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Decomposing the Law, Composting the Collectives: Indigenous Struggles for Lands and the Making of Life Beyond Rights

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Abstract
In the last two decades in Brazil, indigenous peoples have been struggling for their rights through the practice of what they call *"retomada de terras"* (reappropriation of lands), which consists of reoccupying ancestral lands that were invaded by farmers or other explorers. Inspired by indigenous perspectives, new social movements are struggling for land and territory. After years of reclaiming the legal demarcation of indigenous lands or agrarian reform without a resolution from the State, they decided to act directly in the building of their territories. Within this process, there is also a production of another space, another ecology, another relationship to the land. If Carl Schmitt is right when he says that the original movement that makes law arise is the taking of land, which produces an ordering of space and defines borders that establish internal and external relations, what happens when lands are retaken and borders are reshaped? If we conceive of law in a very modern and technical conception, solely linked to an institutional image, it cannot help us to answer this question. The practice of *"retomada"* by the Tupinambá people and the agroecological experience of the Web of the People (*Teia dos Povos*) in Brazil can be an interesting path to investigate how the conditions of existence can be produced beyond abstract rights and more-than-human arrangements can change the way we live together. These practices produce justice spatially in a given territory and bring conceptions of rights rooted in the entanglements of bodies and their territories.

Keywords Normativity · Rights · Indigenous lands · Spatial justice · Territory

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Introduction

What would the case be if we forsook all vocabulary of order, institution, and norm that dominate legal discourse — and which maintain an implicit relation with racial and colonial violence to enforce itself (Silva 2009) — and tried instead to investigate other parameters and vocabularies that allow for the actualisation of other modes of collective? This article investigates this through the experience of the struggles for land and territory of indigenous people and the landless workers' movement in Brazil, in the southern region of the state of Bahia. Looking at the experience of the *Tupinambá* people taking back their ancestral lands and the creation of the Terra Vista settlement by the Web of the People (*Teia dos Povos)* in recent decades, I intend to explore new legal and political techniques of social organisation that do not pass through the liberal idea of normativity. This is an idea, I will argue, that was strictly conceived for the white, male, and European subject, but applied coercively upon other populations without considering their participation as political subjects.

I intend to show how the concept of normativity is crucial in liberal theories of the law and how it organises the structures of liberal societies. Inspired by the decompositional method of Denise Ferreira da Silva (2022), I explore the elements that sustain the normative logics of reasoning and show how these are complicit with a racial and colonial order that reinforces violence against non-white bodies and non-Western social forms. I then demonstrate how the critiques of modern law developed by critical legal theorists are limited and incapable of pointing towards new modes of collective existence no longer oriented by liberal, anthropocentric, individualistic, Eurocentric, and modern conceptions. These conceptions are also unable to welcome the modes of existence of indigenous ways of living with the land. In the context of the Anthropocene, this should not be only a concern of indigenous people but a demand for the transformation of Western ways of living, which become unviable before the exhaustion of the material sources that feed and underpin modernisation (Latour 2018).

My purpose is to move away from this liberal conception of the law and investigate in the experiences of these struggles for land a way of conceiving social formations based on the co-emergent entanglements between human and non-human bodies; between the humans and their environments where the former does not triumph over the latter and end up by destroying itself, as warned by Bateson (1972);[1] entanglements that are not controlled by human reason, but with which we can compose together in a more ecological existence. I take inspiration here from the concept of *lawscape* developed by Philippopoulos-Mihalopoulos (2015). I believe that such an investigation can point to alternative ways of conceiving law and politics before the challenges posed by climatic changes and the Anthropocene (Crutzen 2002). This new planetary context is also one that brings about the concrete possibility of extinction, not only of several species of living beings but also of human life, as the increasing warming of the planet triggers a cascade of interconnected consequences such as the melting of glaciers, rising of sea levels, desertification of lands and so on. These consequences are forewarned by the global scientific community and described in the

[1] 'The creature that triumphs over its environment destroys itself' (Bateson 1972).

sixth report of the Intergovernmental Panel for Climate Change (IPCC 2022). This context demands of us to understand our bonds to the planet and its multiple forms of life, recognising the agency of these latter in the making of liveable conditions on our planet and composing with them new forms of coexistence.

The concept of *lawscape* is helpful here for its post-humanist approach that decentres the human subject as the ruler of the law and understands the latter as formed through the assemblages of human and non-human bodies in space (Philippopoulos-Mihalopoulos 2015). Through this concept, Philippopoulos-Mihalopoulos describes an inseparable relation between law and space, since the law is always realised in a material redistribution of bodies and space is never an empty void where bodies flow smoothly, instead it is also a material arrangement of bodies that constrains and orders these bodies (Ibid). The *lawscape* will be articulated here in dialogue with indigenous perspectives on land and their practices of negotiating the sharing of territories with other forms of life.

The data provided here is based on bibliographical sources. I discuss the ethnographic works of Brazilian scholars who dedicated years of research to following closely the struggles for land of the *Tupinambá* people (Alarcon 2019; Sandroni 2018) and the writings of activists and indigenous leaders (Babau 2019; Ferreira & Felício 2021). In reading these works, I describe the indigenous conceptions of land and nature and the practices of agroecology of the Web of the People, which is also inspired by indigenous ancestral knowledge. In dialogue with these indigenous concepts, I seek to elaborate on how their relationship with the territory and non-human forms of life allows for a new understanding of the triangulation between law, rights, and justice. I do not take these as separate entities since the law recognises and distributes rights, whereas justice demands the fulfilment of these rights and the transformation of the law. To use the terminology of legal geography, spatial justice reorients the *lawscape* (Philippopoulos-Mihalopoulos 2015). By paying attention to how struggles for land in southern Bahia change the space and redistribute the relationships between human and non-human bodies in space, I explore how they also bring forth a new *lawscape* no longer ruled by liberal normativity and capitalist modes of extraction.

The Normative Programme of Modern Law

Through a liberal approach, as the one developed by Rawls (1971), in order to propose an arrangement of legal and political institutions able to organise social relations in a complex society, it is necessary to theorise justice in such a way that generates principles for the collective distribution of goods. For Rawls, two principles are crucial: the first is that each person has equal rights to the most extensive basic liberties, compatible with similar liberties of others; the second is that economic inequalities should be arranged in a way that can benefit the least advantaged in society (Rawls 1971, p. 52). Following these principles, a legal theory is necessary to conceive of ways to solve social conflicts in a way that these principles are respected. These theories must establish a deontological programme of working for these institutions through a set of legal rules that will prescribe the command which regulates practices

within these organisations.[2] What I wish to highlight here is how normativity and the creation of norms are at the core of liberal ways of structuring societies. Modern legal theory and its theories of justice, therefore, are forms of knowledge complicit to liberal societies.

The command as a manifestation of the law is part of a broader rationality that shapes the law. I intend to argue against this understanding of the law as something produced by the interaction of human minds, a rational process mediated by discursive communication with a stable semantic transfer of meanings and a form of logical reasoning that intends to be neutral and technical. This understanding of the making and practice of the law is based on normativity but is not exclusive to legality. Norms can be legal or not. There are also social, religious, moral, and biological norms, among others, and the differentiation of legal norms from other kinds of normativity has been an important concern of legal theory (Banakar 2015). Normativity, in turn, is a structuring feature of a form of thought that is deterministic, causal, and guided by norms. A norm is a descriptor that defines a relation of necessity between an event and its consequence. This necessity can be expressed as *ought,* as in the case of the law, or as regularity or patterns of behaviour, as in social norms (Ibid). This linkage between events sustains logical reasoning in a linear and determinative manner.

This focus on norms has oriented the canon of modern legal theory. For example, in Kelsen's *Pure Theory of the Law* we find the following:

> By defining law as a norm and by limiting the science of law to the cognition and description of legal norms, and to the norm-determined relations between norm-determined facts, the law is delimited against nature, and the science of law as a science of norms is delineated against all other sciences that are directed towards causal cognition of actual happenings (Kelsen 1934, p. 75).

The discourse of modern legal theory is built through this normative reasoning and points towards the technical application of legal norms. This happens similarly to other techniques that base their application on scientific formulations. Science is a descriptor of causal relations between events that make it possible to predict their possible consequences and act in advance of them. In its turn, legal science describes the formulation, interpretation, and application of norms of *ought* or *have-to-be.* Either in natural sciences or legal science, this allows for the control of a causal sequence of events, making possible a certain degree of determination of predictable reactions, thereby reducing the contingency of the future, as the law is supposed to do according to Luhmann (2008). This scientific model based on causal relations was also a basis for the kind of logical reasoning that still rules liberal institutions in capitalist societies (Silva 2022).

Normativity is the technical vocabulary of law and the form in which official authorities' decisions are expressed. This defines the parameters through which we

[2] This notion of norm as command is developed by Giorgio Agamben in his book *Opus Dei: An Archaeology of Duty* (2013), and it refers to the relation between norms and behaviours prescribed by norms, which is a relation of having-to-be. Thus, command is that which is in question in the norm. Before Agamben, Hans Kelsen also discussed the norm as an expression of command in his book *General Theory of Law and State* (2005).

mediate conflicts, guide human conduct, and establish common expectations of these conducts. Legal normativity is a technique of social regulation (Kelsen 2005) based on the modern tradition of European thought. It is a set of practices applied based on professedly objective scientific justifications; that is to say, it is the application of a theory akin to any other technique that presupposes a scientific description of its way of working. Hence, we can consider that the concept of normativity is also guided by some idea of effectiveness, which is the main value that orients technical development according to the French sociologist of technique Ellul (1964). From a philosophical perspective, effectiveness is also a measure of an efficient causality and its capacity to determine reality.[3] For Kelsen (2005), effectiveness is a condition for the validity of a legal order. If the modern law is a form endowed with efficacy and expressed in norms that determine causalities, then it is also a form that controls time, that is, one that determines what will inevitably happen after a certain event or action (ontological description) or what must happen after that (deontological prescription). This reasoning also presupposes a subject, since time is determined mentally and rationally in the interiority of the rational subject (Silva 2022).

