

43 - RIGHT OF FREE MANIFESTATION AND THE CRIMINALIZATION OF SOCIAL MOVEMENTS: THE BODIES IN THE STREET

JACQUELINE DE CASSIA PINHEIRO LIMA¹
 ROSANE CRISTINA DE OLIVEIRA¹
 ANGELO DOS SANTOS SIQUEIRA¹
 ANA CLÁUDIA MORAES LEAL FELGUEIRAS²
¹ UNIGRANRIO, Duque de Caxias, RJ, Brasil.
² CBM-UNICBE/SIMONSEN/UNIGRANRIO,
 RJ, Brasil.

doi:10.16887/89.a1.43

Initial Considerations:

Russell Hardin (1999) makes it clear that the coordination of society makes the political game work. The government can serve the interests of the population and this population must consent to this coordination, give up some rights in favor of the state, so that it is better for all. For the author then, liberalism, constitutionalism and democracy work for people, because they are coordinated on several issues.

Thus, the democracy presented by the author works only when it is a mutual advantage in coordination in the social order. And in places where democracy can be worked, respect for government becomes easier, making it difficult, as it is in Brazil, to include men in the possibilities of manifesting themselves.

For the author there are two main classes in the theory of mutual advantage: contractualism and utilitarianism. The first theory requires some version of consensus, while the second is essentially of paradoxical definition, since its motivation to self interest, as a positive result for all, runs counter to the author's notion that mutual advantage is not made for everyone, but for considered. Thus, when we see some social manifestations in the streets, the human mass always subjugates to the ideological interests of those bodies there.

In the explanation of Democracy as an agreement or consent, Hardin states that the theory of consensus can be divided into two branches: the first formed by popular sovereignty and theories of the social contract and the second branch, democracy itself. On the other hand, he observes that along with the theory of consent is also the coordination, because in their use, consent, contractualism and popular sovereignty are meanings that people combine according to their orders. The order given and the possibility of refusal, which takes the bodies to the streets, is a symbol of resistance, of struggle. The German jurist Ihering demonstrates this:

The fight is not, therefore, an element alien to the law, but an integral part of its nature and a condition of its idea. Every right in the world was acquired by struggle; these principles of law that are now in force were indispensable to impose them by the struggle to those who did not accept them; so that every right, whether that of a people or of an individual, presupposes that the individual and the people are willing to defend it. (...) Law is work without respite, and not only the work of the public powers, but the work of all the people. If we take a glimpse throughout its history, it presents us nothing less than the spectacle of an entire nation, spending uninterruptedly to defend its law painful efforts, such as those it employs for the development of its activity in the sphere of economic production and intellectual. Everyone who has an obligation to maintain his or her right, participates in this national work and contributes to the extent of his or her strengths in the realization of the right to land. (IHERING, 2005, p.65)

We can affirm that for one day to reach this reality described above it is fundamental the popular awareness that only the participation of society and the exercise of citizenship so that the effectiveness of laws and social development can be objectified. In this sense, the capacity for social mobilization as well as political participation are essential elements for the development and reaffirmation of the Democratic State of Law, the State should allow the social protagonism of citizens, not only through popular representation, but also during elections, but creating the possibility of an effective participation of civil society in the political life, conscious and in the exercise of its rights, acting together with its representatives in the improvement of the nation, bringing the State closer to its citizens, in a real experience of democracy.

Manuel Castells (apud OLIVEIRA, 2017) affirms that the current model of representative democracy is exhausted, it is necessary to find other forms of participation, building a participatory democracy. Social networks can also be an important vehicle for information, mobilization and political participation that the state has been underestimating. Mainly because popular participation brings a number of contributions to democratic states, such as the possibility of government being closer to the population and listening to their demands make more positive choices for the common good and at the same time making those decisions more legitimate, increases the sense of responsibility and commitment of the citizens allowing the full exercise of citizenship and also allows a greater oversight of governmental acts reducing the possibility of abuse of law by the State, reducing social inequalities and injustices.

