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ID 1663 | A SOCIO-JURIDICAL CRITICISM TO URBANISTIC LAW FOR A NEW URBAN STRATEGY IN NATAL/RN/BRAZIL

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1 INTRODUCTION

The principle of the dignity of the human person is a moral, social and juridical value inherent in the person, that is, every human being is endowed with this precept, and this is the highest principle of the democratic state of law.

While it is a right the idea of dignity in a collective dimension concerns tolerability per temporal, spatial and cultural circumstances. Thus, the city must be the place of the exercise of the dignity of the human person.

Based on this idea and based on a dialectical perspective, the research proposes to discuss the effectiveness - notably ineffectiveness - of the norms of urban law, through the confrontation between the Federal Constitution, the City Statute, the Metropolis Statute, and the Municipal Master Plan in the State of Rio Grande do Norte located in Brazil.

For purposes of this work, effectiveness is understood as the conformity of the actual situation to the legal situation granted or determined by the standard. In this sense, the first stage of the work consists in the revision of the literature focused on the legislation and legal instruments of urban law that regulate the urban space in the municipality of Natal.

Next, we intend to criticize the illusion of urban law and the predominantly positivist conception that predominates both in the elaboration of legislation in Natal-RN and in the application of such norms. In addition, to investigate the causes of noncompliance with norms of urban law, it is necessary to study the city and society in which we live, the relation of identification and belonging of the individual with the city in which he lives, what mechanisms of participation Effectiveness of such individuals. In other words, we must understand in depth the ideas of democracy and justice, from the precepts of freedom and equality to the understanding of our reality. In this sense, the objective is to evaluate if the usual means and procedures used in the city of Natal-RN in the legitimization of public decisions in the sphere of urban policies, are backed by social legitimacy, once we experience the daily practice of civil disobedience in relation to the laws in the coexistence of the legal city and the illegal city.

Thus, it is essential to discuss the right to the city from the study of popular participation. Therefore, it is urgent to rethink conceptually law as a science, specifically the role of urban law and urban plans in the current Brazilian scenario, and the necessary change from its normative-rationalist character to a more pluralistic view that the promotion of less unequal social and territorial justice.

2 THE RELATIONSHIP BETWEEN URBAN STRATEGY AND POPULAR PARTICIPATION

Thinking about a new urban strategy also means rethinking political participation and social control in city management. In other words, the understanding of the city can only be reached from the unit of two levels of analysis: that of capital and that of society where the individual is first a citizen with all the rights that the term implies (Carlos, 2015). It is also important to emphasize here the original relationship between the words city and citizen, which appears long before the established legal provisions. According to the etymology of the words, both derive from civilians. In this way, city (civitas) is a political community whose participants, the citizens, organize and govern; And citizen is the individual who enjoys the right of city, that is, is the subject that belongs to a certain place.

Here it is important to mention the theoretical contribution of Ellen Wood (2011) in her work "Democracy against capitalism: the renewal of historical materialism", where the author warns against the dangers of the uncritical use of the terms citizenship and civil society. For democracy to recover its true meaning of government by the people or the people, it is necessary to radically transform capitalism, an economic and social system that gradually removes several spheres of social life from popular and democratic control. He explains that since capitalism generates, among other things, new forms of domination and coercion beyond the reach of the instruments created to control traditional forms of political power, it also reduces the emphasis on citizenship and the achievement of democratic accountability (Wood, 2011)

According to our Federal Constitution, urban policy must necessarily be a product of popular participation. But the issue is not just legal. Brazil has no tradition of effective instruments of participation or sharing in solving problems in the public sphere. It should be noted that the constitutional command of guaranteeing popular participation and the State's duty to carry it out is not sufficient. Another element must be added: the political and programmatic commitment of the government, which commands the different portions of the State.

Regarding the specific social control for urban policies, it is basically that popular participation permeates the state's performance in the management of the city since the 1970s (Ataíde, 2015). Currently the social control in the municipal scope in the current context of the Urban Planning and Management System of the Municipality is provided for in article 93, paragraphs 1 and 2 of Complementary Law No. 082/07. The Council of the City of Natal - CONCIDADE is the central articulator of the sectoral councils (Municipal Council of Urban Planning and Environment - CONPLAM, Municipal Transit and Urban Transport Council - CMTU, Municipal Council of Housing of Social Interest - CONHABINS and Municipal Council of Basic Sanitation - CONSAB) and counts on the popular participation obeying the criterion of territorial and sectorial representation, being composed by fifty two members.

It appears that the existing councils are still often based on the classic idea of social control, consolidated until the beginning of the country's re-democratization as a set of methods conducted by the State with the purpose of establishing the social order and the purpose of disciplining individuals. In other words, still far from a dialogical relationship between the State and Society, which allows the broad participation of the organized sectors in the formulation, monitoring and verification of policies, at a more general level to the plans, programs, and projects in their different stages of development. Implementation, including the allocation of resources.