As a social technique, the law is always connects to public institutions and technical procedures that organise and mediate social relations. But even before referring to the State machinery that the law puts to work — and which also makes the law work, since the law is its language — the rationality of legal theory already works as a security system based on transcendental reason as its police and certainty, norm and logical necessity as its repressive and controlling weapons. The law is obsessed with security and control, it blocks everything exterior to its internal code — as Luhmann puts it, the operative closure of the legal system (Luhmann 2008). Thus, everything exterior to its code may be epistemologically tamed before it is legally coded. Everything may be mapped and chained to an explicative and scientifically controlled causal chain, which should work as a form of logical prediction, even though it is made through non-linear and complex models of causality, as in contemporary legal theory.

The Critiques of Modern Law

In this section, I discuss some key texts from critical legal scholars that expose the limits of modern legal theory. In doing so, I also want to demonstrate the limits of these critiques in non-Western contexts. Although the critique of modern law and modernity has already been developed by Western scholars, the reasons why non-Western scholars criticise modernity are often different, and it is important to explore these differences.

[3] Silva claims that.In sum, determinacy as deployed in Kant's knowledge (scientific) program remains the core of modern thought: it is presupposed in accounts of the juridical and ethical field of statements (such as the human-rights framework) which (a) presume a universal that operates as an a priori (formal) determining force (effectivity), and which (b) produce objects for which 'Truth' refers to how they relate to something else—relationships mediated by abstract determinants (laws and rules) that can only be captured by the rational things' (including the human mind/soul) principles of disposition (Silva 2017).

In the works of Douzinas & Warrington (1991) and Fitzpatrick (2001), there is a common concern with the foundation of law after the dissolution of the pre-modern ordering of the Western world, which had God as its grounding soil. After the announced 'death of God' by Nietzsche, the remaining shadow of this transcendent place still haunted society and the void left by God could be replaced by human forms (Fitzpatrick 2001, p. 54). In this, lies the problem of finding new foundations for the law, when transcendental reason becomes the dominant logic and 'there now is nothing ontologically prior to the individual', who must determine their own being: 'It is the individual who now mediates between the transcendent and the real, who now weds truths to times. The displacement of myth is completed when "man" comes to be subjected to "the sciences of man and society"' (Fitzpatrick 1992, p. 35). In other words, in modernity, humans become subjected to themselves.

Douzinas & Warrington find in modernity a fracture that makes impossible — or at least much more difficult — the construction of ethical agreements. For them, Western rule of law was an answer to this but the conditions that led to modernity prevented the law from providing what it promised: neutral and non-subjectivist decisions about conflicting values (Douzinas & Warrington 1991, p. 12). Without common ground for different comprehensions of the world and with the fragmentation of life caused by modernisation,[4] the law cannot find stable ground on which to determine itself. This generates an unresolvable problem for legal theory and its justifications for the law as an institution. The work of Fitzpatrick, specifically, is very concerned with unfolding this problem and its paradoxes. He outlines how legal theory sought to solve this problem by a process of rupture and denigration of the pre-modern past of the law and its mythic narratives. This self-foundation of modern societies as rationalised, self-determined, and transparent is also a process of constitution of the identity of European nations in opposition to their 'others'. These latter were those peoples taken as savage and uncivilised that became entrapped in a forced relationship with Europe by colonisation. As Fitzpatrick puts it:

> Such an identity is constantly recreated and sustained in opposition to certain 'others' who persist as embodiments of contrary worlds that have gone before. The primitive, to take a figure of the other, is uncontrolled, fickle irresponsible, of nature, and so on. The European is disciplined, constant, self-responsible, of culture, and so on. But the other is not truly other (even assuming such a state was possible). It does not exist primarily or initially apart from its relation to a West which encompasses it. The other, in its uncivilized or pre-modern state, is a construct of the West […] A closure is thus effected. The West creates those others in simple opposition to which it is created (Fitzpatrick 1992, p. 30).

Douzinas & Warrington, in turn, read modern legal theory as an effort to answer the question about what the law is, separating the law from extra-legal domains and giv-

[4] In his presentation of law in modern society, Unger discusses the specialisation of different activities that characterise modern liberal societies. With this, the individuals' experiences are composed of different social spheres, where relations and shared values can vary. Unger develops the implications of this concerning the law in the third chapter of his book (Unger 1976).

ing it its proper object, unity, and identity. These theories aim to define the legality of the law, and the conditions t determine which norms are part of the law and belong to a logically coherent legal system. In the authors' words, modern legal theory intended to determine the law of the law (Douzinas & Warrington 1991, p. 25). The authors also approach the contrasts between two different ways of thinking about the law: legal positivism and studies of law and society or law in context. The distances and tensions between positivist legal theories are also a common concern here — wherein the law is treated as an autonomous phenomenon or epistemological field linked to a technical and institutional practice separate from the social contextual worlds from which the law emerges. They criticise both trends as modernist modes — either because of the urge to find coherence, unity, and permanence in law by positivists or because of the attachment of sociologies of law to modern representation (Ibid, p. 25–26). Douzinas & Warrington here follow a Derridean orientation that seeks to deconstruct these supposed coherent constructions of modern legal theory and show their internal plurality, opening it to new forms of reason.

Fitzpatrick concludes the first part of his book — wherein he develops his theory of law — by stating that the law works through this tension between the determination of its technical and institutional dimensions and its responsiveness to social demands and contexts. Without the former, the law can lose itself in vagueness, and without the latter, the law loses its capacity to transform and attend to the demand for justice coming from social contexts (Fitzpatrick 2001, p. 104). Neither of these alone are sufficient for the law since the determination of legal decisions and their technical procedures are the means of realisation of what is demanded in contexts beyond the law (Ibid, p. 107).[5] These decisions, however, cannot meet these demands integrally and these latter will keep alive the need to transform legal institutions. In this final argument, Fitzpatrick also follows Derrida in his well-known text, *Force of Law* (1992).

These critical legal theorists sought to destabilise modern law by opening up the manifold of its semantics, breaking with its transparency and supposed neutral objectivity, showing the foreclosed otherness, the internal conflicts of the law, as well as the racism of liberal legalism. Although pertinent, the critiques of these authors cannot fulfil the epistemological and political demands that my proposal pursues here. Firstly, there is a problem of tradition, or it would be better to say, geopolitics of knowledge. The authors discussed here — Douzinas & Warrington (1991) and Fitzpatrick (2001) — consider mainly, or exclusively, European or North American references, who are white males in their majority. By saying this, I do not want to deny the contribution of these scholars or just tear apart Western tradition. To do so would be far from straightforward — more than a simple problem of theoretical choice — because this tradition shaped the world that we live in, including the violence and negations of other people's lives and intellectual traditions. However, many authors

[5] In the author's words:Law, as we have seen, cannot be sustained in the songs of Rousseau's whispering bird or in 'some secret discourse with a divinity'. Law, on the contrary, is always operatively attached to existent situations, even if it cannot be positively rendered in terms of any such situation. It is in the legal decision — the decision of the subject, the judge, the legislator — that law becomes operative (Fitzpatrick 2001, p. 104).

from this tradition have also influenced forms of struggle against this violence. Such tradition is neither homogeneous nor monolithic, and is full of internal conflicts.

More than this, my concern is not solely these textual or epistemological issues. Rather, it is that this textual and epistemological change achieves *more* than the mere inclusion of marginalised authors and traditions. Together with them, other forms of imagining and knowing the world emerge, forming the political proposal of this article. My proposal is not merely to criticise the exclusion of black and indigenous people in Brazil from the given forms of Western modern law exported to post-colonial contexts. I am more concerned with how black and indigenous practices with the land point toward other forms of coexistence, not only amongst humans but enmeshed with the many forms of life that compose their ecologies and territories. This is a further limit of the critical legal thinkers discussed above — they did not dare to go beyond the forms of the State to consider other forms of structuring society politically.

This question concerning land is accounted for by Fitzpatrick in the second part of his book (Fitzpatrick 2001) in a pertinent sense, showing how Western international law has worked to erase indigenous humanity and political subjectivity, ignoring their political forms of organisations, taking indigenous lands as unoccupied territories and thus legitimating the colonial occupation of these lands (Ibid, p. 157–158). However, these different forms of being human, their ways of exercising political subjectivity and organising collectively, and their diverse cosmologies and understanding of what those lands are go undiscussed.