The human right to freedom of expression has a fundamental role for the Democratic State of Law, since the socio-political transformations and the reform of the State in which there is social justice must start from there, from the popular will. The possibility of participation through the exercise of the right to free expression is the main hallmark of the democratic conception of government. But for popular participation and social movements to exist, it is necessary to educate citizens who are aware, participative, supportive and alert for the protection of their rights, but who are especially attentive to their violations and able to protect and help victims of abuse of law and illegality. That is why Human Rights Education has vital importance in the Democratic State of Law.

Unfortunately in our country a large part of the population lives on the margins of citizenship, isolated from the notion of their rights, unaware of their place in the legal system as a subject of rights and consequently unable to exercise their constitutional right to free expression, believing that their rights are favors granted by the State to which it must repay with subservience.

The concept of the right to free expression:

The right to free manifestation derives from the human right to freedom of thought, which can be defined as the right to exteriorization of thought, which includes the right to inner thought, ideas, conviction, opinion, human conscience and right to

silence and also the right not to manifest thought. These rights are expressed in the Federal Constitution of 1988 in the articles in article 5, IV, when disposing "the expression of thought is free, and anonymity is forbidden" and in art. 220, in saying "the manifestation of thought, creation, expression and information in any form, process or vehicle shall not be subject to any restriction, subject to the provisions of this Constitution."

The examination of the external expression, of the manifestation or not, and of the opportunity of the thought is only of the individual himself, but the Constitution forbids anonymity, as well as being able to blame excesses or abuses of this right. This right clearly integrates the principle of the dignity of the human person, freedom of thought is an inherent right to the human person, recognized and guaranteed in the Universal Declaration of Human Rights and in the constitutional order in force in our country. It is an inherent prerequisite for the Democratic State of Law.

The right to freedom of expression is a non-transferable fundamental human right, which guarantees to all without discrimination of any kind: free expression, allowing all people to freely express their thoughts and ideas and opinions, verbally or various forms, as well as poems, articles, music, paintings or drawings, internet, photographs and other forms, and censorship is prohibited. The right to freedom of expression also guarantees the possibility for anyone to be able to meet on public roads, to express their ideas, feelings or opinions, as well as to protest freely, to carry posters or emblems, to shout, to sing, and to be able to express themselves through However, according to the Federal Constitution of 1988 anonymity is forbidden, the recent State Law 6,538 / 2013 of Rio de Janeiro brings another requirement of prior notice. "Art. 3º The constitutional right to the public meeting for manifestation of thought will be exercised: V - upon prior notice to the police authority". It follows that freedom of manifestation is not an absolute right, since it has definite limits in the constitution and laws. Thus, the limits to freedom of expression are established initially by the constituent itself.

The Criminalization of popular demonstration movements:

It is true that the popular manifestations are like a thermometer, measuring the satisfaction or dissatisfaction of the population with respect to the actions and decisions of government of the State. Freedom of expression is a constitutional guarantee is a true right of resistance or opposition to the State, moreover it is mainly and important instrument that allows in a society as complex and plural as the present a more direct political participation of the citizen, where social movements make possible the participatory democracy that claims the most diverse social demands with the State, expressing in the streets and also in the cyber space different social struggles, public needs, injustices, as well as the desire to change equality, of tolerance of the realization of social rights, of social justice. Demonstrations reinforce and solidify democracy in a democratic State of Law, because in a just and democratic society, consensus and respect for differences prevail, in the full exercise of effective citizenship and by the growth and social development of the State. Souto Maior adds:

It is for all these reasons that the realization of a democratic state of social law, claimed on the streets and as provided in the Federal Constitution, that the purposes of social movements are covered by law, and political action is assured, aimed at improving the living conditions of its members, as well as in acts of solidarity. (MAJOR, 2013. P. 88)

Therefore, the democratic state of law should not only guarantee and protect the right to free demonstration, but promote and encourage it. But unfortunately the current governments do not have this vision. What we have been able to observe is a sad and growing process of criminalization and demobilization of the social movements through the use of excessive and disproportionate police force on the part of the State and by sectors of the media. Xavier recounts how this process weakens democracy:

It is important to emphasize that the scenario of confrontation causes seizure and instability in the country, since the possible need to maintain order through the imposition by the public security forces, or the possible restriction of rights, recalls the period of military rule lived by 1964-1985, which may jeopardize historic democratic achievements. In this conjuncture of violence, the popular manifestation ceases to be a channel of approximation between the State and citizens, in view of the absence of dialogue with public institutions. (XAVIER, 2014)

The recent demonstrations in Brazilian cities in recent years bring mixed reports of excessive force by the police force, violating the human rights of demonstrators and even of the population that only witnesses the demonstrations. Truculence and violence have been completely banalized and may be known by reports, but today through social media we can see the shocking images such as these photos published by Extra Journal in April 2017 during the protests of April 28, 2017 in the city of Rio de Janeiro.

The treatment of criminalization given by the state and the media intimidates and generates insecurity in the population, driving the population out of demonstrations, putting it against demonstrators, who are treated by the military police and portrayed by the media as thugs and vandals who are on the streets only to destroy or steal the patrimony. This type of action arises from the very conception of police, that its function is to put "order" of citizens, to protect and to serve it is very far from the daily reality, being common the violence against the population in the approaches police and that this violence is justified by public insecurity, as Zaccal and Volpe reports:

At the current juncture, we are daily manipulated by a continuous succession of speeches in the press in which the protesters are presented as bullies and criminals, and the leaders of the acts are considered enemies and violators of the law. In this way, the authors intended to undress the relationship between the growing sense of insecurity of the population, which motivates this to claim the application of a maximum criminal law, and the criminal populism of our Legislative Branch, which takes advantage of this situation to propose laws disproportionate and symbolic in order to remedy such feelings of insecurity. (ZACCAL and Volpe Filho, 2016. p. 238)

But during the demonstrations we can see the Tactical Force, Rota and Bope and the presence of the Shock Troop and the Cavalry acting in a truculent and violent way, using the coercion against the population that manifests peacefully when it should be there to protect and serve all citizens in a moderate manner in accordance with the principle of legality, timeliness, proportionality and moderation. Unfortunately the conception of the military police in itself is a constitutional problem, for it is according to the Federal Constitution, article 144, § 5: "The military police are responsible for the ostensible police and the preservation of public order"; like the photo below, that has become popular on social networks, are increasingly common.

The repression of social demonstration weakens the rule of law and democracy, because it hurts the hand that feeds it. Democratic states survive only as legitimate representatives of the people act in accordance with the popular will.

In the brief history of Brazilian democracy we have some examples of the consequences of the separation between citizen and State. In fact, social movements represent the political maturity of a people can cause, ruptures, shocks and conjunctural and structural impacts on institutions and governments. Therefore, there is the attempt not only to dissolve or just to empty social movements, it is necessary to criminalize them, to make them socially undesirable, to point out only the negative points such as the common shock with the right to come and go, so that there is no manifestations because people do not want or do not believe in their results anymore, Zaccal and Volpe show this:

The repression of protests and popular demonstrations that threaten the current constituted order is a tactic used by

the state to try to silence the dissenting voices that have opened the greed and disregard of the "owners of power" to the demands of the disadvantaged. This repression was carried out through practices orchestrated by the Executive, Legislative and Judiciary powers and put in check the democratic State of law established with the 1988 Federal Constitution. " (ZACCAL and Volpe Filho, 2016. p. 237)

A democratic state of law can never criminalize or discriminate against social movements and, consequently, freedom of expression. The voice of those who struggle to reduce social inequalities, against corruption, against all forms of oppression can not be allowed to remain silent. Silva and Teixeira express the importance of the demonstrations: It should also be noted that a social movement is a living organism, composed of citizens, and represents the struggle for the implementation of public policies formally established by the State itself. In this sense, the manifestations are formed by a given collectivity that struggles with the purpose of effecting rights that are denied to it, understanding that process as part of the search for social emancipations, for the transformation of a reality forged in oppression, for the end of exclusion and of social injustices in a broad sense.

