

# CULTURAL APPROPRIATION OF MINORITY TYPICAL COSTUMES. GLOBALIZATION, LOAN OR EXPLOITATION?

## *APROPRIAÇÃO CULTURAL DE TRAJES TÍPICOS DAS MINORIAS. GLOBALIZAÇÃO, EMPRÉSTIMO OU EXPLORAÇÃO?*

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**ABSTRACT:** Considering the frantic growth of consumerism due to the globalization, the present work has the goal to briefly analyze one of the aspects of the cultural appropriation, seeing that there is a dispute in order to protect and ensure that another group does not use a certain cultural expression, based on the occurrence of disrespect and intolerance to minorities, mainly in the world of fashion, regarding the known costumes for belonging to a culture. This way, it is necessary to verify who the minorities are who become vulnerable with cultural appropriation, as well as to clarify what is the protection for the right to culture and cultural heritage. Furthermore, we aim at conceptualizing what cultural appropriation is and how it happens in the fashion world, in addition to highlighting whether it is possible to ensure that only one group uses a certain type of clothing, mainly when it is traditionally used by black people, as in theory, the uses by white people provide the whitening of a cultural expression. Thus, the deductive methodology is used, with bibliographic searches in books and periodicals, as well as in the legislation.

**KEY-WORDS:** Cultural appropriation; Cultural heritage; Fashion; Human rights; Multiculturalism.

**RESUMO:** Considerando o crescimento frenético do consumismo em decorrência da globalização, o presente trabalho visa analisar brevemente um dos aspectos da apropriação cultural, uma vez que existe uma disputa com o intuito de proteger e assegurar que outro grupo não utilize determinada expressão cultural, com fundamento na ocorrência do desrespeito e intolerância às minorias, em especial no mundo da moda, no tocante a trajes conhecidos por pertencer a uma cultura. Dessa maneira, é preciso verificar quem são as minorias que se tornam vulneráveis com a apropriação cultural, bem como esclarecer qual a proteção para o direito à cultura e ao patrimônio cultural. Ademais, busca-se conceituar apropriação cultural e como esta acontece no mundo da moda, além de evidenciar se é possível assegurar que apenas um grupo utilize determinado tipo de roupa, principalmente

quando esta é tradicionalmente utilizada por pretos, pois em tese, os usos por brancos proporcionam o embranquecimento de uma expressão cultural. Destarte, utiliza-se da metodologia dedutiva, com pesquisas bibliográficas em livros e periódicos, bem como na legislação.

**PALAVRAS-CHAVE:** Apropriação cultural; Direitos humanos; Patrimônio cultural; Moda, Multiculturalismo.

**SUMMARY:** 1 Introduction 2 Minorities and Vulnerable people 3 Human Rights regarding Culture 3.1 Cultural heritage 4 Cultural appropriation 4.1 Cultural Appropriation in fashion 4.1.2 Indigenous people, skins of animals, religion and the cultural appropriation 5 Conclusion 6 References notes.

## 1. Introduction

Preliminarily, it is emphasized that society is in constant political, social and cultural evolution, consequently, the law is not able to follow everything, thus there are always arising several questions that must be solved, in order to avoid conflicts and solve disputes.

When we refer to cultural appropriation, those people who seek respect are minority groups, who are generally vulnerable. It is emphasized that this article has the goal to expose cultural expressions, belonging to peoples of African origins, mainly the clothes that are known as characteristics of this social group. As an illustration, some cases that do not refer to the culture of black peoples, but exemplify the occurrence of cultural appropriation of the fashion, will also be mentioned.

To this end, it is fundamental to highlight human rights to culture, in addition to mentioning the cultural heritage issues. The immaterial is highlighted and if fashion is a susceptible good to protection as an immaterial cultural heritage. If so, the legislation shall list the means of protection.

Therefore, there is no doubt that the theme is controversial, bearing in mind that cultural diversity is fundamental to the peoples, on the other hand, the development accompanied by consumerism and globalization, means that there is nothing specific of a group, then, the cultural appropriation arises, and that many people list as whitening of the values and cultural expressions of the black people, seeing that supposedly, the fact that a white person uses something that is common to a black person, without knowing the meanings, it would be considered an offense.

For the elaboration of this present work, we use the deductive methodology, that is, it applies general methods, in which they were already considered to be true and accepted, they are based on bibliographic research in doctrines, journals and in national and international legislation.

