosa Weber (Brazil, 2012), who does not limit modern slavery to the deprivation of freedom, but, rather, defines it in terms of the intense and persistent violation of dignity. In this sense, it is a progressive vote.

⁶ Condemning workers to their situation of exclusion and acquitting their bosses from the criminal actions they were reporting, as clearly demonstrated by the study by Mariana Paes (2016).



The paradox that constitutes it lies in the denial of the condition of equal dignity to the peasant subject, especially those most vulnerable, who accesses the justice system as a victim. Under the grounds of “concrete conditions”, of the contextualization of social conditions, the duty of equal respect and consideration is flexibilized, reinforcing a negative valuation of the peasant victim and legitimizing their disqualification for full citizenship (Brazil, 2006; 2019b). The TRF1 vote is explicit in this sense:

Conviction is only justified in serious and extreme cases, without reasonableness, when the violation of labor rights is intense and persistent, reaching blatant levels, all under the scrutiny of judicial evidence, in which there is effectively a degradation of the worker in his human condition, in tasks in the execution of which they are subjected to unacceptable economic and personal (moral) constraints, which is not the case in this sentence-(Brazil, 2019b, p.8).

In the aforementioned excerpt, the judge makes it clear that the violations to which the victims were subjected do not attain the level of sufficient reprehensibility, since the parameters that should be used are not those of the “city paradigm”. In this way, a rule and its exception are demarcated. Under the urban paradigm, the exhausting workday; the lack of perspective of ending the employment relationship; lodgings that do not adequately protect against the cold, rain and insects; the lack of access to drinking water; the lack of access to quality food; the deprivation of sanitary conditions for the fulfillment of basic needs; the lack of cafeterias would be considered slave labor (Brazil, 2019). However, in relation to the frontier subjects, marked by the stigma of rusticity, such violations are mitigated or erased to the point of not qualifying as a violation of rights.

In the ritual of invisibilization, the violence perpetrated against the victim is erased under the pretense of different forms of dignity. In this persuasive game that operates based on stigmas, violence, the frontier conflict and the vulnerable condition of the peasant subject of the frontier are naturalized.

Under a certain social representation of what the frontier is and of its subject, precariousness and the lack of rights are naturalized. In the words of Gilmar Mendes (Brazil, 2006, p. 61):

[...] that the authorities report as a case of “slave labor” the existence of workers in a place without adequate facilities, such as bathrooms, cafeterias, etc., without taking into account that the employer himself uses the same facilities [...]



The STF minister argues that the rural reality englobes everyone, employers and employees alike, and that precariousness is a portrait of the general reality on the frontier. The victim of the frontier conflict suffers an invisibilization process that composes a network of exclusions, in which employers and workers are portrayed as equal victims of the “concrete conditions” (Martins, 2022). The conflict is obscured and with it the condition of exclusion that the peasant is subjected to. With no recognition of this mitigation of rights, all that remains is the naturalization of the hard life in the rural environment. In this game of meanings that precedes the utterance of words, the citizenship of certain subjects is relinquished. Exceptionality is created, or, in Goffman’s (2013) words, stigmatization.

As Goffman (2013) explains, stigma does not always arise from rationalization. Sometimes discrimination occurs without the realization that it is being inflicted. The demeaning of the other is not always intentional. As Warat (1994) pointed out, it is the result of a shared imaginary, a complicity that precedes discourse, which is situated on the frontier of words, not always audible, visible or rational. At the same time, this tacit and symbolic agreement outlines the field of acceptability of reality, creating the limits of what is plausible and what is implausible.

The discrimination imposed by the use of the geographic criterion is not always the result of ill intent by its enunciators or of a desire to belittle or demean, but rather stems from the logic of power of which they are a part of. The view of the peasant as a subject who does not have the right to full dignity may not be perceived by these judges as a problem, as something that goes against the duty of equality under the Law, and does not cause them any embarrassment or censure.

Power relations and social hierarchies are masked by being made into obvious premises, and therefore difficult to refute. A social representation is naturalized, stripping it of the network of inclusion and exclusion that constitutes it. They cease to be consumed as historical productions and are understood as circumstances intrinsic to society, thus being exempted from being denounced and becoming more resistant to public discussion.

When a representation is naturalized - which Barthes (2007) defined as a stereotype - it can become a discourse that circulates more easily, arousing less resistance, becoming more acceptable and rhetorically inducing greater persuasion. It is



convincing because it is a commonplace, a premise that, because it is deemed evident, is more likely to induce agreements (Perelman, 1998).