The government, for its part, can not ignore this process, because in a democratic country the state must be prepared to deal with all contradictions, whether they are analyzed in a positive or negative way. (Silva, Teixeira, 2016.p 63)

Criminalizing social movements is the way the state seeks to resolve social conflicts in a weak attempt to show strength and power rather than democratic dialogue. There is no doubt that the excessive and violent reaction of the State against the legitimate right of assembly and free expression, which were at the cost of much struggle and suffering conquered and elevated to constitutional guarantees are threatened and consequently democracy in our country is also. Unfortunately, there is still a conservative and undemocratic ideological force that wants to dilute political participation more and manipulate society against social movements.

Final considerations

The human right to free expression in the history of human history has fulfilled its role with society and has promoted the necessary ruptures of social changes and demonstrating that the union between the State and the population not only legitimizes governments and acts, but mainly generates development, growth and social justice. It is no longer possible to believe that democracy is made with periodic participation in the elections of our representatives, especially in the face of the current political crisis in this scenario of widespread corruption. It is increasingly necessary to create mechanisms so that the effective participation of citizens is a peaceful exercise and ensured by the social order for the good of all. Allowing the legitimation of new ways of organizing struggle for recognition and affirmation of social rights. For the simple exercise of the right of manifestation does not lead to immediate social changes, it requires a governmental will as a solution to social problems. At the same time, state opposition to the exercise of the free expression of social movements and consequently full political citizenship in public spaces reveals a crisis of representative democracy itself, since the state needs popular legitimacy and must allow opposition and contestation in a dialogue of differences to consolidate their role as regulator of social conflicts. The more the democratic state moves away from its citizens, the more it weakens politically and socially.

It is necessary in a plural society such as ours with such diverse demands as to encourage dialogue, not opposition. That is why it is necessary to give voice to the excluded, to claim dignity, the effectiveness of social rights, to show society that it is still unequal and unjust, that it still discriminates against at least leading to a collective reflection on the course of our country, and we know that we can find solutions to the plural problems of our society together with the State and Citizens.

In general terms, with great social efforts and government policies in the face of poverty and misery in recent years, the daily lives of the majority of the Brazilian people are - and have been historically - marked by a context that makes production and reproduction of life, prohibits the manifestation and expression necessary for participation, demoralizes and criminalizes social leaderships and movements and ignores subjects. The interdiction of manifestation and expression is revealed by the persistence of violence, as well as by the high concentration of the media and opinion. Violence violates the social fabric and reproduces fear, keeping whole communities away from living together in society - a basic condition for them to be able to organize and freely propose their longings and demands. Associated with this is the high concentration of the media, which react negatively to any kind of socialization or control measure on the grounds that they are censorship measures.

The demoralization and criminalization of leaderships and social movements has been used as a strategy to contain the popular organization and, with it, the advances proposed by it. Demoralization is a way of turning struggles and people into advocates of anachronism. Criminalization is a harsh way of institutions that have been set up to protect society and their rights become agents who propose the "extinction" of popular organizations and their bodies on the street.

References:

BRASIL. Constituição Federal de 1988. Promulgada em 5 de outubro de 1988. Disponível em http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em junho de 2017.

FERNANDES, Eduardo de Oliveira. Novas Manifestações Democráticas e Antigas Dificuldades Republicanas. Disponível em: <http://www.defesanet.com.br/riots/noticia/11360/Novas-Manifestacoes-Democraticas-e-Antigas-Dificuldades-Republicanas/> acesso em: junho de 2017.

HARDIN, Russell. Liberalism, Constitutionalism, and Democracy. EUA: Oxford University, 1999.

IHERING, RUDOLF VON. A luta pelo direito. São Paulo: Rideel, 2005.

