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Saidian Inputs to a (De)Colonial Law: On Revolutions and Odalisques Iconologies[1]

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Saidian Inputs to a (De)Colonial Law: On Revolutions and Odalisques Iconologies[1]

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I. Introduction

> To read these major works of the imperial period retrospectively and heterophonically with other histories and traditions counterpointed against them, to read them in the light of decolonization, is neither to slight their great aesthetic force, nor to treat them reductively as imperialist propaganda. Still, it is a much graver mistake to read them stripped of their affiliations with the facts of power which informed and enabled them (SAID, 1994, p. 161).

Contemporary debates on decolonialism have reached the most varied fields of knowledge in a way that is extremely difficult to study this transdisciplinary theme through the lens of a single area. Therefore, in this text translated by Lucas Braunstein da Cunha, we discuss methodology, art, history, power relations, colonialism and many others subjects that we understand indispensable to comprehend the scope and strength of law when applied to non-Western territories conquered by European countries, especially by France and England.

The delimitation of our theme has two different dimensions: its theoretical foundation and its temporal limit. Edward Said was one of the greatest precursors of the decolonial studies. Said's work has both strength and depth, even though it cannot be considered immune to criticism and beyond the need for complementation. We use the theoretical contributions of two of Said's books, these being *Orientalism* and *Culture and Imperialism,* where debates such as the European colonialism over the Orient through the representations that the first make over the second and how these cultural artifacts – such as the paintings that we study in this text and the law itself that was in use back then – create a social imaginary through narratives that are capable of creating a material reality, as will be seen. In this text, we bring authors from many study fields to verify, endorse and complement Said's argumentation, besides the aim of highlighting social and individual resistance occurring in the web of power and the development of some concepts considered pertinent to the theme.

Beyond the theoretical foundation, the temporal limit is also a factor that delimits our research, since it focuses on the relations established between the metropolis and the periphery during the nineteenth century under the representation of two French painters, Delacroix and Ingres. What interests us the most is the connection between images and law and the possibility of a better understanding of this or that legal culture through the analyses of painting and their authors' personality. To this end, we divided the text into four parts. Initially, we present some intersections between the cultural environment, the legal systems, and the formation of identities, besides exposing the iconological method used in the analyses of the chosen images.

The second part we reserved for the appreciation of two works, *Liberty Leading the People* (DELACROIX, 1830) and *The Fanatics of Tangier* (DELACROIX, 1837). It is also the part where we highlight their theoretical ties with the most diverse fields of knowledge, especially those related to legal and cultural aspects of the nineteenth century. The same method of analysis is seen in the next section when used with the other two works, *Comtesse d'Haussonville* (INGRES, 1845) and *La Grande Odalisque* (INGRES, 1814). To better comprehend our line of thought, we recommend the visualization of these four paintings, whose electronic addresses are in the references. Lastly, from all that we discussed, we present some considerations on the matter of the colonial law and possibilities for its decolonization.

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II. Connections between Culture, Law, and Identities: Iconology as an Empirical Work Tool

We start from the assumption that the law is a cultural artifact elaborated by men and women, being inserted in this world and formed by many voices. This way, we are capable of bringing together its elaboration to that of artistic works, showing the similarities and connections between them. To do so, we present an empirical search guide where we utilize the documentary method of analysis to highlight the formation of identities by both the legal systems and the paintings used in this work.

a) Law as Cultural Artifact, Documentary and Iconological Method

The cultural world that we live in is extremely imaginary in many ways. Pictorial media have an immediate force of persuasion, hardly found in other forms of communication, and we can see it being used from advertisements to legislation, from teaching materials to the construction and fall of social icons. We understand that the cultural environment is build - and in turn, builds - by shared mindsets and perceptions in a specific time and place.

The mutual influence between cultural narrative (whether through painting, romance or another form of artistic manifestation) and the historical, political and economic dimensions of society where these works are produced or reach through other forms is one of the objects of study of the American of Palestinian origin Edward W. Said (2011). Thanks to his book *Orientalism* (SAID, 2012), published originally in 1978, where Said discusses the imaginary and material constitution of the Orient through the Eurocentric discourse of superiority over non-Europeans, he is considered one of the precursors of the post-colonial studies (CASTRO-GÓMEZ, 2005, p. 20). To him, this discourse encompasses political, economic, moral and legal narratives - in short; it is based on cultural productions made both in the West and in former European colonies.

We note that the law is also a cultural artifact built by men and women. It describes conducts, represents alleged consensus and, aims to organize the society under a certain hierarchy of actions and even through punishment. In this sense, the law also creates images that serve as models of social conduct:

> Does not the law even request the colors to become more imperative? Black is the garment of magistrates and court clerks, black is used by police forces. Colors that echo the black of the referee's uniform and the priest's cassock. All of these characters are there to remember the rules and, if necessary, force their fulfillment. The funeral is not far away. Also the red, a colour preferred by power (let's think of the imperial and cardinal purple, the various red carpets): the magistrates of the high jurisdictions also share the love for red; it is present on the cover of most French codes; it is the red that tells us when to stop when driving [...] The law imposes itself on our retina[2]. (ROULAND, 2008, p. 6-7).

The dimensions shown by Said and Rouland are valid for the study of visual culture in literate societies, where image often replaces writing. We find interesting to observe the diversity of images and colors that, together, translate a narrative: photographs in both print and electronic media, traffic signs, a layout of a jury court, works exhibited in a museum of fine arts. Many of them accessible to anyone when others are aimed at specific groups, although technically available to popular knowledge. All, in one way or another, related to the perspectives and worldviews of the societies that gave rise to them.

Although colonial enterprises originate earlier than the nineteenth century (MIGNOLO, 2008, p. 7), what we propose is to understand aspects of colonial law through some naturalized Eurocentric perceptions that influenced paintings from the nineteenth-century. To do so, we conducted an empirical research using the documentary analysis method (BOHNSACK, 2007), considering the images as direct and documentary sources (KNAUSS, 2006, p. 100).

The differentiation between pre-iconography, iconography, and iconology, according to Ralf Bohnsack (2007, p. 290-292), resides in the questions asked by the researcher at the moment of the image analysis. At first, the researcher should wonder what is represented by the image: people, historical facts, landscapes, events. Both pre- iconography and iconography are non-theoretical, being dictated by immediate and descriptive perceptions. The pre-iconographical description of the work reaches its composition, the incidence of light and shadow, and the shades of the colors used there. In the iconographical description, what we should consider is its intentionality, that is, what the image wants to represent.

The next moment of this work is where we put the iconological questions. We now discuss how these facts were produced by both the author of the image and the characters - if any. This stage demands

[2] From the original: O direito não chega até a solicitar as cores para tornar-se mais imperativo? Preta é a roupa dos magistrados e dos auxiliares de justiça, escura as forças da polícia. Cores que fazem eco ao preto do uniforme do árbitro e da batina do padre. Todas essas personagens estão aí para lembrar a regra e, se preciso, forçar sua observação. O fúnebre não está longe. Mas também o vermelho, a cor de que gosta o poder (pensemos nos púrpuras imperial e cardinalício, nos diversos tapetes vermelhos): os magistrados das altas jurisdições se revestem dele; ele colore a capa da maior parte dos códigos franceses; deu seu nome aos sinais de trânsito que prescrevem parar [...] O direito se impõe até à nossa retina.

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theoretical deepening and historical contextualization of the moment represented in the paintings and the actions of the people there portrayed. Likewise, it is necessary to know the artistic influences of the author that is under study, the artistic movement to which he is affiliated, and even aspects of his life, which we present now.

b) Producing Representations and Identities: A proposition of an empirical research script

To operationalize our investigation, we associated the documentary method with the studies of Martine Joly (2012). The research script elaborated by her brings practicality to the study, without neglecting the complex nuances indispensable for understanding the meaning of the image. We must remember that the image represents, evokes, and even replaces the thing pictured. It produces meanings and designations inserted in the historical moment in which the work was elaborated (JOLY, 2012, p. 16- 17). About this:

> Fields of study, as well as the works of even the most eccentric artist, are restricted and influenced by society, cultural traditions and by stabilizing influences such as schools, libraries, and governments; furthermore, […] both scholarly and imaginative writings are never free, but limited in their images, presuppositions, and intentions; and [...] are less objectively true than we would often think[3]. (SAID, 2012, p. 274).

