

Scientific Journal of Applied Social and Clinical Science

PUBLIC POLICY CYCLES AND JÜRGEN HABERMAS' DEMOCRATIC CONCEPTION

Renan Porcaro de Bretas

Master's student in Law at `` Universidade
Católica de Petrópolis `` – UCP
<http://lattes.cnpq.br/9663053137864270>

All content in this magazine is licensed under a Creative Commons Attribution License. Attribution-Non-Commercial-Non-Derivatives 4.0 International (CC BY-NC-ND 4.0).



Keywords: Public policies. Right. Democracy. Dignity. Human rights.

INTRODUCTION

Public policies have received more attention from scholars and researchers in the humanities and applied social sciences with each passing year. The theme is relevant as a plausible way of promoting social transformation through institutional means, in a practical and realistic way, without leaving aside the necessary debate on the causes of social problems.

Democracy, as a political regime, currently facing crisis in the most diverse Western countries, has been addressed in relevant research as the environment for proposing, debating, implementing and controlling public policies as a decision-making procedure and state action and, especially, those that affect directly or indirectly in the realization of rights. Without the intention of closing the discussion, on the contrary, with the intention of highlighting what is already discussed by researchers in the area and contributing to reinforcing the debate on the relationship between legal sciences and public policy cycles, this work aims to reflect and answer whether, and to what extent, public policy cycles, which are the formulation, proposition, implementation and control of public policies, can be explained based on the thinking of Jürgen Habermas, relating to the notions of human rights, human dignity and, mainly, democracy, which mark the author's work.

Initially, the discussions and results will introduce a general notion of public policy and its cycles. In the following moment, the aforementioned concepts will be compared with some aspects of Habermas' theory, seeking to reflect on the need for democracy, as thought by the author, to be the environment for carrying out different cycles of public policies.

Possible relationships will be raised,

with the exception that Habermas' theory, developed a century ago, was never dedicated to explaining public policies, a relatively recent theoretical field. However, it is possible and will be sought to identify some possible dialogues and relationships. The present work will have already reached good use if the discussion proposed here can add to the immense range of reflections on the subject, with a view to contributing to encouraging the participation of the most varied thinkers and social actors in the construction of solutions to the problems of the community and, through them, possible conclusions regarding the role of Habermas' democracy as the preferred arena for public policies.

METHODOLOGY AND THEORETICAL FRAMEWORK

The research used to research the aforementioned objectives is of a qualitative and deductive methodological nature, adopting the bibliographical review of selected texts by Jürgen Habermas, in order to read and interpret elements of the current theory of public policies based on the author's ideas. The articulation with the concept of public policies and their cycles will have as a theoretical reference the ideas of Maria Paula Dallari Bucci, Maria Marta Assumpção Rodrigues, Ana Paula Barcellos and Eduardo Marques on public policies.

To elucidate the problem based on the possible dialogue between the two fields, using the hypothetical-deductive method, the work proposes a discussion based on what has already been studied about the concepts. There is and will be explored the possible dialogue between the theory of public policies and notions of human rights, human dignity and, mainly, democracy, presented by Habermas.

RESULTS AND DISCUSSION

According to Bucci and Souza (2022, p. 22), a “public policy law approach” can help researchers understand that public policies are composed of legal and political elements. The peculiarities of a public policy can be better perceived through the political and institutional contextualization of its formulation and implementation.

According to the cycle model, public policies constitute a process composed of a series of stages, with the objective of meeting the demands and interests of society. Such stages are complex systems of decisions and actions (or omissions), which can only be taken by government institutions legitimized by law. These are the cycles: Agenda, formulation, implementation, monitoring and evaluation (RODRIGUES, 2010, p. 46-47).

Analyzing the cycle of agenda formation and, subsequently, the formulation of public policies, based on procedural democracy, in which the law mediates facticity and validity, it is possible to see that Habermas’ thought provides us with a formula for an almost ideal environment for that cycle. From a normative point of view, what legitimizes the “procedure” is exactly the route or the argumentative basis of justification that occurs in the public sphere. This so-called path aims to provide the equitable use of communicative freedoms, thus also granting legitimacy to the standardization process. The only form of legitimation, according to procedural democracy, necessarily consists of respecting communicative assumptions and conditions of the process of democratic formation of opinion and will (HABERMAS, 2010, p. 22).

Public policy cycles, as stages of the procedure that they represent, due to their legal and political nature, must be carried out in an environment of participation, control, consideration, debate and observance of constitutional and democratic principles.