## 2. Minorities and Vulnerable people

To be different in certain societies, most of times, is a reason for discrimination and prejudice, making minority groups vulnerable, mainly when the dominant group preaches that a certain cultural expression is mistaken, wrong or even ugly and strange. However, afterwards, the dominant group becomes adept of this expression for consumerist issues and for globalization, making this culture trivial, therefore, it is notorious that there is discrimination related to the disrespect to something that is considered sacred or a source of pride for the struggle of a class.

Besides, it is important to bring up the concept of the minority that can be divided into quantitative and qualitative aspects. The first is by reason of a numerical inferiority, the second is related to the absence of power, whether cultural, economic or political (ANSELMINI; CRISTIANETTI, 2020, p. 155-156); in this case, even if the Brazilian population is in its majority composed of women, it is evident that this portion of the population is classified as a minority, due to the absence of power; the same statement is true for black people, therefore, the minority does not just refer to the quantity.

It is important to clarify that although minorities and vulnerable people are treated as synonyms, there are differences between them, because for the vulnerable, there is no identity between these individuals, although they are also susceptible to being injured or attacked. Vulnerable groups have the goal to exercise their rights without maintaining the preservation of the trait that placed them in discrimination against the rest of the society. Minorities aim at having rights, as well as at exercising them, preserving the object of discrimination, because of being part of their cultural trait, an identifying element of their culture, the identity that unites the individual with the rest of his specific group "(SIQUEIRA; CASTRO, 2017, p.118).

Therefore, it is evident that the people, the communities want the execution of the right to equality, that their expressions are tolerated and accepted, and that there is not any

deviation from their purpose, otherwise the group will be disrespected.

Given these facts, the Brazilian Federal Constitution determines that all are equal before the law, however it is fundamental that there is an unequal treatment for the different people, seeing that, “Nature made man outwardly unequal, but ontologically equal. The law needs to attribute some distinctions between human beings that, apparently, are different, to bring them closer” (CASADO FILHO, 2012, n/p). Regarding the principle of equality, according to Dantas (1948, p. 357-367) the more collectives progress and organize themselves, the greater the degree of differentiation that reaches their legislative system.

However, equality is not something common, so, considering the barrier that was imposed by the dominant group, black people are excluded by society in terms of their culture, among them it is highlighted the way of dressing, the dance and the food, everything is a reason for discrimination and making them vulnerable.

In another way, the dominant group, following globalization and the mixture of culture, has the goal to despise the cultural expressions of black people, the financial refuge, leaving a style of clothing that was considered ugly, transformed into beautiful, provided it is used by white people.

However, you will notice that every form of cultural expression is a heritage of the peoples and deserves protection.

### 3 Human Rights regarding Culture

Preliminarily, it must be noted that the right to culture is expressed in the Universal Declaration of Human Rights, and the article number 27 mentions that “every human being has the right to freely participate in the cultural life of the community” (United Nations, 1948), in view of this, it is clear that access to culture is a fundamental right to the person, and it will bring him, issues regarding dignity.

When we refer to human rights and globalization, it is necessary to “highlight the need for dialogue between Cortes, in order to promote the most beneficial interpretation of human rights, based on the pro persona principle” (CAMBI, 2020, p. 81).

In the same way, the Federal Constitution of 1988 provides in its article, number 215 that “the State will ensure to everyone the full exercise of cultural rights and access to the

sources of national culture, and will support and encourage the valorization and dissemination of cultural manifestations” (BRASIL, 1988), and in the first paragraph, it is stated that the State will protect the manifestations of cultures.

In this aspect, the State, besides ensuring access to culture for all people, it will encourage cultural dissemination. For this goal, the Constitutional Amendment, number: 42/2003 enabled States to link the state fund to development and culture, it has the goal to protect and enhance the culture of the people.

In 2002, the Universal Declaration regarding Cultural Diversity was proclaimed, based on the fact that society is increasingly diversified, by reason of an interaction between people with different cultural identities, but this cultural pluralism is linked to democracy, and that this diversity enables more than an economic development, it allows access to an intellectual existence. It was also mentioned that culture is one of the human rights, considering that it has ties with dignity, freedom and respect (UNESCO, 2002).