Joly (2012, p. 63-113) elaborates her pictorial analysis in four steps. Initially, she contextualizes the artistic movement in which the painter is inserted, this way identifying differences with other movements. Then she describes the image, highlighting the choices of shape, colour, how elements are arranged in the frame, lighting, and angle. In the third stage, she looks at the iconic meanings, including the depictions of any portrayed people and the qualities attributed to them. Finally, she identifies the linguistic messages of the work, its title, and possible subtitles, all that can soften the polysemic meanings typical of the images.

Combining the Bonshack's method (2007) with that of Joly (2012), we elaborated a study script whose steps are summarized as follows: a) contextualization of the artistic movement and biographical information of the painter; b) pre-iconographic and iconographic dimensions, when occurs the description of the image; c) iconological stage, when we observe the meanings and representations of the narrative exposed in the image, including the titles of the works.

The methods of image analysis elaborated by these authors are valuable empirical research tools to be used in both direct and documentary sources. In this text, they are useful for connecting visual narratives and legal systems of the Eight Hundred, taking both Law and painting as strategies of power and convincing not only in the aesthetical terrain but also in the social one (KNAUSS, 2006, p. 112). Therefore, we can perceive the works of art studied here as products of its time, but also as producers of aesthetic tastes, world perceptions and a hierarchy of values in groups of people who had access to these kinds of cultural manifestations (such as rulers, European bourgeoisie and intellectuals) through systematic exhibitions in art halls and galleries.

Such representations surpassed the West by reaching mostly the whole globe and this way, supporting a European cultural imaginary that opened a fissure between the metropolis and the colonies. We should note the importance that is to remember that the colonial enterprise will experience unprecedented expansions, especially in the late nineteenth century (MERLE, 2004, p. 729). Its institutions, such as education and science, followed this colonial path by disciplining and classifying people and knowledge. What this pedagogy taught, through English literature, is the idea of a European superiority – which we could see in both metropolitan and colonial schools. Besides, the ethnography then practiced deepened the cultural abyss by producing and exposing images that referred to a supposed native barbarism and primitivism (SAID, 2011, p. 173).

Still, the colonial experience is built by incongruities, resentments, resistances, but also compatibilities, collaboration, and conviction. Mutual experiences, dependencies, and dialogues. Neither the metropolis nor the colony emerged unharmed from these relations: processes of exclusion and, therefore, inclusion forged their identities. In a study of Edward Said's work, Juan Ignacio Castien Maestro (2013, p. 13-14) states that:

> The content of each identity, its own and foreign, integrated by the different characteristics attributed to each one by the fact of having a certain identity, is not something that can be understood separately. On the contrary, it can only really be understood when it is compared with the content of other identities to which it is opposed. [...] The Other is not for us a mere object of contemplation; it is also the object of our actions and we of its, although this may occur somewhat indirectly[4].

Therefore, the colonial works - artistic or not - created knowledge, provided contemplation and study, often even built the reality they described, acting on Europeans and non-Europeans. This social substratum is shared by any cultural artifact produced at the same time - including the existing legal system. The law also

[3] From the original: Os campos de estudo, tanto quanto as obras até do artista mais excêntrico, são restritos e influenciados pela sociedade, por tradições culturais, pela circunstância mundana e por influências estabilizadoras como as escolas, as bibliotecas e os governos; além disso, [...] tanto os escritos eruditos como os imaginativos nunca são livres, mas limitados nas suas imagens, pressuposições e intenções; e [...] são menos objetivamente verdadeiros do que muitas vezes gostaríamos de pensar.

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contributed in this endeavor to transform the Orient into a province of European scholarship, domesticating it, unifying and translating its legislation, classifying customs, and comparing them with Europeans (SAID, 2012, p. 120-121).

These works are not, after all, neutral, but they reflect pleasure and displeasure, hatred, and passion. Thus, in analyzing the paintings described here, we aim to highlight the contrast between the marginality of certain representations, the centrality of others, and the numerous strategies that have arisen from what we perceive as a dispute. From a Saidian perspective, it is not up to us to judge the evident qualities of the artistic techniques used by the artists here presented but to make a study that allows the intersection of resistances and colonialisms, since the representation is, to some extent, a way of participating in the battle described (SAID, 2011, p. 484 and 139).

III. Western Revolution and Oriental Mob: Crossing Representations of Europe and its "Others"

Highlighting the power achieved by European colonialism, we discuss the imbrication of western representations of the Orient and the construction of certain lifestyles, subjectivities, and materialities both in Europe and in its colonies. We can see such constructions in the iconological analysis of two works by the nineteenth-century French painter Eugène Delacroix *Liberty Leading the People* and *The Fanatics of Tangier*. In both paintings, we can infer discourses, including legal ones, being these capable of validating or invalidating peoples and customs, according to the side they inhabit on the dividing line between the European "I" and the "Others", their subjects.

a) Validated Revolution: *Liberty Leading the People*

We propose to think the theme of this study, the representations of certain European perceptions, through nineteenth-century painting. To better understand this period, we have to consider it as a booming world. The years between 1815 and 1914 were a very relevant period for the European colonialism, being called by Marcel Merle (2004, p. 729) "the hour of truth". Back then, By the year of 1815, Europe held 35 % of the land surface, including its overseas colonies; the percentage gets up to an impressive 85% in 1914 (SAID, 2012, p. 74).

Besides the territorial expansion of this period, we can think of the advances in technology and communication, the significant increase in production and consumer goods, and population growth in European countries (HOBSBAWM, 2010, p. 272-273). A very small part of this, however, was reverted to the benefit of the colonized peoples and territories in the face of a plundering discipline, the impossibility of self-government, and the widening social gulf between the resident Europeans and native peoples.

England, for example, brought some advantages to its colonies (especially concerning its administration practices) and respected local religions whenever possible. Nevertheless, despite English efforts, "[...] colonial statistics reveal that malaria, respiratory disease, tuberculosis, and dysentery account for approximately 90 percent of India's mortality from 1872 to 1921 [...][5]", which should be considered alongside the severe famine that plagued India in 1876 and lasted until 1920 (FOURCADE, 2004, p. 355-356). The local reality was so different from the metropolis that even if England took full advantage of all the advances in medicine (which was unlikely considering the colonial posture) it still would be difficult to combat such diseases. We note that, not coincidentally, the period in which the local population was affected by hunger and the aforementioned diseases was practically the same.

At the same time, the metropolis trade, which consisted on sugar, slaves, cotton, opium, and precious metals, was intense. We add to these facts the compromise of the circulation of cultural goods and people, creating an atmosphere that allowed the acceptance of the idea of subjugation of races considered biologically and rationally inferior by western nations in what Ramón Grosfogel calls "epistemic racism or Islamophobia" (GROSFOGEL, 2011, p. 343), which gave some coherence in a set of experiences, in one way or another, shared:

> A young Englishman sent to India to be a part of the "covenanted" civil service. He would belong to a class whose national dominance over each and every Indian, no matter how aristocratic and rich, was absolute. He would have heard the same stories, read the same books, learned the same lessons, joined the same clubs as all the other young colonial officials (SAID, 1994, p. 151).

[4] From the original: El contenido de cada identidad, propia y ajena, integrado por los distintos rasgos que se le atribuyen a cada cual por el hecho de poseer esa determinada identidad, no es algo que pueda entenderse de manera aislada. Por el contrario, sólo puede ser realmente comprendido cuando se lo coteja con el contenido de las otras identidades a las que se contrapone. [...] El otro no es para nosotros un mero objeto de contemplación; también es objeto de nuestras acciones, y nosotros de las suyas, aunque ello pueda darse de un modo un tanto indirecto.

[5] From the original: "[...] as estatísticas coloniais revelam que a malária, as doenças respiratórias, a tuberculose e a disenteria estão na origem de aproximadamente 90% da forte mortalidade indiana de 1872 a 1921 [...]".

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That is why Said considers *Orientalism* as a form of understanding the Orient – a place not only adjacent to Europe but also Europe's colonies (especially France's and England's), a place where resides an "Other", Europeans' cultural rival. Its intellectual construction integrates the material culture of Europe: a discourse configured in colonial institutions, vocabulary, scholarship, images, and bureaucracies (SAID, 2012, p. 27-28).

Artistic manifestations created an authorized space for discourse, connecting life in the metropolis with peripheral everyday life, through representations of control, and a whole set of meanings of what is convenient or not for those who lived on either side of the dividing line. Over time, societies have come to differ so much that Orientalism becomes a source of identity for both Westerners and their "Others". Thus, the dissemination in Europe of "new styles of art, including travel photography, exotic and Orientalist painting, poetry, fiction, and music, monumental sculpture, and journalism" (SAID, 1994, p. 109).

