

THE PRINCIPLE OF RESILIENCE IN SOCIOLOGY OF LAW - how citizenship became a new boundary for state power

Luciana Cristina de Souza

Faculdade de Direito Milton Campos.

E-mail: dralucianacsouza@gmail.com

RESUMO

Em muitos países as pessoas têm fortalecido sua relação com o Governo por meio de mobilizações – ênfase na flash mob via internet – e esta nova forma de cidadania tem transformado o relacionamento típico entre Estado e Cidadãos de um modo resiliente. Segundo o princípio da resiliência, a democracia deve ser vista como uma construção social que resulta dos novos papéis. Aqui se analisará e discutirá este princípio recorrendo a exemplos tais como movimentos indígenas e a nova Constituição do Equador, além das manifestações de rua ocorridas no Brasil entre 2013 e 2014. Acredita-se que a relação entre Estado e Sociedade Civil atualmente propicia condições para a emancipação dos Cidadãos e não se pode analisar estas relações sem considerar a mútua percepção como autores de um diálogo que envolva poderes de autoridade e nas quais o “outro” tenha poderes para alcançar a cidadania.

Palavras-chave: Cidadania; Estado; Resiliência.

ABSTRACT

In many countries, people have enforced their relation with Government with mobilization – focus on flash mob in internet – and this new kind of citizenship has changed the typical relationship between State and Citizens in a resilient way. According the principle of resilience, democracy must be seen as a social construction that results from new roles. Here we will analyze and discuss on the topic of Resilience using current examples as indigenous movements and the new Constitution of Ecuador and Brazilian streets manifestations in 2013 and 2014. We believe that the relationship between State and Civil Society nowadays must provide conditions to Citizens emancipation and we cannot analyze their relationships without considering the mutual perception as authors of a dialogue in which on has authority powers, the “other” has control powers aiming citizenship.

Keywords: Citizenship; Resilience; State.

DEMOCRACY AS SOCIAL CONSTRUCTION AND NOT JUST POLITICAL REPRESENTATIVENESS

Political representativeness is one of most important issues in modern debate, especially after the Enlightenment and liberal revolutions as happened in France (1789) and United States (1776). It ensures that people power in public administration model by legislators was seen as the most similar political deliberation in comparison with Greek democracy. Despite direct participation had considered difficult why demographically States populations had increased a lot in the last centuries, modernists, in the political sense, defended citizenship by parties action, what means, by professional politics, for two reasons: a) the specialization provoked by bureaucratic rationality; b) the mandatory exercise of citizenship in countries with big population. Secondly Robert Michels, *the practical ideal of democracy consists in the self-government of the masses in conformity with the decisions of popular assemblies... the impotence of direct democracy, like the power of indirect democracy, is a direct outcome of the influence of number* (MICHELS, 2001: 21).

Thus, political representativeness born as a path to practical exercise of democracy in modern States, however had brought with it some evil: the manipulation of masses by political marketing; the control of media commu-

nication and the discursive influence of political parties; the distant way to Government action in relation its people; the bureaucracy control by specialists (technicism); and, among others, the impairment of Citizens power in front of legislators. The mediation of representativeness solved the problem of direct democracy in Modernity but brought to light the ethical and juridical challenge of Citizens empowerment regarding their elected political representatives. According Robert Michels, it is undeniable the oligarchical tendency of modern democracies by the control of political parties and the elite behind those (MICHELS, 2001, *passim*).

Considering this setting whereby current democracy was born, it is easily understand why nowadays individuals, organized as Citizens, are requiring constantly more space in public sphere. The meaning of democracy in 21st century is plural, horizontally constructed and co-participative, resulting, therefore, in compulsory application of the principle of resilience to the relations between State and Civil Society with the intention to equalize power among these subjects. Social demands are not anymore just “requests” to legislators and to Executive Branch, but, in fact, a determinative agenda to public power since they are proposed by Citizens defending fundamental rights.

Citizenship and fundamental nature of the rights defended are the two

mainly distinctions between modern and present democracy. The citizenship includes today more attributions than in the past; fundamental issues overlap individualism and sectarianism strongly felt in liberal scenario. Both contributes to reduce the oligarchical tendency in modern democracy, controlled by bourgeois power and influence in the last centuries, in which the external way of exercise power in liberal democratic States have been through political parties and professional politicians. In face of the transformation, we can say that *a new sense of the term citizenship its developed today, more broader and inclusive* (L. SOUZA, 2010: 128) than illuminist Modernity proposal because authorizes other instruments of action for individuals as Citizens.

Without compromising State sovereignty, there is, today, a greater demand for the amplification of popular sovereignty which results in the extension, way of consequence, of the meaning of citizenship. One of the evidence has been cited - new communication channels between the State and Civil Society; another is the requirement of accountability, since Citizens are calling not only participate in decision making, as well as establish control criteria on their representatives who manage public welfare

(...)

