

## Searching for the emancipatory institutional potential of the Public Defender's Office: reflections and propositions on the challenge of building institutional markers to increase the three-dimensionality of access to justice

Brazil is a country marked by profound social inequalities. For this reason, the objectives of the Federal Constitution (1988) are aimed at reducing these inequalities and in upholding the public model of full and free legal assistance ("staff model") – to be provided by public defenders to the poor – as a judicial policy.

It turns out that the constitutional promise of a permanent institution does not always correspond to reality (or is still far from it). The reflections formulated here arise from the recognition of the gap between the promised constitutional model of access to justice (to be instrumentalized by the PDO) and what has been possible to accomplish. An illustration of the discrepancies between the PDO we want and the one we have can be seen in the IV Diagnosis of the Public Defender's Office in Brazil (Brazil. Ministry of Justice. Secretariat of Reform of the Judiciary, 2015). From this problem arises the fundamental question that the text seeks to answer: how to bring the institution closer to its constitutional mandate?

The issue is carried out in the search for the institution's emancipatory potential which, like the law, depends on its emancipatory usages (Santos, 2003). The PDO can be both an instrument of direct counter-hegemonic democracy – as referred to by Glauce Franco (2015) –, as well as being a mere reproducer of the status quo and enabling the application of law. This produces in turn a racist, classist and sexist order of the peripheral capitalist system (in which Brazil is inserted) in its political and legal forms (Mascaro, 2013, p. 39).

Understanding that the State is planted in the social fabric, expanding beyond a simply repressive nucleus (Mascaro, 2013, p. 71) makes it possible to think of the public defender as a megaphone for

vocalizing counter-hegemonic struggles. In this sense, the challenge of proposing strategies to expand the emancipatory potential of the public defender, carried out within the framework of predominantly analytical-bibliographic research, is met. To this end, it is necessary to understand the parameters of the notion of access to justice which we are working on here in terms of three-dimensionality and to include all the institutional functions performed by the defender, both in the judicial dimension (in accordance with the principle of due process of law) and in the extra-judicial dimension (either in the context of out-of-court dispute resolutions or in terms of the effective exercise of rights).

The other theoretical pillar that guides this research is the concept of "social construction of reality" by Berger and Luckmann (2014) which states that the institutionalization of a practice depends on it becoming a habit and abandoning the terrain of exceptionality. Considering that the PDO is forged in the tireless work of defenders and public defenders, it is in microphysics (Foucault, 2010) that practices can become habit and modify the institutional culture of human rights which are stimulated or inhibited (Gallardo, 2014; Herrera Flores, 2009).

Therefore, the central issue is decanted to specify the search for strategies of incidence in the cultural change necessary for the promotion of human rights and the increase of all institutional attributions recommended by law – notably in the extrajudicial field – usually relegated by the peripheral position in relation to the activities carried out within the framework of legal assistance (judicial field.)

The hypothesis of this work is that the current markers of professional practice – appearing in the monthly statistical forms filled out by the public defender – may provide clues as to what are the institutional attributions of the list of Complementary Law 80/94. They are adopted as an institutional practice and are promoted as a habit of the institutional culture of the PDO. On the other hand, they also make it possible to identify which practices are less valued and remain in a satellite position (even if they express the PDO's constitutional promise and the three-dimensionality of access to justice that it carries.) The three-dimensional analysis of access to justice – inspired by the Declaration of Brasília (Iberian-American Judicial Summit, 2008)—provides a critical re-reading of legal needs in addition to legal (or procedural) assistance.

Thinking about the potential of the PDO (a state agency) implies identifying its limits. As an institution of the justice system of a capitalist sociability, however counter-hegemonic it may become it will not be capable of structural changes because the law is not suitable for such use. However, some fissures in the system (Holloway, 2013) are possible by law through a political legal action that forces the existing loopholes and creates mediation mechanisms capable of consolidating – even if provisionally – the processes of a struggle for dignity (Herrera Flores, 2009). This struggle is always in tune with the voices and struggles of people in vulnerable situations.

Finally, the conclusions of the research are expressed in proposals because the study is a challenge inscribed in the construction of institutional markers that increase all dimensions of access to justice. The modification of the statistical forms and the ways they generate or do not generate institutional performance markers are an important fissure for the implementation of the rule of law – to be carried out in its normative arm (the justice system) through the public defender.