The conditions of possibility were there. The cultural environment has contributed very strongly to this. We do not suggest that such artistic manifestations caused imperialism, nor that all the marks existing in the former colonies are there due to European rule. Rather, European culture has often validated itself by drawing dividing lines between it and other peoples, reaffirming its dominance in these distant territories (SAID, 2011, p. 144-145).

We can observe the discipline of bodies provided by this mentality in the works of Eugène Delacroix and Jean-Auguste Ingres, contemporary painters in nineteenth- century France. Although affiliated to rival artistic movements, some of their works analysed here are examples of the Orientalist discourse in question. Four of their paintings were chosen for analysis in this text, according to the script previously elaborated: *Liberty Leading the People* (DELACROIX, 1830), *The Fanatics of Tangier* (DELACROIX, 1837), *Comtesse d'Haussonville* (INGRES, 1845) and *La Grande Odalisque* (INGRES, 1814).

We begin with the author of *Liberty Leading the People*, whose works were inspired by dramatic themes, sometimes heroic and violent actions. Born in 1798, Ferdinand Victor Eugène Delacroix, who lived until 1863, was one of the most important exponents of nineteenth-century France. The French administration commissioned him to paint the ceiling of the Luxembourg Palace and the Bourbon Palace. This first painting symbolizes the romantic movement in his country, characterized by the appreciation of colors, movement, the contrast between light and dark, having as its subject the individual, the ideas of a hero, shady or even libertine individual, all to achieve a less rational result, aiming to be as emotional and dramatic as possible (COSTA, GOMES, MELO, 2014, p. 477).

The fight against neoclassical rationalism and the appeal to nationalist causes meant that romantic artists were "[...] inspired and involved in a direct way by public matters [...]", social issues being "[...] frequent, which refer to national and contemporary events in the life of artists [6]" (VIEIRA, 2009, p. 10). It was a historic moment marked by the double revolution – the French and the English ones (HOBSBAWN, 2009, *passim*). *Liberty Leading the People* (DELACROIX, 1830) became popular as a symbol of the French Revolution, even though it does not refer to it but to a popular French uprising in 1830. Later this work would become an icon of French nationalism (BELL, 2008, p. 318).

In this painting, Delacroix portrays several people in the midst of a struggle in the streets of Paris. Framed by the smoke of battle, a female figure in flowing white robes occupies the centre of the painting, especially illuminated in contrast to the other characters. Carrying the red, white and blue republican flag in one hand and a bayonet in the other, she goes on, stepping over fallen combatant bodies during the battle, leading a group of revolutionaries. Around her, people dress in all kinds of clothes: ordinary workers clothes, jackets, top hats, ragged shirts. They are all carrying weapons, whether pistols, carbines or swords. According to an art critic:

> The picture cleverly combines gritty contemporary reportage with allegory in a monumental way. Place and time are clear: Notre Dame is visible in the distance and people are dressed according to their class, with the scruffy boy on the right symbolizing the power of ordinary people (FARTHING, 2011, p. 395).

The title of the painting contributes to its understanding. It highlights certain elements to the detriment of others. Here, the word freedom is fundamental, considering its meaning in the artistic movement to which Delacroix was affiliated: the Romantic Movement usually associated freedom with national independence. Thus:

> This is where Delacroix's freedom comes in. It guides the people, it does not command them, it does not give orders, it does not take away from them the perception that they are agents in a material world and in which abstract entities need to personify themselves - become equal - to act equally[7]" (COSTA, GOMES, MELO, 2014, p. 481).

[6] From the original: "[...] inspirados e envolvidos de forma direta pelos assuntos públicos [...]" and "[…] frequentes as temáticas de cunho social, que remetem a acontecimentos nacionais e contemporâneos na vida dos artistas."

[7] From the original: É aqui que se insere a Liberdade de Delacroix. Ela *guia* o povo, ela não o comanda, não o ordena, não tira dele a percepção de que ele é agente em um mundo material e em que as entidades abstratas precisam se personificar – tornar-se *iguais* – para agirem igualmente.

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The enlightened personification of Liberty ahead of the French on the urban battlefield is emblematic. These people fought for their self-determination, for the possibility of organizing themselves politically, freed from reins that did not suit them. They carried instruments that allowed conquering these objectives: weapons and a flag, strength and nation. The modern idea of state is, this way, legitimated, bringing with it the legal notions of national sovereignty and individual freedom, both figuring as citizens' protectors against external advances and damage to their private dimension: identity, privacy and heritage.

b) Invalidated mob: *The Fanatics of Tangier*

The narrative told in *Liberty Leading the People* allow us to think that the French revolutionaries and their successors would make radical changes in the destinies of their colonies. What happened, though, were demonstrations of even more colonial power: Louisiana, for example, was sold to the United States by Napoleon in 1803 - its price, $ 15 million. After all, "what do some 'sugar islands' weigh in the face of the fascination of the revolutionary brazier and the glory of the empire? [8]" (MERLE, 2004, p. 728).

Within this line of thought and praxis, legal monism occupies a prominent place. We observe that "it was with the post-revolutionary French Republic that an eagerness to integrate the multiple legal systems based on equality of all under common legislation was accelerated [9]" (WOLKMER , 2003, p. 04). It is, then, in the State that lays the unique legitimacy of dictating the law, which holds the capacity of validation or invalidation aforementioned.

Even though the British colonization were based on an indirect administration model, that was more receptive to the local legal costumes, France, on the other hand, focused in a more direct administration intending to assimilate the native peoples even in the legal aspect (BÔAS FILHO, 2007, p. 338). Beyond these differences, both models understood as necessary knowing better the colonized peoples to exercise their power over them. To do so, Orientalism fitted perfectly: its set of texts and practices sustained an imaginary over degraded populations that, therefore, deserved the legal discipline - to a greater or lesser extent - that only the European legal systems could guarantee.

The mere thought that the law in other places could be grounded in a "set of religious, legal, and social norms directly based on canonical doctrine[10]" of Islam, such as the *sharia*, was unthinkable in the European scenario (LOSANO, 2007, p. 402). The Quran, a fundamental prophetic and religious work, has only one-tenth of its verses of what could be interpreted as legal rules, aiming to indicate the steps to a life of righteousness (WOLKMER, 2013, p. 325). Because of this, the non-religious Western authority, guardian of sovereignty and freedom, was felt in the Orient by delimitating the dividing mark between "legitimate" law and its illegitimate "Others". It passed the idea that Islamic law was nothing more than a collection of religious books, and native customs.

Following this line of thought, by contemplating the *Liberty Leading the People* (DELACROIX, 1830) we feel that, after all, truth and safety will prevail, this way justifying any loss of men and women during the process. This is a very different feeling from that experienced when seeing *The Fanatics of Tangier* (DELACROIX, 1837).

In this painting, we see an utterly different scenario if compared to Delacroix's previous painting. We see an oriental city with its white buildings and colourful rugs. Portrayed in it, a group of people: brown-skinned men with dark hair and beard, wearing Arabian clothes in shades of yellow, red, and terracotta. These men occupy the street in a disorderly way, being this a manifestation of violence and ferocity. In the center, a figure wearing a white shirt and with his arms raised is portrayed as out of control and, to the right, a serious man on horseback, holding a green flag. On the left side, a runaway child, and on the opposite side, a man protects two other children. Around there, we see people standing, watching the protest.

The scene concerns a group of religious protesters - dervishes - in a public act of frenzy. In this work, Muslim culture is presented as wild, bizarre, and dangerous:

> Delacroix' images are in fact not objective depictions but instead shaped narratives informed and controlled by Western preconceptions and prejudices. [...] Where in Liberty Leading the People, the flag was a unifying manifestation of civic ideals carried by Liberty herself, the green banner here is held by an Emhaden, a religious leader, who also restrains the dervishes through chains or ropes (HARTMANN, 2002, p. 7-8).

We find interesting that Delacroix did not paint this image during his trip to Morocco, but only "[...] after his return to Europe, this way being free to paint only the emotion and not the details that laid before him[11]" (BOTTON, BOTTON, 2012, p. 95). Since he disregarded

[8] From the original: O que pesam algumas 'ilhas de açúcar' diante da fascinação do braseiro revolucionário e da glória do império?"

