Capítulo 92

Would there be marxist human rights?

https://doi.org/10.56238/methofocusinterv1-092

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ABSTRACT
The relationship between human rights and Marxism is controversial since Marx was not concerned with theorizing the legal phenomenon or the philosophy of law. Therefore, in Marxist theory, the eradication of human rights in the ideal communist society is defended against the taking of human rights as a space of political struggle against hegemonic power. From these questions comes the research problem: to what extent is it possible to validly relate human rights and Marxism? The hypothesis is that legal pluralism, as a current that denies the monopoly of law by the State and recognizes the coexistence between an oppressive official law and an unofficial law of the oppressed, is aligned with Marxist premises. With the use of bibliographic and descriptive research, using the deductive method, this work initially describes the bases of Marxist thought applied to law and, in a second moment, analyzes to what extent Marxist thought is related to the pluralism aspect. legal. The result achieved is that, for the emancipatory struggles of the oppressed to have space, an alternative normativity of human rights is effectively necessary, based on forms of informal and unofficial law, guided by concrete political actions of social transformation.

Keywords: right found on the street; alternative right; right of the oppressed; parallel right.

1 INTRODUCTION

Talking about Marx is a challenging task. Not only because of the breadth of Marxist thought, but, in particular, because of the emotions that the reference to the name of the thinker can bring, whether positive, with a passion that leads to unreflected agreement, or negative, with the prima facie refutation of any argument that arises try to present. Feelings, when intense, prevent an impartial, objective, and scientific analysis of the proposal. This is why the challenge of relating Marx and human rights, in a relationship that, in itself, is already controversial, since there is no finished Philosophy of Law or Theory of Law in Marx's work.

For this reason, the pretensions of describing a Marxist law, and relating it to human rights, vary depending on the author's ideas, so anyone willing to develop a theory of Marxist law is developing his theory of law, based on Marxist premises. When talking about law and Marxism, therefore, one will always be faced with a second reading of Marx's work, which can lead to the most diverse conclusions possible, of the total abandonment of law, as a mere superstructure that maintains the state of affairs and impedes of the revolution, to the parallel coexistence of official bourgeois law and unofficial law of the oppressed. In this

way, the absence of a theory of law in Marx makes room for varied constructions but is not necessarily exclusive.

What would allow the designation of a given conception of law as Marxist, then, would be the adoption of a critical, materialist, and dialectical perspective of reality and the legal phenomenon, not necessarily the conclusions it reaches and the propositions it makes. Furthermore, for it to be classified as "Marxist", the thought does not necessarily come from Marx, but also from other authors who follow his thoughts. From these questions comes the research problem: to what extent is it possible to validly relate human rights and Marxism?

In this context, the adoption of legal pluralism as a current law that aligns with Marxist reasoning and therefore derives validity from it emerges as a hypothesis. Indeed, legal pluralism, in the participatory community aspect, by abandoning the false idea that the State is the sole origin of law or its ultimate source of legitimacy, argues that there is a real and unofficial right in the rich informal production of social rules, engendered by material conditions, social struggles, and pluriclassist contradictions. In other words, in line with a critical view, the pluralist conception denies the state monopoly in proposing norms of conduct and forms of conflict resolution and, among the multiple extra-official sources of law, recognizes in the actions of collective social agents a birthplace legitimacy of socially applicable norms, thus creating a space for decisions that are neither controlled nor determined by the State, but induced by society.

Once the thematic proposal is understood, the general objective is to establish the relationship between Marx's materialist, critical and dialectical assumptions and human rights. As specific objectives, the study intends to: a) describe the bases of Marxist thought applied to law; b) verify points of contact between Marxist thought and the aspect of legal pluralism. Such objectives constitute the two points of development of the work.

The research is justified because it contributes to the construction of legal possibilities against oppression. Legal pluralism is a theoretical strand that turns against various forms of hegemony and domination, configuring itself as a right of the oppressed. The pluralist conception gained strength in Brazil in the 1980s and had as its main motto the fight against the oppression of the Dictatorship and the exploitation of Latin American countries through neoliberal practices in the context of global North-South power. This context, however, remains today, notably with the global rise of the ultra-right. In addition, the idea that law is a phenomenon arising from multiple sources, especially the social fabric in which it is inserted, is justified by the insufficiency of positive law, based on two perceptions: either the law manifests itself as a superstructure with the sole scope of maintaining the status quo; or, if it intends to produce social changes, despite the most eloquent affirmations in the field of human rights, social reality, the world of flesh and blood, does not change satisfactorily. It is necessary, for these reasons, to conceive of alternative forms of law.