LIMA, George Marmelstein. Desafivelando a Máscara: o uso de máscaras nas manifestações. Disponível em: <https://direitosfundamentais.net/2014/04/17/desafivelando-a-mascara-o-uso-de-mascaras-nas-manifestacoes/> Acesso em: junho de 2017.

MAIOR, Jorge Luiz Souto. A vez do direito social e da descriminalização dos movimentos sociais. In Cidades Rebeldes. Passe livre e as manifestações que tomaram as ruas do Brasil. São Paulo, Boitempo, 2013. P. 83 a 88.

OLIVEIRA, Samir. "Atual modelo de democracia representativa está esgotado", afirma Manuel Castells. Disponível em: <http://www.sul21.com.br/jornal/atual-modelo-de-democracia-representativa-esta-esgotado-afirma-manuel-castells/> Acesso em maio de 2017.

RIO DE JANEIRO, Lei Estadual 6.538/2013. Promulgada dia em 11 de setembro de 2013. Disponível em: <http://alerj1n1.alerj.rj.gov.br/contlei.nsf/4734bd1980be7a2003256b2a0061e644/95394833846e60a583257be5005ec84a?OpenDocument> acesso em: maio de 2017.

SARLET, Ingo. Democracia com ou sem máscaras? A liberdade de reunião e manifestação. 2015. Disponível em: <http://www.conjur.com.br/2015-set-04/direitos-fundamentais-democracia-ou-mascaras-liberdade-manifestacao> Acesso em: junho de 2017.

SCHERER-WARREN, Ilse. MANIFESTAÇÕES DE RUA NO BRASIL 2013: encontros e desencontros na política.

CADERNO CRH, Salvador, v. 27, n. 71, p. 417-429, Maio/Ago. 2014

SILVA; TEIXEIRA. Vânio Pacheco da; Daniela Felix. Criminalização dos movimentos sociais: reflexões sobre suas consequências à democracia, à liberdade e ao livre exercício do direito. O Direito Alternativo, v.3, n.1. pp. 55-80, nov./dez. 2016. Disponível em: <https://ojs.franca.unesp.br/index.php/direitoalternativo/article/view/1988>

TABORDA; MATIAS, Maren Guimarães; Flávia Hagen. Democracia procedimental, opinião pública e mídia: estudo sobre o caso da "revolução das panelas e frigideiras" procedimental democracy, public opinion and media: study of the case "kitchenware / kitchen implement revolution". In Teoria constitucional. Organização CONPEDI/UdelaR/Unisinos/URI/UFSM/Univali/UPF/FURG; Coordenadores: Lucas Gonçalves da Silva, Ruben Correa Freitas – Florianópolis: CONPEDI, 2016.

TAVARES, Celma. Educar em direitos humanos, o desafio da formação dos educadores numa perspectiva interdisciplinar. In: SILVEIRA, Rosa Maria Godoy (Org.). Educação em Direitos humanos: Fundamentos teórico-metodológicos. João Pessoa: Editora Universitária, 2007. p.487-503

VASCONCELOS, lever. A livre manifestação do pensamento e sua responsabilidade. 2015 Disponível em: <http://www.conjur.com.br/2015-fev-05/clever-vasconcelos-livre-manifestacao-responsabilidade> . Acesso em maio de 2017.

Abstract:

This article aims to demonstrate the relationship between freedom of expression, especially freedom of expression of social movements and their importance to the Democratic State of Law and discuss the consequences of criminalization of these movements, when bodies go to the streets. Disagreeing with some naturalistic jus authors, affiliated with the theory of Natural Law, which would understand its emergence in a natural, spontaneous way, being superior and prior to human existence, perfect and permanent, of divine origin, suffice the human reason for its knowledge, law would already be born with man, and, when necessary for the solution of social conflicts, he would emanate from reason to men. Law, in fact, arises from the daily struggle, from social conflicts, the essence of which is the human and historical construction of law, where human experience, time, culture and legal fact are the main source from which the law will derive. The law is the imperfect and eternally unfinished human work and in this way it is urgent the struggle for the construction, remodeling and updating of the rights, the political participation, the social movements are of extreme value, making that when we put the bodies in the street, let us turn to the insertion of the citizen power in front of the social demands.

