



FULL LAND REGULARIZATION: A REINTERPRETATION THROUGH NANCY FRASER'S THEORY OF RECOGNITION

Regularização Fundiária Plena: Uma Reinterpretação Através da Teoria do Reconhecimento de Nancy Fraser

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ABSTRACT

This article aims to relate the theory of justice and recognition by Nancy Fraser, an American author, with full land regularization in Brazil. A bibliographic search with an inductive method was carried out. It was found that the realization of full land regularization enables redistribution, with the realization of the right to property to historically excluded minorities, and recognition, with the implementation of urban and socio-cultural regularization, guaranteeing them dignity by improving the quality of life and promoting dialogue with the community. Although this dialogue is still emerging, we see the importance of its implementation in Brazilian public policies. This study contributed by demonstrating the potential of full land regularization in the emancipation of individuals, in promoting social inclusion and realizing the Right to the City.

Keywords: Dialogue. Right to the City. Recognition. Full Land Regularization. Theory of Justice.

RESUMO

O presente artigo tem por objetivo analisar a regularização fundiária no Brasil à luz da teoria da justiça e do reconhecimento de Nancy Fraser, autora norte-americana. A metodologia utilizada foi a pesquisa bibliográfica e documental, com abordagem teórica, por meio da análise de documentos legais e artigos científicos. Verificou-se que a efetivação da regularização fundiária plena viabiliza a redistribuição, com a concretização do direito de propriedade a minorias historicamente excluídas, e reconhecimento, com a implementação da regularização urbanística e sociocultural, o que lhes garante dignidade por melhorar a qualidade de vida e fomentar o diálogo com a comunidade. Em que pese este diálogo seja ainda emergente, nota-se a importância de sua implementação nas políticas públicas brasileiras. Este estudo contribui ao demonstrar o potencial da regularização fundiária plena na emancipação dos indivíduos, na promoção de inclusão social e efetivação do Direito à Cidade.

Palavras-chave: Diálogo. Direito à Cidade. Reconhecimento. Regularização Fundiária Plena. Teoria da Justiça.



INTRODUCTION

For more than one hundred and fifty years the theory of justice was guided by the question of redistribution. With post-socialism, the doctrine turned to another bias, that of recognition.

While redistribution had its object in socio-economic injustices rooted in society, with the exploitation of labor, whose solution would be economic restructuring, within a Marxist strand (MARX, 1970), the theory of recognition focused on the issue of cultural injustices, rooted in social patterns of representation, interpretation and communication. That is, it aimed to counteract the social stigma that makes the individual, inserted in a minority group, less respected and culturally valued, within a Weberian strand (WEBER, 1970), in order to define minority rights and claim people's self-determination. Thus, while policies of redistribution are equated with politics of class, those of recognition are equated with politics of identity.

Fraser, therefore, is inserted within the current of recognition, but clarifies the importance of not leaving aside issues of redistribution. For the author, distribution cannot be subsumed under recognition, both are not just one thing, but are intertwined.

In view of this theoretical framework, this research sought to answer the following question: How to reinterpret the legislation regarding land tenure regularization in Brazil, as well as the land ownership reality in Brazil in the light of the theory of justice and recognition of Nancy Fraser? For that, we used a qualitative approach (MINAYO, 2008), exploratory and descriptive objective (GIL, 2010), documental bibliographic source, through the analysis of legal documents and scientific articles (MARCONI; LAKATOS, 2007).

The article was divided into three sections: Nancy Fraser's Theory of Recognition, Full Land Regularization and the relationship between full land regularization and the theory of recognition.

This study is justified because it highlights the importance of guaranteeing full land tenure regularization, in order to guarantee recognition and representativeness.

Well, for the realization of a full land regularization, it is necessary to comply with three intervention biases: domain-register, urban and socio-environmental. All must be fully guaranteed, otherwise, full regularization is not achieved.

Brazilian legislation, despite leaving doubts as to the need to fully implement regularization, clarifies its need in both the norm and constitutional principles. Therefore, it must be interpreted teleologically and in accordance with the Constitution.



Furthermore, in order to guarantee regularization, dialogue and cooperation are essential. Without communication, policies become detached from the local reality, imposed from the top down, which leaves aside an important bias of regularization: the sociocultural one.

