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***MANTALIL, MAURI AND DJANG:* LAW AND JUSTICE IN THE INDIGENOUS WORLDS**

Abstract

Indigenous and positive law systems are often based on different ontological assumptions. This is one of the aspects that can give rise to collision in a *field of legal conflict*. The text presents examples of the ontological differences between legal systems and social and cultural phenomena related to them, while pointing out that, despite their great importance, they do not prove to be the major obstacle to enduring understanding between cultures and their law systems.

KEYWORDS

customary indigenous law, positive law, ontology, field of legal conflict

SŁOWA KLUCZOWE

tubylcze prawo zwyczajowe, prawo stanowione, ontologia, pole konfliktu prawnego

1. INTRODUCTION

Recognition of multiculturalism and the accompanying legal pluralism – as a part of decolonization processes – appears in some countries inhabited by indigenous peoples. Colonial states, each to a different degree imposing their own legal rules on the conquered peoples,¹ introduced their own institutions and practices. Today, indigenous peoples demand recognition of their own subjectivity and autonomy, claiming the right to apply their own law (see, e.g. the Declaration on the Rights of Indigenous Peoples²).

The coexistence of different legal systems in the same countries often leads to conflicts. Conflicts at the intersection of positive and indigenous law arise at different levels, or around several central elements of dispute, resulting from sociopolitical and cultural conditions. Some of these have their source in the unfinished decolonization process and in discrimination. This results from the lack of genuine recognition by the national society of indigenous identities and practices, including legal practices. This state of affairs is often associated with the denial of basic rights to indigenous communities, for example, the right to land or the right to autonomy. On the other hand, instances of dispute are found in different opinions of representatives of indigenous communities on the validity of the applicable rules and legal norms, whether referring to indigenous law or to positive law. Another area where problems are manifested, which also combines the previous two, is the lack of mutual adjustment between norms of indigenous customary law and norms of positive law. This means there are no mechanisms and solutions facilitating the coexistence and conflict-free functioning of both legal systems within one legal order (e.g. a state). Even if such solutions exist, they are often neglected. Another important area where conflicts may arise are assumptions about the reality of facts, events, and relations, i.e. the issue of different ontologies from which different legal systems derive.

The problems highlighted above belong to a set of relations and processes that manifest themselves as a phenomenon I label a *field of legal conflict*. This is an area where conflict and tensions between the legal systems referenced by the participating actors (in this case, the indigenous customary law and the positive law) take place. Tensions and conflicts arise between: different legal norms, values, worldviews and paradigms explaining their functioning, attitudes to understanding what a human being, a person, or consciousness are, whether it is possible

¹ For more on this topic, see among others in: P. Fitzpatrick (1990, 1992), M. Chanock (1985), S. F. Moore (1986), J. F. Collier (1973), L. Nader (1989), J. Drzewieniecki (1995).

² United Nations GA Resolution A/RES/61/295 adopted on 13 September 2007, https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (accessed 10.02.2021).

to have rights without fulfilling obligations, and whether everyone deserves the same rights.³

Among the very important elements that are present in the field of legal conflict, there is the issue of understanding and perceiving 'law' per se. It results largely from the abovementioned ontological difference between indigenous cultures and the Western positivist concept of the world. This difference and its consequences is the subject of this paper. My intention is to argue, using a few selected examples of indigenous cultures from different parts of the world (Mexico, Australia and New Zealand), how the understanding of what we might call 'law' differs across these cultures from the 'Western' concept.⁴ In these societies visions of the world, the role of man in it, and the role of an individual in society have been shaped by myths different from those that have formed European societies. The realization of this difference leads to, among others, the questions about what ontological concepts – including those concerning the human being, the reality of the invisible world, and the relationship between rights and obligations – should be used in multinational states, and whether it should be one concept or rather a few of them. The fundamental problem is therefore whether, despite ontological differences, the systems can coexist and adopt common standpoints.