In addition, considering that all of the societies produce culture, there is no society without it, although being different in line with the environment and the history, Munanga explains.

Given this fact, it can be stated that culture is a formation that the human being acquires through a historical context in which the subject constructs his experiences, in which he will be influenced by other people of the same context through the construction of symbols and valuations, thus, culture is more than social creations and what individualizes a determined group. It is emphasized that such a cultural group will need other groups, even if conflicts arise between them (BITTENCOURT, 2018, p.138-139).

According to the words of Kambegele Munanga, “the balanced development is that one that does not degrade nature and it does not destroy the culture of a people, that is, their view of the world and the universe, their religions, their history and their traditions, although these ones have their own dynamics” (2017, p.175).

In this scenario, culture can be understood as the accumulation of several factors that are transmitted by humanity, and they are divided into groups, according to several criteria such as geographic location, social class, ethnicity, customs, period, making to exist the construction and evolution of cultures, listing the several existing cultural identities in a nation (OLIVEIRA; SILVA; SAMPAIO, 2017, p. 4).

It is important to consider that the pedagogical practice of culture is of paramount importance for the healthy development of society, seeing that “culture originates special forms of conduct, modifies the activity of psychic functions, builds new levels in the developing human behavior system” (VIGOTSKI, 2000, p. 34, *apud* SILVA; ALMEIDA; FERREIRA, 2011).

Thus, culture is essential to human development, considering that cultural diversity is revealed by the original and plural forms of identities of the most diverse groups that make up the human species. Besides, these plural and original forms of cultural expressions are not watertight and they interact, generating, in turn, unexpected exchanges and creative innovations. The so-called ‘interculturality’ is born, which consists of the phenomenon of the existence and equitable interaction of different cultures, as well as the possibility of generating shared cultural expressions through dialogue and mutual respect (RAMOS, 2020, n/p).

Therefore, both cultural plurality and the protection of different cultures are extremely important, as a synonym for tolerance, respect and democracy, essential aspects for the whole population.

### 3.1 Cultural heritage

Cultural heritage can be divided into material and immaterial; the first are tangible assets of an archaeological, landscape nature, as well as historical or artistic values. It must be noted that these types of cultural goods are subject to be listed as a historic property, as it is defined on the Decree-Law, number 25/37 (BORTOLOZO, 2017, p. 425).

On the other hand, immaterial goods are intangible goods such as dances, parties, expressions, ways of acting and clothes. In this dictate, it is emphasized that the Federal Constitution mentions that there will be a law that will value the Brazilian cultural heritage (§3º, article, number 215 of the Federal Constitution / 1988), it is regarding the competence of all governments (Union, States, Federal District and municipalities) to protect such assets, (article: 23, paragraph III of the Federal Constitution).

The importance of cultural heritage, whether material or immaterial, was highlighted, however, considering in the present case the analysis of cultural appropriation, intangible cultural heritage will be analyzed.

It is very important to mention that Brazil uses legal means to protect immaterial

cultural assets, such as the edition of Decree, number: 6,177/07 that promulgated the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, that was signed in 2007, in Paris.

The Ministry of Tourism / Special Secretariat for Culture Issues, through the National Culture Plan, defined several goals, among them, it was highlighted the goal, number: 4, which concerns the “national policy of protection and valorization of the knowledge and expressions of popular and traditional cultures implanted”, as well as “having laws that value and protect popular and traditional cultures” (BRASIL, 2012).

One way to carry out this goal is through the protection of cultural expressions, and that in case of commercialization, there is authorization from this group. Therefore, it is pointed out by the National Culture Plan that it will be needed to protect both the traditional knowledge and cultural expressions and also the collective rights of the populations who are the authors and keep this knowledge. There is the case, for example, of the use of traditional knowledge and cultural expressions for commercial purposes. It is necessary, in this situation, to ensure that such use is made with the authorization from the populations who have this knowledge, such as, for instance, indigenous people, *quilombolas* [communities of runaway slaves], gypsies, people from non-public yards and riverside communities (BRASIL, 2012).

As an example of an immaterial cultural asset, Irish income can be mentioned. In the Municipality of *Divina Pastora* of the State of Sergipe, a parade took place with the presence of the representative of the National Historical and Artistic Heritage Institute (IPHAN), and it was discussed by the Irish Income Advisory Council its inclusion in the Knowledge Registry book. Therefore, in 2010 it was declared as Intangible Cultural Heritage of Brazil (IPHAN, 2011).