Now, it has already been demonstrated by other critical theorists that the legal norm has a transcendent relation with the social facts and temporality proper to social relations. Most of these theorists, feminist scholars mainly, develop a strong critique of the abstract legal subject and his — literally his — disembodied reason that dissimulates a position of power in society and hides who is concretely making and deciding the law (Keenan 2015; Grear 2020; Hunter 2013). This position is demarcated by race, gender, geographic, and economic differences, where the white male owner from the global north occupies most of the positions of power in society. Being produced by subjects distanced from the empirical realities of less privileged, racialised, and dispossessed people, legal norms have always been built in a heteronomous way without connection to the concrete necessities and ways people build their forms of life by themselves. Denise Ferreira da Silva makes a remarkable contribution by exposing how such a conception of the law frequently fails when it deals with racialised bodies (Silva 2007). As Silva argues, the state needs violence to enforce the legal rule that in itself is ineffective (Silva 2009). Her discussion of violence differs strongly from Derrida's (1992) and Benjamin's (2004) elaborations on the relationship between law and violence. The problem for Silva is not the metaphysical or mystical foundation of the law and its intimate relationship to violence, but instead the intimate relationship of the modern legal structures with race as a marker that distinguishes the bodies that do not belong to the rational space of European modernity and its legal and political architecture (Silva 2007). A topic overlooked by Derrida and Benjamin. In this way, making use of total violence against racialised bodies, the unreachable ideal of effectiveness makes the enforcement of legal norms refer to social life always as violence towards life. Mainly in post-colonial contexts, the necessities of social relations and

survival produce a local arrangement that cannot be framed by legal norms imposed from the outside and ignores the needs, rhythms, values and will of people living in such contexts. Therefore, when the law produces an ideal order that is unrealisable for people living in these contexts, the law does not do more than criminalise poverty.

The work of Giorgio Agamben also showed how the rule of law, founded on liberal normativity, has always kept a correlation with the state of exception (Agamben 1998). For Agamben, the law is instituted not only by an imperial 'taking of the land' that orders the space and regulates the internal and external relations in a territory (Schmitt 2006) but also by a 'taking of the outside',[6] which is an exception, an implication of exterior and undetermined relations that haunt the norm and suspend its rules of operation. Returning to the technical aspect of the law, we can consider this the blind spots in the development of a technique that is supposed to solve a singular problem and ends up triggering many other problems. All causal links around an action or event cannot be wholly predictable and controllable. However, the enforcement of legal norms backed by the rational justification of a legal system costs many lives to prove its efficacy.

But how do we handle the reality of legal norms, rights, and institutions without ignoring the problems of violence produced by the law and the state? Surely, it would not require a reaffirmation of the State, which always presupposes itself as necessary to make society possible (Hobbes 2017), and as the highest stage of social organisation (Hegel 1991). Instead, we need to question the concept of the norm itself as the main feature of the law, since it is always related to the working of reason and is an expression of a rational and transcendental subject acting upon the world. This subject reasons logically based on the information available to him or even arbitrarily chosen by him — this abstract rational subject that dissimulates his white male body and his privileged position in society. He makes decisions based on his logical deductions and judges life from a position outside the atmosphere of affects and concrete situations that condition bodies.

In the book *Towards a Global Idea of Race* (2007), Silva investigates the discourses of modern philosophers to show how, after the proclaimed 'death of God' in modernity, reason became the world-ruler in modern thought. Considering modernity as the historical moment of colonial enterprise that instituted a space of global and asymmetrical relations between different subjects, she argues that the forging of modern reason implicated in the creation of different kinds of human beings with different positions before the universality that rules modern philosophy. It instituted the rational subject but also his/her others. Here, the racial categories played an important role in this differentiation of human beings. In modernity, reason, an attribute of the human mind, became the sovereign ruler of history and science, the privileged forms of knowledge (Silva 2007).

Modern law and its normative apparatuses also emerged from this same ground. They are rational tools to rule society and deal with contingency, creating predictable

[6] The concept of *outside* in Agamben's work is influenced by his reading of authors such as Gilles Deleuze and Michel Foucault, and it refers to an ontological dimension that is not codified by language, it is shapeless, marked by contingency, and it is always in relationship with the formalised arrangements that conforms an order of bodies and signs. It is the outside that always deforms the arrangements, triggering a perpetual process of deterritorialisation and reterritorialisation.

consequences for potential events and conflicts. The law is a technique to produce universality. It aims to create rules applicable to all subjects in the same society but the social matter is always fleeing and leaking the legal forms. To codify and include social differences in legal norms is not enough to capture the multitude of bodies and their contexts. Besides this, the inclusion of human differences into the apparatuses of modern law still presupposes the universality of an ideal of a subject from which all those different subjects were left out, as Silva argues in her critique of the sociology of exclusion (Silva 2007). Post-human and multispecies perspectives bring even more complexity to this problem, showing how other species of living beings are active agents producing the environments in different rhythms and times; their activity interferes and disturbs human projects (Tsing 2015).

The modern law in socio-legal theory or critical legal theory is usually seen as a break with a primitive, savage, and pre-modern society that precedes modernity. This break would bring society into a progressive process of rationalisation, complexification of its forms, separation of its different dimensions, and formalisation of its several systems (Unger 1976). This society that sees itself in transparency would also describe itself as opposed to its 'Others', the non-European and racialised peoples, affectable bodies, whose minds were not able to determine themselves before the world's several constraints (Silva 2007), peoples without history, as Hegel said about populations in Africa.[7] But what if instead of following this increasing progression of reason improving itself dialectically and actualising itself in new social forms, we break with this arrangement of history? What if we put into question the barbarism that is foundational for this supposed rationalised society and take into consideration the multiple forms of existence of these 'Others of Europe'? Where might that lead us at last?

Stepping on the Lands Barefooted of Normative Boots

Why dismantle normativity? Because the causal system that sustains it in practice requires the use of force to make it work, in the reinforcement of laws and the conservation of the racial and class order of the liberal State and capitalist society (Silva 2022); because the normative ideals of the law create promises never fulfilled by the State, transforming basic needs of living in abstract rights (D'Souza 2018).

Moving beyond this kind of approach, the challenge will be to investigate experiences in which more autonomous, polycentric, diverse, ecological, and interspecific collectives emerge, no longer burdened by the paradigms of order and sovereignty

[7] See, for example, what Hegel says in his *Philosophy of History*:The peculiarly African character is difficult to comprehend, for the very reason that in reference to it, we must quite give up the principle which naturally accompanies all our ideas - the category of Universality. In Negro life the characteristic point is the fact that consciousness has not yet attained to the realization of any substantial objective existence – as for example, God, or Law - in which the interest of man's volition is involved and in which he realizes his own being… The Negro … exhibits the natural man in his completely wild and untamed state. We must lay aside all thought of reverence and morality - all that we call feeling – if we would rightly comprehend him; there is nothing harmonious with humanity to be found in this type of character (Hegel 1956, p. 93).

that invariably implicate spaces of exception[8] marked by racial selectivity and violence.[9] In post-colonial contexts then, the State does not guarantee order, but instead manages disorder (Robinson 2016). It would be more interesting now to adopt a plural perspective on the diversity of social collectives that develop themselves as *sympoietic systems*,[10] existing in interaction with each other and co-producing themselves through their exchanges and conflicts — an approach already advanced by Grear (2020) and Petersmann (2021).

The vocabulary that the modern liberal tradition gives us does not stand in relation to the concrete modes of life producing themselves in non-hegemonic territories, those territories where modern capitalist development has prevailed. It is an always verticalised and idealist vocabulary, built by the transcendental subject's reason and entirely based on a detachment between nature and culture. This detachment gave us two different ways of conceiving of norms, being a norm understood here as a descriptor of a causal relation between events, or actions that express a relation of ontological necessity or a deontological end (having-to-be).

With the legacy of the modern tradition, which Bruno Latour has called the *modern constitution* (Latour 1993), we can talk about universal and descriptive norms that determine the relations of causality present in nature, and that are studied by natural sciences; or contingent and prescriptive norms established by human collectives, that vary according to the diversity of languages and cultures and are studied by human sciences. However, this tradition is unable to describe human collectives and their relations of power always in interaction with objects, techniques, territories, animals and other beings of nature. Its descriptions revolve only around human subjects and their history. It is this anthropocentric conception of society, blind and deaf to other forms of life, that has brought us to the current emergency state of climatic catastrophe. The human subject acting upon nature as though they were the only inhabitant of the earth has ended up putting at risk their own conditions of existence.

[8] This concept comes from the work by Agamben (1998) and refers to those geographical areas where the fundamental rights granted by the rule of law are suspended, such as the concentration camps. Agamben claims that in modern democracies this problem was internalised by the political order, coexisting with a democratic regime without destabilising it. He mentions for instance the Guantanamo Bay detention camp.

[9] In this work, I am not following European or American elaborations of anarchism, although the works of authors such as Clastres (1989) and Deleuze & Guattari (1987) on the politics of indigenous societies were influential. But, above all, my political orientation is much more guided by the practices of indigenous communities and social movements that I discuss in this article. They have their political elaboration, for example, see Ferreira & Felício (2021). This paper is indeed an effort to gather concepts from different areas to contribute to their struggles in the theoretical area.

[10] The concept of *sympoietic* systems differs from that of autopoietic systems used by Luhmann to describe the law (Luhmann 2008). The latter is produced through a self-differentiation from its environment, creating an internal code that decodifies external inputs, liberating outputs as reactions, turning into an autonomous system. Sympoietic systems, conversely, are not closed systems and they produce themselves always in interaction with other systems. Haraway describes it as follows: 'Sympoiesis is a simple word; it means "making-with." Nothing makes itself; nothing is really autopoietic or self-organizing. In the words of the Inupiat computer "world game," earthlings are never alone. That is the radical implication of sympoiesis. Sympoiesis is a word proper to complex, dynamic, responsive, situated, historical systems. It is a word for worlding-with, in company. Sympoiesis enfolds autopoiesis and generatively unfurls and extends it" (Haraway 2016, p. 58).