Accountability is important because it enables the responsibility of

the government for their decisions in the management of res publica. Also following the line of responsive law, cited above, imposes on the legislature make laws socially concerned about situations where the State acts in the service of society. (L. SOUZA, 2010: 128 - our translation)

In Brazil, it can be highlighted in the recents streets popular manifestations in which individuals presented theirs demands to State but clearly saying that these demonstrations are not attached to the existent political parties. But it is necessary to say that movement organization overcame modern argument which affirms *deliberative assemblies of a thousand members encounters the gravest difficulties in respect of room and distance* (MICHELS, 2001: 22), because the new technological mediums would benefited articulation among thousands of individuals by social networks as Facebook, Twitter and Instagram, forming what we call *net condition*, because: *This new organization permits empower group efforts, get more resources for the social conflicts with State and also the quickly exchange of important informations* (L. SOUZA, 2013: 2). Most of public policies made after streets demonstrations in 2013 and 2014 stem from Citizens agenda and not from political parties, which reveals the significant change in the political participation of Civil Society in the Brazilian

democracy and the strength of Digital Era that allowed to individuals broad and deterritorialized access by using a kind of collective intelligence to gather their efforts (LÉVY, 1999, *passim*).

There is a serious parties crises in Brazil nowadays and Citizens had sought other participatory means that are unconnected to professional politicians as popular movements, non-governmental associations, direct lines of communication with Executive Branch and, more powerful these days, judicial activism. Many relevant social questions had been discussed in Judiciary Branch, what results in Court decisions, mainly Supreme Federal Court in Brazil, endowed with normative and regulatory character trying to fill the legislative – or representativeness – omissions that prevent access to fundamental rights. For instance, the recognition of legal marriage to homoaffective couples thanks to constitutional action ADPF/132 (Allegation of Disobedience of Fundamental Precept), converted to Resolution N. 175, approved by National Justice Council in May 14, 2013. This law interpretation support some kinds of judicial intervention and meets its foundation in ADPF/45 arguments that affirms be the judicial way allowed to consolidate constitutional rights, which must be guaranteed by legislators but, in some circumstances, they do not.

Because of this, we can say that in Brazil nowadays people sovereignty is

more than modern concept of it, since is now a larger perspective of citizenship. To vote e to be voted are important, however, to make public policies and to participate in decision-makings are equally relevant: *State legitimacy depends on democracy and, nowadays, it's unthinkable waits for democracy and legitimacy without a regular and complete popular participation in State decisions through an effective Law.* (L. SOUZA, 2013: 4). And such characteristic has increased in the last years because is essential to plural and flexible democracy how we will see in the following topics.

THE PRINCIPLE OF RESILIENCE AND “OPEN” PERSPECTIVE OF STATE

Considering this setting, public policy is a government decision-making tool that allows to know *how and why governments choose to certain actions” among others to exercise their role as managers of political and social life to which individuals are subordinated* (C. SOUZA, 2006: 22). The central point is to analyze the government action to verify *who gets what, why, and what difference does it* (C. SOUZA, 2006: 24). Therefore, it is undeniable its conflicting character, since the different stakeholders involved in each specific public discussion dispute power at the time of decision making, which will imply the selection of investment areas of the public budget.

So it is essential that all analysis of public policies, in addition to formal political aspects, also consider the “co-operation possibilities that can occur between governments and other institutions and social groups” (C. SOUZA, 2006: 25). Celina Souza affirms over your text that the governmental sphere is the *locus par excellence* of the clashes of ideas, but not the *locus* of birth of public policy itself, because its content is social, came from demands of Citizens, which must be met by the Government through these democratic tools.

According to political scientist Theodor Lowi, quoted by Celina Souza, there are four types of public policies: a) distributive, designed to meet the most specific interests; b) redistributive, aim to achieve a greater number of Citizens, not just localized groups; c) regulatory, establishing the bureaucracy of how public policies will be implemented; d) constitutive, which create areas of performance according to the demands raised (LOWI cited C. SOUZA, 2006: 28). It is noticed that this is the first difficulty for the State to implement a public policy: direct it properly to the purpose for which it is proposed considering the effective citizenship, rather than serving individuals or sectorized interests, excluding the needs of other.

The second difficulty results from the incremental character that public policies can take, explains Celina Souza, as the programs outlined as relevant

to Citizens *do not start the ground but, from marginal and incremental decisions that ignore political changes or substantial changes in public programs* what means there is always a “past”, a previous commitment with other policies that often becomes an obstacle to route changes that could be more appropriate because these incremental issues, although not substantial, still have strong influence on government planning (C. SOUZA, 2006: 29).

In accordance with Celina Souza the cycle of public policy has as phases: agenda-setting, identification of alternatives, evaluation of options, selection of options, implementation and evaluation. Therefore, when we care about their deployment, in fact, we are reflecting only on the stage of implementation of the proposed measures, without regard often for all the long and contested process of political and social negotiation that precedes it. Even the evaluation phase can not be considered neutral in relation to the incremental aspect, because the criteria used to judge positively or negatively public policy is affected by conflict of interest.