2. MANTALIL

In some indigenous cultures, not all members of a community are regarded as equal. This is the case, for example, of the Tzeltal culture. As Pedro Pitarch, an anthropologist and expert on the Tzeltal culture and language, writes: 'This asymmetry also explains why not all human beings possess the same respect or, in this context, the same rights.'⁵ In 1996, Miguel Gómez Gómez and Juan Santiz Cruz⁶ translated the Universal Declaration of Human Rights (UDHR) into the Tzeltal language. The translators took into account the cultural context, rhetoric and content of Tzeltal discourse so that some concepts alien to members of the community could be understood. The translation, in consultation with translators,

³ For more on the topic of legal conflict, see in M. Krysińska-Kałużna, *Prawo jako mit. Relacja pomiędzy tubylczym prawem zwyczajowym a prawem stanowionym*, Kraków: Nomos 2017.

⁴ Some of the examples of ontological diversity of legal systems mentioned in this paper are presented in my book, see M. Krysińska-Kałużna, 2017, *op. cit.*

⁵ P. Pitarch, *The Labirynth of Translation: A Tzeltal Version of the Universal Declaration of Human Rights*, (in:) P. Pitarch, Sh. Speed, X. Leyva-Solano (eds), *Human Rights in the Maya Region. Global Politics, Cultural Contentions, and Moral Engagements*, Durham and London: Duke University Press 2008, pp. 91–121, at p. 97.

⁶ Both are indigenous persons from the municipality of Cancun in Mexico.

was analysed by Pedro Pitarch. In his text *The Labyrinth of Translation: A Tzeltal Version of the Universal Declaration of Human Rights*, the Spanish anthropologist cites, among others, translations of individual articles of the UDHR and explains the terms used for 'law' and 'rights'.

The term 'law' was translated into Tzeltal as *mantalil*. *Mantal* without the generalizing suffix *-il* means what one person tells the other to do, and so means 'advice', but also 'order', 'rule' or 'dictate'. 'Although the themes that the term *mantalil* covers are very broad, it deals in particular with questions of posture, gesture, and social etiquette, especially with regard to showing respect to relatives and neighbors.'⁷ According to Gómez, *mantal* is given to children partially in the form of sacred words. Then the children can follow the 'sacred path of advice', *ch'ul be mantal*.⁸ The entire concept of *mantalil*, i.e. the laws that determine proper, ethical behaviour and life, is rooted in religious and mythical thinking. *Mantalil* defines not only the relationship between people but also the relationship between human beings and the rest of the world. To explain this concept, Pitarch recounts a story told by his friend: One time when on their way home, elderly people stopped and sat down by the road because they heard a bird sing. Its singing was so beautiful that listening to it made those people reflect on the world. The bird gave them a *mantal*, moral guidelines, ethical advice.⁹

Mantalil is accumulated throughout the whole life in the human body, which possesses two sources of consciousness: the head and the heart. As Pitarch explains:

The process of creating the body is effectively continuous and only at an advanced age – older than forty perhaps, when a man or woman is a grandparent – is a person considered to have acquired sufficient maturity to be considered a 'correct' body. Nonetheless, this development is as much physical as it is moral: each aspect is a necessary condition for the other. From a Tzeltal perspective this ethic (*mantalil*) intervenes decisively in the formation of a person, though not spiritually (as we imagine in the West) but corporally. *Mantal* is thus not only used and understood as an ethical discourse; over a lifetime one actually acquires *mantal* as if it were something substantive, so that a person can accumulate a lot or little *mantal*.¹⁰

Head awareness develops throughout life and 'the body is the necessary condition for the moral development of a person.'¹¹ Therefore, as we can see, in the Tzeltal culture *mantal* 'law' is not a set of abstract rules, it is a substance that can and should be accumulated in a human body.¹²

⁷ P. Pitarch, 2008, *op. cit.*, p. 95.

⁸ *Ibid.*, pp. 95–96.

⁹ *Ibid.*, pp. 96–97.

¹⁰ *Ibid.*, p. 95.

¹¹ *Ibid.*, p. 96.