Naturalization prevents certain social constructs from being confronted with facts and subjected to judgments of veracity. Public discussion is made difficult, generating acceptability by presenting these social constructs as unquestionable. Segregation becomes more palatable, legitimizing the non-recognition of equal citizenship. Truths about a subject and their social role are allowed to circulate and be consumed stripped from historicity under the justification of being innate.

The geographical criterion is therefore based on stigmatization, but also on stereotyping the peasant subject and the frontier (Barthes, 2007). It is assumed that the rustic conditions of the countryside generate more resilient subjects, accustomed to degradation. It is a symbolization without basis in reality, history or social facts. It is an imaginary not backed up by evidence, which fulfills a political role of making the conflict, the exclusion, the victim and the subject of the frontier invisible. It imposes a stagnation on possible gain rights by these subjects, since it presupposes, within the spectrum of normality, the scarcity of rights and guarantees.

José de Souza Martins (2022) argues that the victim is a central and methodologically explanatory figure of the conflict on the margin, because through them the phenomena of otherness and the Other who inhabits the frontier is made visible. The geographical criterion implies the absence of conflict, it is the denial of the peasant's victimhood, of their plight as an excluded subject. It, therefore, represents the disregard that this Other, who survives on the threshold of society, in the place of exception, exists. The symbolic and, sometimes physical, denial of the existence of the other constitutes a lapse of otherness. Exclusion turns against the enslaved, contributing to the reaffirmation of a historical deficit of citizenship of the countryside subjects.

5) The geographical criterion, frontier and the institutional role of the Judiciary in invisibilizing the violence of victims of slave labor on the frontier

José de Souza Martins (2022) says that the frontier is a methodologically important category, as it allows us to understand how societies emerge, reproduce themselves and



institutionalize themselves. To examine the victim of the frontier conflict is to study the margins of the territory, where people find themselves in an ambiguous social situation, stuck between belonging and not belonging, between recognition and non-recognition.

The victim of the frontier inhabits the territorial fringe, the threshold of the rule of law. In this sense, the analysis of the social and legal reality of these subjects can reveal a lot about the commitments and challenges imposed on the Judiciary in the formation, organization and reproduction of national citizenship (Martins, 2022).

The frontier is not just a geographical category that demarcates the limits between countries. As a geographical category, it is closely associated with the concept of territory, which etymologically refers to the place where state power is carried out, that is, the place wherein its empire is exercised. Territory refers to the web of constitutive and constituent powers of a State in a given spatiality (Haesbaert, 2007; Raffestin, 1993).

Territory is the lived space, a human production and the ultimate expression of the Modern State. Territorialization is the human construction of space, subjectivizing it symbolically and emotionally. Thus, it is bound to the land by a network of highways, roads, air routes, commercial networks, which shorten distances and alter temporalities, and also through a specific syntax, which enables its representation.

The normative power of Law is complex and does not occur solely through the threat of external violence against individuals. Law forms the very logic of rationalization of space and time. Its institutions are means of ordering and attributing meaning to the land and are constituents of the territory. Space is subdivided into property, transacted through purchase and sale, benefitted from through possession and leasing (Raffestin, 1993; Rey, 2003).

The rule of law is not just a coercive, external action, but also a producer of social relations. This is how the modern state binds itself to the land, territorializing space. Carl Schmitt (2014) describes this phenomenon by saying that the modern state takes over the land. For him, there is a state violence that structures space, forging a new *nomos*, a new system of territorial representation. It is the empire constituting the land.

To reflect on territory allows for us to problematize the concept of frontier, both as a legal and geographical category. If territory is associated with the network of power relations that constitute symbolizations of space, the frontier represents the limits of



territorialization, the threshold of “taking the land”. If modern territory is the space in which the State can exercise its terror, the frontier is where this empire is at its extreme.

The frontier doesn’t solely refer to the demarcation between States, but, from the epistemic perspective defended, it represents the very limit of the State's power to influence and constitute human relations, subvert hierarchies, and induce symbolizations. For this reason, the frontier is a privileged site for observing how societies are formed, structured, and reproduced.