Thus, Brazil uses means to protect all kinds of cultural expression, seeing that all cultural heritage belongs to the whole community.

#### 4 Cultural appropriation

Cultural appropriation is a term that is very spread in recent decades, as it depicts when a culture follows elements characteristic of another culture, such as: symbols, images, ideas, sounds, objects or behavioral issues that, when subtracted from their native cultural

circumstances, they may adopt discrepant connotations, by the way, with a sense of domination and exploitation.

Geledes (2019, n/p) mentions the concept of cultural appropriation as being the adoption of some specific elements of a culture by a different cultural group. It is described as acculturation or assimilation, but it can imply a negative view regarding the acculturation of a minority culture by a dominant culture. For Lacordaire and Preto (2017, p. 76-77), the cultural appropriation emerged through dominant groups using the culture of dominated groups, mainly, African and indigenous peoples when they left their territories and looked for new horizons.

During the Second World War many people migrated and took their culture with them, increasing the process of globalization, in which they had influences from new cultures, causing the cultures of these groups to be modified and weakened, seeing that the symbols and clothes left their contexts as a way of being accepted (LACORDAIRE; PRETO, 2017, p. 77).

Globalization provides a slight pace of development that is driven by the internet, linking different cultures together, raising knowledge and teaching other cultural traditions, and, taking advantage of this moment, capitalism sponsors industrial culture as a way to warm up the market, in another way, it can devalue something that is sacred to a community, causing severe losses (BORTOLOZO, 2017, p. 424).

It is the new phase of the global capitalism, which is focused on the primacy of the market forces principle, on the liberalization of trade, on the privatization of the government-owned companies, on the deregulation of the financial capital, on the precariousness of the labor relations, on the degradation of the governmental social protection, on the irresponsible exploitation of the natural resources and on the global mercantilization of the social and political lives (CAMBI, 2020, p. 92).

Ribeiro (2015, n/p) points out that the globalization exposes some people to exclusion and racism as it is unacceptable to visualize the cultural appropriation as something correct, considering that, often, those people who marginalize are the same ones who appropriate. Thus, at the same time that the so called standard of straight-haired, white skin beauty is imposed, it is spread out the idea that the use of turbans by black women is something referred the African low social classes; the symbol quickly becomes a trend; in this way, what is black is still in fashion, but the black people are still discriminated, seeing that fashion is only beautiful



when it is related to white people with black cultural garment. Thus, it opens up an appropriation that brings harm to the group, which in theory, would be the owner of this custom.

Such a concept that the ugly becomes beautiful is resulting from an unbridled capitalism that seeks only the profit. This state of domination, that was engendered from industrialist capitalism, shows the most perverse facet of a Western, Nordic, white and blue-eyed culture, which, in its objectifying way of philosophical-scientific-technical rationality, manifested extreme possibilities of cognitive and practical mastery of things and men (SANTOS; LUCAS, 2019, p. 46).

Heleno and Reinhardt (2017, p. 121) mention that historically the dominated peoples, known as minority groups, they have suffered suppression of their culture, but there is an elevation in the culture of the majority or dominant group, and there is an attraction to the culture of this people. This way, on the other hand, an inversion begins to happen where what was neglected by scorn, a process of mercantilization by globalization is started, however, it ceases to have a historical value, shaped only by consumption issues. This process is old and in Brazil, it can be called 'whitening', as it happens to samba.

For this reason, it is noted that the use of a determined good, which in theory, belongs to a single group has become the cause of conflicts, seeing that both began to use this good and this cultural expression. The point is that there will be no consensus among those who can make use of it, however, every cultural process is resulting from social exchange, and this makes it possible for an oriental to taste a food that belongs to a Japanese culture or even, only black people could belong to candomblé (Afro-Brazilian religion). It is important that the Democratic State tolerates all the cultural statements (BITTENCOURT, 2018, p. 142).

At the time of denouncing the use of cultural signs considered as being exclusive for a specific group, it should be firstly analyzed if the elements, that compose his cultural and social origin, are or are not derived from the assimilation of other cultural and social structures. The sectarian purist person, who opposes to the fact that 'non-authorized' persons use cultural signs that do not 'belong' to them, perhaps he is not thinking about that his whole personal mind is composed by structures that are collectively shared, such as the language and the social codes (BITTENCOURT, 2018, p. 142-143).