Therefore, we must transform our juridical and political vocabulary including ecological and systemic perspectives that consider not only human relations but also the relations between different species of living beings.

Taking into account the technical aspect of legal norms, research undertaken by Yuk Hui shows us that techniques are neither neutral nor universal but informed instead by some cosmology from which they emerge.[11] Considering this, we can say that normativity is a legal technique which seeks to actualise a determined conception of the world and presupposes a conception of the subject that is able to determine him/herself and history. Denise Ferreira da Silva's work on modern philosophy shows what implications European metaphysics and cosmology have for colonial violence that crosses legal normativity (Silva 2007; 2022). This article seeks to move beyond said metaphysical tradition in order to investigate the cosmologies of indigenous peoples in Brazil. With them, I seek other ways of thinking about social conflicts, by considering the relations between forms of life and the territories they inhabit.

The law is also a social, political, and ecological technical form that organises institutions and procedures to mediate the relationship amongst and between people and their territories. Peter Fitzpatrick argues that the forms of modern law are unable to welcome and accommodate indigenous forms of expression and thought, which do not fit the normative grammar of law (Fitzpatrick 1995). Additionally, following Silva, modern law is a facilitator of capitalist accumulation, which places indigenous people beyond the limits of what would be proper civilisation (Silva 2007). This leaves this outer space unprotected and available for the unbridled use of violence, without constituting an ethical violation in the legal domain. Facing this context, I am concerned with how we can think in collaboration with indigenous people about new institutional forms that emerge from their struggles, cosmologies, and practices.

Here, nature cannot be conceived of as a passive and formless material that waits to be shaped by the subject's free interest, but as a diversity of beings with which it is necessary to compose together. Indigenous territories are alive lands, neither empty spaces nor property and it is my concern here to describe these living territories through the perspectives elaborated by indigenous people. Thus, social conflicts should not be thought of as detached from interspecific relations between humans and non-humans because conceptions of nature are central to current political conflicts. Or better said: *cosmopolitics* (Stengers 2005). Beyond this, the law — considered in excess of its institutional apparatuses — also implicates a territorial and spatial ordering of bodies (Philippopoulos-Mihalopoulos 2015).

Nevertheless, if we conceive of law in a purely technical, normative, and liberal way, it is always reducible to institutions, and when we do not feel represented by them, we feel without alternative because we have only learned to think about politics and power through the lens of the state. Thus, it is important to acknowledge legal formations beyond the State, where the conditions of existence are produced beyond abstract rights and new more-than-social arrangements are generated, changing the way we live together. The practices of indigenous people dealing with conflicts, rec-

[11] 'Scientific and technical thinking emerges under cosmological conditions that are expressed in the relations between humans and their milieus, which are never static. For this reason, I would like to call this conception of technics cosmotechnics' (Hui 2016, p. 18).

reating ways of managing the lands and coexisting with other living beings can be an interesting path to investigate how these practices can produce justice spatially in a given territory and bring forth ideas for the art of living and dying well on a damaged planet (Haraway 2016).

In contrast to this technical, normative, positivist, modern, and liberal conception of the law, what would a non-modern *lawscape* not formalised in norms but expressed as a force in the moving bodies that constitute that *lawscape* look like? A *lawscape* that reactualises itself perpetually through the agonistic demands for justice manifested in these bodies. Therefore, a law that is always spatialised but also intensive, transforming itself along with the bodies' frictional movements and rearrangements that follow lines of flight, lines of virtualities, and spectres of a precarious formation always about to come. Frictions that move according to a certain abstract machine that deterritorialises the bodies from a certain assemblage in the direction of new others (Deleuze & Guattari 1987; Sauvagnargues 2016), and in this way reshaping the *lawscape*. Space and time are inseparable here since space is dynamic and constantly changing. This law would not be a form that would warrant the application of a force, as the latter unfolds immanently and manipulates the legal forms in advance. Instead, we might ask what forces engender other forms. The *lawscape* is a concept that allows us to see the law in this reversed perspective, bringing to the scene the material constraints and relations of force that bodies face in space, which is made by the proper movement of and relations between these bodies.

Before continuing, it is important to highlight an important difference of choice. The proposal that I seek to build here does not follow a kind of *a-legality* (Hamzic 2017) and does not describe an entirely alternative legal system working outside the official institutions of the State. I do not see this in the contexts I approach here and the way I understand the *lawscape* is not completely exterior to the relations with the State, neither is the *lawscape* reducible to it. I conceptualise the *lawscape* working in tension with the State but not having it as the gravitational point around which its politics and collectives form. Public institutions and their norms are parts amongst other parts of the *lawscape* that produce a spatial ordering of bodies. Philippopoulos-Mihalopoulos describes the *lawscape* by saying that the law is intimately implicated in this, 'both as logos and nomos, namely as state law boundaries and nomadic law of passage' (Philippopoulos-Mihalopoulos 2015, p. 40). The practices of *retomada* (taking back) of indigenous lands and landless workers' experiences of occupying inactive lands and recovering them with agroecology could be seen as this nomadic law that exists in tension with State law, exposing how the latter has always worked in favour of colonial white elites. But, at the same time, it also triggers a demand for the transformation of these institutions that shape the forms of collective life. As a form endowed with efficacy, as Silva argues (Silva 2022), the law is shaped between these tensions, and it does need to be conceived of as exclusively reducible to the form of the State's law. These struggles make the law more fluid, leaking beyond the limits of its traditional forms and norms. There is a point of transmutation here that should be stressed and these struggles for land in Brazil trespass this point from within and outside the law. We could say, with Kirsten Anker that:

> It is an approach that takes pluralism – the minimum condition for the 'recognition of difference' – to be not just the co-existence of multiple legal systems, but a plurality in the very nature of law. In contrast to the unity of monism and the objectification of positivism, law can also be seen as inherently partial, fragmented and shifting, its meaning never given but rather derived from an inherently dialogic process (Anker 2014, p. 5).

Law is not monolithic. It is always political and always lies between disputes and relations of force. A normative form makes use of a certain force, which gives it effectiveness and is produced by several others in dispute. Much of our criticism of the law — mainly those inspired by Agamben that have a completely negative position on the law — does not account for how the law itself is mobilised by indigenous people, maroon communities, and activists in favelas in global southern countries. And paradoxically, if on the one hand, the law reaffirms the logic of State sovereignty, on the other it also shows that it is not a consistent and dynamic unit. The Hegelian separation between State and society is a fiction, because neither State nor society are closed sets, but are associative processes and relations of force that are formalised in certain identities/institutions that do not contain or stop these processes that pierce and escape them.

To Deal with the Law

After Jair Bolsonaro assumed the Brazilian presidency, instead of public policies to enforce indigenous rights, we saw proposals of laws such as PL490, PL2633, and PL191 intended to legitimise the exploitation of natural resources in indigenous lands and delegitimise indigenous rights already established in Articles 231 and 232 of the Brazilian Constitution. The rushed effort of politicians linked to agribusiness and mining companies to approve these laws actualises the colonial violence implicated by the law (Rapozo 2021). On the other hand, the law also plays a strategic role in indigenous struggles once they reclaim rights and the legal demarcation of their territories. Rather than a facilitator or protector, the law here is a hurdle that these populations must clear. The rights granted by law are far from ideal, but the law is nevertheless at work in these conflicts. This, however, does not mean a reproduction of the law's self-justification in its theoretical discourse that makes the state necessary to control violence, for example, as in the theory of the social contract (Hobbes 2017), or as it is reproduced in modern legal theory (Kelsen 1934). As I have argued above, in post-colonial contexts violence is often triggered by the State itself (Robinson 2016). Instead, I want to consider that which the law is supposed to deal with, beyond the paths of modern legal theory. Moving away from this modern understanding of the law, we can learn from the indigenous practices of reappropriation of lands as a way of dealing with the challenges around the conflictive coexistence of heterogeneous populations in the same territory, which is a problem at the core of legal theory. However, indigenous experiences demonstrate how the modern law and the State resolve these conflicts in a disadvantageous and asymmetrical way for indigenous people.

Analysing the relationship between indigenous nations and the Canadian state, Glen Coulthard criticises how politics of recognition that seek to accommodate indigenous people in the framework of the colonial State place these people in a subaltern position. In his words:

> […] in relations of domination that exist between nation-states and the sub-state national groups that they 'incorporate' into their territorial and jurisdictional boundaries, there is no mutual dependency in terms of a need or desire for recognition. In these contexts, the 'master' – that is, the colonial state and state society – does not require recognition from the previously self-determining communities upon which its territorial, economic and social infrastructure is constituted. What it needs is land, labor and resources. This, rather than leading to a condition of reciprocity the dialetic either breaks down with the explicit *non*recognition of the equal status of the colonized population, or with the strategic 'domination' of the terms of recognition leaving the foundation of the colonial relationship relatively undisturbed (Coulthard 2014, p. 40).

