From Colonial Paradise to the Subversion of Paradise: Decolonizing National Parks in Brazil

By *Clara Adão*[*] and *Raquel Coelho de Freitas*[**]

Abstract: This article addresses land legal conflicts in Brazil arising from the overlapping of protected areas with traditionally occupied territories. This legal practice is inspired by the American and European environmental protection models, which reproduce the idea of a colonial paradise through the creation of Parks with the objective of protecting environmental beauty, in violation of the rights and autonomy of traditional communities and indigenous peoples. To understand this legal conflict, the article introduces a critical and decolonial reflection on the foreign concept of colonial paradise as a legally protected area without human beings, seeking its correspondence in Brazilian environmental law, in order to expose the territorial exclusion that it promotes in the National System of Conservation Units. Next, the article focuses on the interpretation of the Resettlement Institute to argue that the conservation of environmental beauty and socio-biodiversity can be more efficient with the inclusion of indigenous traditional communities and indigenous peoples, and not their exclusion. The archaeological-paradigmatic research was carried out through bibliographic and documentary data collected at the Chico Mendes Institute for Biodiversity Conservation and the Ministry of the Environment. The research points out the need to subvert the ideal of colonial paradise whenever the overlapping of protected areas occurs in violation of the rights and autonomy of indigenous peoples and traditional communities.

Keywords: Colonial Paradise; National Parks; Protected Areas; National System of Conservation Units

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A. Introduction

Colonization in Brazil was conducted by a process of seduction to maintain colonial power in the conquest of new territories, establishing Europe as a model of development, knowledge, and aesthetics with strong environmental interference through a concept of

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natural beauty to be followed.[1] Thus, the colonizers became a mirror of civilization, social organization, and lifestyle, legitimized by an elaborate set of political institutions that also allowed for environmental exploitation.

A durable aspect of this imposition of colonial models can be observed in today's biodiversity conservation policy. It was the result of European countries[2] imposing a North American model of conservation in Brazil through international environmental policies.[3] This model of biodiversity conservation, rooted in the concept of wilderness and untouched nature, emphasizes preserving large areas of land in a pristine state, free from human influence. This approach, which emerged prominently with the establishment of Yellowstone National Park in the United States, advocates for creating protected areas that prioritize ecological integrity over human activities. The idea is to maintain these areas as "wilderness" where natural processes can occur without significant human interference.

Throughout its implementation, this model began to present some incompatibilities and challenges with the legal and social reality of Brazil, such as the overlapping of specially protected areas with traditionally occupied territories. The legal protection implemented in these territories was not guaranteed, as they were constantly threatened, and at times, concrete violations of the rights and autonomy of traditional and indigenous communities challenged their very existence.[4]

This North American model of biodiversity conservation reached even European countries, but inadequacies and territorial conflicts in the region forced them to review the biodiversity conservation policy in their jurisdictions.[5] Thus, the European Union decided to adopt a new conservation paradigm, based on a moderate environmentalism, which sought to make human experiences compatible with the environment.[6] However, in the context of foreign relations, the European Union continued to impose the American model

1 *Jessé Souza*, Subcidadania Brasileira: para entender o país além do jeitinho brasileiro, Rio de Janeiro 2018.

2 According to Dieugues and Ferdinand European countries that have significantly influenced ecological movements and environmental policies in Latin America include Britain, France, Germany, Spain, the Netherlands, Norway, and Sweden. It is worth noting that specialized literature often presents a broad contrast between Europe and the Americas without specifying which European countries are being critiqued. However, the historical context of these discussions generally suggests that the criticisms are directed at the European Union or Western European countries, see for instance *Antonio Carlos Diegues*, O mito moderno da natureza intocada, São Paulo 2001; see also *Malcom Ferdinand*, Uma ecologia decolonial: pensar a partir do mundo caribenho, São Paulo 2022.

3 *Maurício Waldman*, Meio Ambiente e Antropologia, São Paulo 2006.

4 *José Heder Benatti*, A criação de Unidades de Conservação em áreas de apossamento de Populações Tradicionais: um problema agrário ou ambiental? Novos Cadernos NAEA, Belém 1998.

5 *Clara de Oliveira Adão*, Parques Nacionais à brasileira: decolonização da beleza cênica em Unidades de Conservação, Revista da Faculdade de Direito 51 (2023).

6 *Joana Otero Matias*, Análise Comparativa de Modelos de Gestão de Áreas Protegidas em Países da União Europeia, Dissertação (Mestrado), Universidade de Lisboa, Lisbon 2022.

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of environmentalism policies on Brazil and other countries in Latin America,[7] particularly when referring to the so-called colonial paradises.[8]

Consequently, European preservationist environmentalism insists on the privileged protection of colonial paradises in Latin America to the detriment of other territories of the same ecological importance and of traditional peoples and communities. The prioritization of untouched areas justified by the concept of colonial beauty generated two main orders of tensions in Brazil: first, there is a conflict in institutional politics, as past environmental policies that either threatened or encouraged environmental destruction have now shifted to the realm of international neoliberal economic policies, which impose severe and unequal environmental restrictions. Second, it has a socio-political and aesthetic nature since the populations most affected by this unequal policy are traditional communities and indigenous peoples, who directly depend on the natural resources of these spaces for their subsistence. As for aesthetics, this reflects the culture that is imposed in the way of thinking and protecting biodiversity, of exploring natural resources, in short, of transforming colonial paradises into politically selective environments, in service of the interests of the colony, and later, of capitalist economic exploitation.

In this context, it is important to understand that aesthetics and politics are intertwined. Political decisions about which environments, resources, or natural assets should receive legal protection as "restricted protected areas" often neglect traditionally occupied territories. It is an environmental policy practice justified in the dissemination of the idea of "lost paradise" that must be legally protected, particularly preventing people from living there. A paradise, after all, without human beings.[9]

Confronting this issue, which threatens communities and the environment, this study aims to critically analyze Brazil's biodiversity conservation model by focusing on legal provisions that prioritize protecting colonial paradises over traditionally occupied territories. The article begins by exploring the concept of a "colonial paradise" and its reproduction within Brazil's National System of Conservation Units. It then discusses territorial exclusion and the relocation of traditional peoples, as dictated by preservationist environmental policies aimed at protecting paradisiacal territories devoid of human presence. The analysis of the conservation of socio-biodiversity and the ethno-knowledge of indigenous peoples and traditional communities is developed in compliance with their constitutional rights, based on a decolonial approach to the construction of paradisiacal territories.