In this regard, it is verified that "cultural appropriation is understood as a structural

phenomenon resulting from a historical process of racism and cultural invisibility” (HELENO; REINHARDT, 2017, p.121), but it causes discomfort in the minority group when it is verified that its symbols of struggle and resistance make only consumer goods, that is, it attacks something that is valuable for this population, given that, “the past is honored and symbols are valued because they contain and perpetuate the experience of generations” (GIDDENS, 1991, p.38).

Susan Scafidi simplifies it by defining it as "to take away the intellectual property, traditional knowledge, cultural expressions, artifacts from someone else's culture without the person's permission ". (*Apud* Malik, 2019, n/p)

The anthropologist Rodney William clarifies on his book “Cultural Appropriation” that taking out cultural manifestations, such as music, dances, typical clothing, idioms, art, cooking, accessories, deflecting them from their sources, and social and historical context is more than a mere appropriation project. By adopting adulterated meanings, which do not reveal their essence and they extinguish the traces of their culture, the ethnic group puts himself at the risk of disappearance. However, the ample problem spectrum referred to cultural appropriation is not limited to the changes and distortions of meanings, it is precisely the fact that it contributes to the symbolic genocide of a people (2019, p. 30).

Besides, Rodney William explains (2019, p. 29) that cultural accessories work as pillars of identity for peoples historically submissive to the West. They carry within them an ancestry and social practices of struggle and resistance that must be respected. Besides, separating cultural appropriation from other ways of cultural exchange, William demonstrates how appropriation participates in devices of cultural invisibility and genocide, weakening even the knowledge of black people, dehumanizing persecuted and discriminated groups. This can even make the symbols meaningless of belonging.

This cultural appropriation can transform the culture of a people into merchandise, devaluating the silenced people. Ary Gordien points out that, many White and Western artists are criticized because of making profits based on the art and culture of ethnic-racial minorities and non-Western people. Regarding the world of culture, there is real violence and socioeconomic, ethnic-racial inequalities. Although they need to be analyzed and criticized, we cannot in any way consider the culture as being the private property of specific communities that others take over. Cultural exchanges are not something new in the history of the mankind

and they keep being the same way. Thus, it is not an easy task to recognize this cultural fluidity while keeping a critical eye on what is denounced and defined as appropriation (2020, p. 2).

Therefore, the cultural appropriation of these symbols appears as a way of preponderance that has the goal to destroy the power of historically inferior groups, exhausting their meanings, generating their symbolic genocide and eternalizing racist stereotypes.

Many cultures are appropriated by westerners, just analyzing entire aisles of some of the most famous museums in the world. Likewise, white people make use of cultural practices, whether through clothing or music, which came from non-Western peoples.

Hence, some people suggest identifying pure national identities, having the goal to resist European political and cultural domination. It is very clear that the concept of cultural appropriation has direct affinity with the differential theories that were inherited from the extreme right groups. In addition to neglecting the intersection in what is most universal, it also rejects the intercultural links that should manage the social life in the beginning of the 21st century JÉRÔME BLANCHET-GRAVEW (2016, p.1).

As it was affirmed by ARY GORDIEN (2020, p. 3), to recognize that the appropriation of cultural elements from other cultures is something common in the history of humanity, it does not mean that these appropriations cannot be unequal or that they configure domination and exploitation. “In the societies resulting from the slave trade and slavery, many cultural practices represent the result of the creolization of African, European, indigenous, Asian and other contributions” (GORDIAN, 2020, p. 3). Thus, the white population profits from the commercialization or political use of cultural practices that were defined by the collaboration of minority populations, mainly Afro-descendants, without being exclusive to them.

As it can be verified, the extension of this concept leads to controversies and lively debates. Thus, the distinction between the commercial exploratory use of dominated cultures and that of a mere intercultural exchange arising from the evolution that is originating of different cultures and that must be emphasized. And according to the words of Arewa Olufunmilayo (2016), the difference becomes more evident between the cultural exchange that is built on common ground and the appropriation that covers the unauthorized borrowing of elements of culture that is called: oppressed minority. “In my opinion, the loan becomes an appropriation from the moment it strengthens historic relations of domination or deprives

African countries of opportunities to control and benefit from their cultural heritage. (OLUFUNMILAYO, 2016, p.2)

Thus, when borrowing patterns fail to recognize the sources and to be grateful by paying them, they can be seen as a cultural appropriation and, even more, when they reflect, reinforce or amplify issues of inequalities. Even that some authors end up being paid, the delayed indemnification does not always correct past injustices (OLUFUNMILAYO, 2016, p. 3).