Indigenous rights are not effectively protected by legal rights, and this limitation can be evidenced by the increase in invasions of indigenous lands after the election of Bolsonaro in Brazil.[12] Moreover, when the need for a new right emerges, it is often because its object has been already violated. But without the law, the risk of an asymmetrical imposition of force by farmers, miners, and other invaders is more likely to happen. Unfortunately, this is a concrete danger even though under legal protection and it is important to think of indigenous struggles beyond the reclaiming of rights and recognition by the colonial framework of the modern law and the State. Although the violence against indigenous people is a continuum spanning the history of Brazil, the threats to indigenous lands increased expressively after the effort of Bolsonaro's government to weaken environmental law and indigenous rights. Several researchers have documented how the former environmental minister of Bolsonaro's government, Ricardo Salles, exploited the tumultuous situation triggered by the COVID-19 pandemic to weaken environmental laws and 'pass the herd' — as the former minister has said — over indigenous lands in the Amazon rainforest (Souza et al. 2022; Rapozo 2021; Ferrante & Fearnside 2021). For an example of this, consider the case of the Yanomami people in the northwest of the Amazon rainforest who suffered again the invasion of illegal miners after the election of Bolsonaro.[13] This, therefore, is both a paradoxical and complex situation. We cannot bypass the institutional and normative roles the law plays within social conflicts and negotiations, but, on the other hand, we should not cling to the limited horizons offered by the law alone.

In Brazil, indigenous peoples have been engaged in an intense struggle for their rights and the legal demarcation of their lands, and the massive mobilisations of the Free Land Camp (*Acampamento Terra Livre*), which occupies Brasilia annually is

[12] As reported here, for example: https://www.nature.com/articles/d41586-021-02644-x.

[13] After Bolsonaro's election, it was reported that an estimated number of 20 thousand illegal miners have entered the Yanomami territory for exploitation of their lands: https://news.mongabay.com/2019/07/yanomami-amazon-reserve-invaded-by-20000-miners-bolsonaro-fails-to-act/.

an evident demonstration of this.[14] However, at the same time, the negligence of the Brazilian state concerning the protection of indigenous rights is recurrent. In January of 2024, a group of farmers self-named *Invasão Zero* (Zero Invasion) gathered hundreds of people to attack the territory of the Pataxó Hãhãhãe people in southern Bahia, leaving an indigenous woman killed and an indigenous chief severely injured. This attack happened with the collaboration and connivance of the military police, that is, the State.[15] Zero Invasion was accused of the formation of an armed militia and police officers have also been investigated for collaboration with the group.[16]

The law includes both normative and discursive practices that link needs and organise causalities and expectations through fixed utterances (Sutter 2009). It works like this: whenever we have the event *x*, then we should have the consequence *y.* That is the way the normative law captures life through representation and analogy in its codes and its determinative, linear, and causal way of reasoning (Silva 2022). This is also the way the law creates agreements that mediate conflict, by stabilising expectations and reducing the complexities of the future (Luhmann 2008). However, as the work of Silva shows, these expectations are not met when the law deals with black and indigenous bodies (Silva 2007; 2009). More than being negligent with the violation of racialised bodies, legal agents and institutions are constantly threatening to criminalise, prosecute, persecute, or even violently attack with their police force the social movements, and racialised bodies of marginalised communities that struggle for their territories (Rasch 2017; Doran 2017; Selmini & Di Ronco 2023).

During my research, I constantly dealt with this conflictive paradox regarding the possibilities and limits of legal institutions. My conclusion is that a strategic relationship with them is a practical necessity, but it should occur in conjunction with the struggles of recovering indigenous territories and recreating ways of inhabiting the land. In the Canadian context, Coulthard dealt with the same dilemma and his work is of great help here. Given the fact that for the foreseeable future indigenous rights will be interpreted and judged by non-indigenous judges and policymakers, he speaks of the need for 'word warriors' capable of engaging with legal and political discourse and interjecting indigenous perspectives into the conceptual spaces where their rights are framed (Coulthard 2014, p. 45). In Brazil, indigenous lawyers such as Eloy Terena, Ivo Macuxi, and Samara Pataxó, amongst others, have played an important role in the defence of indigenous rights. However, in a country where agribusiness is the main economic activity, indigenous lands become an obstacle to capitalist expansion. As the State is complicit with these forms of production — see for example the massive presence of the so-called 'ruralist bench' (Canofre 2017) — the frameworks of the institutional law and the State, as they currently exist, will not be enough to protect indigenous futures.

[14] More about the Free Land Camp here: https://amazonwatch.org/news/2022/0419-annual-indigenous-free-land-camp-occupies-brasilia.

[15] This was widely reported in Brazilian newspapers. A report written by journalists, activists and indigenous leaders was published here: https://news.mongabay.com/2024/02/attack-on-pataxo-hahahai-indigenous-leaders-must-be-investigated-commentary/.

[16] This was reported by Al Jazeera internationally: https://www.aljazeera.com/news/2024/2/29/a-legend-for-our-people-inside-an-indigenous-activists-death-in-brazil.

The possession of land is at the core of these conflicts, as it is a material basis for political power. The legal recognition of indigenous autonomous territories is of great importance here. Legal abstractions produce concrete effects on bodies and they are a part of political conflicts that must be dealt with. The ambiguity remains: this is not the whole — but it is part of a broader struggle, and it matters. Creating tension and dispute in the legal dimension, these same marginalised groups can also earn important victories that increase their possibilities of existence and resistance. The law does not redeem, but it legitimates, conquers and pretensions through rights. These political struggles extend beyond the law, but they must also pass through it. Nevertheless, they cannot have it as a final horizon once material changes in living conditions are not fulfilled by normative abstractions, which do not work when separated from other relations of force and constraints that shape society. As Coulthard argues,

> the problem with the legal and political discourse of the state is not only that they enjoy hegemonic status vis-á-vis Indigenous discourses, but that they are also backed by and hopelessly entwined with the economic, political, and military might of the state itself (Coulthard 2014, p. 47).

The distribution of land and reestablishment of indigenous territories can change the balance of these other relations of force and opens the way for other *lawscapes* (Philippopoulos-Mihalopoulos 2015) — see how the law and the space are intersected in the struggle for land — not subjugated to capitalist and colonial forces.

Thinking through the practices of occupation of lands and factories in Latin America, Brabazon observes that despite social movements being aware of the material constraints to furthering more radical goals, it did not prevent their critical analysis of the limitations of law (Brabazon 2017). But this paradoxical situation led them to develop tactical uses of the law that could create circumstances in which the creation of another legal, political, and economic order would be possible (Ibid). Thus, Brabazon differentiates the use of *law for politics* — when the law is used as a tool to achieve political goals, for example, a favourable court's decision — and the use of *law as politics*, when the legal practice itself is recognised as political and becomes a way of questioning the capitalist order (Ibid). Taking the law as inherently political in its form, these social movements sought to expose the hypocrisy of the liberal law, such as the presumed equity and impartiality of the law, which in practice did not work since legal institutions tended to favour landowners and criminalise activists (Ibid).

The normative law, as a supposedly formal, amoral, and technical language used to formalise political decisions and program institutional practices, is not neutral politically. This would presuppose that formality is a neutral aspect that can be used with different purposes when instead this already establishes a way of positioning oneself in reality and a way of dealing with other beings in the world. The formalism of normative law is already based on a certain conception of the rational and human subject positioned before the non-human world as objective, inert, and passive of appropriation. This alone brings about particular consequences — for instance, consider the relationships between anthropocentrism and ecological disaster or between ethnocentrism and racial violence. In his critique of the colonial politics of recog-

nition of indigenous rights into the framework of the settler-state, Coulthard demonstrates how the form of modern law already contains an asymmetrical relation to indigenous worlds (Coulthard 2014). But is the law completely reducible to its institutional arrangements? Indigenous forms of coexistence with the land and its non-human forms of life open a path to investigate new ways of conceiving the law.

The law has to do with practices of collective coexistence, achieved through bodies composing together in the same space, either by agreements or conflicts, expressed discursively or not. The law is also produced within the agonistic compositions of embodied forces in friction, reshaping the forms in which they coexist spatially, co-producing their own space according to their movements (Philippopoulos-Mihalopoulos 2015). Hence, I reject 'the Law', capitalised and in inverted commas. With this rejection, I want to signal that this is not something essentially given and unitary, but a terrain of different practices producing the spatial assemblages of bodies, including non-human bodies, that compose our different ecologies. With this claim, I will bring the experiences of the Web of the People with agroecology and the *Tupinambá* people in retaking their ancestral lands to the foreground. I aim to show how they give materiality to their rights through their actions. In doing so, they are spatially producing law beyond the horizons of the State and legally constituting their territories by agonistically dealing with State institutions through the grammar of rights. Their relation to the law is strategic, operating within legal structures but exceeding their limitations.

For Land and Territory

In the southern region of my state in Brazil, the state of Bahia, new landless movements have been learning from indigenous traditions a new way of understanding land and territories. In the book *Por Terra e Território* (2021), written by two activists of the collective *Teia dos Povos* (The Web of the Peoples), Joelson Ferreira and Erahsto Felício, it is demonstrated that a territory is not merely a demarcated area, but a place full of symbols of belonging based on the abundance of life; what they call 'beyond the fences' (my translation). For them, it is not enough to claim land through the distribution of individual property rights, which later will become machines to destroy lives in agribusiness' hands. What they reclaim as territory are places full of life, with community, where rivers, forests, animals, and water sources can be respected and maintained with care. For them, a territory cannot be divided into isolated pieces by fences. As they say,

> If we keep fighting from the fences, they will keep separating us, dividing us; they are what allows someone to degrade the river in one corner and the other people who don't to be impacted by the destruction of that same river in another place (Ferreira & Felício 2021, p. 44).