Concerning methodology, this is a study located, predominantly, in the transdisciplinary field of Philosophy of Law, using a legal-sociological approach and developed through descriptive research (describes the state of the art about the theme) and bibliographical (part of the analysis of secondary sources on the subject). The research method employed is deductive.

2 HUMAN RIGHTS IN MARXIST THOUGHT

Karl Marx (1818-1883) is considered the thinker who most influenced the 19th and 20th centuries. His ideas, built with the help of Friedrich Engels, go against utopian socialism and anarchism, being the greatest exponent of critical socialism. Marx sees social and economic relations from the historical clash between bourgeois and proletarians, so that class struggle is the engine of history. For him:

> The history of all society up to our day is the history of the class struggle. Freeman and slave, patrician and plebeian, lord and serf, master and officer, in short, oppressor and oppressed were always in constant opposition; engaged in a relentless struggle, now veiled, now open, a struggle that at each stage led to a revolutionary transformation of society as a whole or the annihilation of the two confronting classes (MARX; ENGELS, 2001, p. 23-24).

Thus, the classes, dominant and dominated, oppose each other according to changes in the means of production and productive forces, composed of concrete subjects involved in economic relations, working and producing, modifying nature, instruments, and technique, redefining the spaces of production and domination (BITTAR; ALMEIDA, 2008, p. 344). These are the foundations of the historical and dialectical materialism that marks Marx's philosophy.

Marx also perceives the State and the law as superstructures, formed by numerous bureaucratic apparatuses of social control, which only maintain the will of the oppressors over the oppressed. The structure that underlies the superstructure is economic, which determines the social division of classes (BITTAR; ALMEIDA, 2008, p. 344). Faced with social chaos, the exploitation of man by man, the breakdown of equality in society, and, above all, the disrespect for the human condition, Marx proposes the revolution by the dictatorship of the proletariat as a way of breaking with the status quo in an intermediate stage. In the next stage, in the ideal communist society, "in the absence of private property, in the absence of the pyramidal distribution of the members of civil society, in the absence of the State, in the absence of Law, in the absence of bureaucracy, man could experience his nature as to be able to work" (BITTAR; ALMEIDA, 2008, p. 357). These are, in very general terms, the main ideas of Marx's philosophy.

With regard specifically to the legal phenomenon, as Roberto Lyra Filho warns, whatever the approach adopted from Marx's work, one does not find anywhere, nor in the whole, a theory or doctrine of law. What one sees are statements "concerning the Law, but there is no way to reduce them to unity, much less to consider their sum as a constituted doctrine" (LYRA FILHO, 1983b, p. 12). Lyra Filho also states that Marx used the expression "Law" throughout his work with opposite and even excluding meanings at some points so that the word "sometimes to designate only the norms of the ruling class, sometimes only

those of the plundered and oppressed, sometimes both, at the same time, without a vision of Law that dialectically absorbs the antithesis and contradictions" (LYRA FILHO, 1983a, p. 96).

In any case, what is extracted from Lyra Filho's reading of the law in Marx is the coexistence between a state and dominant order and space of regulation proper to the dominated, so that, based on this analysis, Wolkmer states that the best appreciation "of this process at the level of Law will allow viewing it not only as ideological repression/domination of the ruling class but also rethinking and rescuing it as a material structure for the liberation and emancipation of oppressed peoples" (WOLKMER, 2002, p. 153).

Atienza, when focusing on the theorization of human rights in Marx, traces an evolutionary line: from 1843, the young Marx has a hostile posture about human rights, which he interprets as another aspect of human alienation; after the Communist Manifesto in 1852, there is an ambiguous stance, on the one hand giving practical importance to the achievements of human rights by the proletariat, on the other hand, however, reducing these rights to mere means and not ends; In a mature stage, from 1853 onwards, although maintaining ambiguities in his thought, Marx abandons the thesis of extinction of Law and the State, giving greater importance to human rights, but recognizing their subordination to the juridical-political superstructure (ATIENZA, 1983, p. 33).