In this sense, this conception of law and democracy would take “as its starting point the integrating social force of non-violent, rationally motivating processes of understanding, capable of safeguarding recognized distances and differences, on the basis of maintaining a communion of convictions” (HABERMAS, 2010, p. 22).

The reflection that can be made, establishing a parallel with a thought that preceded public policy studies by years, but without the intention of giving new meaning to a basis of thought as important as Habermas’, is that the formation of an agenda, formulation, implementation and evaluation of effective public policies that protect rights must take place in an arena of discussion in which, as Habermas idealized, the conditions for communication and collective construction of solutions are respected.

According to Bucci (2006, p. 38), public policy is considered a program or framework of government action. The institute consists of a set of coordinated (articulated) measures, whose objective is to promote and stimulate, which can occur through public action or inaction. Public policy moves the governmental machinery (or that of the actor that carries out public and collective action) to achieve any public order purpose, towards, for example, the realization of human rights.

According to Habermas (2012, p. 11), the appeal to human rights comes from nonconformity in the face of humiliation resulting from the violation of human dignity. The link between human rights and human dignity for Habermas is genuine and can be demonstrated in the development of law itself.

Regarding this link, contrary to the idea that human dignity served to attribute a posteriori moral burden to human rights, Habermas argues that this conceptual link always arose from oppression, arbitrariness and humiliation, through opposition to them

(HABERMAS, 2012, p 10-11).

Therefore, it is more than pertinent to defend the discussion of the agenda and formulation of public policies based on Habermas' ideas of human rights and democracy, as there will be a guarantee that such cycles will occur in a more fair way. Public policies are necessarily designed and implemented for collective well-being, it cannot be forgotten that state action must have as its aim the promotion of human dignity.

Human dignity works as a measure to determine what is fundamental to a democratic legal order, which are the rights guaranteed by the citizens of a community, so that they can be enjoyed by themselves and their peers, free and equal, based on an associative conjunction voluntary. "Only the guarantee of these human rights creates the *status* of citizens who, as subjects of equal rights, intend to have their human dignity respected" (HABERMAS, 2012, p.17).

It is imperative to understand that government action almost always manifests a public policy. Allocating budgetary resources, granting tax exemptions, holding public tenders, issuing decrees or provisional measures, determining that certain pieces of propaganda be broadcast, as well as not doing so, not allocating resources, not regulating a certain subject, not supervising any conduct, in short, correspond to practices that per se are the expression of a public policy.

According to Barcellos (2006, p. 91):

Visualize again the relationship between the various elements just exposed: (i) the Constitution establishes as one of its essential purposes the promotion of fundamental rights; (ii) public policies constitute the means by which constitutional purposes can be achieved in a systematic and comprehensive way; (iii) public policies involve spending public money; (iv) public resources are limited and choices need to be made; therefore (v) the Constitution links choices regarding public policies and

expenditure of public resources.

The author makes it clear that public policies are essentially linked and cannot be immune (or their non-existence unpunished) to constitutional control mechanisms by the Judiciary. In addition to being evaluated after their implementation, public policies can be subject to judicial control because they involve the implementation and protection of rights. Judges evoke the protection of human dignity when, for example, faced with unforeseen events that bring risks to the human person, arising from invasive technological advances, they resort to creating a right to informational self-determination (HABERMAS, 2012, p. 13).

In this sense, once formulated, proposed, implemented and evaluated, public policies can be subject to judicial control. Whether the control of legality, constitutionality and even conventionality, public policies can now be induced, corrected, terminated or even redirected by decision of the Judiciary.

In the context of the 1988 Federal Constitution and the redemocratization of Brazil, there was an increase in legal interest in public policies. In this context, public social policies stand out, aimed at providing services and guaranteeing rights provided for in the Magna Carta. Furthermore, there is the phenomenon of the judicialization of rights. The confluence of these factors led to the boiling of the debate regarding the interference of the Judiciary in the aforementioned policies (PAMPLONA, 2017, p. 32).

Understanding that public policies are instruments available to democracy for the defense of human rights and, consequently, guarantee respect for human dignity, as well as that they must develop in a democratic environment of equal participation, it is possible to substantiate such premises with Habermas' thought, according to which citizens will only enjoy the rights that

guarantee their dignity when they are able to experience a political order based on human rights (HABERMAS, 2012, p. 24).