7 *Diegues* (note 2) illustrates that Latin America embraced the wilderness model quite early, in the late 19th and early 20th centuries, with the establishment of protected areas in Mexico, Argentina, and Chile even before Brazil.

8 *Diegues*, note 2.

9 *Ferdinand,* note 2.

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Methodologically, this study begins with epistemic indignation[10] to challenge the prevalent discourse of colonization regarding the materiality of paradise in Latin America.[11] This discourse persists in Brazil, shaping legal and social imaginaries based on aesthetic assumptions, a theme explored throughout this work.

The research method is archaeological-paradigmatic, drawing on Agamben's[12] insights, viewing the legal system itself as a discursive practice—both in its explicit laws and its omissions.[13] This approach focuses on the paradigmatic analysis of law and how its provisions impact traditional communities and indigenous peoples. Thus, it examines the enduring image of a colonial paradise in Brazilian Environmental Law, influencing the current National System of Conservation Units.

B. What is Colonial Paradise?

According to Sarah Aoun,[14] the concept of colonial paradise is inspired by the original paradise described in the Bible — a fertile and beautiful garden abundant with water and diverse flora, fostering communion between humans, nature, and animals. This idea, later seen as a lost paradise, motivated Spanish explorers to seek similar lands in the Americas, believing they would find this utopia. Malcom Ferdinand[15] points out that Christopher Columbus, in his reports to the Spanish crown, believed he had discovered this paradise due to the lush landscapes and the docility of the natives, mirroring the

10 According to *Freitas* and *Nóbrega* "indignation is understood as a sociopolitical feeling-thinking-acting against situations of social and cognitive injustice, resulting from the hegemonic political project of modernity, of denial of rights to subordinated social groups, expanding new theoretical and methodological possibilities for understanding these groups", see *Raquel Coelho de Freitas / Luciana Nogueira Nóbrega*, Indignação epistêmica e descolonização do conceito de minorias, Revista Direito e Práxis 14 (2023), p. 4.

11 *Raquel Coelho de Freitas*, Indignação e conhecimento: para sentir-pensar o direito das minorias, Fortaleza 2020.

12 Agamben expands Foucault's archaeological approach by introducing the notion of "paradigm". He argues that paradigms are fundamental structures that determine the ways of thinking and acting at a given time, playing a central role in the construction of power relations and the establishment of norms and categories of thought. Therefore, Agamben 's archaeological-paradigmatic method proposes an in-depth analysis of historical discourses and underlying power structures, seeking to identify the paradigms that shape society. As this is an archaeology based on paradigms, it is possible to analyse legal institutes and what they represent in a given historical period. In legal research, this method is appropriate when treating law as a set of discursive practices, whose legislative statements can be analysed as a reflection and consequence of social practices. In this research, the National System of Conservation Units is analysed, in its discourse, as a reproduction of the ideal of colonial paradise, a concept that explains the paradisiacal vision that the colonizers had of the conquered lands, see *Giorgio Agamben*, Signatura rerum: sobre o método, São Paulo/ Boitempo 2019.

13 Ibid.

14 *Sarah Aoun,* A procura do paraíso no universo do turismo, Campinas 2001.

15 *Ferdinand*, note 2.

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biblical myth of human-nature harmony. Sergio Buarque de Holanda[16] adds that Portuguese explorers shared a belief in finding Eden-like lands upon arriving in Brazil. The encounter with the Americas' picturesque landscapes reinforced the perception of paradise, shaping hierarchical colonization policies based on natural resource exploitation and subordination to European centers. This led to a colonial habitation model marked by dependency on the metropolis, environmental exploitation, and epistemicide—rejecting cohabitation with existing cultures. It consists of the "refusal of the possibility of inhabiting the Earth in the presence of another".[17] Richard Grove[18] discusses how tropical islands were often viewed as idyllic landscapes, embodying the idea of a paradise that was ripe for exploitation and transformation. The portrayal of tropical regions as paradisiacal allowed colonizers to justify their expansionist endeavors. They believed they were bringing civilization to these "untouched" lands, which they viewed as needing European intervention and development. This romanticized view provided a moral rationale for their actions, framing colonization as a benevolent mission.

Moreover, the idea of paradise fuelled the desire to exploit the natural resources of these regions. Colonizers sought to extract valuable commodities, under the belief that they were enhancing the economic potential of these "Edenic" landscapes. This exploitation often came at the expense of the local environment and indigenous populations. Additionally, the cultural narratives surrounding paradise contributed to a perception that colonization was a means of preserving and enhancing the beauty of these lands. Such narratives frequently ignored the adverse effects on indigenous peoples and ecosystems, presenting colonization as a positive force.[19]

Colonizers viewed the new territories as wild and dangerous, and for that reason justified deforestations as a means of domestication. This policy contrasted sharply with the indigenous peoples' sustainable practices, resulting in biodiversity loss and genocidal actions aimed at seizing land. While the social organization of the native peoples of the Americas was based on harmony with nature, even though they cut down trees in their agricultural practices, the colonial occupation policy made the felling of trees a priority condition for their settlements.[20]

> *"[U]nable to grasp intellectually the magnitude of their discovery, the Portuguese stumbled through half a continent, driven by greed and righteousness, unmoved*

16 *Sérgio Buarque de Holanda*, Visão do paraíso, São Paulo 2010.

17 *Ferdinand*, note 2, p. 50.

18 *Richard H. Grove,* Green Imperialism: Colonial Expansion, Tropical Island Edens and the Origins of Environmentalism, 1600–1860, Canberra 1996.

19 Ibid.

20 *Ferdinand*, note 2.