Wolkmer, on the other hand, concludes that, although Marx's youthful writings were contrary to human rights, indicating that the provisions of art. 2 of the French Declaration of 1793 would be "the rights of the selfish man, a member of bourgeois society, turned to himself and his interest" (WOLKMER, 2004, p. 11), it is possible to extract from his thoughts a philosophy humanistic that breaks with the freedom of metaphysical humanism, individualistic and minimizing social contradictions. This humanist philosophy of Marx is extracted "from his concerns about the various forms of pressure (economic, social, political and religious) that deny the realization of the human being and the construction of a concrete praxis capable of freeing the alienated man and of providing a real human emancipation" (WOLKMER, 2004, p. 26).

Going beyond the analysis of Marx's work, other thinkers made use of critical, materialist, and dialectical premises to give continuity to his thought, carrying out an open examination of the legal phenomenon in Marxist theory. According to Mascaro (2016, p. 281), regarding the structural relations between law and Marxism, there are two major perspectives of analysis: the revolution, based on the abandonment of law in the ideal society, which would dispense with it; and the strategy of transformative political action within the capitalist state itself.

The role of law in the revolution guided the just philosophical reflections of the 20th century, especially with Pachukanis. Considered the most influential theorist of Marxist law, the author, deepening Stuchka's constructions, breaks the idea of Soviet thinkers that law, although based on class struggle, would be a neutral instrument, liable to be removed from bourgeois hands and used in support of the socialist struggle. A staunch critic of Kelsen, the theorist states that the assumptions of law cannot be reduced to a logical-formal reflection, exempt from the relations generated by a real social process. Thus, for Pachukanis, the law is not taken as a mere generic normativism, outside of history, but is necessarily linked

to capitalist production. In his work, it is “mercantile circulation that gives specificity to law. Therefore, the legal form is a concrete historical-social data, of the plane of being – and no longer of being –, as it was with the entire metaphysical and legal positivist tradition" (MASCARO, 2016, p. 414). For this reason, Pachukanis, in the originality of his ideas, "defends the gradual extinction of the law, as one could not speak of a right in the communist society of the future" (WOLKMER, 2002, p. 157). In other words, in Pachukanis' reading, "the purpose of liberation from capitalist exploitation is the end of the State and law" (MASCARO, 2016, p. 418) through revolution.

On the other hand, there is political action as a strategy for social transformation, which finds its most important thinker in Antonio Gramsci. Indeed, Gramsci identifies an element of domination that transcends the relationship of mechanical exploitation, through work, between bourgeois and proletarian: cultural hegemony. Domination operates, above all, through its ideological construction, spread in a process of naturalization of dominant values for those dominated, so that they share the same way of thinking. In the words of Mascaro (2016, p. 422), “this ideological breadth of domination, creating an amalgamation between the exploited and the exploiter, is the concept of hegemony”. This mechanism is effective because, from the field of ideas, it prevents the dominated from rebelling against those who dominate or, however much there is rebellion, it keeps it at a controlled level, without the power to break with the structure of the dominant world.

Thus, for Gramsci, the economic-productive infrastructure is not solely responsible for building the social dynamics between oppressors and oppressed. Alongside domination by work, which is more evident and easily perceived, is the exploitation of classes at the cultural and superstructural level. In this way, "if workers consider it natural that there is a division between those who exploit and those who are exploited, they may even rebel against their location, individual, among the exploited, but not against the system that distinguishes both" (MASCARO, 2016, p. 423).

Society, thus, is structured into two groups in Gramsci's philosophy: political society, which corresponds to the official institutions that monopolize violence through institutionalized apparatuses and perform the functions traditionally understood by the State; and civil society, responsible for creating, disseminating, and ideologically maintaining the hegemonic, such as means of mass opinion, schools, universities, intellectuals, political parties, etc. Both hegemonic action groups act in an organic and complementary way, carrying out activities of repression and proposition, respectively. Together they form what Gramsci calls the “Extended State”.