Thus when one talks about public policy is central to observe and analyze the process of choosing and setting up of existing programs. The model is the most appropriate? And if this is true under which perspective: the Citizens, the State, any other interested group? There are viable and more desirable al-

ternatives, preferably coming from the Civil Society itself? How the choice of public policy is really made? *State legitimacy depends on democracy and, nowadays, it's unthinkable waits for democracy and legitimacy without a regular and complete popular participation in State decisions through an effective Law.* (L. SOUZA, 2013: 4).

Towards this sense, Leonardo Valles Bento affirms that new face of public administration, today, must be driven to Citizen and his “active dimension of citizenship”, not just particular interests expressed by individuals, but also thinking in the sense of community (BENTO, 2003: 94). Citizenship, now, according Bento, consists in share power; State and Citizens are co-agents in democratic setting, and in policies decisions too. To share power, however, is necessary that State and Citizens see each other as equal subjects, opposing positivist rationality of hierarchical relationship between them.

At this moment in democracy becomes essential to set the boundaries between authority, represented by the government, and citizen participation; between structural requirements necessary for the functioning of a state and its Branches, public agencies, etc. and flexibility of action; between ensuring equality and ensure diversity. For this new time we need capacity to preserve democratic fundamentals of the Rule of Law, while we develop our ability to dia-

logue and to share with “other”. We must be apply the principle of resilience to relationships between State, Law and Civil Society, herein understood as Citizens.

This theory was developed during the PhD in Law at PUC Minas in the period 2008-2012 (L. SOUZA, 2012) and has the purpose to analyze democracy as a basis for social inclusion through human agency practiced by Civil Society, Citizens taken into consideration here, and the State action through public policies, at which fulfills its social function provided for Constitution. Considering that the most distinct interest can arise in the dispute for power and social inclusion, which is made possible by access to political and legal means of State control for acting on towards of the Citizen. It is necessary establish a reciprocal relationship of acceptance / rejection by which the subjects involved can present their demands and listen to those shown by the other, and whereby the State is invoked to act with his authority, while not excessively invades the private sphere to do so.

The resilience elasticity is provided with firmness, such as a rubber band, which needs to give mobility to the necessary shape and at the same time, it must have consistent structure, which ensures that fulfill its function of holding together the items for him involved. The resilient State, therefore, is that wherein the structure and mechanisms of participation owned by the

government have the confidence of the population in practice to impose rules necessary to social life and at the same time, the elasticity needed to, without losing authority, do not confuse it with authoritarianism and make room for the proactive role of Citizens.

This does not threaten the legal certainty or even respect for public order, only reframes the concepts of “certainty” and “order” in relation to the liberal period in Modernity. At that time it was essential for the imposition of bourgeois model that State figure, despite should not intervene in the economy, it was harsh with individuals, since it should be organized in formal-bureaucratic and not dialogical way. Certainty was seen as statism and legal monism; order was seen as standardization of collective life from the models dictated by the holders of political power - and economic power behind this. The big question is not “what is safe”, but “who is insured”; perhaps even more so, “why this security is not guaranteed for all”?

Thus, the resilient State has crucial dependence on: a) the democratic model of Rule of Law; b) the design of order as balance and not as control over the disempowered; c) the concept of legal certainty in the context of substantive equality, therefore, inclusive and respectful about the differences that some minorities may represent in relation to the predominant pattern; d) access to the media, since nowadays the

social relations become more technological and permeable to the influence of other patterns experienced by digital means; e) the Citizen as the subject of its history and not just someone who delegates mandate to others and then moves away from public life.

One can see that in the face of such a scenario, it is really difficult to achieve full-resilience because it means accepting plural handling systems, when in fact, by the modern standard, we are led to believe in the universalization as reliable paradigm in any proposed theoretical reading. However, it also reveals how much it is currently essential because the public and legal areas cannot dodge the dynamism already noticed and confronted by other fields of knowledge. Mathematics and Physics already recognize the new borders that break with the “correctness” of their claims; economics and management area work with multiple settings through modeling systems; cyberculture leads us to interact by means of text hyperlinks.

Therefore, the Euclidean linearity and Cartesian logic, yet respected as important modern heritage, can not, however, continue to be the inspiration of legal rationality and Public Administration in its bureaucracy model, because they no longer realize the social reality that is presented to them. The modern liberal Citizen never recognized the “other”, but this “other” is now introduced as a subject and cannot simply be

“framed” in the previous standard. The category of “Citizens” no longer corresponds to a more homogeneous group in social mores, economic position and political power in society, but instead to a more significant status and encompassing inalienable fundamental rights.