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> *by pity or even curiosity. The magnificent Atlantic Forest left them unmoved and uncomprehending."*[21]

In addition to the destruction of fauna and flora, leading to significant loss of local biodiversity, colonial enterprise was characterized by genocidal policies that exterminated entire populations with the aim of occupying territories.[22] According to the survey conducted by Brazilian Institute of Geography and Statistics (BIGS), the Brazilian indigenous population in 1500 was estimated at about three million; by around 1650, this number had drastically dropped to 700,000 indigenous people; not to mention the 650,000 indigenous people, from at least eighteen ethnicities, who were extinct.[23]

Despite the devastation of nature and genocide, the colonial paradigm of paradise persisted,[24] supported by the idea of preservation to justify the exploitation of primitive paradisiacal lands during colonization, and more recently, to implement tourism. This has resulted in a landscape that excludes indigenous and traditional inhabitants, perpetuating the vision of an uninhabited territory. These were territories not intended to foster belonging or reciprocity between the land and those who appropriated it but rather spaces devoid of human beings – an invented paradise rooted in extractivism, frontier politics, extermination, and epistemicide[25].

On the other hand, the materiality of paradise persisted in the colonial imagination, becoming the paradise of Westerners while the new territory turned into a hell for indigenous peoples through the colonization of their lands. The colonial paradise thus became a space of recognized scenic beauty that displaced its indigenous inhabitants to accommodate visitors.

The horrors and devastation wrought during colonization were not sufficient to prompt the establishment of norms to protect nature and its inhabitants. According to Engels,[26] it took the degradation affecting the European bourgeoisie during the Industrial Revolution in England before environmental issues began to be addressed legally.

Initially formulated at the end of the 19th century and the beginning of the 20th century in Europe, foreign environmental legislation did not align with the realities of newly inde-

21 *Warren Dean,* With Broadaxe and Firebrand: The Destruction of the Brazilian Atlantic Forest, Berkeley 1995, p. 10.

22 *Marcelo Grondin / Moema Viezzer*, Abya Yala: genocídio, resistência e sobrevivência dos povos originários das Américas, Rio de Janeiro 2021.

23 Appendix: Statistics from 500 years of settlement, see Brazilian Institute of Geography and Statistics (IBGE), Brazil: 500 years of settlement, Rio de Janeiro 2000.

24 *Ferdinand* (note 4) describes that in addition to the genocide of indigenous peoples and the destruction of ecosystems, a true matricide took place in the colonies, which consists of the "de-indigenation" of the landscape and the institution of an aesthetic of repetition, with monoculture and exploration. Thus, they are colonial violence of various kinds, both environmental and genocidal and altericidal. There was an erasure of other possibilities of existence.

25 Ibid.

26 *Friedrich Engels*, A situação da classe trabalhadora na Inglaterra, São Paulo 2010.

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pendent Brazil. The country was predominantly rural and agrarian, facing land conflicts due to the entrenched inequalities of large landholdings. In addition, the integration of newly freed black workers presented additional challenges, such as the lack of access to land and resources, widespread racial discrimination, limited economic opportunities, and inadequate social support systems. Freed black individuals often faced barriers to acquiring property and finding stable employment, and many were forced into precarious and exploitative labor conditions, perpetuating cycles of poverty and marginalization.[27] These Brazilian socioeconomic conditions contrasted sharply with European developmentalism, which was driven by economic exploitation and the slave regime in the Americas. These disparities meant that Brazil had much to address before adopting the environmental standards that were already in place in Europe.[28] Throughout the 19th century,[29] Brazil had only sporadic laws governing the exploitation of natural resources and their aesthetic values.[30] A more comprehensive legal framework for environmental protection emerged in the mid-20th century, influenced by post-World War II[31] developments and international pressures.[32]

Although environmental issues were part of the restoration policies in European countries, in Brazil, environmental discussions were not among the main political issues, which delayed the development of a legal framework that respected its people's idiosyncrasies and territory. Brazilian environmental regulations largely emerged due to intense pressure from European and Latin American countries, driven by the realization of the finite nature of natural resources. This pressure[33] compelled Latin American countries to adopt environmental concerns or face economic embargoes.[34]

The fact is that the reception of environmental legislation in Brazil, despite the many incompatibilities it presented with local realities, was significantly influenced both by

27 *Grondin / Viezzer,* note 22.

28 *Waldman*, note 3.

29 *Georgette N. Nazo* / *Toshio Mukai*, O direito ambiental no Brasil: evolução histórica e a relevância do direito internacional do meio ambiente, Revista Direito Administrativo 223 (2001), pp. 75–104.

30 As brought by Nazo and Mukai, in the 19th century, although there was no specific environmental legislation, through the Penal Code of 1830 there was a penalty for illegal logging; there was Law No. 601 of 1850, also called the Land Law, which required the registration of all lands; In 1862, the Tijuca forest, in Rio de Janeiro, was reforested. At the end of the 19th century, the 1891 Constitution provided for the power to legislate on mines and land (Ibid.).

31 The context for formulating the National System of Conservation Units was this post-war alarmist environmentalism, which led Brazil to establish a system of strictly protected areas, with a recruitment of environmental laws.

32 *Édis Milaré*, Direito do ambiente: a gestão ambiental em foco – doutrina, jurisprudência, glossário, São Paulo 2009.

33 *Waldman*, note 3.

34 This leads to a resurgence of environmental law, which generates conflicts with traditional peoples and communities. Although it is indeed important to protect ecosystems, the view that this must necessarily be done by mitigating human actions is a colonial agenda and harmful to the maintenance of the ways of life of indigenous and traditional peoples.

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external imposition and by the belief that the conservation policies of Europe and the United States were superior to those that could be developed locally by Latin American countries. According to Freitas[35], this tendency to replicate legal and institutional models from these regions can be understood as part of the colonization of legal knowledge.

Raquel Coelho de Freitas argues that the adoption of foreign legal and institutional frameworks in Brazil reflects a broader pattern of intellectual and cultural colonialism[36]. This process involves the importation of European and North American legal concepts and environmental policies, which are often applied without sufficient adaptation to local contexts. This imposition of external models is rooted in a belief in their inherent superiority and efficiency, disregarding the unique environmental, social, and economic conditions present in Brazil. Consequently, this practice not only marginalizes local knowledge but also reinforces a dependency on Western legal paradigms.

In the context of Malcolm Ferdinand's[37] concept of paradise, this dynamic becomes even clearer. This author critiques the creation of idealized environmental spaces, which often emerge from colonial and post-colonial contexts. These spaces are typically designed according to foreign ideals and standards, which can lead to the exclusion and marginalization of local populations. The establishment of such paradises frequently involves the prioritization of environmental conservation over the rights and needs of indigenous and local communities. In conclusion, colonial paradise is thus founded on the forced displacement of peoples from their territories, resulting in deep injustices and dispossession.