Thus, after analyzing Fraser's work, texts on Full Land Regularization and the land issue in Brazil, we were able to interpret the norm and verify that the realization of full land regularization makes redistribution possible, with the realization of property rights to historically excluded minorities. , as well as recognition, for the implementation of urban and sociocultural regularization, conferring dignity and respect, above all, through dialogue with the community, giving them voice, protagonism and emancipation of individuals, which makes it possible to promote social inclusion and effectiveness of the Right the city.

1. THEORY OF JUSTICE AND RECOGNITION BY NANCY FRASER

Within the study of legal systems, the Theory of Justice has long been discussed. This intent comes from remote times, from classical antiquity, in the study of natural law, with the historical Aristotle and Plato.

Theories of justice in general were divided into two streams: redistribution and recognition. The first has dominated theoretical discussions of justice for the past fifty years. It referred to the social problems of minority groups arising from class stratification, as a result of the capitalist system and sought as a solution the redistribution of economic goods (AMADEO, 2017).

Redistribution, then, aimed to combat the socioeconomic injustice, present in the structure of society, resulting from the exploitation of labor, with economic marginalization and the deprivation of an adequate material standard of living (FERREIRA, 2010).

The second developed in post-socialism, where there was a shift from studies to the Theory of Recognition, which goes beyond the perspective of “mere” redistribution.

In this way, this aspect allowed more current discussions on the subject, which understands that different groups are wronged not because they belong to underprivileged classes, but because they are part of specific social groups, distinguished by questions of nationality, ethnicity, race, gender and sexuality (FERREIRA, 2010).

Homophobia, racism, machismo, etc., are ideologies that make certain minorities be seen as inferior and not worthy of respect, precisely because they do not share the same cultural status as the dominant groups. In this post-socialist period, group interests took the place of class interests.



Recognition aimed to combat, then, cultural and symbolic injustices, that is, cultural domination under a bias of representation, interpretation and communication (FERREIRA, 2010). The search for recognition predominated in situations of material inequality, income, ownership, property, among others (FERREIRA, 2010).

There was a struggle for the recognition of differences as constitutive of the very condition of being human, against the hierarchy of cultural expressions and the establishment of standards of the dominant culture (BRESSIANI, 2011).

Within this current, three authors emerged: Charles Taylor (1992, 1994), Axel Honneth (1992, 2003) and Nancy Fraser.

The debate between the authors was fierce and far from being homogeneous, the first two brought in their considerations the debates faced by Hegel and defended the relevance of subjective recognition, that is, self-recognition and realization (MENDONÇA, 2006).

The studies focused, then, on the dilemmas of multiculturalism and how they were treated by public policies, by discriminating symbolic standards, or even on the construction of citizenship itself (MENDONÇA, 2006). At this point, there was no longer any concern with redistribution, focusing all attention on the issue of recognition.

In turn, Fraser, in the face of both conceptions (redistribution in a first phase and recognition, in the second), points out that the displacement of theories of justice solely for recognition could be a problem, as it removes the focus from redistribution, which it was in the interests of the capitalist system itself.

Fraser highlights, then, the importance of redistribution, since economic inequalities remain rooted in contemporary societies and have even increased in recent years (AMADEO, 2017).

Thus, Fraser builds on Weber's work and once again emphasizes the importance of the redistribution of material resources, since many of the social inequalities are not related to the symbolic patterns of non-recognition (MENDONÇA, 2006).

While redistribution aimed to put an end to the factors that differentiate groups, recognition aims to praise the particularities of each group, which Fraser considers a philosophical schizophrenia, as wronged people would have to simultaneously deny and affirm their differences (MENDONÇA, 2006).

He then proposed a bivalent conception of justice by recognizing the overlapping of redistribution with recognition. Economic injustices reinforce cultural injustices and vice versa, independently, but intrinsically (AMADEO, 2017). The relationship between the two is such that

sometimes culture could generate redistribution injustices; and the economic one, of recognition (BRESSIANI, 2011).

Thus, according to Fraser, material resources must ensure the voice of the members who interact in society, in the same way that the already institutionalized standards of cultural value must reflect equal respect and opportunities to obtain esteem for all (FRASER, 2003).

Moving away from a Marxist concept of economics, Fraser started to defend parity of participation as a central category. Under a subjective bias of participatory parity, of recognition, the aim is to remove cultural impediments, with respect and recognition of the infinity of plural ways of living. Now, in the material or objective bias, of redistribution, the aim is to eliminate marginalization and exclusion, with access to minimum conditions of existence: education, health, housing (FRASER, 2003).