According to the words of William Marx, "the alleged crime of cultural appropriation is only a weapon with the goal to limit freedom of thought." (MARX, 2020, p. 1).

Kenan Malik (2019) affirms that the appropriation suggests theft and a analogous process to the seizure of land or objects. Besides, behind the debate regarding cultural appropriation is the establishment of rules or a label to determine how a particular cultural form can be used, and by whom. The whistleblowers of cultural appropriation estimate that some people have the right to define who can use such knowledge. This right to control cultures and experiences is an appropriate right for those people who allow themselves to be arbitrators of an appropriate cultural loan. This maintenance of order suffocates creativity and attacks the imagination. Cultural creation does not take place in an egalitarian context, but, on the contrary, it is shaped by racism and inequality issues. (MALIK, 2019, n/p).

According to Malik's words: Every society has its gatekeepers, whose role is to protect certain institutions, to maintain the privileges of particular groups and to cordon off some beliefs from challenge. Such gatekeepers protect not the marginalised but the powerful people. Racism itself is a form of gatekeeping, a means of denying racialised groups equal rights, access and opportunities (2019, n/p).

Malik (2019) is clear when he states that the cultural appropriation term is inappropriate, considering that the cultures do not work as per appropriation issues, but by a disorderly interaction. No one has a culture, but everyone lives inside one (or more than one) and by living in one culture, he/she finds the tools to reach other cultures. For the sake of the arts and the politics, it is said that we need less controls and restrictions and more interactions and imagination.

Thomas Kenneally suggests that we can penetrate other cultures, but with cultural respect. (Apud Malik 2019) It is not everyone who agrees that cultural appropriation is always

something negative, seeing that the reciprocal influences can be something positive, performed by a reason of admiration and without the intention of harm. Furthermore, according to the words of John McWhorter, “It used to be that we said that imitation is the sincerest form of flattery. But now there is new way to see the matter: Imitation is a kind of dismissal” (MCWHORTER, 2014, n/p).

Thus, it is concluded that globalization has a meaningful interference and influence on cultural appropriation, and capitalism uses this type of market, with the goal to obtain profits. The appropriation without profit is something normal in a society, seeing that there is migration between peoples, it causes a social group to start using the culture of this people, however, it is necessary to be cautious, so that undue interpretations do not occur, placing them on a level of inferiority and humiliation.

#### 4.1 Cultural Appropriation in fashion

Nowadays these words are often seen: cultural appropriation, mainly regarding African fashion, mainly when people misuse symbols, which may represent a disrespect to a minority cultural group that lives in a determined society.

According to what was verified in the previous topics, the right to the culture is protected by the human rights, which protect the intangible cultural heritage. And in this area, fashion stands out as a cultural expression of a specific people, and seeing that it is a cultural heritage, it is worthy of protection.

Not always to affirm to be part of a determined group is something easy. Black people in Brazil, for example, face a repressive system in everything that goes back to their origin, it can be the customs, beliefs, traits, costumes, etc.

Historically, turbans have been wear by the cultures of African origin. The use of the turban by a black person confirms his heredity, which he has always been forced to curb. Its use by white people does not have the same political meaning. By wearing it, the black person reaffirms his ancestry, his historical constitution.

Thus, without the consent of its owner, appropriation occurs by taking an element that does not belong to it culturally. This domination has the scope of erasing the culture of the dominated party.

*Wax*, for example, is a hybrid fabric with multiple identities that is used in the most diverse countries and regions, such as Indonesia, Ghana, Holland, Sub-Saharan Africa. Recently, it has been used on the catwalks of Parisian fashion parades. (GORDIAN, 2020, n/p)

Disney, in 2016, was the subject of controversy involving cultural appropriation, occasion in which the brand commercialized a costume with the effigy of the hero Maui from the movie *Vaiana*, using Polynesian tattoos. In the midst of controversies, Disney has ceased marketing the clothing (CHIA, 2016, n/p).