¹² M. Krysińska-Kałużna, 2017, *op. cit.*; M. Krysińska-Kałużna, *Los orígenes míticos de la ley*, 'Pensamiento filosófico del CESLA' 2015, No. 3, pp. 13–35.

The concept of 'right' (meaning 'to have rights' or that 'something is right to do') was translated using the expression of *ich'el ta muk*, which means 'respect'. 'The expression is made up of the transitive verb *ich*', meaning to receive, obtain, or take something; *ich'el ta muk* can be literally translated as "receiving something greatly, with force."¹³ Therefore, the Tzeltal notion of 'right' is interpreted within a logic of reciprocity and complementarity. The Tzeltal do not think that all humans are equal – which was the assumption of the UDHR authors – but rather distinct and 'powerfully unequal' beings, an aspect that makes reciprocity and complementarity necessary.¹⁴

The word 'fraternal' used in relation to the assumption expressed in the UDHR that all persons are equal, in the Tzeltal culture does not have the same meaning, because siblings are never equal. For example, brothers and sisters differ by age, hence they are not equals. 'In the same way, husband and wife are unequal, and this is what makes them need each other. This asymmetry also explains why not all human beings possess the same respect or, in this context, the same rights. Respect is not something given but something acquired as one goes about fulfilling one's obligations.'¹⁵ Fulfilling one's commitments is the basic condition for getting respect; one can only deserve it and not obtain it just because one is human. For this reason, it is difficult to state that children in the Tzeltal culture have rights. Children do not gain respect but owe debt to those who care for them. Only the possibility of entering into a relationship of mutual obligations will allow them to gain the respect of other members of society. The 'creature in the mother's womb' does not have rights, because according to the Tzeltal it is not yet a person, 'it has never heard that there exist laws'.¹⁶

In the translation of the UDHR into Tzeltal the word *kirsano* (plural: *kiranue-tik*) was used. It is a borrowing from Spanish and comes from the word *cristiano*, meaning a Christian person. The authors of the translation tried to avoid the term *winik*, because in Tzeltal it means a human as a man and excludes women from this category, or at least – as Pitarch writes – their inclusion is questionable and not self-explanatory. Interestingly, the use of the word *kirsano* excludes beings that only look like people but are not human. Pitarch writes:

Among the Tzeltals of Cancuc, *kirsano* is usually used to distinguish human bodies of skin and bone from other types of beings such as spirits, the dead, souls, lords of the mountain, and monsters. If someone comes across a being of some sort during the night, they wonder whether it is a *kirsano* or not, if it is a human body or not. These other beings have some human qualities, but their bodies are not really their own. Conversely, the category of *kirsano* includes human beings that are not indigenous,

¹³ P. Pitarch, 2008, *op. cit.*, p. 97.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 98.

such as Europeans, or the ‘cannibals’ in the Lacandón Forest, despite their great cultural distance.¹⁷

Kirsano is thus the category that extends equality beyond the group of men of one people and also includes, inter alia, women and non-indigenous persons.

The terms ‘freedom’, ‘justice’, and ‘peace’ are translated in the UDHR into Tzeltal as *lekil utsilal* and *sbuts k’inal*. The first of them literally means ‘a lot of goodness’, that is ‘being a contented person, protected, out of danger, without enemies, who lives well and can go where he or she pleases in harmony with the rest of the world, the human as well as the natural and non-human ones.’¹⁸ *Sbuts k’inal* means that one is physically healthy and is ‘not scared, worried, ashamed, or depressed’.¹⁹ According to Pitarch, the language describing illness and health is for the Tzeltal the primary way of talking about social and political relations. ‘It is not an exaggeration to say that the Universal Declaration of Human Rights is proposed, in its Tzeltal version, as a means of improving the health of human beings.’²⁰

3. MAURI

The essence of the indigenous law and justice system is to restore balance in the community. Less important is the argumentative inquiry of who was right, as we know it from the Western courtrooms. Consequently, justice is seen and labelled as healing by many indigenous communities. This is how the Navajo, the Ojibwa, the Haudenosaunee or the Maori perceive it.²¹ ‘Justice produces equilibrium. In order for equilibrium to exist, there is a pathway – Ko Te Ara Tika (the right road) that Maori seeking justice for themselves and others must follow. It is paved with traditional principles – indicators and measures of true and proper behavior – crafted by our ancestors as they journeyed through the cosmos and into Te Ao Marama (the physical world).’²²

Justice and law, as portrayed by Nin Tomas, exist only when they penetrate and connect the material (visible) world and the spiritual world in which the ancestors function. As in the Tzeltal culture, for the Maori, the principles to be followed

¹⁷ *Ibid.*, p. 102.