It is important to mention here the inspiring experience of the *Terra Vista* settlement instituted by the Web of the Peoples after a long struggle for land in the southern region of the state of Bahia in Brazil (Lima 2017). This settlement celebrated 32 years

of existence in 2024. During this time, they recovered a large area of deforested land through the practice of agroforestry and the cultivation of cocoa with agroecological methods. There are dozens of families living there and the settlement includes a local school of sustainability and a chocolate factory managed by the local residents. The settlement is a hub connecting activists from different regions of Brazil who go there to learn about agroecology and the Web of the Peoples consistently collaborates with indigenous people.

Therefore, inspired by indigenous perspectives on land, they understand a territory as a space of realisation of life in fullness. They are in close collaboration with the Pataxó and Pataxó Hãhãhãe peoples, whose territories are also located in southern Bahia, and the Maxakali people, who live in the northern region of the state of Minas Gerais, bordering the state of Bahia. This indigenous knowledge is also registered in books published by the Web of the People's own publishing house, such as *A Escola da Reconquista* (The School of Reconquest) by Mestre Muniz (2022) and *Saberes dos Matos Pataxós* (Knowledges of Pataxó Jungles) by Santana (2022). Learning from this ancestral knowledge, the Web of the Peoples understands the territory can give materially that which the law promises with its abstract rights but never realises: the material conditions of living well.

The experiences of struggles for land discussed here are not magical recipes or models, but examples that can inspire practices elsewhere. They indeed struggle and resist many difficulties to keep living in their lands, but in their lands, they cultivate a way of living that does not lead to the collapse of the planet and the blood of so many people. These land movements — and I like here the idea of lands moving together with their peoples in a cosmic dance — have arrived just ahead of time before the predictable catastrophes that we face with climate change.[17]

One of the main problems faced by cocoa producers in southern Bahia is how the imposition of economic conditions by global cocoa markets makes it much more difficult for people to cultivate their lands and collaborate with their ecological potential in a way oriented towards their own liberation and benefit, increasing the biodiversity of the local ecology, cultivating other species, and allowing lands to flourish again. Here, I am thinking mainly of cocoa growers not linked to social movements or indigenous communities, as is the case in my own village. Market demand for low prices and the dominance of that market by international companies — such as Barry Callebout, Cargill, Mondelez International and Olam International — restricts the autonomy of people to cultivate their lands as they wish.

An example of the consequences of this compulsion to produce more, sell more, and profit more, is the use of strategies to intensify cocoa production. To increase the productivity of cocoa crops, some farmers use the so-called full-sun cocoa, a species of cocoa more resistant to the sun that is not dependent on the shadow of taller trees as in the *cabruca* system. Thus, it makes it possible to utilise more space and plant a higher number of cocoa trees. Consequently, this reduces the presence of native trees and biodiversity. However, studies show that full-sun cocoa has proved unsustainable over time and led to the exhaustion of the lands while the *cabruca* system is more

[17] The sixth report of the Intergovernmental Panel on Climate Change (IPCC) foresees serious consequences as global warming keeps rising (IPCC, 2022): https://www.ipcc.ch/report/ar6/wg2/.

favourable to the natural regeneration of the soil (Piasentin et al. 2014). The *cabruca* system also contributes to the resilience of lands regarding the impact of climate change (Heming et al. 2022).

The experience of the Web of the Peoples works against this global order and resists this imposition of capitalist rationality. It can be more difficult to cultivate cocoa with agroecology and move against the currents of the capitalist market, but even harder would be living in a land exhausted by capitalist forms of production. Hence, they avoid farming techniques that solely focus on increasing productivity — the purpose of their work is to make possible the conditions for an autonomous collective existence on the land in collaboration with the forests. Cocoa is cultivated with attention to its relationships with other species of trees, insects, and animals. The experience of agroecological transition in the Terra Vista settlement by allying the cultivation of cocoa with the recovery of native forests has proven very successful in recovering a damaged land and producing a collective territory abundant with life. They have learned to compost their collective life with cocoa, which connects their lives to other indigenous communities living in southern Bahia and to the ancestral times of this land; and it is also cocoa that combines them with the native Atlantic rainforest and its different temporality that cannot attend to the rushed pace of the capitalist global trade and its eagerness for productivity.

Composting Rights

Cocoa cultivation is also a practice of *Tupinambá* people, an indigenous people living in several villages around the region of the city of Olivença in southern Bahia. Cacique Babau, an important *Tupinambá* leader, wrote about how their methods of planting cocoa differs from the practices of cocoa farmers in that region: 'To produce, the farmers have to buy what is made by the industry. Fertilize soil and combat plagues. Thus, they damage all of us' (Babau 2019; own translation). He explains how the use of pesticides by farmers kills the bees that pollinate and increase the scale of cocoa production. He says that *Tupinambás* let bees live and work in partnership with them for they do the work that people cannot do: fecundating flowers, producing delicious honey, and collaborating with cocoa trees. But, thereafter, loggers came and took off all hardwoods, destroying *Tupinambá*'s traditional agriculture and food chain. He says:

> They killed and destroyed our traditional agriculture. With their arrogance, they broke our food chain, which we had in perfect condition until the end of the 1980s. We asked: *"how are we going to live without the close and harmonious partnership with the animals?"* When they started cutting down *jussara* for industry, it was degrading for *Tupinambá* people. They hit hard at our food source, as the *jussara* was the basis of our food and that of the birds. The *mutum*, the *jacupemba* and other birds of the forest have *jussara* as their food basis, followed by the *bicuíba*, the *jindiba*, the *jatobá*… Without the *jussara*, the birds leave for another region and leave our house with less food (Babau 2019; own translation).

Tupinambá people face a historical conflict with local cocoa farmers, which is a common tragedy for all indigenous peoples that have been living under threat in Brazil. *Tupinambás* have been seeking justice through the practice of what they called *'retomada de terras'* (retaking of lands),[18] which consists in reoccupying lands that once belonged to traditional populations and were invaded by farmers or other explorers. Within this process, there is also a recovery of another space, another ecology, another relationship to land. They face in their lands the environmental destruction and the pressure of capitalist speculation that intends to explore their lands for commercial purposes. This results in drastic consequences for those people who depend on the forests and rivers to live. Babau explains how the felling of large trees affects all local ecology: the sun directly reaches the soil, which does not bear it and dries, causing the death of trees that lived under the shadow of larger trees; the river's level decreases — importantly, trees retain water in their roots and prevent soil erosion — and the rain cycle becomes unregulated, disordering indigenous methods of planting (Babau 2019). But this has changed since indigenous people began to organise themselves to reoccupy lands that were once occupied by their ancestors, places where rituals used to be realised, places that hold memories and affective bonds for those people (Alarcon 2019).

In 2004, *Tupinambá* people put into action the first *retaking* of land, which led to many others in the following years. Their mobilisation was heavily repressed by the police with many episodes of violence. Afterwards, some indigenous people suffered persecution and intimidation. This repression also involved the police colluding with farmers, the media, and courts to criminalise them. Anthropologist and journalist Daniela Fernandes Alarcon documented it very well in the short film titled *O Retorno da Terra* (The Return of the Land 2015)[19] and her book of the same title published in 2019. There is also a long report written by Glicéria Tupinambá, the sister of Cacique Babau, who also played an important role in this mobilisation and was cruelly arrested by the police with a still breastfeeding baby (Silva 2021). It is not the focus of this work to describe these episodes in detail, but considering my objectives, it is important to mention here that they also mobilised institutionally and legally to protect themselves and reclaim their rights, with the help of indigenous lawyers, as the report of Glicéria Tupinambá shows.

Babau recounts how after this reclamation of territory began, the *Tupinambá* managed to solve the problem of hunger, the forests were recovered over time, rivers were recomposed, and the economic situation of the community also improved (Babau 2019). Alarcon, who did ethnographic work with *Tupinambá* people for many years, describes in her book how lands retaken by them were found in a degraded state and how the reoccupation of these lands is also a practice of healing, always tuned to a spiritual practice (Alarcon 2019). The return to these ancestral lands is a practice of

[18] I prefer to translate this word as retake, which means to take back something that once one has owned; instead of reappropriation, in which appropriation means to take control of something that belongs to someone else. The case discussed here concerns the history of a people who lived in these lands for thousands of years and suffered a long process of extermination. They bravely resist, staying where their ancestors have lived for so long.

[19] This film is available on-line on the link: https://vimeo.com/127657520.

care in which they seek to retrieve the vitality of the territory, recomposing the cosmological web between trees, rivers, birds, spirits, and people.

The language of rights frequently appears in the discourses of indigenous leaders and activists in Brazil. They appropriate this knowledge, negotiate strategically with institutions, and resort to the grammar of rights when necessary, but on the other hand, they do not expect to have all of their needs fulfilled by the State. Their perspectives are always focused on the defence of forests and territories that can sustain their existence. They affirm their rights whilst at the same time recognising that their existence is only possible in fullness when the rights of other living beings are also respected. The brilliant text of Cacique Babau mentioned here provides strategies for reorganising ways of living faced with the need to compose together with other animals living in the territory. He says:

> How can we think that we are the only ones with the right to land? And the right of birds to have their trees to perch, sing and nest? And the right of the sloth to have its tree to live in? And the right of the armadillo to have a land to dig and live with dignity? Why do only human beings think they can live with dignity on earth? We *Tupinambá* do not think so. We have our right and nature has her right. We don't touch her part (Babau 2019; own translation).