The plurivocality of current citizenship confronts the modern models of rationality and challenges them not try to reconcile the irreconcilable, because the difference is a right. Being resilient is learning how to “be” simultaneously with other existence that is not similar to you. Modern equality is the similarity; the resilient equality is to have equal right to invoke the State and the courts to defend “the right to be yourself” and not “to be equal to the standard.” The equality in difference is the great challenge, equal rights of a Citizen, to move judicial process when necessary, to get around, to express themselves, etc., but not the same way that others do. Returning to the example of the elastic: how to keep us together as a society under the same laws and State, while distinct? How the extension to which this ability to include and make room for the difference can be sustained by the government with no serious disruption? How the extension to which the Citizen can be considered subject and to what extent he is humble to State authority?

Therefore, “resilience” is totally different from “resistance”,

because in this one the actors are opponents and in these cases one will find a power struggle – like he only answer to democratic understanding problem, as the more extremists legal pluralists did; the principle of resilience, how we call in our doctoral thesis, represents a value very essential to actual Brazilian democracy, since this application by Law in StateSociety conflicts could equalize “State power”, which must be legitimate, and “popular participation”, whose interventions in political context sometimes aims just particular demands, compromising important public interests or minority rights. (L. SOUZA, 2013: 6)

Thus, the principle of resilience is applied to:

a) resignify citizenship, conferring more attributes to Citizen today than he had in modern liberal period and, this occurs by a reframe of State functions and authority, becoming more horizontal and permeable to suggestions and demands from Civil Society;

b) equalize “citizenships”, avoiding the domain of private interests under public issues, because is very important assure particular rights needed by individual, as well as collective ones;

c) promote legal recognition of difference as “equality in rights”, espe-

cially about human dignity what challenges our conservatism and behavior standardization, since is essential guarantee democracy beyond modern pattern of equality once we are not really the same kind of person e this should not be a problem to social life in democratic State and Law;

d) avoid the “insulation” of Government in face of Citizens, as affirms Leonardo Valles Bento, because participative democracy is substantial to political regime stability and State efficiency *thanks to the political sustainability and legitimacy to which they have for their action programs* (BENTO, 2003: 218 – our translation).

So, we can affirm that *resilience is understood also by the ability of political institutions to assimilate the intervention of new subjects - Citizens proactive - in its internal structure in order to interact with them aiming their continuous improvement* (L. SOUZA, 2013: 9). Resilience consists in a new parameter to equalize social and legal relationships with the intention to open more the democratic setting.

Resilience practice

Resuming the above analysis let us make its application to individual cases: the development of public policies for indigenous education in Brazil; the new Constitution of Ecuador; street demonstrations that took place in Brazil in the last two years.

Indigenous movements in Brazil – educational issues

The formation of public agenda process in a specific area, to be legitimate under the law of a democratic State, should hear the main demands of stakeholders and beneficiaries of its implementation, which is the intended audience of government measures, *in casu*, Brazilian indigenous communities. The basis of this “listening” is deposited in the Constitution of the Federative Republic of Brazil, promulgated on October 5, 1988, whose Art. 205 provides education as a fundamental right “seeking the full development of the person, his preparation for the exercise of citizenship”.

Therefore, the agenda of discussions should guarantee pluralism of ideas and pedagogical concepts (Art. 206, III, CR / 1988) in choosing which policies will best meet Brazilian indigenous populations, as well as democratic management of education (item VI) in State and municipal schools in order to ensure such communities quality standard (item VII). It suggests that the teaching of indigenous culture cannot be at the expense or less zeal than the regular education.

It is also necessary to highlight the important contribution made by Amendment n.71, of November 29, 2012, which included in the Constitution of Brazilian Republic (1988), the Art 226-A, that created the National System of Culture under the following grounds:

- a) decentralized and participatory collaboration in public policy;
- b) management and joint promotion of public cultural policies;
- c) democratization of access and cultural dissemination in the country;
- d) promoting human development, social and economic with full exercise of cultural rights;
- e) diversity of cultural expressions;
- f) universal access to cultural goods and services;
- g) complementarity in the roles of cultural players;
- h) transversality of cultural policies;
- i) autonomy of federal entities in the three levels considering Brazilian political organization – Union, States and municipalities – and, also, institutions of Civil Society.

Thus the participation of indigenous communities in the agenda identification process (priority topics for State action) is constitutionally guaranteed right, which is based on the following infra-laws:

a) Decree N. 5051, of April 19, 2004, that regulates the Convention n. 169 of the International Labour Organization, an agency of the United Nations, whose text deals with indigenous and tribal peoples rights, assuring them the recognition of the aspirations of these peoples to take control of their own institutions, ways of life and economic development, apart from to maintain and strengthen their identities, lan-

guages and religions within the lands where they live (Preamble);

b) Act N. 11645, enacted on March 10, 2008, which made compulsory the teaching of african-Brazilian and indigenous cultures in schools;

c) Decree N. 6861 of 27 May 2009, whose text organizes the indigenous education in ethno-educational territories in order to respect the different tribes that make up the Brazilian indigenous culture and these should have guaranteed their particular identities, why the Art . 3 of this decree provides autonomy for indigenous schools organize with “its own specific standards and curriculum guidelines” and “regardless of the calendar year”, even as the festivities and landmark dates in the history of that community can be very different from the official calendar;

d) Resolution N. 45 of the Deliberative Council of the National Educational Development Fund (Ministry of Education and Culture) of 29 August 2011, which created a training fellowship program aimed at qualification of teachers for indigenous education, forming the National Network of Professional Teaching in Public Basic Education (MEC Decree n. 1,328, of September 23, 2011).