It is believed that the essence of social participation is embodied in the universalization of social rights, in the expansion of the concept of citizenship and in a new understanding of the role and character of the State, understood as the arena of political conflicts where different groups of interests vie for space and meeting their demands, from a public debate.

For example, in all the meetings that participated, the bills were brought ready for the approval of the council, without the least concern for popular participation in the various instances of the process that go from the discussion to the formulation and implementation of the public policies presented. That is, in the current scenario, even with the existence of a theoretically democratic and representative model, one must question the legitimacy of urban policies and programs.

It is well known that Brazil's problem is not a lack of law or regulation. The denial of the right to the city in Natal / RN (as elsewhere) is expressed in land irregularity, housing shortage and inadequate housing,

precariousness and deficiency of environmental sanitation, low mobility and quality of collective transportation and degradation Environmental (Maricato, 1996). At the same time, wealthier elites and layers continue to accumulate more and may enjoy a pattern of exaggerated luxury consumption (Harvey, 2009).

In the words of Professor Ermínia Maricato (1996), it is exactly in the context of this contradiction expressed in urban segregation that violence explodes and the power of organized crime grows in the city. The hegemonic paradigms of urban planning and urban planning have revealed their limits and are failing to respond to the contemporary problems of large cities.

This idea is based on Habermas's theory (2001), it is believed that the list of problems that currently imposes must be thought of in a political agenda capable of giving the individual confidence in participating in the actions of the state and provoking The transformation of society. The diagnosis of social conflicts becomes a series of political challenges only when the egalitarian institutions of rational law are connected to an important premise, namely, the admission that the citizens of a democratic collectivity can configure their social and Can develop the necessary action for the intervention.

It is often verified that the Administration is not in favor of the participation, even in folders that historically adopt models in "democratic" thesis. Take, for example, a public hearing. In this the citizens can expose their ideas in person, by dialoguing with a public manager democratically elected or with those responsible for conducting the public policies indicated by him or under his hierarchical control. In concrete terms, what is perceived is that there is no complementarity between the ways of participating. There is no dialogue for the construction of concrete proposals and projects. What we have are spaces where the manager publishes ideas previously constructed without the popular participation and the audiences serve only to give a certain appearance of popular legitimacy.

From the moment that it is considered that participation, as a fundamental right, would be based on the popular sovereignty already emphasizes a visibly political aspect of the administrative participation. In this way the participation should be effective, with real possibility of intervention in the decisions of the public power and in the directions of the society in which the citizen is inserted.

For Habermas (2001) the legal concept of self-legislation must gain a political dimension and be broadened in terms of the concept of a society that acts upon itself in a democratic way. Only in this way can one read in the existing Constitutions the project of implementing a just and well-ordered society.

We understand that in order to overcome certain occult forces, or at least that is how they present themselves, such as financial capital, political oligarchies and real estate speculation, we must renegotiate the relationship between the State and society as a way to avoid mitigating decision-making and participation spaces Popular, as a means of curbing legislative authoritarianism and thus trying to save what remains of a "democracy" (if one can use that term after our theoretical study and the clash with the reality of the motherland).

From this perspective, from the lessons of Lefebvre and the idea of popular participation as a corollary of democracy, we must think of a new urban strategy where the right to the city manifests itself as a superior form of rights: the right to full liberty, individualization in socialization, Habitat, and habitation, as well as the right to work (the participant activity) and the right to ownership (other than the right to property). However, for urban society to represent social emancipation, it is necessary to renew critical theory and to overcome the limits imposed by urban law.

3 TO RE-THINK THE URBAN LAW

The present stage of evolution of urban society, characterized by complexity, seems to threaten the consistency and coherence of law. In Brazil, the distance between constitutional idealities and social realities is indicative of this diagnosis. Official law, to maintain its coherence and consistency, in the face of what is traditionally understood as deviation, dysfunction, or social contradiction, ends up producing its own operational continuity and, therefore, distancing itself from the society that legitimizes it.

Given this context of ineffectiveness of legal monism, legal pluralism presents itself as an alternative capable of representing the opening of the legal system before the society that surrounds it, increasing its effectiveness. In other words, it is no use concentrating all efforts for the legal city if the illegal cities and the irregular cities where individuals live, not less citizens or subject human beings coexist in the same space and time.

At this point, the contribution of Boaventura de Souza Santos in the works "Renewing critical theory and reinventing social emancipation" and "The criticism of indolent reason: against the waste of experience", which affirms that the final crisis of modernity is more visible As an epistemological crisis (a crisis of modern science) than as a societal crisis (a crisis of the capitalist world).