I. The Coloniality of Brazilian Environmental Law

The modern concept of environmental law, shaped by a Eurocentric perspective, is based on the idea that nature exists separately from humans and requires protection from exploitation. This view has caused significant harm to ecosystems and Indigenous communities, influencing current environmental governance and reflecting a colonial legacy.[38]

In Brazil, the evolution of environmental law was gradual and fragmented, with a utilitarian and anthropocentric approach dominating for a long time.[39] A paradigm shift occurred in the late 20th century with the enactment of Law 6,938, which established the National Environmental Policy and adopted a more holistic view of nature.[40] This was the

35 *Freitas*, note 11.

36 *Freitas / Nóbrega*, note 10, pp. 1742–1770.

37 *Ferdinand*, note 2.

38 *Diegues*, note 2.

39 *Talden Farias / Francisco Seráphico da Nóbrega Coutinho / Geórgia Karênia Melo*, Direito Ambiental, Salvador 2015.

40 *Antonio Herman Benjamin*, Constitucionalização do ambiente e ecologização da Constituição brasileira, in: José Rubens Morato Leite / José Joaquim Gomes Canotilho (eds.), Direito Constitucional ambiental brasileiro, São Paulo 2008.

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result of ecological struggles that aimed for both effective environmental protection and environmental justice.

The Brazilian Constitution of 1988 also mirrors this struggle for environmental justice by ensuring territorial rights for Indigenous and quilombola communities, recognizing their traditionally occupied lands as an existential right. However, the implementation of these guarantees often faces challenges from development projects that prioritize economic exploitation, such as mining and agriculture, which overlook the rights of these communities. Another critical issue is that the legislation often fails to align with these principles of territorial rights. This discrepancy creates conflicts between environmental protection and the preservation of traditional ways of life.[41]

The Constitution also incorporates environmental rights, creating a dedicated chapter for environmental protection that asserts the right to an ecologically balanced environment. This new paradigm led to various regulations and public policies, such as the Environmental Crimes Law and the National System of Conservation Units Law, which are crucial for strengthening environmental protection in Brazil.[42]

Nevertheless, the Environmental Crimes Law establishes penalties for environmental damage, but its enforcement frequently ignores local realities. Consequently, the environmental governance regime is not only unequal but also hierarchizes the value of environments, prioritizing those that generate greater economic return.[43]

The National System of Conservation Units Law is yet another example of this unequal distribution of environmental burdens. Even though it was created to protect ecologically significant areas, the implementation of conservation units often restricts access to and use of natural resources by communities that have traditionally inhabited these regions. As a result, local communities are frequently displaced or have their livelihoods threatened in the name of conservation, reflecting a logic that favours a modern, utilitarian view of nature.

Although the legislation has progressed and developed environmental policies, legal thinking continues to be influenced by modernity. It adopts classical European frameworks that rank the value of nature based on the resources to be preserved.[44] Therefore, Brazilian environmentalism is characterized by fluctuations and discontinuities, shaped by political, social, and economic factors that hinder the effectiveness of environmental policies.

> *"Biodiversity conservation is largely a colonial agenda. Not that preserving nature and ecosystem integrity isn't in the interest of all inhabitants—human and non-human—of this planet. But conserving biodiversity may not exactly equate to caring for or living with nature. Indigenous peoples and local communities coexist, manage, breathe, and blend with nature. Prejudice, racism, and discrimination have often*

41 *Benatti*, note 4.

42 *Farias, et al.,* note 39.

43 *Milaré*, note 32.

44 *Waldman*, note 3.

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> *displaced these communities from territories deemed worthy of conservation in numerous cases and nearly everywhere around the world."*[45]

National parks in Brazil are a pertinent example of this phenomenon. These protected areas, often modelled after conservation strategies from Europe and North America, can sometimes reflect a form of environmental colonialism.[46] While they aim to preserve biodiversity and natural landscapes, the implementation of these parks can overlook the rights and traditional knowledge of local communities. In some cases, the creation of these parks has led to the displacement of indigenous peoples and the suppression of their traditional practices. This process exemplifies the tension between global conservation ideals and local realities, illustrating how the imposition of foreign models can contribute to the construction of "colonial paradises" that prioritize external standards over local needs and contexts. The issue goes beyond the violation of territorial rights of indigenous peoples and traditional communities. In addition to these rights violations, there is no guarantee that this form of preservation, which excludes human beings, is effective.

II. The Creation of National Parks and the Legislation for the Protection of Colonial Paradises in Brazil

The creation of National Parks and the associated legislation for the protection of "colonial paradises" in Brazil represents a complex intersection of environmental conservation and socio-political dynamics. These national parks are often modelled after conservation strategies from Europe and North America, reflecting a globalized approach to preserving natural landscapes and biodiversity. However, this importation of foreign conservation models has led to significant implications for local communities and their traditional practices. The legislation designed to protect these areas sometimes prioritizes environmental ideals over the rights and needs of indigenous and local populations, leading to tensions and conflicts[47]. This phenomenon illustrates a form of environmental colonialism, where the idealization of natural spaces as "paradises" can marginalize local knowledge and exacerbate socio-environmental inequalities. Understanding this dynamic is crucial for developing more equitable and context-sensitive approaches to conservation in Brazil.

An example of Brazil's adoption of European and American environmental models dates to 1876 when Brazilian abolitionist engineer André Rebouças proposed creating National Parks, inspired by the example of Yellowstone in the USA.[48] The establishment

45 *Nurit Bensusan*, Estranhos no Paraíso, in: Antonio Francisco Perrone Oviedo / Nurit Bensusan (eds.), Como proteger quando a regra é destruir, Brasília 2022.

46 *Clara de Oliveira Adão*, Colonialidade da natureza: análise das áreas protegidas na União Europeia e a distribuição desigual dos ônus ambientais ao Brasil. Realis Revista de Estudos Anti Utilitaristas e Pós Coloniais 12 (2022).

47 *Diegues*, note 8.