Keywords: Rights - Manifestations - Social Movements

Résumé:

Cet article vise à démontrer la relation entre la liberté d'expression, en particulier la liberté d'expression des mouvements sociaux et leur importance à la règle de droit démocratique et discuter des conséquences de la criminalisation de ces mouvements, lorsque les corps vont dans les rues. Désaccord avec quelques naturalistes jus, les auteurs théorie affiliés du droit naturel, qui inclurait son apparition dans une existence naturelle, spontanée, et supérieure et inférieure humaine, parfaite et permanente d'origine divine, simplement la raison humaine, pour information, ainsi la loi déjà né avec l'homme, et si nécessaire pour la résolution des conflits sociaux qu'il émane raison aux hommes. La loi en fait est né de la lutte quotidienne, des conflits sociaux, avec la construction humaine et historique base du droit, où l'expérience humaine, le temps, la culture, fait juridique, sont la principale source dont dérivera la loi. La loi est imparfaite et toujours le travail inachevé de l'homme et donc il y a un besoin urgent de lutter pour la construction, la rénovation et la mise à jour des droits, la participation politique, les mouvements sociaux sont extrêmement précieux, ce qui rend l'on insère les corps dans la rue, tournons-nous vers l'insertion du pouvoir citoyen face aux revendications sociales.

Mots-clés: Droits - Manifestations - Mouvements sociaux

Resumen:

Este artículo tiene como objetivo demostrar la relación entre la libertad de expresión, en especial la libertad de manifestación de los movimientos sociales y su importancia para el Estado Democrático de Derecho y discutir las consecuencias de la criminalización de esos movimientos, cuando los cuerpos van a las calles. En el caso de las mujeres, la mayoría de las veces, la mayoría de las veces, la mayoría de las veces, la mayoría de las veces, el derecho ya nacer con el hombre, y, cuando sea necesario para la solución de conflictos sociales, emanaría de la razón a los hombres. El derecho, en verdad nace de la lucha cotidiana, de los conflictos sociales, siendo esencial la construcción humana e histórica del Derecho, donde la experiencia humana, el tiempo, la cultura, el hecho jurídico, son la principal fuente de donde va a derivar la ley. El derecho es la imperfecta y eternamente inacabada obra humana y de este modo es urgente la necesidad de la lucha para la construcción, remodelación y actualización de los derechos, la participación política, los movimientos sociales son de extremo valor, haciendo que al insertar los cuerpos en la calle, nos volvamos a la inserción del poder ciudadano frente a las demandas sociales.

Palabras Clave: Derechos - Manifestaciones - Movimientos Sociales

Resumo:

Este artigo tem como objetivo demonstrar a relação entre a liberdade de expressão, em especial a liberdade de manifestação dos movimentos sociais e sua importância para o Estado Democrático de Direito e discutir as consequências da criminalização desses movimentos, quando os corpos vão para as ruas. Discordando de alguns autores jus naturalistas, filiados a teoria do Direito Natural, que compreenderia o seu surgimento de forma natural, espontânea, sendo superior e anterior a existência humana, perfeito e permanente, de origem divina, bastando a razão humana para seu conhecimento, assim, o direito já nasceria com o homem, e, quando necessário para solução de conflitos sociais ele emanaria da razão aos homens. O direito, em verdade nasce da luta cotidiana, dos conflitos sociais, sendo essência a construção humana e histórica do Direito, onde a experiência humana, o tempo, a cultura, o fato jurídico, são a principal fonte de onde irá derivar a lei. O direito é a imperfeita e eternamente inacabada obra humana e deste modo é premente a necessidade da luta para a construção, remodelação e atualização dos direitos, a participação política, os movimentos sociais são de extremo valor, fazendo com que ao inserirmos os corpos na rua, nos voltemos para a inserção do poder cidadão frente às demandas sociais.

Palavras-Chave: Direitos – Manifestações – Movimentos Sociais