For the author, modernity collapsed as an epistemological and cultural project (Santos, 2011), which opens a wide range of future possibilities for society, one of them being a future non-capitalist and socialist eco (The postmodern opposition).

It is believed in the reflection on the epistemology of a disciplinary field of human knowledge that we can unravel its limits, pose new questions, and overcome old obstacles. In the case of the legal field, it is necessary to realign its praxis with the praxis of academic research, which means to return to the legal world the primacy of rationalist doubt and critical historical configuration.

In the words of Boaventura de Souza Santos, the emancipatory scientific knowledge of law aims to discover, invent, and promote the progressive alternatives that social transformation may require. It is an intellectual utopia that makes possible a political utopia (Santos, 2011).

Thinking about the right to the city implies thinking about Urban Law, as well as the instruments and structure that can perform this task, which in turn refers us to the debate on public policies and social policies, as well as a global analysis of the Democratic State of Law itself. At this point are the theories of Henry Lefebvre with his critique of knowledge and theories of Boaventura de Sousa Santos in the perspective of an ecology of knowledge for social transformation.

As opposed to the natural environment, the cities, in which most of the contemporary population lives, constitute the built heritage. In this sense, we can define urbanistic law as the branch of law that regulates the production of the built environment. Specifically, about its installment, occupation and use.

The definition of these functions in contemporary cities requires adequate planning in the sense of separating and integrating the different uses and investments to be made by the public and private sectors. In addition, increasingly frequently, the production of the built environment must consider the need to preserve environmentally sensitive areas located within the urban perimeter of cities.

In this sense, the urban master plans stand out as an instrument of the municipal planning process aimed at the integrated achievement of objectives in the physical, economic, social, and administrative fields. Alongside this function, after the 1988 Constitution, the master plan becomes a basic instrument of municipal urban policy with a view to the full development of the city's functions. But in reality, the state never stopped the monopoly of law, and it is important to recognize the sociological existence of a constellation of rights and its rejection by the political order. In addition, it is essential to understand that law has contributed decisively to the dichotomy of the state / civil society that hides the nature of power relations in society (Santos, 2011).

It is well known that one does not change the world and urbanism at once, but using the lessons of Boaventura de Souza Santos it is important to do two things: to work within the conventional university and to create parallel institutions. For a long time, we will have to act like this. This is characteristic of a time of transition: working the old to renew it, being necessary to reinvent knowledge-emancipation. We are at a time when it is necessary to think of a critical utopia (Santos, 2007).

4 THE IMPORTANCE OF DIALOGIC ADMINISTRATION FOR A NEW URBAN STRATEGY

In recent decades, the transformative movements of the contemporary state have sought not only to reassess the ends of the state, but also to re-examine the typical functions of the social state model and the way in which such functions were commonly performed.

With the rise of phenomena such as the network state (Castels, 2002) and Public Governance, a new form of administration emerges, whose references are dialogue, negotiation, agreement, coordination, decentralization, cooperation, and collaboration.

Thus, the process of determining the public interest starts to be thought from a consensual and dialogical perspective, which contrasts with the dominant imperative and monologic perspective, averse to the use of communication mechanisms internal and external to the administrative organization.

Explicit JJ Gomes Canotilho (2006), referring to the expression Good Governance, whose normative meaning would be "responsible conduction of State affairs", that Public Administration not only addresses the direction of government and administration matters, but also the responsible practice of Other powers of the State such as the legislative power and the jurisdictional power.

According to Odete Medauar (2003), the consensus-negotiation activity between Public Authorities and individuals, even informal ones, began to assume an important role in the process of identifying public and private interests, under the protection of the Administration. It no longer holds exclusivity in the establishment of the public interest; Discretion is reduced, the practice of unilateral and authoritative decision-making is tempered. The Administration must be turned to the community, getting to know better the problems and aspirations of society.

According to our Federal Constitution, urban policy must necessarily be a product of popular participation. But the issue is not just legal. Brazil has no tradition of effective instruments of participation or sharing in solving problems in the public sphere.

It should be noted that the constitutional command of guaranteeing popular participation and the State's duty to carry it out is not sufficient. Another element must be added: the political and programmatic commitment of the government, which commands the different portions of the State.

As already mentioned, it is often verified that the Administration does not favor participation, even in portfolios that historically adopt "democratic" models.

Specifically, what is perceived in Natal and in several cities throughout the country is that there is no complementarity between the ways to participate. There is no dialogue for the construction of concrete proposals and projects. What we have are spaces where the manager publishes ideas previously constructed without the popular participation and the audiences serve only to give a certain appearance of popular legitimacy.