To analyze the Judiciary in relation to the victims of the frontier conflict implies investigating its ambiguous, sometimes contradictory role in the process of institutionalizing the territory, in its normative-constitutional role of territorializing dignity, democracy, and more symmetrical relations. The territorialization of the State, within a Constitutional and Democratic paradigm, should signify the expansion of citizenship, that is, the transformation of social relations, the confrontation of hierarchies, the change in the regime of inclusion and exclusion that create reality – this refers to the ideal dimension of Law (Carvalho Netto and Scotti, 2011).

The geographic criterion underscores the judicial ambiguity regarding the frontier and the victim of the frontier conflict. As Mariana Paes (2016) rightly pointed out, those in peripheral locations, on the threshold of territory, are subjected to greater exclusion, which is why it is where the highest incidence of the crime of submission to work conditions analogous to slavery occurs. On the edges of Brazilian constitutional democracy, symmetrical relations and the institutional mechanisms for its promotion and defense are not properly established and the idea of citizenship is precarious, the result of power relations marked by asymmetry and the perpetuation of landowner power. A lack of recognition of the other as an equal subject prevails.

When part of the jurisprudence adopts the geographic criterion, it reaffirms the locus of the exclusion and the lack of citizenship that characterizes part of the Brazilian countryside. Above all, it keeps the victim of the crime of submission to work conditions analogous to slavery on the exterior of the domain of law. There is no crime, since the violence perpetrated is not recognized, but rather, justified rhetorically and symbolically on the basis of a stigmatized dignity.

Levels of dignity are created, that of the city and that of the frontier, as well as the rule and its exception. The Judiciary plays the role of an apparatus for the



reproduction of hierarchies and dissymmetries in rural areas. It imposes on the victim of the conflict its non-recognition as the Other, creating a place where otherness isn't recognized. In doing so, it compromises the possibility of a full and dignified life for these people, putting their symbolic and physical existence at risk.

6) Concluding remarks

The Judiciary is a complex, ambiguous and contradictory institution, and it would be reckless to formulate generalizing propositions. Thus, the objective of this article was to conduct a qualitative study, seeking to understand the networks of meaning that involve the geographic criterion and the enslaved victim of the agrarian conflict on the frontier.

The geographic criterion does not imply a restrictive view of what slave labor is, but rather the relativization of dignity. In the ideal dimension of Law there is the recognition of equal respect and consideration, but in the implementation of the norm, two levels of dignity are established, that of the city and that of the countryside. This is possible by stigmatizing and stereotyping the agrarian reality of the frontier and its subject, the victim of the conflict. Without an empirical basis and disregarding the normative dimension of Law and the counterfactual function of the Judiciary, the rustic reality of the countryside is accepted as a powerful common sense. An imaginary is formed that allows for the dignity of the peasant on the frontier to be demeaned.

The geographic criterion is based on the peasant stigma, a sociological category created to illustrate the process of demeaning this other to the status of a subject undeserving of equality and the same rights. The stereotype is a failure in the mechanisms of reciprocity, it is a justification for the non-recognition of otherness and of the Other as a being who has the right to the same conditions to enjoy a full life. The geographic criterion, therefore, contradicts the constitutional order.

The Brazilian agrarian frontier is a place where rights are denied. Due to the vulnerability of its subjects, it is also an area where people are more susceptible to being submitted to conditions analogous to slavery. Problems such as lack of sanitation, treated water, and adequate housing are common in the countryside. However, the geographic criterion speaks volumes about the part of the Judiciary plays in the face of exclusion.



The frontier is a methodological category through which it is possible to understand how institutions are formed, maintained and reproduced. The agrarian frontier, therefore, can teach us a lot about the ambiguous role played by the Judiciary in the constitution of the national territory, especially in relation to the affirmation of rights for the countryside. It is remarkable that in the face of extreme indignity and slavery a recalcitrant jurisprudence remains in force.

Instead of adopting the paradigm of the full scope of rights, such as access to housing, basic sanitation, accessibility and education as elements that are lacking in the agrarian sphere, the opposite path is taken. The lack of minimum life conditions on the frontier is used to condone pernicious labor practices, placing degraded ways of life in the realm of acceptability and normality, thus, denying people equal opportunities to stay alive.

The way in which the premises for characterizing the crime of submission to slavery-like conditions are consolidated do nothing to help end slavery. On the contrary, they facilitate its normalization, as they mitigate the impact of the violation of rights and guarantees of the frontier subject. Law, then, is used as an apparatus to legitimize the reduction of the scope of their rights, which goes against the principle of human dignity. What was supposed to be broad and unrestricted is shown to be compromised based on stigmas legitimized by an uncritical common sense.

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