[9] From the original: Foi com a República Francesa pós-revolucionária que se acelerou a disposição de integrar os vários sistemas legais sob a base da igualdade de todos perante uma legislação comum.

[10] From the original: Conjunto de normas religiosas, jurídicas e sociais diretamente baseadas na doutrina canônica.

[11] From the original: Após o seu retorno à Europa, pois, assim, estaria livre para pintar apenas a emoção e não os detalhes que se postavam à sua frente

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any empirical data, his narrative did not seek precision, but rather to characterize oriental "strangeness" and capture it from the European perspective (SAID, 2012, p. 113).

Looking at Western culture by the end of the nineteenth century, we see a depository of made-up identities concerning these strange, non-Western beings: inferior, immoral, slow, greedy races, holders of an unchanging essence, and therefore in need of the severe European rule. Generally, we can find these perspectives in advertising pieces, postcards, in artifacts as different as board games and musical scores, all accepted by nineteenth-century societies (SAID, 2011, p. 244-245).

In these kinds of representations, the oriental peoples were simplified entities, all considered foreign demons, terrorists, violent and undemocratic. A hasty imperialistic perspective may lead to the realization that the idea of freedom is exclusively Western and that:

> […] the European tradition is the only natural and inherently democratic one, while it is claimed that the non-Europeans "others" are naturally and inherently authoritarian, denying the non-Western world democratic discourses and forms of institutional democracy (which, of course, are distinct from Western liberal democracy), and as a result, end up supporting authoritarian political forms[12] (GROSFOGUEL, 2011, p. 345).

In this way, the struggles against European colonization were translated by the Orientalist discourse as an inability to understand legal institutes such as freedom and sovereignty, disregarding the historical resistances to the European domination that such peoples carried out all along. Assuming the binary division of the "eastern/oriental" and "western" categories, freedom and self-government were of less importance to the characters from *The Fanatics of Tangier* than to the French combatants from *Liberty Leading the People*. When the non-Westerners later claimed the end of colonialism, the Orientalist canon understood such revolts as derived from western influence, more specifically, from the western notion of freedom (SAID, 2012, p. 159; SAID, 2011, p. 314 and 402). The Saidian insights apply until this day:

> To be non-Western (the reifying labels are themselves symptomatic) is ontologically thus to be unfortunate in nearly every way, before the facts, to be at worst a maniac, and at best a follower, a lazy consumer who can use but could never have invented the telephone (SAID, 1994, p. 304).

[12] From the original: [...] la tradición europea es la única natural e inherentemente democrática, mientras se pretende que los "otros" no europeos son natural e inherentemente autoritarios, negándole al mundo no occidental discursos democráticos y formas de democracia institucional (que, por supuesto, son distintos de la democracia liberal occidental), y como resultado, terminan apoyando formas políticas autoritárias.

IV. Intimate Place: Female Resistances and Conformities

A home where a family lives - a place reserved especially for women - is surrounded by various rules, both social and legal. This way, we present a discussion about cultural representations of women in two works by the French painter Jean-Auguste Ingres, a Delacroix's contemporary. In both the *Comtesse d'Haussonville* and *La Grande Odalisque*, we observe, through the empirical method used here, a game of inclusion and exclusion to which female representations were subjected in different legal systems.

a) *Comtesse d'Haussonville and the obligatory web of marriage*

We already said that every exclusion presupposes some inclusion. The counterpart to Oriental barbarism was European civility. Westerners, therefore, should follow certain rules of conduct: actions, words, gestures, thoughts, and feelings, to which they might or might not realize, but were, indeed, being followed (SAID, 2012, p. 308). To women, conversational arts, delicacy, and modesty. To men, the world to be conquered. It is interesting how, above all, freedom was painted as a feminine image: various representations of the French Republic translated it into a young, familiar and affectionate woman (HUNT, 1991, p. 31). The young Republic needed to be a place of shelter against tyranny and ill-treatment - the expression of femininity seen here served the purpose of attenuating the intrinsic violence of an armed revolution.

Modesty, affection, receptivity: these characteristics were considered female. Subservience was the counterpart to the protection of its fragility. The Code Napoléon was very explicit in his article 213: "The husband owes protection to his wife, the wife obedience to her husband", to the extent that the wife is unable to exercise guardianship or even compete equally in inheritance, for example, because of her civil disability (PERROT, 1991, pp. 121-122). Her place was a private, intimate one, though not entirely owned by her - the money and the decision-making were held by her husband, or her father, if still single. Married, she could not be, by herself, part in any contracts or use her salary; even to practice a profession, the women would need the consort's endorsement, as in everything else. This way:

> In English mid-nineteenth century imagination, the house was the place of sweetness and delight, but perceived in different ways by men and women. Men could mix the worries, fears, and deep satisfactions of public life with the hidden charms of home. For women, this duality rarely existed: they had only and

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exclusively home, the "natural" place of their femininity[13]. (HALL, 1991, p. 87).

Private conservatism in the midst of a public revolutionary furore is a combination that was not restricted by family affairs. In addition, the artistic circles mirrored such ambiguity. Neoclassicism was a nineteenth-century artistic movement influenced by the Enlightenment and was characterized by the rescue of ancient Greek and classical Roman traditions, besides the maintenance of academic rules and styles of great masters from the past. At the same time, its themes political and not outdated, depicting scenes and heroes of the French revolution, always highlighting feelings considered universal, such as patriotism and courage (BELL, 2008, p. 312; NATIONAL GALLERY OF ART, 2015). If historical scenes are grand, the portraits bring an ideal of classic beauty, as found in Ingres's work.

Jean-Auguste Dominique Ingres was born in 1780 and died in 1877. He struggled against the Romantic Movement that took control over French paintings scene, in which we can insert Delacroix's works. Ingres' iconic paintings of well-dressed models and his fantasies of oriental concubines occupied a prominent place in the French society of the time:

> The clientele he had chosen, his classic references, and the linear control of his design gave him a certain place in the politics of French art. Until his death in 1877, this master of revised neoclassicism became the epitome of conservative values, despite the strange instinctive intensity of his actual paintings.[14]. (BELL, 2008, p. 312).

We chose two of Ingres' works. The first is the portrait of *Comtesse d'Haussonville* (INGRES, 1845). In it, we can see a young woman with a blue silk dress and hair trimmed with a red ribbon, pictured in front of a mirror, on a velvet sideboard in a darker blue colour. The garment, lace-adorned, and the objects arranged on the sideboard - including an oriental vase on the left - are indicators of its upper class. The level of detail in the portrait justifies the three years it took Ingres to complete it. We are talking about a classic representation from nineteenth-century European painting: a thoughtful woman holding her chin in a chaste attitude (ROUSSEL, 1985).

The demand for Western female decorum was fundamental. Nineteenth-century bourgeois Europe surrounded marriage in an obligatory web, that in both legal and moral dimensions. For women, especially from the upper class, this was the ultimate goal: to get married. Achieving this goal involved the fulfillment of other tasks such as taking care of her husband and children, attending the halls of friendly and well-known families, welcoming them in her own home, worrying about fashion and body. What happened, in most cases, is that they were to become "men's insignia" (CORBIN, 1991, p. 449).

Despite this, and despite what one might think at a glance of the model in Ingres's painting, she was Louise de Haussonville (1818-1882). Although young and of high social position, she was a recognized liberal writer, an odd path for women at such a historic moment. Haussonville's example demonstrates one of the difficulties of generalization: there are always resistances, conformities, ambiguities.

> The harsh yet intelligent woman went on to publish five books including a two-volume chronicle of the life of Lord Byron and an unpublished autobiography. […] Ingres found her to be a modest young matron who did not conform to the assumed frivolous nature of the ruling class. The portrait was extremely successful, both in its precise execution of the Comtesse and her personality and with the Haussonville family and ultimately Parisian society as a whole (WERLY, 2011, p. 159-160).

On the other hand, the division of male and female roles was a social force. Sex was an object of normalization only legitimized in the marital bed, making it inappropriate or even abnormal elsewhere. Once again, what was invalidated from the domains of the "I" was sent to the territory of the "Other."

b) La Grande Odalisque and the Misunderstanding of Oriental Culture and Law

The exoticism and moral lassitude of these Orientals "Others" can be observed in the depiction made in the painting *La Grande Odalisque* (INGRES, 1814): blue silk curtains in the background, censer on the right of the canvas and a naked woman - with western features - reclined on pillows, wearing a turban and holding a fan of peacock feathers.