The relevance of social and cultural aspects in the public agenda formulation stems from the fact that, by this way, one can specifically meet the real demands of the intended audience: the

Brazilian indigenous communities. The forums and regular meetings that indigenous leaders have promoted in order to highlight to the public authority which education needs are urgent and in which situations is no greater disrespect their culture and, also, what paths the interested parties offer to solve these problems. Thus, it is also relevant instrument the Final Document of the First Conference on Indigenous Education, held in Luziânia (Goiás) in 2009 and that was to focus establish fundamental guiding principles, namely (our translation):

I - Consult the representatives of Indigenous Peoples, government organizations and Civil Society about the realities and educational needs for the future of indigenous education policies;

II - Discuss proposals for improving the offer of indigenous education in view of the implementation of Ethno-educational Territories;

III - Propose guidelines to enable the advancement of indigenous education in quality and effectiveness; and

IV - To make a pact between the representatives of Indigenous Peoples, federal agencies and organizations to collectively build commitments to the practice of intercultural indigenous education.

This document is clear legal supported in the aforementioned Decree 5.051 / 2004 regarding the essentiality of community participation in the formulation of the agenda and in making public policy decisions that affect them (our translation):

Article 6

1. In applying the provisions of this Convention, governments shall:

a) Consult the people concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

b) Establish the means by which these peoples can freely participate, at least the same extent as other sectors of the population and at all levels, in decision-making in elective institutions and administrative bodies and otherwise responsible for policies and programs which concern them;

c) Establish means for the full development of the institutions and people initiatives and, where appropriate, provide the necessary resources for this purpose.

2. Consultations on the application of this Convention shall be undertaken in good faith and appropriate to the circumstances, with the aim of reaching an agreement and get the consent to the proposed measures.

Article 7

1. The peoples concerned shall have the right to decide their own priorities with respect to the development process, to the extent that it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or use in any way, and to control, as far as possible, their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and national and regional development programs which may affect them directly.

So the process of identifying and forming the public agenda on indigenous education has the required actors: the different communities, as each will point the peculiarities of teaching in its territory; the representative bodies of the community of existing tribes in Brazil today; the organs of the Ministry of Culture and Education linked to public education. The main topics on the agenda have been: multiculturalism, bilingual education, the cultural calendar of the tribe precedence over the calendar year, training of indigenous teachers and infrastructure for these schools.

Resilience can be seen in:

a) Government respect to multicultural aspects of indigenous communities since there is diversity about tribal culture and regular educational system,

as well as between different tribes, organized in ethno-educational territories;

b) co-participative deliberation process that defines public policies about indigenous education and cultural manifestations, here represented by the Council of Brazilian tribes which one contributed to this agenda fully;

c) educational legislation roster, disposed in Ministry of Culture and Education website, in which indigenous peoples Declaration was listed as one of the rules to be obeyed about education indigenous in Brazil, revealing State openness to Citizens participation.

Brazilian streets manifestations 2013 to 2014

The best political and social impact that stemmed with movements that went into the streets in 2013 was precisely the return to the streets. The Brazilians had lost this habit as healthy for democracy. Cannot be said yet that there is a “movement” in the sense used in the 1980s, because many participating alone, just “take to the streets,” without integrating any other forum for debate or have any participatory engagement to actually petition to the government. It is still a movement of “wave”; it must evolve and become organized activity, with clear guidelines and well directed to State bodies - Presidency, Ministries, Legislative, etc. - and also with better continuity of policy coordination after “returning home”. This is important to

prevent the transient effect of these mobilizations not linked to more organized groups and permanent social action.

At the time of convening by the social networks and while they are on the streets many protesters express enthusiasm in your posts on the Internet (Facebook, Twitter, Instagram, etc.), however, at the time an official public meeting is convoked or a public petition is organized the number of people who appear to participate is much lower. In the 1980s, those who were on the streets continued to fight out of them. There are not many manifestations with high volume as the latest in order to deal on the reform of political parties. In the 1980s the protesters had a deeper sense of how politics works, so there was more focus on guidelines and greater cohesion between the protesters even after gone to the streets. Unfortunately, many of the current generation does not even like to talk effectively about politics in their daily lives and end up going to the march with displaced causes, such as the return of the military regime.