For Fraser, however, based on Weber's concept of status, non-recognition cannot be understood as a mere depreciation of the specific identity of the group (self-recognition), but rather, the subordination/social standard. Thus, what requires recognition is the status of individuals as partners in social interactions (FRASER, 2000).

Injustice resulting from non-recognition originates from institutionalized patterns of devaluation of a particular culture, which builds the idea that certain categories of social actors are superior to others. These standards can be established in formal laws or informally (MENDONÇA, 2006).

Recognition, then, is a positive reassessment of the identities of minorities in all their diversity, changing the ways in which each individuality is perceived (FERREIRA, 2010).

A society that recognizes minorities as dignified, on equal terms, is able to develop autonomous individuals and this influences the way a person represents himself, in addition to how society represents him. This sense of dignity is heightened as they live in a community that grants them rights.

Although his work focuses on the issue of gender, race, sexuality, it is perfectly applicable to any minority groups, including the low-income slum class, from a perspective of political power, perfectly in line with the unequal Brazilian land ownership reality.

Although they are framed in redistribution theories, they are also marginalized groups lacking respectability in society. So when talking about poverty, the issue of recognition also emerges in this sector, according to Fraser's conception (redistribution and recognition).



In the same way, when talking about the scarcity of resources for access to material goods, one goes into the heart of the land problem in our country, which will be discussed in the next section.

2. FULL LAND REGULARIZATION

Since the “discovery” of Brazil by the Portuguese, land has had its exchange value preponderant to its use value in our country, in the opposite sense to that conceived by Lefèbvre (2001), author of the famous work *Right to the City*.

In colonial times, land was seen as a commodity in two ways: for extracting its resources and as a high-value product. The *sesmarias* system, which aimed at colonization and population, led to the concentration of large estates in the hands of the slave elite (CORREIA, 2017).

Simultaneously, numerous possessions were established in this period in the absence of the State. This system, called *Regime das Posses*, was consolidated in 1822, the year in which the *sesmarias* system was extinguished and no other rule was edited to regulate the land issue. Until 1850 there was no regulation, so the disorderly occupation of the land prevailed, with no size limits, added to the *sesmarias* large estates (TRECCANI, 2009), in complete 'buzz' (SILVA, 2008, p. 146).

Faced with the failure of the adopted system, in 1850 the Land Law n. 601. This rule, which had the power to change a large part of the social problems related to the land issue, gave rise to a greater distance between owners and non-owners, by making their role as merchandise positive, by providing as a way of acquiring property: the “ revalidation of allotment letters that, despite not having observed the other legal requirements, proved the cultivation of the land; the legitimation of possessions, the purchase of vacant land and donation (the latter institute applicable only in the border strip)” (TRECCANI, 2009, p. 5), so that. thus, only the owners or *ex-sesmeiros* could acquire (CORREIA, 2017).

The high value for the acquisition of immovable property added to the consolidation of large estates were some of the causes of non-access to land by the working class, with low wages (many descendants of former slaves) today (BALDEZ, 1991).

Allied to this, in the post-industrial revolution period, with the emergence of capitalism and globalization, cities became the center of economic production. In the countryside, agrarian policies were aimed only at large landowners (FREITAS; RESENDE, 2019), with a total lack of incentives to settle in rural areas, so that, in the face of new opportunities in the cities, there was a strong rural



exodus. The speed of this transition was such that it became impossible to provide housing for everyone (GODOY, 2017, p. 457/458).

Thus, occupation in disagreement with the legislation, whether in titling, occupation or construction, has become the main alternative to access to land by the low-income population, especially in places where there was precarious housing, due to the lack of basic infrastructure, such as water, electricity, basic sanitation, garbage collection, among others (GODOY, 2017, p. 457/458), that is, without the provision of minimum public services to guarantee a dignified life.

In the city of Rio de Janeiro, favelas and communities have passed through theoretically opposing public policies, from being removed from the city map, with the development of removal policies in the 30s and 50s, to their, in short, insertion, in theory, in the urban planning, with reurbanization policies.

In order to re-urbanize and insert the communities into the formal city, some legal diplomas were published, albeit timidly, such as the Concession of the Real Right of Use (Decree Law 271/1967).