> Cette femme allongée sur un divan est offerte par sa nudité et son visage tourné vers nous. Le titre de l'oeuvre, signifiant "femme de harem", ainsi que les accessoires orientaux qui l'entourent suggèrent l'Orient sensuel. Mais cette femme est aussi discrète parce qu'elle ne montre que son dos et une partie d'un sein. Le thème du nu, majeur en Occident, était surtout lié à la mythologie depuis la Renaissance, mais Ingres le transpose ici dans un ailleurs géographique (LOUVRE, 2015).

[13] From the original: Nos meados do século XIX, na imaginação inglesa, a casa realmente era o local das doçuras e delícias, mas percebida de formas diferentes pelos homens e pelas mulheres. Os homens podiam mesclar as preocupações, temores e profundas satisfações da vida pública aos encantos recônditos do lar. Para as mulheres, raramente existia essa dualidade: possuíam apenas e exclusivamente o lar, quadro "natural" de sua feminilidade

[14] From the original: A clientela que ele escolhera, suas referências clássicas e o controle linear de seu desenho conferiam-lhe um certo espaço na política da arte francesa. Até sua morte, em 1877, esse mestre do neoclassicismo revisado se tornou o epítome dos valores conservadores, apesar da estranha intensidade instintiva de suas pinturas efetivas.

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Such pictorial narrative has a discourse that characterizes the Orient with a very specific vocabulary, filled with figures so representative that in fact are closer to theatre characters (SAID, 2012, p. 112-113). This theatricality may be because Ingres never traveled to the Orient, making his paintings based on travelers' accounts and other images from books and diaries (FARTHING, 2011, p. 408) - hence the model's western features and absence of her name in the title of the work. No name fit her, being her originated from the orientalist fantasy of its creator, added with paints of exotic literature.

These writings portrayed "[...] a place where you could search for a sexual experience that did not exist in Europe[15]" (SAID, 2012, p. 263). An extravagant and permissive place that allowed Westerners to move there and find a life with fewer restrictions than the European one, being able to do countless activities that were not allowed in their countries of origin. Travel to the Orient also played the role of sexual initiation in the imagination of many wealthy young men (CORBIN, 1991, p. 467).

Ingres followed a path common to many other artists: from Orientalist literature to fantasy, finding in the last one the source to represent an eccentric culture that was far too difficult for him to grasp. Hence the habit from middle nineteenth-century European art to portray the oriental woman as a dancer, slave, servant, concubine, or belonging to the lust of some harem. Several paintings inserted her in places where "[...] sensuality and cruelty are inevitably associated (SAID, 1994, p. 121). The conclusion date of *La Grande Odalisque* – 1814 - is noteworthy. The Western fantasy of dominance over this Oriental "Other" had concrete reflexes: a year later, the West already had dominion over 35% of the territories of the world (SAID, 2012, p. 74).

Once again, we recall the materiality of these representations, which was reflected in the validation of actions by both European and Oriental women. In the words of Santiago Castro-Gómez, commenting on Said's work:

> The representations, the "world conceptions" and the formation of subjectivity within these representations were fundamental elements for the establishment of the Western colonial dominance. Without the construction of an imaginary "east" and "west", not as geographical places but as forms of life and thought capable of generating concrete subjectivities, any explanation (economic or sociological) of colonialism would be incomplete. [...] orientalism is not only a matter of "consciousness" (false or true) but the experience of objective materiality[16] (CASTRO-GÓMEZ, 2005, p. 22).

Yet, this harem so desired by young Europeans was a place reserved for family life, a place for living among relatives and servants, where women could be comfortable (DIB, 2011, p. 149). This was also reinforced by the Islamic law, which "[...] is directed not at the individual but at the family [17][...]", including the regulation of marriage, polygamy, inheritance, and affiliation (LOSANO, 2007, p. 413).

We should note, also, that Ingres misunderstood even the meaning of the word "odalisque". They were housemaids, slaves, spoils of war, or bought in markets still very young. Because of this, it was not possible to stipulate which skills they would develop, and were, therefore, educated for various tasks, including Quran reading, weaving, poetry and dance. An odalisque would only change her life if she stood out among the others, becoming the sultan's concubine, a hierarchically superior position (DIB, 2011, p. 149- 150).

The orientalist discourse is one that passes the idea that represented women are accessible to any man that arrives in the Orient; these women being nothing more than an object of lust for male pleasure. We can see this orientalist discourse among other works of the studied painters such as in *Le Bain Turc*, 1862, and in *L'Odalisque à l'esclave*, 1842, these both by Ingres and in Delacroix's works *Odalisque Reclining on a Divan,* 1828 and *The Death of Sardanapalus*, 1827.

> The Orientalist paintings, which were largely based on imagination, played a big role in portraying the image of the Arab woman as a sexual figure. In those paintings, the Arab woman is dancing, taking care of herself, or sitting doing nothing in her own woman space (ABURWEIN, 2014).

This perception disregards the cultural and moral particularities of the represented place. Such Western men would not be admitted to these places simply because they did not belong to that family. More important, in our view, are the power relations within the harem. Being odalisque, concubine and even, more fortunately, the mother of one of the sultan's children was a career that many of those women strove to pursue.

[15] From the original: Um lugar onde se poderia procurar a experiência sexual que não existia na Europa.

[16] From the original: Las representaciones, las "concepciones del mundo" y la formación de la subjetividad al interior de esas representaciones fueron elementos fundamentales para el establecimiento del dominio colonial de occidente. Sin la construcción de un imaginario de "oriente" y "occidente", no como lugares geográficos sino como formas de vida y pensamiento capaces de generar subjetividades concretas, cualquier explicación (económica o sociológica) del colonialismo resultaría incompleta. [...] el orientalismo no es sólo un asunto de "consciencia" (falsa o verdadera) sino la vivencia de una materialidad objetiva.

[17] From the original: [...] o direito islâmico dirige-se não ao indivíduo, mas à família [...].

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Finally, we should mention that despite the role assigned to the European women in the nineteenth century, some did not exactly follow social conventions. Louise de Haussonville wrote a biography of Lord Byron; himself considered a cursed poet (SILVA, 2010, p. 8). In this sense, feminist studies have been questioning some of Said's considerations regarding the heterogeneity of discourses within the scope of colonialism. There are investigations that analyse how, through travel diaries, Western women sometimes identified with the oppression experienced by the natives, while other times they shared Western male discourses of power over the colonies (GARCIA-RAMÓN; MAS, 1998, p. 04-05).

We remember that the European woman was destined for a peripheral public and legal role, her place was at home, surrounded by household chores, her children, and her husband. On the other hand, traveling afforded greater freedom - both socially and geographically, the reaffirmation of European superiority placed women side by side with men. This way, amid criticism of the colonialist conduct of officers and residents and sympathies for the modernization brought by colonial administrations, several women experienced ambiguities between local and western powers.

V. (DES) Colonial Law as a Strategy of Power

Descolonial studies, especially when seen through the work of Edward Said, serve as powerful tools for discussion of numerous legal issues. We understand that its association with the documentary method of analysis presented here provides a better view of colonialist discourses within legal systems of metropolises and their colonies. We also emphasize that the relationship between conformity and resistance permeates the entire social fabric and may present alternatives to the coloniality of power, especially in times of contemporary persistence in an invalidation discourse of the Orient.

a) The role of Law in the Orientalist Inclusion-Exclusion Game

The ambiguity between collaboration and resistance is, in fact, part of the subjective and objective world created by the colonial and patriarchal enterprise. We note that resistance to colonialism existed from the beginning. This way, the colonizer has always needed natives to cooperate in combating this opposition - the institutional force cannot be felt everywhere and with the same intensity. Thus, local collaboration with European colonization was active and, in many cases, it came with the intention of adopting the modernization of the metropolis. This also occurred through colonial education, through the reading of scholarly works and novels and the aesthetics from paintings and music, all this bringing the European lifestyle to the colony (SAID, 2011, p. 404).

We perceive, then, the connection between colonialism (the political domain of the metropolis over the colony and the exploitation that settles there) and coloniality (born with the first and built on the cultural, sexual, and political perceptions - among others – of the colonizer over the colonized). As we have argued, the natives end up assuming such representations as theirs, even though they diminish and underestimate them (GROSFOGUEL, 2010, p. 464-465). Both identities intertwine with the hierarchies that come from them, forming narratives that sometimes are harmonious and sometimes are not, such as the examples of European travelers that identify themselves both with non-Westerners and, at the same time, with the colonial administration.