Regarding the evaluation cycle of public policies aimed at establishing a social protection network, we can base it on demands for satisfactory participation, aimed against the increase in already large social differences and against the marginalization of certain groups within a community (HABERMAS, 2012, p. 16).

(...) human dignity forms something like the portal through which the egalitarian-universalist content of morality is imported into law. The idea of human dignity is the conceptual hinge that connects the morality of equal respect for each person with positive law and democratic legislation in such a way that, in their cooperation under favorable historical circumstances, a political order based on human rights could emerge. (HABERMAS, 2012, p. 17-18).

The relationship between law and public policies, addressed by this work, is of great relevance in current times, in which the role of public action, by the State or other actors, has gained centrality in the public debate. The consequences of this action, whether effective or ineffective, as well as the lack of proper action, have gained important contours in areas of public interest such as education, security, public health, job and income generation, among many others.

According to the nature of law presented in Habermas's democratic conception, it is possible to propose that public policies, as the "State in action" (MARQUES, 2013, p. 24), can indeed be explained and defended as an instrument for realizing rights.

FINAL CONSIDERATIONS

Thus, the formulation and proposition of public policies, as responses to social problems and, consequently, violations of rights and human dignity, can be explained in light of Jürgen Habermas' contribution to democracy. Although they were never the object of Habermas' concerns, it is possible to propose, with his concepts and inflections, a reading of the theory of public policies.

From the perspective of evaluating procedural democracy, both in proposing an agenda and formulating policies, as well as in implementation and evaluation, the defense of human dignity, as described by Habermas, justifies judicial control, not only as a limit for administrative action, but as in the utopia of a fair State that human rights project, due to its political and institutional character, as well as its vocation to regulate life in society.

In short, taking into account the "Public Policy Law approach", which understands that public policies, as a manifestation of institutionality, have political and legal components, Habermas' theory, especially the conception of procedural democracy, can work as a "lens" for reading the theory of public policies as a procedure constituted from a set of cycles.

To conclude this text, the greatest evidence is that it is inevitable that research continues, with a view to deepening the reading and articulation of the concept of public policies with Habermas' thought, in order to understand how much this rich theory could follow explaining and guiding the best public.

REFERENCES

BARCELLOS, Ana Paula. **Neoconstitucionalismo, direitos fundamentais e controle das políticas públicas**. In: BARROSO, L. R. (Org.). *A Nova Interpretação Constitucional: ponderação, direitos fundamentais e relações privadas*. 2. Ed. Rio de Janeiro: Renovar, 2006. P. 49 - 118.

BUCCI, Maria Paula Dallari. O conceito de política pública em direito. In BUCCI, Maria Paula Dallari (org.). **Políticas Públicas: Reflexões sobre o Conceito Jurídico**. São Paulo: Saraiva, 2006.

BUCCI, Maria Paula Dallari; SOUZA, Matheus Silveira de. A abordagem Direito e políticas públicas: temas para uma agenda de pesquisa. In: **Seqüência**. Florianópolis: Programa de Pós-Graduação Stricto Sensu em Direito da Universidade Federal de Santa Catarina – UFSC, 2022.

HABERMAS, Jürgen. **Direito e democracia: entre facticidade e validade**, vol. 1 e 2, ed. Revista pela Nova Gramática da Língua Portuguesa, trad. Flávio Beno Siebeneichler. Rio de Janeiro: Tempo Brasileiro, 2010.

HABERMAS, Jürgen. **O conceito de dignidade humana e a utopia realista dos direitos humanos**. In: Jürgen Habermas. *Sobre a Constituição da Europa: um ensaio*. São Paulo: Ed. Unesp, 2012, p. 7-38.

MARQUES, Eduardo. As Políticas Públicas na Ciência Política. In: FARIA, Carlos Aurélio Pimenta de (org.). **A Política Pública como Campo Multidisciplinar**. São Paulo, Rio de Janeiro: Editora Unesp, Editora Fiocruz, 2013.

PAMPLONA, Danielle Anne. O Estudo das Políticas Públicas e as Possibilidades para o Direito. In: JUBILUT, Liliana Lyra; FRINHANI, Fernanda de Magalhães Dias; LOPES, Rachel de Oliveira (org.). **DIREITOS HUMANOS E VULNERABILIDADE EM POLÍTICAS PÚBLICAS**. Santos: Editora Universitária Leopoldianum, 2017.

RODRIGUES, Marta Maria Assumpção. **Políticas Públicas (coleção Folha Explica)**. 1ª ed. 2010. São Paulo: Publifolha (Folha Explica), 2010.