It could be thought that the law is inserted in political society, linked to the repressive functions of the State, as would be natural. However, at the same time, the legal phenomenon is an instrument of political society and civil society, and is also a propositional tool of cultural hegemony: “In the task of building law as a hegemonic consensus in society, the legal phenomenon must be presented, taught and reproduced according to the appearance of a universal, uncompromised, impartial, free-of-side technique” (MASCARO, 2016, p. 429).

It is from this vision of the State and the notion of hegemony that Gramsci states that a war of movement, which frontally and violently attacks the prevailing state of affairs and seizes state power, like revolution, is a way of social transformation that cannot be sustained in developed societies. It is that the immediate alteration of the relationship between oppressor and oppressed, maintaining the hegemonic ideology, will not allow effective changes and is doomed to failure. For this reason, Gramsci proposes a war of positions, aimed at conquering spaces and positions in civil society, in a political struggle against hegemonic power:

> What happens in military art happens in political art: the war of movement increasingly becomes a war of position, and it can be said that a State wins a war when it prepares it thoroughly and technically in peacetime. The massive structure of modern democracies, whether as state organizations or as a set of associations in civil life, constitutes for political art something similar to the "trenches" and permanent fortifications of the combat front in the war of position: it makes it only "partial" the element of movement which formerly constituted "the whole" war, etc. (GRAMSCI, 2017, p. 24)

It should be noted that, although Marxist theories are centered on the bourgeois/proletarian relationship, their premises transcend this relationship and find their field of application in other situations between oppressors/oppressed. It is noted, especially from the harmful experiences of real socialism – implemented with total distortion of Marxist humanism –, a movement of new Marxist thinkers who, from a materialist and dialectical bases, think of ways to end the oppression imposed on minorities, such as black people, women, the LGBT+ community.

In this scenario, different roles of human rights in Marxist reasoning are noted, from total abolition to their recognition as a tool against hemegonic social transformation, with different nuances and covering all forms of oppression. In any case, what can be seen from the analysis undertaken is that, regardless of the revolutionary or political position, Marxism, above all, sees law not from the angle of legitimation, as juspositivism does, but seeks to understand the legal phenomenon in its concrete historical manifestation. Thus, legal relations cannot be formally understood, but are necessarily immersed in power relations between oppressors and oppressed.

3 THE PLURALIST PROPOSAL

Boaventura de Sousa Santos calls the duality of transformative possibilities – revolution and political action – illegal social emancipation and legal social emancipation [1]. Revolutionary experiences,

[1] "This duality would come to characterize the politics of the left over the last one hundred and fifty years: on the one hand, an emancipatory politics achieved by legal parliamentary means through gradual reformism; on the other, an emancipatory policy conducted by illegal extra-parliamentary means leading to revolutionary ruptures. The first strategy, which was to dominate Western Europe and the North Atlantic, took the form of the rule of law and translated into a vast program of liberal concessions to expand both the scope and quality of the inclusion of the social contract, without thereby threatening the basic structure of the current political-economic system – that is to say, capitalism and liberal democracy [...]. The second strategy, inspired by the Russian Revolution, and which would become dominant on the periphery of the world system, took the form of illegal confrontation, violent or not, with the linear State, with the colonial or post-colonial State, and with the economy. capitalist" (SANTOS, 2003, p. 5).

however, advise against this option of transforming the path. The revolution as a mechanism for social transformation proved to be factually inadequate, "as the nation-states resulting from the success of the struggles against colonialism and capitalism began to collapse" (SANTOS, 2003, p. 7) and considering, also, the oppressive and dictatorial expedients managed under the pretext of revolution for the common good. Political action for legislative changes is also not effective, as it is innocuous over the last few decades in the context of neoliberal states that have no interest in inclusion agendas, so "the legal path to social empowerment seems to be blocked" (SANTOS, 2003, p. 6).

How, then, does discarding the revolutionary possibility, promote emancipatory political actions outside the legal scope? The author will respond that emancipation takes place with "the movements, organizations, and subaltern cosmopolitan groups that resort to the law to take their struggles forward"[2] (SANTOS, 2003, p. 69). The notion of "law" used, however, does not refer to the positive modernist idea, but concerns "forms of law (forms of informal and unofficial law, namely) that are often not recognized as such" (SANTOS, 2003, p. 69).