48 As previously mentioned, the model of national parks was only implemented in Brazil in the early 20th century, when international pressures for environmental protection led to the creation of

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of National Parks in the United States, similarly, involved the expulsion of local peoples as a condition for implementing wildlife and environmental protection models. This proposal occurred despite controversies such as the displacement of indigenous Crow, Blackfeet, and Shoshone Bannock peoples from their territories.[49] In Brazil, this conservation model has generated various land conflicts with indigenous peoples and traditional communities, such as the Canastreiros in the Serra da Canastra National Park, the Caiçara in the Superagüí National Park, and the Apiaká people in the Juruena National Park. Thus, territorial exclusion in establishing National Parks was not an unintended consequence but a prerequisite for their environmental protection model, which inaugurated a conservation policy disconnected from human presence.

The creation of National Parks in Brazil was discussed since the late 19th century but formalized only in 1934 through the Brazilian Forest Code, Decree 23,793/1934.[50] This legal framework provided for the establishment of Parks under federal, state, or municipal jurisdiction as natural public monuments, aimed at preserving flora in areas deemed worthy of protection due to their unique circumstances.[51] The first protected area in Brazil, like in the United States, was a National Park, specifically Itatiaia National Park, established in 1937.

In 1965, a new Forest Code was enacted, expanding the categories of environmental protection due to Brazil's rapid urbanization, economic development aspirations, and the need to address international environmental concerns, which culminated in the United Nations Conference on the Human Environment in 1972.[52] The Forest Code has introduced not only Parks but also Biological Reserves, National, State, and Municipal Forests. Parks were designated as areas of integral protection where direct exploitation of natural

protected areas. However, the engineer André Rebouças considered this possibility as early as the 19th century, driven by the colonial mindset of replicating foreign knowledge, which was deemed superior to Brazil's own capacity to develop and formulate appropriate laws. Despite being aware of the controversies surrounding park creation in the United States, the renowned abolitionist believed that it would be beneficial for Brazil to showcase its biodiversity through supposedly untouched areas.

49 *Nurit Bensusan*, Conservação da biodiversidade em áreas protegidas, Rio de Janeiro 2006.

50 According to Santos Filho et al. the formalization of Brazil's first Forest Code occurred during a time when international environmental legislation was advancing, particularly in the United States, Europe, and industrialized countries in general. As then-President Getúlio Vargas aimed for the massive industrialization of the country, it was necessary to establish regulations regarding the exploitation of natural resources, which was the main reason for the formulation of this first Forest Code, see *Altair O. Santos Filho* /*José M. Ramos* / *Krysia Oliveira* / *Tany Nascimento*, A evolução do código florestal brasileiro, Caderno de Graduação - Ciências Humanas e Sociais – UNIT 2 (2015), pp. 271–290.

51 Art. 9 of the Brazilian Forest Code "National, state or municipal parks constitute public monuments naturaes, which perpetuate in their primitive floristic composition, sections of the country, which, due to peculiar circumstances, deserve it".

52 *Santos et al*., note 50.

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resources was prohibited, as stipulated in Article 5, single paragraph.[53] Integral protection aims to preserve natural environments as much as possible by limiting anthropogenic activities, under the premise that any human interaction with nature is inherently harmful, often disregarding the traditional lifestyles of indigenous and local communities. This approach establishes a form of biodiversity conservation that can be exclusionary, as it frequently overlooks the sustainable practices and deep knowledge these communities have developed over generations. This regime can inadvertently marginalize those whose ways of life have historically contributed to the preservation of natural ecosystems.[54]

The Brazilian Constitution of 1988 was influenced externally by Spain and Portugal, which had also transitioned from authoritarian regimes to new democratic constitutions around that time.[55] Additionally, there was a significant influence from other European countries and their legislations, particularly regarding social and environmental concerns that emerged after the World Wars. For instance, as noted by Sarmento, Germany's emphasis on prioritizing fundamental rights in democratic societies served as a model for the Brazilian Constitution. Concerning this issue, the Brazilian constitutional text dedicated a chapter on environmental protection as a fundamental right. Article 225 ensures access to an ecologically balanced environment and lists areas to be specially protected under its paragraph 1, item III.[56] Subsequently, infra-constitutional legislation specified which areas would receive special protection, accomplished through Law 9,985/2000, which established the National System of Conservation Units (NSCU).[57] This law includes twelve categories of Conservation Units[58] under two legal regimes: sustainable use and integral protection. The sustainable use category was a new feature introduced by NSCU, complementing the pre-existing integral protection category established in the 1965 Forest Code.

Sustainable use was devised to harmonize traditional indigenous lifestyles with biodiversity conservation. Constitutional protections for cultural rights and indigenous ways of life compelled lawmakers to create this environmental legal framework accommodating

53 Art. 5 of the Brazilian Forest Code "The Public Power will create: Single paragraph. Any form of exploitation of natural resources in National, State and Municipal Parks is prohibited."

54 *Diegues*, note 8.

55 *Daniel Sarmento*, 21 anos da Constituição de 1988: a Assembleia Constituinte de 1987/1988 e a experiência constitucional brasileira sob a Carta de 1988, Direito Público 6 (2011).

56 Art. 225. "All have the right to an ecologically balanced environment, essential to a healthy quality of life, collectively imposing on the Government and the community the duty to defend and preserve it for present and future generations. § 1. In order to ensure the effectiveness of this right, it is incumbent upon the Government: III - to define, in all units of the Federation, territorial spaces and their components to be specially protected, with alteration and suppression permitted only through law, and any use that compromises the integrity of the attributes justifying their protection prohibited".

57 The Conservation Units are necessarily specially protected areas, but it is important to highlight that there are other specially protected areas that are not Conservation Units, such as the legal reserve area (LRA) and permanent preservation area (PPA).

58 In Portuguese, protected areas are referred to as conservation units.

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communities living in or off natural habitats. Seven conservation modalities were created for this purpose[59]: Sustainable Development Reserves, Extractive Reserves, Forests, Areas of Ecological Interest, Environmental Protection Areas, Private Natural Heritage Reserves, and Wildlife Reserves. While all categories allow for the presence of traditional and indigenous peoples, only Sustainable Development Reserves and Extractive Reserves were specifically designed to reconcile traditional lifestyles with biodiversity conservation.

Regarding integral protection, National legislation created five Conservation Units[60]: Parks, Ecological Stations, Biological Reserves, Natural Monuments, and Wildlife Refuges. This represented an expansion from the 1965 Forest Code, which only recognized three types of Conservation Units: parks, forests, and biological reserves.