Currently, Citizens are demanding changes not as specific as they did in the 1980s and early 1990s, but that target the political and governmental system as a whole, up to non-partisan way, because it has been strong rejection of political parties. However, there is still little knowledge about the functioning of government agencies, precisely because these protesters have not integrated,

mostly, some organized group, which would have the function of transmit this knowledge to them.

So there is a lack of focus on requests - are fair, but directed to the wrong institutional agency - for example, some of the claims made to the President Dilma in marched posters of March 15, 2015 are actually claims of National Congress competence. Brazilians are protesters of "last minute", convened by digital social networks, still see the Chief Executive to be responsible for everything, without having a clear idea that most of their demands can only be authorized by the Legislature. This is accused of "inefficient" more generally - in the case of the executive branch is more personal - because of the figure of the political representatives and their parties are associated with the current model of political and electoral organization in Brazil.

On the latest movements can be said that the agenda of 2013 turned more to the defense of social rights. The corruption theme has been mentioned, but without being the central focus as the "free pass" and other issues. It was a demonstration against "governments" - federal, State and local - towards questions such as urban mobility, education, health, security, etc. This was reflected and continued in 2014, as the population felt neglected in the absence of adequate responses of the three levels of the federation - federal, State and municipalities - and also

being against FIFA interference in Brazil. In 2015, many of those who took to the streets expressed in social networks do not support any party, which is a reflection of disbelief in the dialogue (?) with government in the years 2013 and 2014. Political corruption has become central and other applications side, seen as a result of political morality.

Last year there was also strong opposition to the presence of party flags (from all sides) among the protesters who claim to be “through Brazil”, not for this or that political party, institution that today we can say that is discredited as a means of political representation. Given this situation we must reflect on how to reframe the parties and also on the form of direct and indirect democratic participation in the country. One consequence of this was the return with intensity of the debate on district voting, by which it could eliminate the dependence on the legend, model adopted today. The parties believe that this weakens policy; Citizens who defend the district vote claim that weakens the “partisanship”, while it is beneficial to democracy.

The strength of social networks has proved the return of Brazilians to the streets undeniably. Influenced by the movement called the Arab Spring, organized and maintained by the communicability using Twitter, since the other media were censored, seeks to articulate the public manifestation faster (and

with lower cost for the organized movements). The use of social networks to mobilize segments of the population uses two very important features that make it advantageous: speed and expansion. However, does not mean that the gone the streets by this means of convocation has the same continuity of purpose of old participations, usually linked to organized groups as student movement, black movement, among others.

There is less cohesion among the demonstrators who gather only by the call via the Internet than those who come because they are engaged in some kind of struggle. This is one reason why after the “street” many of disperse and continue to manifest only by “Likes” tool of social networks, which is not actually “mobilization” since there is no effort to change within the means institutional still needed to legislation changes, implementation of public policies, etc. Digital social networks are fundamental to making Citizens’ demands more visible, but this step must be followed by another: the effective engagement in democratic control mechanisms of the State by Citizens: civil action, popular action, popular initiative of bills, participative committees in assemblies, public meetings, and other.

In these cases, resilience is present when:

a) different groups accept their demands even they not agree in personal life, but as respect to the other in public

arena: religious segments, homosexuals, ecologists, private business, etc.;

b) State create new spheres to public manifestation in its official agencies if the existents ways are insufficient to provide space and condition to dialogue with Citizens, institutionalizing deliberation with Civil Society;

c) the Citizens agenda is actually welcome and converted in legislation or public policies, even some claims could not be accepted, but with clear evidence that the public power are open to considerations.

New Constitution of Ecuador (2008)

The most evident case of resilience in the last years is, undoubtedly, the new Constitution of Ecuador (2008). First of all because its own process of proposition, by referendum, what means that Ecuadorian people could really “speak” as Citizens about their Magna Law. Public consultation was made in September 29, in 2008. Almost 70% of Ecuadorian population approves the new Constitution, what signify this utmost importance as fundamental law and, also, as democratic expression of public deliberation. This constitutional text defends animals rights, priority groups (children, women, handicapped, among other), urban mobility, and, in a significant way, native peoples and the *Pacha Mama* (Mother Nature, of which we are all part). Recognized Indigenous Justice and tribes’ autonomy much more

broadly (resilient) than Brazil does and yet the Constitution has a compromise with *sumak kawsay*, a *kichwa* word to “welfare” respecting indigenous peoples values (Preamble of constitutional text).

So, in accordance with Mark Tushnet (2015), the rules, and this applies to those with constitutional status, are produced (constructed) today by other mechanisms, beyond traditional ways as the legislature. It is not only a matter of judicialize access to rights, but to actually hear other spheres, now considered empowered, as Civil Society. The Ecuadorian Constitution is one of these instruments, such as the previous deliberative process that discussed its contents. It is not the first time that a Constitution, or a more significant constitutional change as an Amendment, was confirmed by referendum - other examples are Egypt (2007) and Italy (2006) - but is the most important as a democratic document, because recognizes indigenous peoples, nature, collectivities, individuals and communities, all, as Citizens and subjects of this Magna Law (Art. 10). One example is the existence of an official language, Castilian, and languages of intercultural relationships, *kichwa* and *shuar*, beyond the use of ancestral tongues in indigenous territories (Art. 2).

