

Editorial

The strategic dimensions of the struggles for citizenship, law and access to justice

The theme of this issue of *Katálysis* involves concepts of intense debate in recent years, yet it is still rife with dimensions that are open for critical treatment. If *citizenship* is to involve the effective enjoyment of rights and the permanent dynamic of the conquest of new rights, an *administration of justice* that is radically democratized and renovated in its procedures is necessary. Since 1988, as has been tirelessly repeated, Brazil has advanced in the approval of social legislation but the laws are either not applied, or are done so inadequately, losing the democratizing potential that the struggle to win this legislation has established. This issue of *Katálysis* is based on the need to discuss the three elements highlighted above, as part of a process that should be considered as a whole so that the permanent construction and broadening of citizenship mean not only the approval of good laws by the parliament, but that their effective application be guaranteed and the content of social justice that they should contain be consummated.

No sphere, whether private or public, appears to escape the rule of not complying or complying only precariously with social rights via pseudo-legal means or explicit illegality. These practices are supported and sustained through the naturalization of impunity. It is well known that the State has been incapable of complying with and enforcing compliance with basic legislation in the social area concerning: suitable housing, basic sanitation, quality health and education, the rights of children, the elderly and discriminated minorities, the eradication of violence and other issues. Even labor rights, consolidated by a long tradition of struggle, are being threatened. The massacre on March 31 in which 30 people were randomly shot and killed in various municipalities of the Baixada Fluminense region of Rio de Janeiro clearly reveal the open scourge of social inequality and the impotence of the State before these issues. In recent years social movements for environmental defense confront not only the aggressor agents, but also the public agencies that disrespect the legislation and do not conduct inspections, or in the few instances that they do, lack the power to punish those responsible for irregularities and environmental crimes. It is not uncommon to hear directors of government agencies exclaim “this law has not taken root here” or “if we were to respect all the laws we couldn’t do anything in the city”. In the realm of the public university, we experience the illegal naturalization of the use of precarious

labor, as is the case of contracting substitute teachers as a “permanently provisory” solution to fill structural teaching positions. Through the illegitimate extrapolation of a mechanism that should be absolutely transitory and arguing that there is an “exceptional public interest”, the Brazilian state places itself in a situation that is not only illegal but also unconstitutional. How can we hope that the common subject respect laws when the State itself persists in violating them?

Thus, a brief genealogy of the struggle for social rights shows us how, after passing through the *vía dolorosa* that is the formulation and promulgation of rights, through the tortuous, retrograde interpretive disputes – centered on loopholes of the law, the strong influence of “special privileges” and wads of cash – and later enduring the martyrdom of the struggle for the effective application of the laws, common citizens or the civic associations who represent them, without resources to pay for legal assistance, finally plunge into the true hell that is the struggle for the access to justice. Brazilian society has been waiting for 17 years for the regulation of the constitutional articles that call for the implementation of Public Defenders Offices (established by the Constitution in art. 5, LXXIV, art. 134, and others). In the case of the Public Ministry, while it is true that its implantation was a tremendous advance, it is no less true that its capability is saturated and that it is not able to keep up with the growing volume of demands from society.

While analyzing the permanence of this second rate justice system, it appears pertinent to highlight two elements of fundamental importance for the problematic that we are focusing on. The first is the lack of a popular legal culture, in which a population armed with the knowledge of legislation and procedures is accustomed to demanding compliance with laws, which guarantee the regulation of the forgotten constitutional articles and which assure fast and effective action by a radically democratized justice system. Although the solution of this social dilemma demands a relatively long process of cultural elevation of the masses, the expansion of citizen participation in social struggles and movements is increasingly moving in this direction. As theoreticians have repeatedly said of participative democracy, social participation, in addition to its immediate political role in resolving demands, is a fundamental pedagogical factor in the process of cultural growth and – using a new but certainly expressive concept

– of the empowerment of the subaltern classes and sectors. This process is inherent to the construction of a new hegemony, which Antonio Gramsci called “intellectual and moral reform”. In this sense, the multiplication and the perfection of public participative spaces is a decisive factor.

Second, in the realm of social thinking, is the insufficient reflection on the strategic scope that we ascribe to the struggle for rights and for the radical democratization of the administrative justice system. In Latin America, theories of emancipation are strongly linked to a Marxist theoretical and political tradition – there are other sources, but Marxism has the strongest influence. From this current of thinking – despite an extensive and highly valuable history of struggle, organization and theoretical efforts to consider the routes of egalitarian social transformation – was inherited a negative concept of law in capitalist society. Law for many Marxists, as an integral and fundamental portion of the State, is seen as simply “bourgeois law” and activity in the legal realm has been strategically disqualified. This has had broad consequences for social movements in general. If law is in toto bourgeois, why waste time and effort in its transformation? Through the revolution that will definitively emancipate the proletariat, and all the exploited classes, bourgeois law will be abolished and over its ashes will be established a new socialist law.

Yet working within the universe of Marxist thinking, the appropriation of Gramscian concepts allows considering another strategic dimension for law (and for the State in general). Gramsci offers valuable tools for considering the radical and revolutionary transformation of society as a complex historic process. This helps overcome the image of the revolution as an isolated act, as a nearly instantaneous redemption of historic inequities and injustices accumulated over the long history of the exploitative regimes. Gramsci’s theory of hegemony provides elements to consider the State and law in complex contemporary societies not only as two institutions destined only for substitution on the day of the revolution, but as arenas of an implacable struggle between antagonistic hegemonic projects. This would allow, through an intense “war of positions” the construction of a new hegemony, of a national, popular, emancipatory character, which by winning the hearts and minds of the broadest masses of the population, guides society in the direction of a new type of just and advanced organization. Law and the administration of justice are no longer automatically understood as “bourgeois facts”. The law can be considered – depending on the capacity of the political and social forces that sustain the popular contra-hegemonic project to defend its demands, principals and political logic – as a tool of struggle for social emancipation. Thus, the struggle for rights, citizenship and radical democratization of the administration of justice is no longer a mere reformist

decoration, and takes on strategic transformative dimensions.

The studies that give life to this issue of *Katálysis* contribute to this discussion with rich empiric research that helps reveal areas of social life where citizenship rights are precarious constructions, when not only mirages. This is revealed in the cases of migrant indigenous woman in Mexico and of poor women from the periphery of Florianópolis; in the struggles for universal access to elementary education in Rio de Janeiro State and for the implementation of policies for children and adolescents in Santa Cruz do Sul; and in the challenges for equitable housing policy in Uruguay. The studies also provide sharp theoretical insights about assistance policies in Brazil and social policy in contemporary capitalism. Other studies analyze the emergence of cultural rights, the construction of interorganizational networks, multicultural exchanges and the pluralization of transformative subjects. Paradigmatic transformations are presented in the understanding of the “popular” in the complex world of economic globalization. We offer our deepest thanks to the authors.

Finally, I would like to mention some formal changes in the journal as of this issue. First, as a result of the effort to adapt the journal to the most demanding indexation norms, we announce the broadening of the Scientific Editorial Council with new members to whom we express our appreciation and welcome. Second, we present changes in the design and layout that we hope will make reading the journal more pleasant. This involves a new two-column format with centered highlight boxes. We have not changed the typeface. We hope that the graphic changes help for better visualization of the texts and, as a consequence, better access to and use of its content.

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