Parks alone represent almost 30% of all publicly managed Conservation Units,[61] although there are eleven types of public management. This illustrates a clear preference for protecting pristine and untouched areas, given their integral protection status and requirement of scenic beauty. Additionally, Parks are the most widely recognized Conservation Units, with 97% of Brazilians familiar with at least one Natural Park, according to Instituto Semeia.[62] Well-known examples include Lençóis Maranhenses National Park, Iguaçu National Park, Fernando de Noronha National Park, Jericoacoara National Park, and Tijuca National Park, all of which are tourist attractions often described by visitors as paradisiacal visions. As we can see below:[63]

59 Art. 14. **"**The Group of Sustainable Use Units comprises the following categories of conservation unit: I - Environmental Protection Area; II - Area of Relevant Ecological Interest; III – National Forest; IV - Extractive Reserve; V – Fauna Reserve; VI – Sustainable Development Reserve; and VII – Private Natural Heritage Reserve."

60 Art. 8. "The group of Integral Protection Units is made up of the following categories of conservation unit: I - Ecological Station; II – Biological Reserve; III – National Park; IV – Natural Monument; V – Wildlife Refuge."

61 National Registration of Conservation Units (NRCU), Brazilian Conservation Units Panel. Database prepared by the Ministry of the Environment. Spreadsheet for the second semester of 2022, https://antigo.mma.gov.br/areas-protegidas/cadastro-nacional-de-ucs.html (last accessed on 21 May 2021).

62 Semeia Institute, Parks of Brazil: population perceptions, São Paulo 2022.

63 The Brazilian law (law 9610/1998) allows the use of protected works for educational or scientific purposes, as long as the use is limited to the academic environment and is not for commercial purposes.

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Figure 1 Lençóis Maranhenses National Park[64]

Figure 2 Iguaçu National Park[65]

64 Instituto Chico Mendes de Conservação da Biodiversidade, Lençóis Maranhenses National Park, https://www.icmbio.gov.br/parnalencoismaranhenses/galeria-de-imagens.html (last accessed on 03 February 2025).

65 Instituto Chico Mendes de Conservação da Biodiversidade, Iguaçu National Park https://www.icmbio.gov.br/parnaiguacu/guia-do-visitante.html (last accessed on 03 February 2025).

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Figure 3 Fernando de Noronha National Park[66]

Figure 4 Jericoacoara National Park[67]

66 Instituto Chico Mendes de Conservação da Biodiversidade, Fernando de Noronha National Park, https://www.parnanoronha.com.br (last accessed on 03 February 2025).

67 Portal Jericoacoara, Jericoacoara National Park, https://www.parnanoronha.com.br (last accessed on 03 February 2025).

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Figure 5 Tijuca National Park[68]

In Brazil, there are 3.5 times more Conservation Units aimed at protecting beautiful landscapes (Parks and Natural Monuments) than protected areas expressly designed to reconcile traditional ways of life with environmental conservation (Extractive Reserves and Sustainable Development Reserves).[69] These statistics highlight what Malcom Ferdinand[70] calls "reforestation without the world," where ecological gestures involve displacing peasants from their territories to maintain an idealized forest image, as "Earth to be preserved" is conceived from an uninhabitable standpoint. An anti-human paradise landscape is thus fabricated, prioritizing tourism ventures and biodiversity conservation without human pres-

68 Amigos Do Parque, Tijuca National Park, https://parquenacionaldatijuca.rio/locais/corcovado/, (last accessed on 03 February 2025).

69 NRCU, note 57.

70 *Ferdinand*, note 2, p. 127.

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ence. However, a significant issue arises when there is a prioritization of creating and maintaining Parks and Natural Monuments over protecting Extractive Reserves and Sustainable Development Reserves. Moreover, there is no certainty regarding the effectiveness of nature protection through parks.

C. Territorial Exclusion in the National System of Conversation Units

Territorial exclusion is a political action that undermines the ability of entire populations, not just specific social groups, to lay claim to land. According to Rogério Haesbaert,[71] this occurs through two main processes: either the destruction of a territory is so severe that human habitation becomes impossible without significant harm (as seen in cases like Chernobyl), or accessible land is restricted from local populations due to conservation policies, such as certain types of protected areas (Conservation Units) in Brazil.

The integral protection category within the National System of Conservation Units can be seen as a form of territorial exclusion. Areas formerly used by indigenous peoples and traditional communities are now considered untouched and uninhabited for environmental protection, leading to the resettlement or expulsion of these communities. The prohibition on direct human use of natural resources assumes that all human-nature interactions are inherently harmful. However, this overlooks the cultural ties of indigenous peoples and traditional communities to nature, where their worldview integrates human existence with natural landscapes as sacred.[72] Thus, biodiversity conservation efforts that limit human activities for ecosystem protection highlight the political, selective, and unequal nature of full protection choices.

The maintenance of the integral protection model often involves expelling local populations to implement conservation efforts. Territorial exclusion in establishing National Parks, for example, aims not only to protect the environment but also to sustain a conservation model that excludes human presence, despite their role in environmental stewardship. This creates a conflict between the rights and autonomy of indigenous and traditional peoples living in areas overlapped by conservation units, and the perceived rights of nature, sometimes seen as conflicting. Nonetheless, traditional human habitation is integral to nature conservation, not obstructive.

The system of exclusions is legally addressed in two different ways for indigenous and traditional peoples. Article 57 of the NSCU[73] allows working groups to resolve conflicts

71 *Rogério Haesbaert*, Viver no Limite: território e multi/transterritorialidade em tempos de insegurança e contenção, Rio de Janeiro 2014.

72 *Joelson Ferreira* / *Erahsto Felício*, Por Terra e Território: caminhos da revolução dos povos no Brasil, Aracata 2021.

73 Art. 57 "The federal bodies responsible for implementing environmental and indigenous policies must establish working groups to, within one hundred and eighty days from the coming into force of this Law, propose the guidelines to be adopted with a view to regularizing any overlaps between indigenous areas and conservation units."

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arising from conservation unit overlaps with indigenous territories, acknowledging the difficulty in harmonizing original rights with ecological conservation goals. Article 42 of the NSCU[74] mandates the resettlement of other traditional communities affected by conservation unit creation, reflecting challenges in reconciling traditional lifestyles with biodiversity conservation.