This also came the other way around: as it turned out, the colony was also represented in the West. The image of an odalisque was the counterpoint to that of a French noblewoman, since "[...] in contrast to European rationality and sobriety, extravagant pleasures were part of the Oriental identity family[18]" (SAID, 2012, p. 132). The mob running through the streets of Tangier highlighted the heroism and organization of the French revolutionaries. The power of the image, its didacticism and persuasion were exposed in halls and galleries. Oriental objects were transported there, receiving attention from curious Europeans. Shiv Visvanathan (2010, p. 565) makes the following comparison: "[...] to the Western mind, the museum is a large humanitarian institution that reflects Western sensitivity to past cultures. However, for the oriental look, the museum is almost the rationalization of piracy[19]."

Law, a potent cultural artifact, was central in the colonial enterprise and its patriarchalism both geographically and representatively. Assuming that there was "one" Islam (rather than several societies, each with its characteristics), nineteenth-century French law intended to reformulate its legal bases through the French Revolution's postulates: liberty, equality, separation of the State from Religion, the division between public and private law, and so on. This way, numerous European legal institutes have been adopted by the Islamic world (LOSANO, 2007, p. 438).

[18] From the original: [...] em contraposição à racionalidade e à sobriedade européias, extravagantes prazeres faziam parte da identidade oriental.

[19] From the original: Para a mente ocidental, o museu é uma grande instituição humanitária, que reflete a sensibilidade ocidental para com as culturas do passado. Mas para o olhar oriental, o museu é quase que a racionalização da pirataria.

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Achieving this "westernization" would bring some dignity to this "Other" by domesticating him, hierarchizing his behaviors, legally assimilating an entire discursive place, rewriting it according to the validation rules of the Western "I". Thus, the legal code that was imbued in the Orient was a non-religious one in a deeply religious world; it was one that differentiated the public from the private in legal systems that did not attach any relevance to this stratification (WOLKMER, 2012, p. 330-331).

Religion is at the foundation of Muslim societies: Islam is literally "total submission to God" (LOSANO, 2007, p. 399). Religious rituals are everywhere and are not understood as that "savagery" that Delacroix's work represented (as examples we suggest the observation of *Massacre at Chios*, 1824, and the aforementioned *The Death of Sardanapalus*, 1827), but as an essential part of everyday life. Hence the law addresses not only to a social organization but - and above all – to a mystical and spiritual dimension. In this, we do not see any western separation between law and morality (AGUIAR, 2001, p. 272). Thus:

> Any comparative attempts at approximation, and subordination, with the Latin ethnic categories that historically informed the *lex* in the designation "Law", such as "Private Law" and "Public Law", end up being anachronistic and Eurocentric. Islamism consolidated political domination in the opposite direction to that of European ethnic groups, in which there was a problematic and progressive disjunction between the Collectivity-State and Religion. (CAMPOS NETO, 2006, p. 47[20]

The concepts of freedom and privacy, for example, so dear to the West, also have dimensions that can be associated with Ingres' orientalist work, here under study. Firstly, because the private life of an oriental woman is different from the European one, their religious senses, the wearing of the veil, the centrality of the family, the social roles they play, all mean that the supposedly universal European law is not easily applied to them.

Secondly, because the iconological analysis used demonstrates the fissure that divides the "we" and the "they" of Orientalism. The privacy of the Countess of Hassounville was largely protected by her lace-trimmed blue silk dress; the same privacy was denied to a nameless Muslim woman, who was presented naked, even though being part of a religion that stipulated the use of a veil. That is why:

> "Western" epistemic racism/sexism, by diminishing "non-western" epistemologies and cosmologies and privileging the "western" men's epistemology as the superior form of knowledge and as the sole foundation for defining human rights, democracy, justice, citizenship, etc., ends up disqualifying the "non-western" as incapable of producing democracy, justice, human rights, scientific knowledge, etc. This is based on the essentialist idea that reason and philosophy are rooted in the 'West' while non-rational thinking is rooted in the "rest" [21]. (GROSFOGEL, 2010, p. 346).

Human rights, the hallmark of French constitutionalism, have their foundation in the bourgeois individualism of the Eight Hundred, in which the concept of freedom has as its antithesis the notion of tyranny. From a Muslim perspective, tyrannical action is opposed to "fair action" (LEWIS, 1996, p. 283). Divine justice, applied by men and achievable, among other ways, by the holy war (*jihad*). From the three meanings of *jihad*, referred to by Mario Losano (2007, p. 426-427), one can see how generalizations can disfigure an image: in addition to the well-known "war against infidels", it also means controversy with Westernized Muslims and, equally, the effort each one makes to follow the rules of the Quran, despite all the difficulties encountered. We see, then, a very personal and peaceful dimension.

Despite all these obstacles, law institutes from Europe were adopted in the various colonized Muslim countries, leading to a decrease in the application of *sharia*. Today, even after World War II and the national independence movements, coloniality remains.

b) Resistances and Legal-Decolonial Strategies

However, as we have shown so far, there are innumerable resistances in any relation of power - in fact, power only exists if such oppositions are exercised.

We can present a large number of resistances that follow this line of thought, such as Islamic countries that apply both Muslim and Western laws at the same time; "Islamization" of European institutions; and legal pluralisms due to the various systems of law, mixing ancient and modern rules. We add, among many other movements, discussions within these societies between fundamentalists and secularists and claims by organized groups of women and non-Muslim citizens (WOLKMER, 2012, p. 332-333). Such a perspective leads us to Said's words:

[20] From the original: Decorrem por isso anacrônicas e eurocêntricas quaisquer tentativas comparadas de aproximação, e-ou subordinação, com as categorias étnicas latinas que historicamente informaram a *lex* no designativo "Direito", tais como "Direito Privado" e "Direito Público" ou superposição deste em relação àquele. O Islamismo consolidou dominações políticas em sentido inverso ao das etnias européias, nas quais se deu problemática e progressiva disjunção entre Coletividade-Estado e Religião

[21] From the original: O racismo/sexismo epistêmico "ocidental", ao inferiorizar as epistemologias e cosmologias "não ocidentais" e privilegiar a epistemologia dos homens "ocidentais" como forma superior do conhecimento e como única fundação para definir os direitos humanos, a democracia, a justiça, a cidadania, etc, termina desqualificando o "não ocidental" como incapaz de produzir democracia, justiça, direitos humanos, conhecimento científico, etc. Isso se baseia na ideia essencialista de que a razão e a filosofia radicam no "Ocidente" enquanto que o pensamento não racional está radicado no "resto".

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> No one today is purely one thing. Labels like Indian, or woman, or Muslim, or American are not more than starting-points, which if followed into experience for only a moment are quickly left behind. Imperialism consolidated the mixture of cultures and identities on a global scale. But its worst and most paradoxical gift was to allow people to believe that they were only, mainly, exclusively, white, or Black, or Western, or Oriental. Yet just as human beings make their history, they also make their cultures and ethnic identities. No one can deny the persisting continuities of long traditions, sustained habitations, national languages, and cultural geographies, but there seems no reason except fear and prejudice to keep insisting on their separation and distinctiveness, as if that was all human life was about (SAID, 1994, p. 336).

The same power strategy that provided years of European colonization (including a legal one) in the Orient can be used as a tool for its decolonization. Not to disregard undeniable Western contributions, but to recognize that our identities are increasingly multifaceted and mutually enriching. Hence the important debate provided by decolonial studies. For Walter Mignolo (2008, p. 10):

> [...] "coloniality" appoint colonized histories, subjectivities, ways of living, and knowledge, from which the "decolonial" answers emerge. So if coloniality is the invisible face of modernity on the one hand, it is also the energy that generates decoloniality on the other [22].

This leads us to the understanding that colonial law has decolonial resistances within it. Muslim adaptations to European laws, Arab revivalism in times of nationalism, different forms of understanding what *jihad* is, legal pluralism in these places, among other indications, occurred at the heart of the colony, whose domain, as these examples show us, was not complete. Yet, coloniality persists in every rule of law that differentiates the "other" from its Western "me."