¹⁸ *Ibid.*, p. 103.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ W. D. McCaslin (ed.), *Justice as Healing: Indigenous Ways*, Saint Paul, MN: Living Justice Press 2005.

²² N. Tomas, *Maori Justice – The Marae as a Forum for Justice*, (in:) W. D. McCaslin (ed.), *Justice as Healing: Indigenous Ways*, Saint Paul, MN: Living Justice Press 2005, pp. 134–140, at p. 135.

in life are closely related to obligations to other people ‘and serve to position each individual within the wider universe that we carry within us’.²³

The principles that Tomas presents and that determine the Maori relationship with the rest of the world are deeply embedded in the mythology and cosmogony of this people. These include: *Pono* (truth, i.e. actions must be true to the Maori view of the world), *Tika* (rightness, i.e. actions must accord with this view), *Whakapapa* (genealogy, i.e. actions must recognize spiritual and physical kinship with the rest of the world), and *Whanaungatanga* (interrelatedness, i.e. actions must maintain and affirm relationships with other people and the rest of the world). To achieve this, one must recognize at least three of the most important spiritual concepts which are *Wairua* (spirituality), part of a non-physical existence: *Tapu* (the authority found in all things, placed there by the gods); *Mana* (the way in which spiritual authority manifests itself and is perceived by others); and *Mauri* (the life energy that connects all things spiritually and is the source of human life essence).²⁴

Tomas describes how her people deal with the problem of sexual abuse of children by elders. Foreign (Western) law is not a method that can help victims. ‘The Marae [formal Maori meeting place – MKK] provides a forum in which healing can occur for all the people who are affected by sexual abuse and where it can be acknowledged that everyone is a victim in some way. I say this not to minimize the hara²⁵ or to protect the perpetrators but to acknowledge that the Maori community as a whole is affected by the sexual abuse of its children, and, this being so, must be able to participate in the healing process.’²⁶ The healing process takes place in the *Marae*, a place filled with references to the Maori mythology, e.g. by referring to the above-mentioned spiritual principles and concepts. Formal speeches that take place during meetings in the *Marae* before the gathered people deal with the matter at hand, refer to the spirituality of the Maori people by reciting mythical events from the lives of their ancestors.²⁷

4. DJANG

The law is healing also for Australian Aboriginal peoples. If the law cannot provide health to people through understanding of its jurisprudence, ‘it is merely

²³ *Ibid.*, p. 135.

²⁴ *Ibid.*, pp. 135–136.

²⁵ Evil, or the violation of *tapu*, the moral code. For more about *hara* and other Maori notions, see *Māori Dictionary*: <https://maoridictionary.co.nz/search?idiom=&phrase=&proverb=&loan=&histLoanWords=&keywords=hara>.

²⁶ N. Tomas, 2005, *op. cit.*, p. 138.

²⁷ M. Krysińska-Kałużna, 2017, *op. cit.*

a set of rules to regulate their movements and their goods', writes a researcher on indigenous jurisprudence Christine F. Black coming from the Yugambeh^{28, 29} Law stories weave people together,³⁰ and people's health depends on the stories that come to them.³¹