Here, he does not speak of rights formalised in legal norms. Rather, he refers to a relationship with the environment that is not based on the rational domain but on an attentive perception and a flexible posture to move according to the movement of non-human bodies. It is to place oneself in an ecological web in the knowledge that this web cannot be mastered without dismantling it. And it is via this web in which we are viscously entangled that life is sustained.

Weaving Justice *in the Middle* of the Jungle

If Carl Schmitt is correct when he says in *The Nomos of the Earth* (2006) that the original movement that makes law arise is the taking of land, producing an ordering of space and defining borders that establish relations of friendship or enmity with its exteriority, what indeed happens when lands are retaken and borders are reshaped? Or even, what happens if those lands are alive, populated by more than human agents, entangled in a cosmological complex, as indigenous peoples conceive it?[20] How to think of law without a pre-established image of a transcendent reason legislating and deciding upon the real, working through its abstract reasoning based on norms and codes indifferent to the necessities that condition marginalised bodies?[21] Certainly,

[20] Indigenous cosmopolitics is always populated by spirits. Nicole Soares Pinto called it an 'ecology with spirits inside' (Pinto 2021). *Tupinambá* people call the forest spirits as *'*the enchanted' and they are the true owners of lands (Alarcon 2019); *Yanomami* people, who live in the northwest of the Amazon rainforest, call these spirits as *'xapiri pe'* (Kopenawa & Albert 2013). Other indigenous people will have different names for spirits that inhabit the forests and coexist with them.

[21] I am taking as reference here the discussion made by Deleuze in the third chapter of *Difference and Repetition* (1994), where he conceptualises the Kantian reason as the modern image of thought and move

this is a question that modern legal theory is not able to answer without a violent exclusion of many beings from relations that were taken as exclusive to humans, such as political and legal relationships.

The concept of spatial justice developed by Andreas Philippopoulos-Mihalopoulos (2015), allows us to move beyond this question, observing how from these struggles for lands emerges a different way of ordering space, taking into consideration the non-human bodies that are part of this spatial assemblage. Instead of a spatial production centred on human action modifying the environment, in the experiences of indigenous communities and landless movements recounted here, we can see a reorientation of human bodies in space that does not rely upon human mastery. Philippopoulos-Mihalopoulos presents a pertinent perspective of the law as produced through the perpetual practice of solving problems between bodies occupying a given space. He describes spatial justice as follows:

> So, rather than synthesis, spatial justice is an emergence (which means, it lies beyond prescription, controlled mechanics and systematic articulation of the result). Rather than originating in a dualism, spatial justice emerges from within a multiplicity (which means, it is not an oscillation between two opposing poles, but an often arbitrary picking of various positions that form a surface on which one moves). Rather than an outcome in the sense of causal link between legal and corporeal movements, spatial justice resists causality. Further, it also resists attribution, namely post-facto causal linking that takes place on a virtual plane, itself potentially co-opted by its own striation. Finally, spatial justice emerges properly speaking *in the middle* (Philippopoulos-Mihalopoulos 2015, p. 189).

In the middle of cocoa crops, birdsongs, enchanted spirits, rivers, bigger trees, smaller trees, police violence, normative instruments, legislation, and constitutionalised rights, these struggles for land and territory produce justice not only for the humans living in those lands and territories but also for non-human beings. Justice is not produced through a rational agreement of human subjects deciding on a given subject. Instead, it emerges according to how the different beings inhabiting that space compose together with each other in their environments; how they are part of the cosmological entanglement that viscously gathers different beings in a multiplicity that is not closed, but mutant.

Sandroni demonstrates in her PhD thesis how the territories where *Tupinambá* people live are not fixed but are constantly reshaped according to how people move between localities, change agriculture, or are affected by the dynamics of struggles for land (Sandroni 2018). The retaking of lands can reshape how bodies are distributed in space and constitute new localities. When the State reinforces repossession orders, it also changes the landscapes and reconfigures territorial limits. Besides this, each kind of crop and agricultural practice shapes the landscape in different rhythms and cycles in non-human times. The local conflicts and relationships between indigenous and non-indigenous people are also crossed by external agents, such as in the case of legal disputes in which the State intervenes. Justice is not fully granted by the

away from that to elaborate an immanent practice of thought.

retaking of lands, as indigenous people can still be vulnerable to attacks from farmers and their hired gunmen.[22] Justice is produced here in a constant struggle among those human and non-human bodies composing a territory. How then, do we enable those bodies that have suffered a long process of genocide and ecocide to affirm their existence in fullness? Rights are part of this struggle, but these groups realise their conditions of existence in fullness neither fully through them, nor without them. This is achieved in the middle of dynamic relations of force, conflicts, negotiations, collaborations, and exchanges in different scales and times, among local people, in relation to the State, disputing in the courts, retaking lands, and so on. This struggle occurs inside and outside the law, both including and exceeding rights. They can never rely solely upon the law in its institutional dimension, because the law is not the central source of justice here, but a part amongst other parts.

In her ethnographic work with the *Munduruku* people and their experiences of self-demarcation of their lands in the state of Pará in the north of Brazil, Luísa Molina provides a pertinent account of this relationship between indigenous struggles for land and the law (Molina 2017). She observes how normative production is oriented towards itself, actualising its norms and improving its instruments as though it has an end in itself. She descrbes how the law itself determines what enters into its code and language. Molina exemplifies this by describing how the State determines what should be considered indigenous land and the implications of this in its own terms, by its own internal logic, and imposing the legal consequences that follow. This then is how the State tries to internalise the multiplicity outside its codes: by codifying them and fitting them into the limits of its norms. Following Deleuze and Guattari, she compares this to a chess game where each component has its possible movements determined beforehand in a striated space. The struggle for indigenous rights works in the same manner. But indigenous struggles leak beyond the limited possibilities conceived by the State. Thus, Molina understands indigenous people's adoption of legal codes and normative apparatuses not as a subjection of them to the State, but as a strategy that allows them to move inside and outside the 'board', using the elements of the State's game against itself and thereby destabilising it. In this sense, the self-demarcation of lands by *Munduruku* people produces a two-way dissonance, it puts into contrast distinct perspectives on lands and the adoption of normative apparatuses that turn lands into legal territories.

Regarding this contrast, Sandroni describes in her thesis a meeting between the *Tupinambá* people and State agents to discuss the demarcation of indigenous land. The State takes a geometric perspective on land as an inert object that can be divided into pieces, whereas for indigenous people land composes an entangled and interdependent territory that cannot be divided without breaking the ecological relationships that sustain its parts. She quotes a curious intervention from a *Tupinambá* person who invoked an animal perspective: 'If they say that the border of the reserve is right there, then tell them to tell the armadillo that it is not to go outside the reserve' (Sandroni 2018). That is to say, other living beings do not recognise the arbitrary cuts that humans make to a web of relationships that exist in a differential continuum. When

[22] See, for example, the report of violence against indigenous communities produced by the Indigenist Missionary Council – *Conselho Indigenista Missionário* – CIMI (2022).

we break this cosmological web that has always entangled our existences with other living beings, we also cut the flows that nourish the basis of our lives. Thus, even where the law recognises the rights of indigenous people to their lands, it cannot fulfil this circuit of flows for it is insufficient to demarcate an area of forest when the areas around it were destroyed. This shows the global dimension of indigenous struggles for land and how they do not fit completely into the modern grammar of rights but go beyond it to bring attention to a way of inhabiting the land in consonance with the cosmological composition of life. This points towards the cosmopolitical dimension of these struggles and how the situated movement of these bodies vibrates with the cosmological strings of the planet, moved by it and moving it in return, the local and the planetary resonating through each other.

In the Anthropocene, the planet enters this scene in its open totality and it challenges us to think of our local situations as always in connection with a planetary conjuncture. Paradoxically, if on the one hand, the Anthropocene puts into question how human activity has consequences on a geological scale, on the other hand, it also displaces the centrality of the human to show how the planetary condition is a fruit of the co-emergence of its multiple parts (Chakrabarty 2021). The human does not have the final word on the production of the world, rather, we are put alongside all other species with which we need to compose together to make possible better ways of living and dying on this planet.

Conclusion – In Defence of *Humus* Rights

In the experiences recounted above, I described how these collective formations co-emerging with their territories work without passing through the determinative and normative forms of modern law. Their natures are not exhaustively described in scientific causal chains, as in modernist scientific descriptions, but are experienced as a corporeal involvement with the territory. This does not mean that scientific tools should be avoided or ignored, but that these natures are firstly lived corporeally and the compositions between people and their territories unfold along the slow time of coexistence with the land. They do not follow the fast pace of progress, the efficient mastering of environments, and other obsessions of the temporal horizon of modernisation. In these struggles for justice, the ancestral knowledge of indigenous people opens ways of coexisting with the land and its multispecies population, nature is not controlled. Instead, people learn to come into confluence with its temporality.

However, these collective formations also happen within the structures of power imposed by the colonial nation-State, global capitalism, and the world produced by modernisation. People taking part in these formations must therefore deal with legal institutions and normative demands as well. But through these experiences of struggle for land in southern Bahia, I sought to show how these formations are not fully contained by these structures, although they are conditioned by them. If they manage to produce justice and defend their rights in these struggles, this is not realised by acting only through the legal institutions and the State, which is very negligent in protecting them. Their territories are formed through autonomous struggles that confront the structures of power of the State and the capitalist forms of production.