The referendum represents a complete paradigm break with the modern model of representation and formation of political power because assigns Cit-

izens power to control the actions of agents who acted on its behalf in the assemblies. Confirmation can follow an existing institutional path, the referendum, but the decision source of so relevant question is innovative, since in this case it includes new rights and greatly expands Ecuadorian citizenship. And, furthermore, the recognition of so many subjects as active Citizens completely changes the relation between State, Law and Civil Society.

Also there is innovation in constitutional contents, for instance:

a) fundamental rights are immediately applicable even those indicated in international law of which Ecuador was signatory in order to ensure justice access for all Citizens, it being prohibited deny applicability to rules due to its lack of legislature process (Art. 11, item 3);

b) State and its agencies are obliged to repair the violations committed against citizens by the deficiency in public services (Art. 11, item 9);

c) the communication means must respect cultural diversity (Art. 16 and 17);

d) intercultural dialogue in education policies (Art. 28);

e) special protection to migrants to avoid the illegality of immigration status and to promote their inclusion with the rest of society (Art. 40);

f) special protection to people with serious diseases as AIDS and other terminal or complex illness (Art. 50);

g) family diversity protection (Art.

67) and other social issues.

We have to emphasize the Chapter Four that cares about rights of communities, peoples and nationalities, considering the cultural diversity in Ecuador. This part of Ecuadorian Constitution intends to curb discrimination against original peoples. It guarantees to them identity respect, property of their ancestral territories, biodiversity management of natures in their lands, and other protections. One of the most important is assure to indigenous peoples the deliberative right on public policies; none political decision about issues related to them can be approved without first heard the mainly interests, indigenous Citizens. Another reflex of this new approach to original peoples way of life is the utmost relevance of community decisions because it is an essential value in democracy, but further in his culture (Art. 57, item 12, protection to collective knowledge).

Chapter Five is also key in this Constitution, because it is expressed individuals participation rights in public life by vote and also with the adoption of “affirmative action” applied to the choice of political representatives (Art. 65). It aims guarantee balance in representativeness and avoid that one group more powerful overlap minorities.

Nevertheless such Citizens empowerment in Ecuadorian Constitution, unfortunately there are problems remained from traditional culture. Despite how we

said before diversity family was ensured (Art. 67) and common-law marriage is open to homosexuals (Art. 68), legal marriage (Art. 67 too) and adoption (Art. 68) still are rights strictly to heterosexual couples, what brought a huge challenge to Judiciary Power in Ecuador regarding human dignity recognition.

The resilience in Ecuadorian Constitution is centered in native peoples and their political, social and cultural inclusion. In this matter this constitutional text is crucial to Latin America, considering our colonization and dictatorial regimes heritage. However the modern and bourgeois characteristics remains, mostly because of the strong Christian religious presence on the continent that inhibits the provision of other rights. But this cannot be attributed uniquely to the denial of recognition by Christians, because there is also the share of contribution from ancient cultures, also organized as families conducted by couples of different sexes aiming procreation, the human continuity in following generations (*Pacha Mama* – “Mother of we all”, sprouting life).

FINAL CONSIDERATIONS

Resilience is the principle of search, constantly, for democratic mechanisms renovation (innovation) considering people contribution to that and the endless scenario changes in all societies. It is an attitude focused on recognition and political dialogue, what means that

sometimes it occurs by social acceptance of diversity (e.g., native peoples in Ecuadorian Constitution or in Brazilian educational law); sometimes, when acceptance is not possible by itself, as a public negotiation for mutual relationship (e.g., homosexuals and religious groups arguing about marriage or adoption). Ever depends on intersubjectivity; on a collective moral that defends human dignity, democracy, citizenship and because of which is capable to adapt itself many times to assure continuous movement of State, Law and Civil Society, including minority groups. But always changing without lost its fundamentals.

Adaptability is not lose identity. It is not lose State authority. Is move your essence to another configuration, which contributes to a better intersubjectivity and, also, better public policies. The transformation mutates mechanisms, rules, political organization, institutions at the same time conserves fundamental rights, democratic Government, deliberation sphere, cultural pluralism, etc.. For example, change political debates to digital media transform the means, however the same mistakes committed in non-virtual sphere could be found in social networks in internet. It is necessary a new moral, which sustained democratic dialogue in any environment and that supports citizenship in contact with diversity.