Along the same lines, Mattei and Nader, when carrying out an extensive analysis of hegemonic expedients of domination in recent world history – which they call "looting" –, question whether the right will have "some counter-hegemonic potential, or will it be condemned to remain in the domains of the problem, not the solution" (MATTEI; NADER, 2013, p. 354-355). A definitive answer is not reached, but the possibility of implementing a "Rule of Law of the People" is suggested, based on the idea of informality and unofficial social regulation:

> People who have had their sense of justice disrespected or their chances of survival threatened (which is almost always the same thing) are inventing, through networks and groups, legal and pre-legal ways of dealing with life-damaging problems. [...]. Their efforts are legitimized by social necessity. The innovative legal restructuring may be what will allow us to leave this planet as a legacy to our grandchildren (MATTEI; NADER, 2013, p. 376).

In this scenario, there is a proposal for concrete political action that escapes the dogmatism of law, considering that "the law embodied in the law does not express the true meaning of justice, nor does it represent the general will of the people or the public manifestation of the legislator, but the interests of the economically dominant strata" (WOLKMER, 2004, p. 19). Therefore, it starts from the idea that there is, in parallel, an official right of the oppressors and an unofficial right of the oppressed in the social environment. The law, therefore, is not limited to the law.

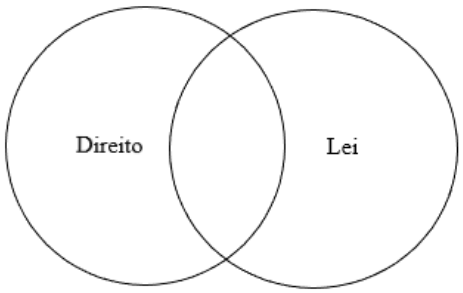
[2] "[...] this reinvention of law implies a search for subaltern conceptions and practices, of which I distinguish three types: 1) conceptions and practices that, despite belonging to the western tradition and having developed in the countries from the West, they were suppressed or marginalized by the liberal conceptions that became dominant; 2) conceptions that developed outside the West, mainly in the colonies and, later, in postcolonial states; 3) conceptions and practices currently proposed by organizations and movements especially active in the effort to propose forms of counter-hegemonic globalization. In short, in a period of paradigmatic transition that distances us from the dominant modernity, subaltern modernity provides us with some of the instruments that will allow us to make the transition towards a progressive future, which is to say, in the direction of an order and a good society, which are yet to come" (SANTOS, 2003, p. 12).

Roberto Lyra Filho, with these bases, develops the distinction between right and law. For the thinker, the law is a State production subject to the will of the ruling class, which prevents legislation from being considered, in its entirety, an authentic, legitimate, and indisputable right. This is because the "authentic and global law cannot be isolated in legislative concentration camps, as it indicates the liberating principles and norms, considering the law a simple accident in the legal process, and which may or may not carry the best achievements" (LYRA FILHO, 2006, p. 3). Citing Gramsci, Lyra Filho states that:

> [...] the Law is trapped in a set of state norms, that is, standards of conduct imposed by the State, with the threat of organized sanctions (repressive means expressly indicated with a special enforcement body and procedure). However, as the Italian Marxist leader, Gramsci, noted, the dialectical view needs to broaden the focus of law, encompassing the collective pressures (and even, as we shall see, the non-state norms of class and dispossessed and oppressed groups) that emerge in civil society. (in institutions not linked to the State) and adopt vanguard positions, such as certain unions, parties, sectors of churches, professional and cultural associations, and other vehicles of progressive engagement (LYRA FILHO, 2006, p. 4).