Probably still a remnant of the authoritarian view of management derived from the liberal matrix of administrative law. This is because administrative law was developed based on the liberal model of state, in force from the 16th century onwards. XIX, a period in which imperativeness (a notion expressing the authority of the State in relation to individuals, resulting from sovereignty) ended up conforming the institutes and categories of this legal branch (Oliveira and Schawanka, 2009).

By this power of empire, typical administrative action was forged, which was manifested through administrative acts, whose essential attributes were subject to the notion of authority. Such a vision can no longer thrive in the present context. In this sense, several administrative emphasize the importance of consensual as a line of evolution and transformation of Public Administration in the 21st century.

Thus, giving more scope to the citizen, the contours of participation as an implicit fundamental right, could be more adequately unveiled by thinking of it as a political right.

Exemplifying the right to popular participation and the right to the city in the local context it is necessary to remember the total lack of commitment of the public power with the accomplishment of the councils provided for by the Statute of the City.

In this context, the study intends to study the role of Urban Law in a broad way for the necessary social adequacy and its current importance for the regulation of the urbanization, occupation, and land use in cities (Pinto, 2000).

The proposed criticism is based on the understanding that the norms and the current juridical-institutional framework are in disassociation with reality from the beginning of its conception and are presented in the service of the hegemonic strategy of capital.

Such discussion is inserted in the context of the concept of Networked State and of Public Governance, while the new public administration in the 21st century. It turns out that it is urgent to discuss Public Governance in the study of Law as not only a new generation of administrative and State reforms, but mainly the foundations that aim at joint action, carried out in an effective, transparent and shared manner, By the State, by companies and by civil society, aiming at an innovative solution of the social problems and creating possibilities and chances of a future sustainable development for all the participants of the life in cities.

5 FINAL CONSIDERATIONS

We tried to proceed to the conceptual reconstruction of the right to the city from a political conception by essence. This idea is fundamental to address the issue of legitimacy and legitimation of public

decisions within the city of Natal-RN as well as has an influence on the analysis of the experiences found associated with new urban practices.

It is not our intention to make closed conclusions about the subject. On the contrary, the purpose of these reflections was to promote the debate about the relation between law and urbanism, specifically to verify the difficulty of a true popular participation and effective exercise of the right to the city in the current context of the study of the urban right from the lessons of Henri Lefebvre and Boaventura de Sousa Santos and walk towards new possibilities.

It is believed, therefore, that deconstructing certainties to meet new certainties is part of the course of knowledge. Research demands discernment in the choices and preserves its essence in the exercise of the options of how to do science, especially when it comes to thinking the law without reproducing the private logic, which is almost always the logic of profit, combined with the absence of effectively democratic instruments, often worsening social inequalities, and contributing to injustices in the space sphere.

In other times the scientific article would begin with the normative text, probably extolling the force of articles 182 and 183 of the Federal Constitution of 1988 and the great progress achieved with the Statute of the City. And, it would probably develop all of it from the rhetoric of the legal instruments of planning and management of the cities characteristic of urban law.

However, the study of the right to the city took other dimensions after joining the universe of social sciences. Our pre-established ideas have turned into real dilemmas; That is, it ended up bringing some dissatisfaction with what was being investigated. This discomfort provoked by the theoretical debates led to the development of this brief study. The answers we have about the right to the city and popular participation do not seem satisfactory to us. In fact, not even the questions on such topics seem to us to be well formulated to address the crux of the problem. It does not only matter to encourage the creation of collegiate bodies of urban policy or public hearings for the implementation of the democratic management provided by the Statute of the City, but we must go further.

It is noteworthy that there is something intrinsically wrong in the way that science and urban law have adopted to maximize their effectiveness in converting the model of sociocultural modernity in cities with capitalism. The problem to be discussed is how the state can choose its priorities to give meaning to true

social participation. To overcome the problems of the city we believe that only the mobilization of the community can transform our reality.

We realize that an important challenge is the recognition of the rights of popular participation and the right to the city by the population. It is hard to claim what you do not know. We stand for collective and conscious participation. And not a maneuver for politicians. As we have tried to argue, the effective participation of the population in management indicates the potential of this space in constituting a public sphere of concertation between the different actors and their respective interests around socially agreed public policies. In conclusion, we can walk towards the utopia of the right to the city from the popular participation, which is essential for an urban strategy beyond the fetishism and technicality of urban law.

Based on all that has been exposed the only conclusion we can come to is that the dialogue about the right to the city as utopia and rights of participation is essential to minimize the effects of inequality and domination in cities. However, the paths to effective implementation are diverse and deserve further study. It is hoped that this will be a first step towards utopian aspiration and the strengthening of new urban strategies with a view to promoting the right to the city.

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