The basic principle of the Aboriginal concept of law is: the Law comes from the Land. The second important principle derived from the first one is: the Law is exercised through the Law of Relationship.³² To describe the Aboriginal jurisprudence, the Australian author uses two important terms: *talngai* and *gawarima*. '*Talngai* means light, which is used to enlighten in a metaphysical sense – what goes around the camp as knowledge. *Gawarima* describes a circular movement in which the information/story goes around the camp. In turn, it becomes a knowledge that is of ritual nature and is therefore meant to heal through feeling the knowledge.'³³ The Australian native story about law is built of circles. The outermost, with the remaining circles within, is cosmology. The second is relationships.³⁴ Right in the middle of the circles is the individual whose legal behaviour is shaped by primordial energy, called *Djang*,³⁵ and whose rights and obligations are determined by the Law of Relationship.³⁶ It is 'the most appropriate term to emphasize the centrality of the legal relationship in the edifice of the legal ethos – that is, the Land is the Law. (...) The shape and pattern of this Law of Relationship creates a body of law which, in Australia's case, "vibrates in song" and is "woven across" *Corpus Australis*. This is expressed in the concept of song-lines, or Dreaming Tracks, which criss-cross the body of the continent.'³⁷ As the continent of Australia is a body in Aboriginal jurisprudential concept,³⁸ 'walking the land' means also 'actualizing' the law and knowledge associated with the law³⁹. The song lines that cross the country are the rhythm of the law.⁴⁰ If we fail to comply with the law, the Land may change overnight.⁴¹ *Djang* – the ancient power, the primordial energy, must be in balance if humanity is to survive on the planet.⁴²

²⁸ Christine F. Black is a descendant of both the Kombumerri and Munaljahlai peoples. The Yugambeh are a group of Aboriginal Australian clans.

²⁹ Ch. F. Black, *The Land is the Source of the Law. A Dialogic Encounter with Indigenous Jurisprudence*, London and New York: Routledge 2011, p. 64.

³⁰ *Ibid.*, p. 5.

³¹ *Ibid.*, p. 63.

³² *Ibid.*, p. 45.

³³ *Ibid.*, p. 4.

³⁴ *Ibid.*, p. 15.

³⁵ *Ibid.*, p. 41.

³⁶ Law is related to human rights and obligations, see *ibid.* at p. 58.

³⁷ Ch. F. Black, 2011, *op. cit.*, p. 15.

³⁸ *Ibid.*, p. 18.

³⁹ *Ibid.*, p. 51.

⁴⁰ *Ibid.*, p. 53.

⁴¹ *Ibid.*, p. 6.

⁴² *Ibid.*, p. 17.

‘The balance of the *Djang*, therefore, is the basis for the Law of Relationship: the metaphysical and physical relationship between people and the cosmos.’⁴³ One of the reasons that *Djang* is out of balance is the violation of holy places.⁴⁴

Indigenous law, as Black argues, is not a collective version of Western law. The real source of law for Aboriginal Australians is Land⁴⁵ or *Djang*, not people.⁴⁶ Law is not made by humans but ordained and deposited into the Land by the primordial energies. The source of law is beyond humankind and their individual concerns; ‘rather, it sits in the realm of eons of time’.⁴⁷ Senior Law People are carriers of knowledge about the Land and the Law. From childhood, they learn about ‘epistemology, ecology, languages, oral literature and esoteric knowledge of their nation’s classical thought’.⁴⁸ Law is inextricably linked with myths and cosmology. ‘To explore the establishment of law in any Indigenous culture, one must first enter the cosmology via the cosmological narrative. Central to that narrative are the constitution of authority and the jurisprudence that legitimates such authority.’⁴⁹ In Black’s narrative, cosmologies are ‘the circle that encompasses all one perceives to be reality’.⁵⁰ Cosmologies are ‘safe places’ for understanding.

Indigenous law and indigenous peoples’ legal theory can be explored through feeling.⁵¹ Feeling is the proper form of communication, and spirit or soul is the fundamental form of being.⁵² For the ‘feeling’ of the law, the Law of Relationship with the spiritual/unseen world is important.⁵³ ‘To feel the Law, which is posited in the Land, requires a communications with the unseen. This *feeling* of the spirit world and the reliance on that feeling as the basis for knowledge keeps the individual mindful of his own actions and so leads him to *internalize* the law, rendering it intimate, in contrast to the West’s reliance on external prompts and norms.’⁵⁴ Feeling shapes experience gained from the landscape and the universe itself.⁵⁵ This familiarity with other states of consciousness is – from Black’s point of view – a hallmark for Aboriginal peoples.