The fight against the still present Orientalism virus, especially in Western foreign policies (VISVANATHAN, 2010, p. 566), passes on one hand through the respect and understanding of cultures as different as those here dealt with. On the other hand, through recognizing that the Muslim world is much more than what was represented by European arts, politics and law. Today, perhaps more than ever, this decolonial perspective is urgent. Western and imperialist countries, especially the United States, have been emphasizing strongly Orientalist images to justify barbarism (physical, social and legal) that they would never commit towards their own citizens. In the lucid words of our Palestinian author:

> Most images represent mass rage and disgrace, or irrational (therefore hopelessly eccentric) gestures. Lurking behind all these images is the threat of the *jihad*. Consequences: the fear that Muslims (or Arabs) will take over the world [23]. [...] With such information about Iraq, what forgiveness, what humanity, what chance for a humane argument? (SAID, 2012, p. 383; SAID, 1994, p. 298).

Finally, one of our methods in this text is the intertwining of images and abstractions, providing an understanding of the materialities produced by law, often enabling unexpected comparisons and analyses. The artifacts that come from it - whether paintings or norms - are not innocent, translating values, choices, and clashes of their producers, whether these being artists, legislators or rulers.

The association between law and images is, nonetheless a strategy of resistance. The visual arts can translate narratives of power that, associated with legal meanings, allow differentiated views over the same issue. As social artifacts, art and law are human constructions that come from choices about what is valid or not, being testimonies of social normalization. These materialities form identities, direct actions, and, in turn, are formed by them.

VI. Conclusion

We tend to live each in our own way, in specific places shared with those who are part of our cultural heritage. Worldviews, images, identities, and materialities were constructed largely presupposing the differentiation between the "I" and the "Other". This binary line of thought is strongly reinforced by modern perspective, to which we are all contributors. Law - as a social artifact – is translated as a place of clashes, also dealing in its own way with a social organization that generates bodies and classifies them. We have shown that the law is permeated by relations of power and knowledge, always eager to develop strategies that may include or exclude specific people, objects and knowledge, organizing them hierarchically through the most diverse sources: legislation, customs and legal doctrines.

[22] From the original: [...] "colonialidade" designa histórias, subjetividades, formas de vida, saberes e subjetividades colonizados, a partir das quais surgem as respostas "descoloniais". De maneira que se, por um lado, colonialidade é a face invisível da modernidade é também, por outro lado, a energia que gera a descolonialidade.

[23] From the original: A maioria das imagens representa fúria e desgraça de massas, ou gestos irracionais (por isso, irremediavelmente excêntricos). Espreitando por trás de todas essas imagens está a ameaça da *jihad*. Consequências: o medo de que os muçulmanos (ou árabes) tomem conta do mundo.

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In this line of thought, we highlight the existence of these mentioned law sources - and of the legal systems that institute them - as inventions, artifacts constructed under certain conditions of possibility, born in historical, political, and economic schemes. Neither the law nor its subjects have a predefined essence. Hence the importance of decolonial studies for the present investigation, paying attention to our legal views on the contingency of knowledge, on the construction of law, and its application. Through these studies, we observe the positivity of power - its materiality, its ability to build the world in which it exists. In the same way, the old relations between colonialists and colonized countries are unveiled, as well as the new configurations between central identities and others considered peripheral.

Among such imaginary and material representations, we seek to demonstrate the strength of categorizations built on power relations between oriental colonies and western metropolises. The iconological method made possible comparisons and approximations in the analysis of the images described by us with Saidian theorizations about Orientalism and its imbrications with the European and Muslim culture of the eight hundred.

We have explored, then, the imbrication between law, images, documentary method, iconology, and decolonial studies. The investigation allowed us to observe the making of law and its knowledge, both products of countless decisions able to build our social practices, especially concerning its claims of neutrality, order, security, and equality, resulting from state codifications and legislations. The resulting coloniality of knowledge and power excludes and includes elements, establishes criteria and classifications, icons and materialities.

We consider the paintings here presented as narratives, acting in an inclusion and exclusion game that classified peoples and nations, domesticated legal rules, and created aesthetic canons. At the same time, it has become a field of resistance and persuasion in both geographical locations (West and East) to eventually overlap identities that today are admittedly more complex than conventionally accepted.

Delacroix's imaginative and allegorical richness materializes the Orientalist perception that draws a dividing line between West and East. In the first, freedom guides the French people, who remain agents of their own actions. Such autonomy is denied to the Orientals who run wildly through the streets of Tangier, incapacitated, for the most diverse reasons, for self-government. Hence the need for European law to impose itself on these distant lands, this being considered wiser and more balanced than mere sets of religious rules.

In turn, the discipline and differentiation to which female bodies have been subjected by nineteenth-century European culture are reflected in the postures of Louise d'Haussonville and her Oriental "Other", both portrayed by Ingres' undisputedtechnique. The modesty (and the clothes) that existed in one lacked in the other. Both, however, shared the perception that femininity served better at home, among their families, and under marital power. There were even legal rules that restricted their actions and reinforced their subordinate status.

Yet, the other face of colonialism has transpired in a variety of ways: from the Islamization of various Western legal concepts to Haussonville's literary freedom; from the discipline that allowed oriental women a hierarchical rise in their families to the plural mixture of ancient and modern law rules in non-western societies. Lessons emerge from all that was discussed to enable the construction of a decolonial law, especially in times when it is necessary to be aware of international policies of imperial and colonial advance in the Orient.

References Références Referencias

1. ABURWEIN, Hibah. *The negative image of the arab woman in the western literature.* [2014]. Disponível em: <http://www.efomw.eu/wp content/uploads/ 2013/01/arab-woman.pdf>. Acesso em: 1º fev. 2015.
2. AGUIAR, Hugo Hortêncio de. Islamismo e Estado. *Revista de Informação Legislativa,* Brasília, n. 152, p. 269-274, out./dez. 2001.
3. BELL, Julian. *Uma Nova História da Arte.* Tradução de Roger Maioli. São Paulo: Martins Fontes, 2008.
4. BÔAS FILHO, Orlando Villas. A constituição do campo de análise e pesquisa da antropologia jurídica. *Prisma Jurídico*, v. 6, p. 333-349, 2007.
5. BOHNSACK, Ralf. A interpretação de imagens e o método documentário. *Sociologias, [S.l.],* ano 9, n. 18, p. 286-311, jun./dez. 2007. Disponível em: <http://seer.ufrgs.br/sociologias/article/view/5659 >. Acesso em: 1º ago. 2014.
6. BOTTON, Fernanda Verdasca; BOTTON, Flavio Felicio. Ao queimar dos reinos: Sardanapalo no teatro e na pintura do romantismo. *Itinerários,* Araraquara, n. 34, p. 83-96, jan./jun. 2012.
7. CAMPOS NETO, Antonio Augusto Machado de. A châr'ia muçulmana. *Revista da Faculdade de Direito da Universidade de São Paulo,* São Paulo, v. 101, p. 33-70, jul./dez. 2006.
8. CASTRO-GOMÉZ, Santiago. *La poscolonialidad explicada a los niños.* Colombia: Instituto Pensar, Universidad Javeriana, 2005.
9. CORBIN, Alain. O segredo do indivíduo. In: PERROT, Michelle (Org.). *História da vida privada 4.* Tradução de Denise Bottmann e Bernardo Joffily. São Paulo: Companhia das Letras, 1991. p. 419-501.