In this way, "the legislation always covers, to a greater or lesser extent, Law and Anti-Law: that is, Law itself, straight and correct, and the denial of Law, warped by the classic interests and continuous whims of the established power" (LYRA FILHO, 2006, p. 3). Therefore, the notions of law and law relate to each other like two drying circles: they communicate at a certain point, in which law and law consubstantiate the same set of real social facts; but there will be a spectrum of real rights not covered by the law; and, likewise, a portion of the law which does not correspond to the real right. The relationship can be seen like this:

Diagram 1 - Right and law



Source: own
Subtitle: Right /Law

If, however, the right does not fully correspond to the law, what does it correspond to? The answer, according to Lyra Filho, lies in Legal Sociology, since the law does not concern what is thought about law, but what is legally done concretely. The thinker proposes an escape from abstract and ideological conceptions of law and, as a solution, the adoption of real law, based on human praxis (of humanity's historical and social activity) from its legal angle. Law, therefore, corresponds to real dialectical practices measurable through a sociological analysis of the social environment (LYRA FILHO, 2006, p. 29).

From these perceptions, legal pluralism emerges, in its communitarian and participatory aspect, which denies the state monopoly of law, granting the articulations of collective social agents a legitimate birthplace of law, parallel to the official law of the State.

For Wolkmer (2006, p. 117), given the limited effectiveness of judicial and state structures in responding to the plurality of demands and conflicts, the growing increase in "pockets of misery and the new colonizing relations of rich countries with developing nations, opens up the discussion for the conscious search for alternatives capable of triggering guidelines, practices and regulations" aimed at the recognition of human life with greater identity, autonomy, and dignity. From these ideas arises the proposal of a new collective space, "a space for decisions not controlled or determined by the State, but induced by society, [...] defining plural mechanisms of democratic exercise and enabling scenarios of recognition and affirmation of Human Rights" (WOLKMER, 2006, p. 117). In this way, one arrives at the notion of legal pluralism that encompasses the

> the legitimacy of new collective subjects, the implementation of a fair system of needs satisfaction, the democratization and decentralization of a participatory public space, the pedagogical development for concrete ethics of alterity, the consolidation of processes leading to emancipatory rationality (WOLKMER, 2001, p. 20-21).

These “new collective subjects” would not be any human organization, but the qualified one. The human aggregation that creates extra-official rights are those collective subjects “transformers, coming from different social strata and integrating a daily political practice with a certain degree of 'institutionalization', imbued with common values principles and aiming at the realization of fundamental human needs” (WOLKMER, 2001, p. 122). These are movements aimed at the conscious and responsible action of their agendas, represented "by associative and community groups, such as the movements of the 'landless' (rural and urban), blacks, women, human rights, ecologists, pacifists, and religious people" (WOLKMER, 2001, p. 138)

The claiming and participatory postures of these collective organizations, the “new collective subjects”, create “new rights”[3]. Not that “new” indicates originality or effective novelty, but it refers to informal ways of realizing rights, so that “the 'new' is the way of obtaining rights that no longer pass through traditional channels – legislative and judicial –, but they come from a process of struggles and conquests” (WOLKMER, 2001, p. 166).

[3] "The. Right to meet existential needs: food, health, water, air, security, etc.;
B. Right to satisfy material needs: right to land (right of ownership, right of the landless), right to housing (right to urban land, right of the homeless), right to work, salary, transport, growth, etc.;
w. Right to meet socio-political needs: right to citizenship in general, right to participate, to assemble, to associate, to unionize, to move around;
d. Right to satisfy cultural needs: right to education, right to freedom of belief and religion, right to cultural difference, right to leisure, etc.;
It is. Right to satisfy diffuse needs: right to ecological preservation, right to consumer protection, etc.;
f. Rights of minorities and ethnic differences: women's rights, rights of blacks, Indians, children and the elderly” (WOLKMER, 2001, p. 167).

Lyra Filho contributes with a particular aspect of pluralism: The Right Found on the Street. It is a specific manifestation of legal pluralism, as it is endowed with its perspective, focused on pragmatic implementation, that is, on praxis, of an unofficial law. As its name indicates, the current has a concern that, fleeing the Law of codes, taught in colleges, focuses on the different legal forms effectively practiced in social relations, overcoming the aporia juspositivism versus jusnaturalism. Thus, jusnaturalism is denied due to its immutability, rejecting the idea that the rights and values of a society are given by nature, by divine design, or by rational lucubration; Likewise, positivism is rejected for being "a reduction of the Law to the established order" (LYRA FILHO, 2006, p. 26). The Law Found on the Street builds, with these bases, its method and conceives the law as follows:

> Law is not; he makes himself, in this historical process of liberation – while progressively unveiling the impediments of freedom that do not harm others. It was born in the street, in the clamor of the dispossessed and oppressed, until it was consummated, it is worth repeating, through the mediation of human rights, in the enunciation of the principles of a legitimate social organization of freedom (SOUSA JÚNIOR, 2015, p. 50)

In this way, the line of O Direito Achado na Rua understands that the standard of the legitimacy of the possible sources of law is not in their degree of politicization, but in the historical and concrete vector, thus extracting "the juice and the extract of the liberating process to called Human Rights (and, it should be noted, not only the official declarations of these Rights but the Rights themselves, emerging and not yet 'declared')" (CARNEIRO, et al, 2015, p . 69).

It exemplifies this dynamic of multiple sources of law, notably those arising from the internal and external relations of social groups, the situation analyzed by Boaventura de Souza Santos. The author empirically verified the pluralist ideas, through a sociological study in the Jacarezinho community, in the city of Rio de Janeiro. There, the sociologist found the coexistence of official law – applied by the oppressors – with unofficial law – of the oppressed –, the latter serving as an alternative strategy of internal legality, parallel to the official one.

Alongside state institutions, the reality of the favela revealed another form of social organization and conflict resolution, so the sociologist concludes that this pluralist form of law, although not revolutionary, "aims at resolving interclass conflicts in a social space. marginal, representing an attempt to neutralize the effects of the application of capitalist property rights within the favelas" (SANTOS, 2015, p. 76).

The pluralist conception of human rights, as can be seen, is closely related to ideas drawn from Marxism, notably the finding of coexistence between the oppressive legal order and an extralegal right of the oppressed, as well as the anti-hemogenic postures of the Gramscian matrix. Therefore, there are indeed human rights with Marxist foundations. These rights, however, are not officially provided for, but are those arising from real social relations, from daily struggles, in which sweat is dedicated and blood is shed, in favor of anti-hemogenic flags; they are those who dispense with the use of a tie or high heels to get to know

each other, study and spread the word; they are, finally, those carried out by collective human organizations, which turn against oppression in a creative articulation of an unofficial right, a right of the oppressed.

4 CONCLUSION

This work highlighted the sensitive relationship between human rights and Marxism, indicating two major perspectives: the revolution – with Pachukhanis being its greatest exponent – and the strategy of transforming political action – which finds its main theoretician in Gramsci. Both possibilities seem valid because, from Marx's work, different perceptions of the legal phenomenon are extracted.

From the second line of action, the conception of legal pluralism in the participatory community aspect was exposed, which denies the idea that the State is the sole origin of the law or its ultimate source of legitimation, defending the existence of a real and legitimate right. unofficial in the informal production of social rules, engendered by material conditions, social struggles, and pluriclassist contradictions.

The development carried out contributed to the deconstruction of myths, such as that the Marxist ideology is based exclusively on armed revolution and seizure of power. Indeed, it was seen that in a mature phase of Marx's works, there would be a certain appreciation of human rights without proposing their extinction; Furthermore, the Marxist thinker Gramsci builds, from the notion of cultural hegemony, the idea of a war of positions, with the conquest of space in a civil society aiming at the realization of social transformation in favor of the oppressed.

To the question that constitutes the title of the work, then, two answers can be given: if one takes into account a radical strand of Marxism, human rights in the form in which we know them do not exist in the set of ideas, because, in the ideal communist state, would be dispensable; on the other hand, when analyzing the Marxist currents that propose political action as a tool of transformation, along the lines of Gramsci's philosophy, there is an important space occupied by human rights, a space that must be filled by concrete actions in a posture against hegemonic and enabling of social transformation.

In this way, when performing the comparison between the bases of Marxist thought and the theory of human rights, the result of the work fosters legal conceptions beyond the State. For the emancipatory struggles of the oppressed to have space, an alternative normativity is necessary, based on forms of informal and unofficial law, porous and influenced by the political causes underlying the issues discussed. Therefore, the emancipatory desideratum belongs to an extralegal, alternative, parallel, unofficial right, of the oppressed or found on the street.

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