Djang is also a source of wisdom.⁵⁶ Thanks to this energy, knowledge can be obtained in Dreaming sites. These places are guarded by the dead. Thus, the dead

⁴³ *Ibid.*, p. 32.

⁴⁴ *Ibid.*, p. 33.

⁴⁵ *Ibid.*, p. 9.

⁴⁶ *Ibid.*, pp. 32, 45.

⁴⁷ *Ibid.*, p. 50.

⁴⁸ *Ibid.*, p. 45.

⁴⁹ *Ibid.*, p. 24.

⁵⁰ *Ibid.*, p. 27.

⁵¹ *Ibid.*, p. 12.

⁵² *Ibid.*, p. 34.

⁵³ *Ibid.*, p. 27.

⁵⁴ *Ibid.*, p. 25.

⁵⁵ *Ibid.*, p. 24.

⁵⁶ *Ibid.*

are still involved in the affairs of the living and the relationship between the living and the dead also results from the relationship between people and the Land.⁵⁷ One of these relationships is the teaching of Senior Law Men by deceased ancestors.⁵⁸ At the Centre of the universe is the Land, not the people, and ‘dreaming’ is associated with feelings for the Land.⁵⁹ ‘There is no escape into solitude, for, at every corner, a rock, a tree, a spirit is watching the action of the Aborigine. Hence life becomes “full-law” participation – fully engaged with all that surrounds us, both seen and unseen. Therefore, when there is little resistance between seen and unseen, it is much easier for inanimate objects to pass through the liminal space and manifest, as the Senior Law Men explain.’⁶⁰ Therefore, Aboriginal peoples see no reasons to attach more importance to the material world than to the spiritual world.

5. CONCLUSION

For the abovementioned indigenous communities, law is not an abstract system of man-made rules. First of all, it is a phenomenon closely related to the spiritual aspect of life. ‘The natural laws of Aboriginal Peoples and the state laws of non-Aboriginal people are inherently different, based on fundamentally different beliefs and values. As a result, they are in ongoing conflict’,⁶¹ claims Gloria Lee, Prince Albert Grand Council Justice Director and the former research developer for the Saskatchewan Indian Institute of Technologies. The law can be a substance accumulated in the body and creating a real person, it can be the energy necessary for the existence of the world, embodied or read in the landscape, associated with the spirits of ancestors. It can be a force that heals the community, creates a relationship between people and nature. The law does not have to be a clearly defined rule, it can be known by feeling, not only among Aboriginal Australians. As Chief Justice Robert Yazzie explains: ‘When the Navajo courts define law, we must consider *norms*. Norms are values and shared feelings about the way to do things. Sometimes Navajo say, “Do things in a good way.” As Indi-

⁵⁷ *Ibid.*, pp. 36–37.

⁵⁸ This is the case, for example, of Mawalan II, taught by his late father Wandjuk Marika (see Ch. F. Black, 2011, *op. cit.*, pp. 36, 72). Wandjuk Djuwakan Marika, who died in 1987, was Senior Law Man and also an artist, painter, actor, composer and political Indigenous land rights activist, see e.g. W. Marika, *Wandjuk Marika: Life Story*, Brisbane: University of Queensland Press 1995.

⁵⁹ Ch. F. Black, 2011, *op. cit.*, p. 40.

⁶⁰ *Ibid.*, p. 35.