In May 2017, Maison Chanel was the subject of controversy caused by alleged cultural appropriation with the sale of its luxury *boomerang*, a traditional object of Australian Aborigines (BOOMERANG, 2017, n/p).

Maison Gucci has been accused of cultural appropriation of *Sikh* turbans that appeared in the brand's parade as a fashion accessory. The Sikh Coalition, a New York association that defends the rights and fights discrimination against the Sikh community, declared: "The Sikh turban is not only a fashion accessory, it is also an article of religious sacred faith" (CHRISTIAENS, 2019, n/p), condemning the cultural appropriation.

The brand Marc Jacob's, in 2016, was the subject of lively debates regarding the accusation of cultural appropriation in its parade by the use of models with false *dreadlocks* (SAFRONOVA, 2016, n/p).

Racism is present and "it has massacred the black population, that part of society that visibly bears African ancestry on the skin and hair" (SILVA, 2017, p. 167). Consequently, it is important to know the ancestors, the origins, so that there is a respectful posture, seeing that African culture defines the identity of peoples, mainly in Brazil, where most people are descendants of African peoples.

The fashion, on its turn, emerges as a need for the economically lower class to place themselves at the same level of the economically higher class by the imitation of clothing. The need for imitation is the result from the need for similarity in order to make the individual to fit into the model that was established, according to the social adaptation. Thus, the fashion, as per this standpoint, could be considered as being a means of belonging to a specific social class (MAIA, 2016, p.5).

Thus, it would be possible to protect the fashion world from consumerism, enabling protection through intellectual property, because in theory, it is an immaterial asset, in which

it may be a cultural heritage.

According to Coelho (2019, n/p), intellectual property can be divided into industrial law and copyright. Industrial law derives from the exploitation of immaterial goods, and the exclusive right will be held by whoever asks for registration in the first place, whereas, in copyright, exclusivity is granted to the creator, yet, the legislation establishes the registration of these writings. The second difference is directed to protection, industrial law protects the idea, but copyright protects the external form.

To be protected by copyright, it is fundamental to analyze the Law, number: 9.610 / 98, in which it establishes in an exemplary list what would be protected, and this same law listed what would not be protected. Thus, it is necessary to verify if it is possible to protect fashion, if it meets the following requirements, if the author is an individual, it will be an intellectual creation, if there will be an externalization of the creation, if the creation and novelty of the work will be prohibited. For this reason, it is verified that there is no prohibition on the guardianship of fashion by the copyright, however, considering the volume of the fashion industry, it would make its protection difficult (MAIA, 2016, p. 8).

Would it then be possible to curb cultural appropriation in fashion, mainly when they wear only white people in the advertisements with objects known to belong to descendants of African origins or change the meaning of clothing? Would there be a tolerated limit for this consumerism?

In Brazil, despite the existence of rules that protect cultural heritage, there are still doubts regarding intangible cultural heritage, such as the protection of fashion.

On the other hand, it would not be reasonable to divide the culture in half, that is, a certain group wears certain clothes and other groups wear other types of clothes, this would increase discrimination and exclusion, even more, that it would be impossible to point out the creator of a garment or style of clothing. Thus, shopkeepers and entrepreneurs would need the authorization of a proprietor, and who would be?

According to what was narrated in the chapters above, culture is due to countless years and is due to several factors, thus, it is a historical construction in which all members of a given social group contributed to this development.

In this bias, Brazil does not have an effective means to protect the fashion world. As per Maia's words (2016, p. 17) "even if the fashion goods are in conformity with the protections

in force in the national order, they will have to analyze the costs-benefits.”

Considering the Brazilian legislation, and the debate regarding cultural appropriation, for the time being, it is practically impossible to protect the supposed owners of clothes, mainly, the African fashion. However, what shall be ensured is the respect for the cultures, because it is a cultural expression and it does not remain stagnated in time, thus, in a constant change, it only requires the tolerance of other members of society, so that there is no disrespect that causes feelings of humiliation.

#### **4.1.2 Indigenous people, skins of animals, religion and the cultural appropriation**

The indigenous people stand out due to their culture, mainly by the way they live, because they reside as isolated tribes far in the forest, they use ornaments as feathers and skins of animals as clothing. However, the people, who do not belong to this group, use these ornaments, being as phantasy in Carnival times, for instance, in the high level fashion and even for daily use, mainly in winter times.