Individuals must be resilient to be capable to accept another people that

claims different rights and way of lives; State must be resilient too, to constructed political and judicial frames that allowed to Citizens discuss about public policies, accountability and rules of official Law. Only in this way we can really say that there is a Democratic Rule of Law in which we can live as emancipated individuals, empowered and equals in the republican sense: the equal right to be ourselves with our identities. Each group in society must give way sometimes, open space to another; and defend its position in face of State and groups in other occasions. This situation has no end, it is a part of democracy, a constant need of sit and talk. Because of that resilience attitude as a principle of Law, applied to relationships between State and Citizens or among individuals, is so crucial to sustain the aperture for the constant restructuring the social and political systems both need.

REFERENCES

BENTO, Leonardo Valles. 2003. *Governança e governabilidade na reforma do Estado – entre eficiência e democratização*. Barueri: Manole.

BRASIL. Decreto 5051, de 19 de abril de 2004, promulga a Convenção n. 169 da Organização Internacional do Trabalho sobre povos indígenas e tribais. *Presidência da República*, Casa Civil, Subchefia para Assuntos Jurídicos. Disponível em: <http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/

decreto/d5051.htm>. Acesso em 14 de fevereiro de 2015.

BRASIL. Decreto 6861, de 27 de maio de 2009, dispõe sobre educação escolar indígena e define sua organização em territórios etnoeducacionais. *Presidência da República*, Casa Civil, Subchefia para Assuntos Jurídicos. Disponível em: <http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6861.htm>. Acesso em 14 de fevereiro de 2015.

BRASIL. Lei 11645, de 10 de março de 2008, obriga o ensino da temática “História e cultura afro-brasileira e indígena”. *Presidência da República*, Casa Civil, Subchefia para Assuntos Jurídicos. Disponível em: <http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/lei/l11645.htm>. Acesso em 14 de fevereiro de 2015.

BRASIL. Resolução n. 45, de 29 de agosto de 2011, Rede Nacional de Formação Continuada para Educação Básica; educação escolar indígena e em áreas remanescentes de quilombos; outros assuntos. *Ministério da Educação e Cultura*, Fundo Nacional de Desenvolvimento da Educação, Conselho Deliberativo.

BRAZIL. *Federative Republic Constitution*. Constitutional text of October 5, 1988, with the alterations introduced by Constitutional Amendments until N. 64/2010. Access: <http://www.stf.jus.br/repositorio/cms/portaStfInternacional/portaStfSobreCorte_en_us/anexo/constituicao_ingles_3ed2010.pdf>.

CONFERÊNCIA NACIONAL DE EDUCAÇÃO INDÍGENA, I. *Documento final*. Luziânia, Goiás, Brasil, 16 a 20 de novembro de 2009.

ECUADOR. *Constitución del Ecuador*, aprobada en referéndum por el pueblo ecuatoriano en 29 septiembre 2008. Disponible em: <http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf>. Acesso en 02 de marzo 2015.

INTERNACIONAL LABOUR ORGANIZATION. 1989. *Resolution N. 169*, Indigenous and tribal peoples. Access: <<http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>>

LÉVY, Pierre. 1999. *Cibercultura*. Tradução de Carlos Irineu da Costa. São Paulo: Editora 34.

MICHELS, Robert. 2001. *Political parties: a sociological study of the oligarchical tendencies of modern democracy*. Translated by Eden and Cedar Paul. Kitchner (Ontário, Canadá): Batoche Books.

QUADROS DE MAGALHÃES, José Luís; AFONSO, Henrique Weil. 2012. The Plurinational States of Bolivia and Ecuador: Foundations for a rereading of Modern International Law. *Anuario Mexicano de Derecho Internacional*, v. XII, p. 455-473.

SOUZA, Celina. 2006. Políticas públicas: uma revisão da literatura. *Sociologias*, Porto Alegre, ano 8, n. 16, jul./dez., pp. 20-45.

SOUZA, Luciana Cristina de. 2013.

State power legitimacy in Brazilian democracy. 26th World Congress of Philosophy of Law and Social Philosophy of the International Association for Philosophy of Law and Social Philosophy (Internationale Vereinigung für Rechts- und Sozialphilosophie - IVR).

SOUZA, Luciana Cristina de. 2012. *Aplicação do princípio da resiliência às relações entre Estado, Direito e Sociedade Civil*. Tese. Pontifícia Universidade Católica, Belo Horizonte, Minas Gerais, Brasil, Programa de Pós-graduação em Direito.

SOUZA, Luciana Cristina de. 2010. A (des)proteção normativa da cidadania. *Direitos Culturais*, Santo Ângelo, v.5, n. 9, jul./dez., pp. 119-134.

TUSHNET, Mark. 2015. New institutional mechanisms for making constitutional law. Access: <<http://ssrn.com/abstract=2589178>>.

Luciana Cristina de Souza

Coordenadora do Núcleo de Pesquisa; Professora da Pós-graduação stricto sensu; Doutorado em Direito pela PUC Minas; Mestrado em Sociologia pela UFMG; Graduação em Direito pela UFMG; Orientadora de Pesquisa pela FAPEMIG e pelo CNPq.