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10. COSTA, Lucas Piter Alves; GOMES, Renan Araújo, MELO, Mônica Santos de Souza. Dos imaginários românticos e de sua construção sígnica em La Liberté guidant le peuple. *Signótica,* [S.l.], v. 26, n. 2, p. 475-494, jul./dez. 2014.
11. DELACROIX, Eugenè. *La liberté guidant le peuple.* 1830. Musée du Louvre, Paris, France. Disponível em: <http://www.louvre.fr/en/mediaimages/le-28-juillet-la-liberteguidant-le-peuple-28-juillet-1830-2>. Acesso em: 4 fev. 2015.
12. DELACROIX, Eugenè. *The fanatics of Tangier.* 1837. Institute of Arts – Minneapolis, Minneapolis. USA. Disponível em: <http://www.eugenedelacroix.org/>. Acesso em: 4 fev. 2015.
13. DELACROIX, Eugenè. *Mort de Sadanapale.* 1827. Musée du Louvre, Paris, France. Disponível em: <http://www.louvre.fr/en/mediaimages/mort-de-sardanapale-1>. Acesso em: 4 fev. 2015.
14. DELACROIX, Eugenè. *Odalisque reclining on a divan.* 1828. The Fitzwilliam Museum, Cambridge, England. Disponível em: <https://www.eugenedelacroix.org/ Odalisque-Reclining-On-A-Divan-1827-28.html>. Acesso em: 4 fev. 2015.
15. DELACROIX, Eugenè. *Scène des massacres de Scio.* 1824. Musée du Louvre, Paris, France. Disponível em: <http://www.louvre.fr/routes/eugene-delacroix>. Acesso em: 4 fev. 2015.
16. DIB, Marcia. Mulheres árabes como odaliscas: uma imagem construída pelo orientalismo através da pintura. *Revista UFG, [S.l.],* ano XII, n. 11, p. 145-150, dez. 2011.
17. FARTHING, Stephen. *1001 Paintings you must see before you die.* London: Quintessessence, 2011.
18. FERRO, Marc. *Historia das Colonizações:* das conquistas às Independências. Séculos XIII a XX. São Paulo: Companhia das Letras, 1996.
19. FOURCADE, Marie. Os britânicos na Índia (1858-1947) ou o reinado do "cinicamente correto". In: FERRO, Marc (Org.). *O livro negro do colonialismo.* Tradução de Joana Angélica D'Ávila Melo. Rio de Janeiro: Ediouro, 2004. p. 345-398.
20. GARCIA-RAMON, Maria Dolors; MAS, Abel Albet. Los relatos de mujeres viajeras ¿Una mirada crítica sobre el colonialismo? Isabelle Eberhardt (1877-1904). *FINISTERRA, Revista Portuguesa de Geografia, [S.l.],* v. 33, n. 65, p. 1-10, 1998.
21. GROSFOGUEL, Ramón. Racismo epistémico, islamofobia epistémica y ciencias sociales coloniales. *Tabula Rasa,* Bogatá, n. 14, p. 341-355, enero/junio, 2011.
22. HALL, Catherine. Sweet Home. In: PERROT, Michelle (Org.). *História da vida privada 4.* Tradução de Denise Bottmann e Bernardo Joffily. São Paulo: Companhia das Letras, 1991. p. 54-87.
23. HARTMANN, Bjoern. *Delacroix at home and abroad: a comparative analysis of early french orientalism.* Disponível em: <http://bjoern.org/papers/hartmann_arth284_delacroix.pdf>. Acesso em: 1º fev. 2015.
24. HOBSBAWM, Eric. *A era das revoluções.* 25. ed. São Paulo: Paz e Terra, 2010.
25. HUNT, Lynn. Revolução Francesa e Vida Privada. In: PERROT, Michelle (Org.). *História da vida privada 4.* Tradução de Denise Bottmann e Bernardo Joffily. São Paulo: Companhia das Letras, 1991. p. 22-51.
26. INGRES, Jean-Auguste Dominique. *Comtesse d'Haussonville.* 1845. The Frick Collection, New York City, USA. Disponível em: <http://collections.frick.org/media/view/Objects/105/984?t:state:flow=3d55e600-cacd-4c3a-affb-6bc943aa1034>. Acesso em: 4 fev. 2015.
27. INGRES, Jean-Auguste Dominique. *La Grande odalisque.* 1814. Musée du Louvre, Paris, France. Disponível em: <http://www.louvre.fr/en/oeuvre-notices/ une-odalisque>. Acesso em: 4 fev. 2015.
28. INGRES, Jean-Auguste Dominique. *L'Odalisque à l'esclave.* 1842. Musée du Louvre, Paris, France. Disponível em: <http://www.louvre.fr/en/oeuvre-notices/ odalisque-andslave>. Acesso em: 4 fev. 2015.
29. INGRES, Jean-Auguste Dominique. *Le Bain turc*. 1862. Musée du Louvre, Paris, France. Disponível em: <http://www.louvre.fr/en/mediaimages/le-bain-turc-0>. Acesso em: 4 fev. 2015.
30. JOLY, Martine. *Introdução à análise da imagem.* 14. ed. Campinas: Papirus, 2012.
31. KNAUSS, Paulo. O desafio de fazer história com imagens: arte e cultura visual. *ArtCultura,* Uberlândia, v. 8, n. 12, p. 97-115, jan./jun. 2006.
32. LEWIS, Bernard. *O Oriente Médio:* do advento do cristianismo aos dias de hoje. Tradução de Ruy Jungmann. Rio de Janeiro: Jorge Zahar, 2006.
33. LOSANO, Mario G. *Os grandes sistemas jurídicos.* Tradução de Marcela Varejão. São Paulo: Martins Fontes, 2007.
34. LOUVRE. *Une odalisque.* [2015]. Disponível em: <http://www.louvre.fr/oeuvrenotices/une-odalisque>. Acesso em: 5 fev. 2015.
35. MAESTRO, Juan Ignacio Castien. Edward Said y el Orientalismo: esencialismo versus historicismo. *Papeles Ocasionales,* Madrid, p. 4-20, 2013.
36. MERLE, Marcel. O anticolonialismo. In: FERRO, Marc (Org.). *O livro negro do colonialismo.* Tradução de Joana Angélica D'Ávila Melo. Rio de Janeiro: Ediouro, 2004. p. 708-747.
37. MIGNOLO, Walter. La opción descolonial. *Letral, [S.l.],* n. 1, p. 4-22, 2008.
38. NATIONAL GALLERY OF ART. *18th- and 19th-Century France–Neoclassicism.* [2015]. Disponível em: <http://www.nga.gov/content/ ngaweb/features/slideshows/18thand-19th-century-france-neoclassicism.html#>. Acesso em: 5 fev. 2015.

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39. PANIKKAR, K. M. *A dominação ocidental na Ásia.* São Paulo: Paz e Terra, 1977.
40. PERROT, Michelle. Figuras e Papéis. In: PERROT, Michelle (Org.). *História da vida privada 4.* Tradução de Denise Bottmann e Bernardo Joffily. São Paulo: Companhia das Letras, 1991. p. 121-185.
41. ROULAND, Norbert. *Nos confins do direito.* São Paulo: Martins Fontes, 2003.
42. ROUSSEL, John. Art view; Ingres's portrait of a lady is the mirror of an age. *The New York Times,* 24 de novembro de 1985. Disponível em: <http://www.nytimes.com/1985/11/24/arts/art-view-ingres-s-portrait-of-a-lady-is-themirror-of-an-age.html>. Acesso em: 1º fev. 2015.
43. SAID, Edward W. *Cultura e Imperialismo.* Tradução de Denise Bottmann. São Paulo: Companhia das Letras, 2011.
44. SAID, Edward W. *Culture and Imperialism.* New York: Vintage Books, 1994.
45. SAID, Edward W. *Orientalismo:* o Oriente como invenção do Ocidente. Tradução de Rosaura Eichenberg. São Paulo: Companhia das Letras, 2012.
46. SILVA, Jorge Bastos da. O Génio e o Desespero: Byron e a Violência da Visão Romântica. In: CASTANHEIRA, Maria Zulmira; ALARCÃO, Miguel. *O Rebelde Aristocrata nos 200 Anos da Visita de Byron a Portugal.* Porto: Faculdade de Letras da Universidade do Porto, 2010. p. 6-23.
47. VIEIRA, Rafaella et al. Movimentos artísticos no século XIX: Romantismo. *Contemporâneos – Revista de Artes e Humanidades, [S.l.],* n. 3, p. 1-20, nov./abr. 2009.
48. VISVANATHAN, Shiv. Encontros culturais e o Oriente: um estudo das políticas de conhecimento. In: SANTOS, Boaventura de Sousa; MENESES, Maria Paula (Org.). *Epistemologias do Sul.* São Paulo: Cortez, 2010. p. 563-583.
49. WERLY, Annie. Progression of the Portrait: Ingres and Comtesse d'Haussonville. *ESSAI, [S.l.],* v. 9, Article 43, p. 158-161, 2011. Disponível em: <http://dc.cod.edu/essai/vol9/iss1/43>. Acesso em: 2 fev. 2015.
50. WOLKMER, Antonio Carlos. Dimensões do direito na cultura islâmica. In: WOLKMER, Antonio Carlos (Org.). *Fundamentos de História do Direito.* 7. ed. Belo Horizonte: Del Rey, 2012. p. 321-339.
51. WOLKMER, Antonio Carlos. Pluralismo jurídico: novo marco emancipatório na historicidade latino-americana. *Cadernos de Direito, [S.l.],* v. 2, n. 4, p. 1-10, 2003.

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