⁶¹ G. Lee, *Defining Traditional Healing*, (in:) W. D. McCaslin (ed.), *Justice as Healing: Indigenous Ways*, Saint Paul, MN: Living Justice Press 2005, pp. 98–107, at p. 102.

ans, we know what it means to do things in a good way. Therefore, the people's shared feelings fill in that broad term of *law* to give it meaning.'⁶² Ada Pecos Melton, president of the American Indian Development Associates and a member of the National Tribal Advisory Committee of the National Tribal Justice Resource Center, writes: 'The concept of law as a way of life makes law a living concept that one comes to know and understand through experience.'⁶³

However distant the ontological foundations of the system of positive law may seem from the indigenous law systems' ontological basis, it does not entail that the two 'structures' cannot meet or be open to each other. The necessity for this openness on the part of dominant cultures and societies is demonstrated, for example, in legal acts such as the UN Declaration on the Rights of Indigenous Peoples, ILO C169,⁶⁴ the UNESCO Universal Declaration on Cultural Diversity. But it also should be seen in the pragmatic conclusions resulting from the observed effects of the application of the Law of Relationship between human beings and the rest of the world in indigenous societies. The relationship with non-human beings proposed by the indigenous communities gives a much greater chance for our survival on the planet.

The limits to openness on the part of positive law constitute the assumptions on which human rights are based. It is difficult to imagine that the state courts could, for example, as a rule, assume that not every person is equally human being or that not all people are equal (thus recognizing certain rules stemming, e.g. from the Tzeltal culture, but also many others). On the other hand, 'as a rule' indigenous peoples in Mexico are treated worse than the non-indigenous, and this also applies to legal proceedings. Therefore, what sense would it make for the Tzeltal community, affected by the violence of the *Ladinos* for hundreds of years, to adapt the concept of customary law in order for it to align with positive law, if the latter serves the interests of the dominant society? The possibility of 'peaceful meeting' of the two kinds of legal systems raises a question about the indigenous communities' willingness for this breakthrough to happen.

The meeting of the systems on the ground of ontology, however, has come to fruition. Legal personality granted to the Whanganui River by New Zealand in the national law system was one such event.⁶⁵ In the Maori culture, protecting

⁶² R. Yazzie, *Healing as Justice: The Navajo Response to Crime*, (in:) W. D. McCaslin (ed.), *Justice as Healing: Indigenous Ways*, Saint Paul, MN: Living Justice Press 2005, pp. 121–133, at p. 122.

⁶³ A. Pecos Melton, *Indigenous Justice System and Tribal Society*, (in:) W. D. McCaslin (ed.), *Justice as Healing: Indigenous Ways*, Saint Paul, MN: Living Justice Press 2005, pp. 108–120, at p. 109.

⁶⁴ Indigenous and Tribal Peoples Convention (No. 169), adopted by the International Labour Organization on 27 June 1989.

⁶⁵ The Whanganui River became the first river in the world to be recognised as a legal person in 2017. 'The Whanganui River is not the only instance of a natural resource being granted legal personhood in New Zealand. In 2014, the Te Urewera park, the ancestral home of the Tuhoe

landscape and the natural environment means protecting the *tupuna*, or ‘ancestors’, who live there and it is the community’s duty. Moreover, humans and water are believed to be particularly intertwined. Now, following 140 years of negotiation, the river has been granted the same legal rights as a human being would, and if ever abused (e.g. polluted), it can sue. At the same time, other concurrent events have reasserted the sustained functioning of the old colonial schemes. In 2020, the Australian mining company Rio Tinto blew up the 46,000-year-old Juukan Gorge cave with prehistoric paintings, a priceless place for Aboriginal peoples, archaeologists, and all mankind. The company obtained permission from local authorities to extend the area of the nearby mine. In the field of legal conflict, capital and profit have a decisive role. One can overcome ontological differences and admit that the river is a legal subject, but apparently, actors making decisions in the field of legal conflict are unable to give up profit. And ontology has nothing to do with it.

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people, became the first natural feature in the country to be recognised as a legal person. In 2018, Mount Taranaki – a 120,000-year-old stratovolcano sacred to the Maori – was awarded the same status.’; see K. Evans, *The New Zealand River that Became a Legal Person*, BBC, 20 March 2020, <http://www.bbc.com/travel/story/20200319-the-new-zealand-river-that-became-a-legal-person> (accessed 10.02.2021).

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