In efforts to balance these constitutional rights, the Supreme Federal Court has ruled that indigenous land rights are compatible with environmental protection objectives, as demonstrated in the Raposa Serra do Sol case (Petition 3388, Supreme Federal Court). This legal interpretation dismisses claims that overlapping indigenous lands and conservation areas inherently jeopardize environmental goals:[75]

> *"[..] A legal analysis of the issue of overlapping indigenous lands with conservation units should always lead to solutions that ensure the human dignity of indigenous people living in these areas. We understand that conservation units on indigenous lands, if created under these terms, should be considered an added protection for the area, with their legal and institutional mechanisms essential to guaranteeing a healthy environment for these peoples. In other words, conservation units should serve the needs of indigenous peoples, not the other way around."*[76]

Regarding traditional peoples, Technical Information No. 175/2021[77], a document aimed at analysing land tenure solutions for the overlap of specially protected areas with traditional housing, Chico Mendes Institute for Biodiversity Conservation[78] also stated that "territories occupied by traditional peoples and communities show good conservation status of natural resources, which often contributes to the invisibility of areas used and inhabited by these social groups, who reside in natural areas throughout the national territory."[79] The absence

74 Art. 42 **"**Traditional populations residing in conservation units in which their stay is not permitted will be compensated or compensated for existing improvements and duly relocated by the Public Authorities, in a location and conditions agreed between the parties."

75 CMIBC, Application Report of the Management Analysis and Monitoring System (RMAMS): 2021 cycle, Brasília 2021.

76 *Priscialla C. Rodrigues* / *Rafael R. Ferreira*, Sobreposição de Unidades de Conservação em terras indígenas no estado de Roraima, in: Jonathan Barros Vita /Valeria Ribas do Nascimento / David M. Ribeiro (eds.), Direitos fundamentais e democracia II., Florianópolis, pp. 303-317.

77 CMIBC, Opinion no. 00175/2021/CPAR/PFE- CMIBC/PGF/AGU; Administrative Process NUP 00810.001628/2020-40.

78 Technical information contained in the records of the administrative process (02121.001913/2019-11) of February 22, 2021. This is an administrative process for the signing of a Term of Commitment between the Association of Residents of the Remanscente Community of Quilombos of Cachoeira Porteira and CMIBC regarding the permanence of quilombola communities in the Integral Protection Conservation Unit of the Rio Trombetas Biological Reserve in Oriximiná, Pará.

79 CMIBC, Administrative Process NUP 02121.001913/2019-1. Subject: Term of Commitment. Interested parties: Association of Residents of the Remanent Community of Quilombos of Cachoeira Porteira - AMOCREQ/CPT, 2019.

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of environmental damage and the good conservation status support the argument that it is possible to reconcile the right to the environment with the cultural rights of traditional peoples without the need for resettlement, as regulated in Article 42 of NSCU and Article 39 of its Regulation Decree 4340/2002.[80]

It is important to note that, under the conventionality control, resettlement must be carried out on land that has legally the same value, as established by Decree 10.088/2019, which ratifies ILO Convention 169. Thus, it is important to emphasize that the legal value of the territory does not equate to its symbolic and identity value for those who traditionally occupy it.[81]

It is also important to mention that under ILO Convention 169, resettlement is treated as an exception, as the right to territory must be safeguarded. Article 16[82] and its respective items guarantee the immovability of peoples in their territories, preserving their right to remain due to their ancestral bond with the territory. The Convention also establishes progressive levels of protection for this immovability, ensuring that resettlement will only occur in cases of necessity and with consent. In cases where consent is absent, it provides that the representation of traditional peoples must be guaranteed, and if the need for resettlement ceases, their return to their original territory must be facilitated.

However, the Convention does not clearly define the circumstances that justify resettlement, leaving it to the discretion of managers to determine which events may necessitate resettlement. Based on the absence of legal criteria, resettlement as envisaged in NSCU may be considered a necessary legal framework for biodiversity conservation, leading to numerous legal questions such as: "On what scientific or legal evidence is the notion based that environmental protection requires the resettlement of traditional peoples? What

80 Art. 39. "As long as they are not resettled, the conditions for the populations to remain traditional activities in Full Protection Conservation Units will be regulated by a term of commitment, negotiated between the executing body and the populations, after consulting the council of the conservation united."

81 *Ferreira / Felicio*, note 73.

82 Article 16. 1. "Subject to the provisions of the following paragraphs of this Article, the interested peoples must not be relocated from the lands they occupy". 2. When, exceptionally, the transfer and resettlement of these peoples is considered necessary, it may only be carried out with their consent, freely granted and with full knowledge of the facts. When it is not possible to obtain their consent, the transfer and resettlement may only be carried out after the completion of appropriate procedures established by national legislation, including public polls, when appropriate, in which the interested people have the possibility of being effectively represented. 3. Whenever possible, these peoples must have the right to return to their traditional lands as soon as the causes that motivated their transfer and resettlement no longer exist. 4. When return is not possible, as determined by agreement or, in the absence of such agreements, by appropriate procedure, these peoples shall receive, in all cases where possible, lands whose quality and legal status are at least equal to those of the lands they previously occupied, and which allow them to cover their needs and guarantee their future development. When interested peoples prefer to receive compensation in money or goods, this compensation must be granted with appropriate guarantees."

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environmental impacts would justify such action, given that the lifestyle of urban-industrial populations causes greater impact without equivalent sanction?"[83]

Diegues[84] and Bensusan[85] argue that traditional peoples are displaced so that urban-industrial populations can enjoy leisure activities in protected areas. Therefore, it is necessary to question firstly whether it is indeed necessary to remove traditional peoples from their lands in the name of conservation and how a norm of territorial exclusion that contradicts the cultural rights of traditional peoples can be legally justified.