The feathers and the skins utilized by the indians are not phantasies, thus, using these ornaments will not be a homage, but a cultural appropriation, as nobody has the right to use the *cocar [crown of bird feathers used by indians]* or to paint himself as the indians do and not to support the indigenous goals. On the other hand, an indian, who utilizes shorts, an electronic device, a sport shirt or any other object, will not perform a violence act, taking into account that objects that belong to the dominant culture are not resistance symbols (WILLIAM, 2019, p. 76).

Due to using skins of exotic animals, as snakes and lizards, the organization that supports the animals' rights - PETA, People for the Ethical Treatment of Animals - warned the French luxury Hermès Group not to use any longer the skins of exotic animals. As per that organization, the only way to fight against that traffic is to extinguish the demand (FASHION, 2021, p. 1).

The indians, when they utilize the feathers of birds and the skins of animals as clothing, do not cause damage to the environment where they live, considering that the people just exert their habits. However, when other people, who do not belong to this group, utilize those ornaments, they cause pain and sufferings, considering that they use them as



phantasies, unduly making an appropriation of the indigenous culture.

When it is thought about the religions of African matrixes, it is verified that the culture is damaged by the modification of its main elements as it is the case of the *vegan candomblé*, as in this type of *candomblé* the slaughtering of animals is not performed (WILLIAM, 2019, p. 94). It is noteworthy, in this case, that this new modality of religion aims at respecting the lives of the animals and it is mainly growing due to the advances of the legislations that have the purpose of protecting the animals, however, it is notorious that it violates the traditions of this religious community.

In the same way, it can be said that the people, who aim at modifying the religious traditions to save lives, work for a fair purpose, however, this can also be considered as being inappropriate, taking into account that a cultural appropriation is involved and modifying the religious traditions is an insult to that minority community.

## 5 Conclusion

Many critics of cultural appropriation do not oppose to cultural creation, but to racism. They aim to protect marginalized cultures and ensure that these cultures express themselves and are not seen simply by the eyes of more privileged groups. The fight is for the visibility of creators.

Therefore, it is clear that every society has minority groups that demand actions from the State, as a way of maintaining dignity, under penalty of becoming vulnerable to the majority groups, thus, the State will ensure that there is respect for the principle of equality, a principle that makes people free to exercise their cultural expressions.

It must be noted that it is not possible to create a society with a single culture, thus, cultural diversity ensures and provides economic, social, political, philosophical and spiritual development. This way, it is noticed the importance of cultural expression inside a society.

In this scenario, it is important to be remembered that the Federal Constitution ensures the protection and valuation of the right to culture, following the international dictates that through international conventions strives for the respect for cultural diversity, and it is one of the ways to ensure the application of Human Rights.

Brazil is a signatory to these conventions and through national legislations, provides

for methods of protecting culture as a means of humanity's cultural heritage, ensuring that such cultural expressions always remain alive in people's memory.

Given the large number of migration that has occurred and that has been occurring, there is an appropriation of the culture, on the other hand, there are groups that affirm that this cultural appropriation is disrespectful, because it offends its meaning and values.

Some people with African ancestry do not appreciate that others wear the clothes, which in theory belong to a certain group, but would it be possible to list fashion as a cultural heritage, and consequently be protected as a cultural heritage or by the corporate law? At first, yes, however, in practice, it would be very difficult.

It is noteworthy that the simple fact of prohibiting someone from wearing a kind of clothing, causes exclusion and discrimination, in addition to being the beginning of a scenario of disputes and confusion, strengthening the division of groups, that is, totally contrary to what national and international standards for the protection of human rights preach.

It is completely possible to determine that the cultural expressions of a given population are considered to be intangible cultural heritage, such as African clothes, which are full of symbols, meanings and faith. On the other hand, it is impossible to ensure that white people do not wear these clothes, under penalty of offense related to this culture.

As it can be noted, respect shall occur, so that there is no culture whitening, seeing that consumerism in the advertising uses these clothes only on white people, evidencing the cultural appropriation, implying that only on white people, they get exuberant.

In conclusion, the most effective way to resolve the present dispute is through respect for the several cultures that make up a society, thus, there will be no exclusivity of cultural expressions, seeing that, everyone will be able to enjoy the cultural heritage, as a way of dignity and freedom.

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