Legal institutions are also part of the viscous meshwork of relationships, conflicts, collaborations and negotiations that make possible the emergence of these territories.

The post-human approach to the law developed by Philippopoulos-Mihalopoulos helped me on this path. The concept of *lawscape* allowed me to think about these more-than-human formations emerging from the way bodies move, the arrangements they compose among themselves, and how the way they distribute themselves within the space shapes that space in a different way. Each new ordering produced by these dynamics conditions how subsequent movements can be possible. The threshold through which a geographical constraint or a social norm can be turned into a legal norm relies mainly on whether a legal system internalises it as a norm or not. 'Everything is potentially law if the legal system understands it as law' (Philippopoulos-Mihalopoulos 2015, p. 67).

Brazilian geographer Milton Santos explained space as systems of objects and systems of actions that interact with one another (Santos 2021). The former conditions the possible actions that can take place, but as actions modify objects and create new ones, the dice for other possible actions are rethrown. Thus, space is transformed, and it reshapes how bodies are assembled in that space and what they can do there. It is important to remember here that humans are not the only actors modifying the space and other species are all the time shaping the landscapes in different rhythms (Tsing 2015). Tsing describes how 'landscapes are simultaneously natural and social, and they shift and turn in the interplay of human and nonhuman practices' (Tsing 2005, p. 29). The *lawscape*, in turn, is also composed by the assemblages between human and non-human bodies in space.

Thus, if law with its pretension of being a universal command beyond subjective and partial positions, has instead some root in the bodies composing the space, conforming them to its forms, would it not also be true that when these bodies move, the law is also transformed? How can we understand this passage from the bodies' micro-scale to the macro-scales of the law? Indeed, the concepts of spatial justice and *lawscape* bring into question the molecularity of the law and its different processes of actualisation into determined legal assemblages. They bring into perspective a passage from the body to the socius, or a point of communication in which individual bodies change the collective and are also shaped by it.[23]

How then ought we grasp this passage between a molecular scale of bodies constrained by norms classified in different terms (religious, moral, physical etc.) and a global scale that presents society with a specific image (democratic, totalitarian, patriarchal, etc.)? In the former, bodies are strained by norms that can be discursive, based on rational causality very rigidly and explicitly expressed or dissimulated and diffused in the space;[24] yet the bodies' behaviours and power relations are usually furtively producing arrangements regularly understood as disorder in contrast to the ideal order required by the law. In the latter, the global scale emerges as a regime of

[23] A perspective about this passage is developed by Deleuze and Guattari in the text *Micropolitics and Segmentarity*, one plateau in their book *A Thousand Plateaus* (1987). In this text, they develop a conception of the state as a resonance machine that is fed by molecular changes in the micro-order of bodies and subjectivities. The state makes to resonate these transformations in a macro-scale.

[24] As mentioned, Judith Butler develops a discussion about this concerning the sexual norms imposed on bodies and how it conforms bodies to sexual identities and social positions (Butler 2011).

visibility that provides a specific perception of how social matter is organised and a set of utterances that refers to what is seen in order to make sense of this. This is, for instance, the way Foucault (1995) explains how the panopticon space and architecture of prisons produces a regime of visibility of bodies, regulating what is seen, and how the criminal law proliferates a set of utterances that explain that context.

This discussion takes on a more literal sense in the context of the Anthropocene, which is one of these global-scale perspectives which situates the social in its planetary dimension but is also linked to the spatial production of humanity, modifying the landscape without due attention to non-human times and processes. Santos says that 'today space is a system of increasingly artificial objects, populated by systems of actions that also have an artificial character and that increasingly serve purposes that are external to a given place and its inhabitants' (Santos 2021, p. 35). For Santos, technical development and the general presence of techniques became the main geographical agents in spatial production. Extending this here, I consider that these techniques are the fruit of the set of human activities on the Earth's surface that have reached such a degree of complexity as to be able to inaugurate the new geological era named as Anthropocene, which is the apex of modernisation. Whether we consider this the product of colonial invasions that transformed global south landscapes into plantations (a way of ordering bodies spatially accordingly to racial hierarchies), or the industrial revolution that accelerated the concentration of people in segregated cities (another kind of spatial order), we can consider the Anthropocene as a planetary *lawscape* that will determine drastically the human possibilities on the Earth, with the potential to cancel whatever possible future is available.

In this collection of experiences from indigenous people and social movements struggling for land, we find a different horizon for forms of inhabiting the planet in the Anthropocene. A horizon no longer oriented towards modernisation, but instead, ecologisation. It demands a break with the patterns of consumption and ways of living that we have in the cities, deeply complicit as they are with forms of capitalist production and extraction that are among the main anthropogenic causes of climatic changes and geological transformations (Clark & Szerszynski 2021), as well as being complicit with the ongoing processes of capitalist accumulation that threaten indigenous lands and carry on exploiting, killing, and incarcerating black people (Yusoff 2018; Silva 2022). Only by subverting this global capitalist order is it possible to produce justice for black and indigenous bodies and liberate nature from the servitude of human extractivism. In these struggles for land, justice is only possible by making visible the viscous law that sticks our lives to the planet and to other forms of life that make this planet a liveable place. To defend human rights then, it is also necessary to liberate nature from capitalist control and recreate the territories where we can recompose our lives collectively. There is no human life possible without a land to live on, and capitalist modernisation breaks with our attachments to lands, which are where we connect to the planet as well.

Therefore, we can conclude by saying that the guarantee of human rights to a dignified existence is dependent on the guarantee of full existence to all other living beings to which our lives are viscously entangled and without which we cannot survive on the planet. This viscous entanglement turns human rights into *humus* rights. As Donna Haraway says, 'we are humus, not Homo, not Anthropos; we are compost,

not posthuman' (2016). This term portrays the interdependent existence of humans with other creatures, composing and decomposing each other, *becoming-with* in different geographical scales and layers of time. Humans as *humus* are deeply connected to land and the Anthropocene serves to remind us of this. It has been challenging the epistemological construct inherited from modernity that is based on the separation of natural from social sciences. It is, therefore, a way of knowledge-making that tries to separate and purify epistemologically parts that have always been interfering with one another (Latour 1993).

Clark and Szerszynski argue that the Anthropocene requires us to think of society *through* the Earth, taking it as a self-organising system far from equilibrium. Besides the need to socialise the Anthropocene and show how its consequences are unevenly distributed across social groups, they also propose to geologise the social. They say that 'the human acquisition of geological agency, we contend, needs to be viewed not only as a manifestation of social power, but as an expression of those powers and properties of the Earth with which we have joined forces' (Clark & Szerszynski 2021, p. 11). The experiences of indigenous peoples and the Web of the Peoples discussed above point to another way of becoming-with the earth in which these earthly powers are not dominated and exploited to produce capitalist wealth quantitatively. Instead, they produce a wealth qualitatively different. This is a wealth that produces an autonomous, healthy, sustainable, and above all collective existence in composition with other species of living beings.

In these experiences, human bodies shape landscapes in collaboration with the maintenance of the conditions of living for other species. Taking care of how other species inhabit the space, being attentive to the ecological webs they compose, and positioning flexibly in conjunction with how other animals, insects, and plants are arranged in the space, they give way to the emergence of another *lawscape* where the material conditions of living and the ability to exert political agency — that which rights are supposed to protect — are composted on the lands. This *lawscape* emerges from the viscous assemblages sticking these different bodies together and the practice of weaving as many forms of life as possible in this meshwork is what makes it flourish.

When indigenous peoples reclaim rights, they are not merely demanding a promise to be fulfilled by the State. They are requiring the recognition of a territory produced by a multispecies collaboration. When the State does the legal demarcation of indigenous lands or recognises the legitimacy of a settlement, this is a condition for the emergence of these miscellaneous compositions of more-than-human collectives. The realisation of justice is neither in the hands of the State nor is it determined exclusively by anyone else. Justice emerges through these viscous compositions formed when bodies assemble in a way that makes possible a heterogeneous coexistence without causing the subjugation of any part. This also means that the non-human agencies composing these viscous aggregates contribute to justice.

Indigenous practices of retaking ancestral lands and landless workers' practices of recovery of deforested lands through agroforestry arose after decades of social struggles and demanding rights without any effective answer from the State. 'One has to step on the land to have the right', a *Tupinambá* woman said after a mobilisation to retake land (Alarcon 2019, p. 108). Alarcon explains how this understanding is pres-

ent among activists and it indicates a need to push the gears of the rights recognition system. Without this pressure, their rights would not be granted. If on the one hand, the demand for rights couples life to the State's sovereignty and its power over life (Agamben 1998), on the other, it is only one part of a struggle that is not concerned with structures of centralised power. These struggles are not seeking to institute a unified territory, but they collaborate amongst them to spread autonomy. Thus, they reactualise what once motivated a French anthropologist to say that these are not societies without states, but societies against the State, which resist the State not only when it comes from outside, but when it virtually haunts them to divide the social body into hierarchised parts (Clastres 1989).

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Declarations

Ethics Approval and Consent to Participate The material discussed in this paper is mainly theoretical and bibliographical and the empirical approach is based on the references cited in the paper when the empirical contexts are mentioned. This work did not use fieldwork intervention and ethics approval by an ethics committee is not needed.

Consent for Publication The author consents to publish this paper.

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