This model of territorial exclusion is the rule in conservation in Brazil, since of the 1,593 Conservation Units (UC) under public management, approximately 55% are in the Strict Protection category, despite this category having two fewer options than the Sustainable Use UC. Of the 851 Strict Protection Conservation Areas, almost 70% are Parks.[86]

As a consequence of prioritizing strict protection, there are numerous land conflicts that pit the right to an ecologically balanced environment against the social and cultural rights of indigenous and traditional peoples in Brazil.[87] Management reports from the Chico Mendes Institute for Biodiversity Conservation (CMIBC) have shown that there is no difference in effectiveness between strict protection and sustainable use in preserving protected areas.[88] This indicates that while strict protection was created as a more rigorous legal category to intensively preserve areas that do not allow human occupation, there are no significant differences in the level of protection compared to areas where direct use of natural resources is allowed. In other words, mitigating anthropogenic action has not yielded the expected results under the law, presenting the same level of environmental protection as areas where direct use of natural resources is permitted.

Management reports also demonstrate numerous instances of prohibited use of natural resources in strict protection areas. They further highlight that incomplete land regularization (i.e., expropriations and resettlements) hinders compliance with protection guidelines, while activities such as ecotourism have significant environmental impacts.

In addition to occurrences of prohibited resource use in Strict Protection Conservation Units, it is important to note that two-thirds of Parks created in Brazil have not been fully implemented, as only 164 out of 520 Parks have Management Plans (MP) and Management Councils. The lack of MP means there are no documents to regulate activities allowed

83 *Clara de Oliveira Adão* / *Karyna Batista Sposato*, Reassentamento de populações tradicionais: morte social e negação ao território, in: XI Congresso Internacional da ABRASD – Sociologia Jurídica Hoje: cidades inteligentes, crise sanitária e desigualdade social, Anais trabalhos completes, Porto Alegre 2021, p. 256.

84 *Antônio Carlos Sant'Ana Diegues,* Etnoconservação: Novos rumos para a proteção da natureza nos trópicos. Hucitec, Nupaub 2000.

85 *Bensusan*, note 45.

86 Chico Mendes Institute for Biodiversity Conservation (CMIBC), Application Report of the Management Analysis and Monitoring System (RMAMS): 2019 cycle, Brasília 2022.

87 *Benatti*, note 4.

88 CMIBC, notes 87.

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within the area, such as visitation, scientific research, and management of fauna and flora by CU staff, which is the reality for over 60% of Brazilian Parks. The absence of a Management Council, in turn, indicates low public participation and the absence of a multidisciplinary team for decision-making, affecting more than half of the CUs.[89]

It is also noteworthy that a report released by Semeia Institute[90] reveals that half of Brazilian Parks lack basic infrastructure, such as water fountains, toilets, signage, accessible trails, and service stations. Moreover, half of the Parks also lack entry controls through gates or turnstiles, complicating monitoring of activities inside the Parks. Finally, one-third do not track visitor numbers.

Based on these data, it is evident that maintaining a conservation policy based on human exclusion is untenable for ensuring effective biodiversity preservation in Brazil. Given that this policy is rooted in the reproduction of colonial imaginaries that persist today, a decolonial revision of this policy is urgently needed to recognize the cultural differences of social groups directly impacted by this environmental protection model. Without them, conservation areas are more vulnerable to degradation than with their presence in their original territories, as evidenced by the fact that deforestation rates in Indigenous Territories, for example, were nearly 70% lower than in private areas.[91]

This does not mean that protection of indigenous and traditional territories should be justified solely on utilitarian grounds, recognizing their role as "guardians of nature" for environmental preservation. The right to territory is constitutionally protected for these peoples because they are also part of nature. Therefore, based on the data presented here, removing indigenous peoples and traditional peoples from their territories for environmental preservation purposes has been a precarious policy for the environment, as well as a violation of the rights and autonomy of traditional and indigenous peoples and communities.

D. Conclusion

Viewing Parks as colonial paradises raises critical questions about their impact on the rights and autonomy of indigenous and traditional communities. Many National Parks and protected areas were established on lands once inhabited by these groups, displacing them to preserve conservation ideals devoid of human presence.

During colonization, colonial powers often ignored the cultural and spiritual ties of indigenous communities to the land, claiming these areas as their own. This colonial habitation was marked by violence against both indigenous peoples and the natural environment, driven by a conquest mentality that included deforestation and genocide. This colonial

89 CMIBC, note 87.

90 Semeia Institute, note 63.

91 MapBiomas, 7 Facts about Indigenous Lands in Brazil, April 2023 Edition, https://mapbiomas-br-site.s3.amazonaws.com/downloads/MapBiomas_Terras_Indígenas_28.04_OK.pdf, (last accessed on 20 June 2023).

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violence reshaped the concept of paradise based on colonizers' actions. Paradise became associated with places that were exploited rather than inhabited, void of human presence. Thus, the colonial paradise emerged by excluding indigenous peoples and communities. Even after Brazil gained independence, these paradisiacal areas gradually became Parks, perpetuating a romanticized view of untouched nature while marginalizing or ignoring the presence and rights of indigenous and traditional communities. Parks have spread globally and are widely recognized in Brazil as the most numerous forms of publicly managed Conservation Units, symbolizing environmental protection. However, data on Parks reveal their inadequate effectiveness in conserving nature, which questions the necessity of excluding traditional and indigenous peoples from these areas. This reproduction of colonial paradises overlooks the history, knowledge, and deep connections that indigenous and traditional communities have with their lands. Viewing Parks as pristine spaces devoid of human presence reflects a Eurocentric perspective that fails to acknowledge the reciprocal relationships many communities maintain with their environment. The concept of colonial paradise is rooted in an absence principle, where human presence is seen as incompatible with conservation goals, rather than recognizing the role of indigenous and traditional peoples in biodiversity conservation.

Nevertheless, significant progress has been made in recent decades towards including and recognizing the rights of these communities in protected areas. Movements advocating for justice have led to greater participation and shared management of these spaces, acknowledging the crucial role of traditional knowledge in biodiversity conservation. In Brazil, the Supreme Federal Court (SFC) has acknowledged the dual impact regime concerning overlapping with indigenous lands, and the Chico Mendes Institute for Biodiversity Conservation supports maintaining traditional peoples in their territories through an intercultural constitutional interpretation of the National System of Conservation Units. These contemporary legal and doctrinal advancements aim to transform colonial paradises into inclusive paradisiacal ideals where traditional and indigenous peoples are not just present but essential for the preservation of Brazil's natural treasures. Recognizing their ethno-knowledge and reciprocal relationship with their territories challenges the notion of paradise without humans, fostering a new vision of harmony between people and nature.

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