In turn, it was the Federal Constitution of 1988 that provided a true Urban Reform (CORREIA, 2017), crowning the long process of democratization and reflection on the socio-spatial integration of the most legally and socially unprotected urban strata, with the consolidation of urban policies in articles 182 and 183, with the role of municipalities in the elaboration of urban development policies and the development of the Master Plan in cities with more than 20 thousand inhabitants. We sought to avoid speculative land concentration and to enable the legalization of informal ways of accessing housing.

In addition, urban adverse possession pro morare was instituted, the basis for the concession of special use for housing purposes, the structuring principles and the social function of property and the city (GONÇALVES, 2013).

Allied to the Federal Constitution, another important legal framework was the City Statute, both considered the beginning of the consolidation of the struggles of urban social movements, which included themes such as the master plan; surface rights, created land and others, with a view to guaranteeing or financing adequate housing.

However, it is important to emphasize that the City Statute served the interests of capital much more than, in fact, the most vulnerable.



Thus, it was only in 2009, with the Minha Casa Minha Vida Law (Law 11,977/2009), that the issue of urban land regularization was addressed at the national level for the first time, consisting of a set of legal, urban and environmental measures and social programs aimed at regularizing irregular settlements and titling their occupants, in order to guarantee the social right to housing, the full development of the social functions of urban property and the right to an ecologically balanced environment (art. 46).

It is clear that this legal provision provided for a so-called full land tenure regularization, as it integrates the domain-register regularization, which guarantees security of tenure or title to property; urban planning, through urban planning, with its own land use and occupation legislation, urban infrastructure, collective equipment and socio-environmental, for defending the maintenance of residents in their communities, integrated into the environment in which they are inserted (CORREIA, 2017), providing its inclusion to the material and symbolic goods offered by the city (LIMA; FERREIRA; FRANÇA, 2019).

Not only did the rule provide for full land tenure regularization, but the Federal Constitution itself, so that titling had to be based on measures to guarantee adequate housing (LIMA; FERREIRA; FRANÇA, 2019).

Subsequently, Provisional Measure no. 759/2016, converted into Law no. 13,465/2017, sought to remove a series of obstacles to the regularization itself, in order to facilitate access to decent housing and security of tenure (VASQUES, 2017).

The new legislation started to conceptualize land regularization as legal, urban, environmental and social measures aimed at the incorporation of informal urban centers into urban territorial planning and the titling of their occupants (art. 9).

The concept is centered on the domain aspect, if compared with a related article of Law 11.977/2009. There is also a change of object, while in the first one talked about irregular settlement, in the current law, in informal urban centers, which is every human settlement, with urban use and characteristics, even if located in rural areas, constituted by real estate units of area less than the rural “minimum fraction of installments” (art. 11, §6, of Law No. 13,465/2017 c/c article 8, caput and §§ 1, 2, 4, I, of Law No. 5,868/1972), as well as those in which it was not possible to obtain a degree.

A critique of the regularization modalities is also in order. The standard provides for Reurb-S and Reurb-E. The first refers to land regularization of social interest, affecting the low-income population, who need public intervention for their regularization, given the scarcity of resources of the population (CAMILO, 2017, p. 126).

In turn, Reurb-E deals with land regularization of specific interest, applicable to people with greater purchasing power, but who are in informal urban centers, irregular areas. The possibility of Reurb-E contradicts the purpose of regularization itself, granting legal benefits to those who, even with financial conditions, chose to transgress urban norms for land use and occupation.

There is also the unnamed REURB, called Reurb-I by Lamana Paiva (LAMANA PAIVA, 2017), a modality provided for in art. 69 of Law No. 13.645/2017, applicable in cases of urban land subdivision carried out before December 19, 1979, without registration and that are consolidated. In this case, the law is more lenient and provides for the exemption of georeferencing, land regularization project, environmental technical study, Land Regularization Certificate (CRF), approvals, licenses, permits and any other manifestations of public bodies (art. 69, §2º, da Lei No 13.465/2017).

In procedural terms, regularization is processed before the municipality, with identification and notification of interested parties, who, in the end, prepare the regularization project, which is taken to the real estate registry. In summary, the land tenure regularization process follows the following order, according to the normative provision:

- a) Request for regularization made by the legitimated (direct and indirect Public Administration; any beneficiary; property owners, land developers or developers; Public Defender's Office on behalf of the hyposufficient beneficiaries; and MP);
- b) Initiation of the Reurb with classification of the modality by the processing entity, as a rule, the Municipality;
- c) Searches with the Real Estate Registry to locate the registrations or transcripts affected and those that match them;
- d) Notification of the holder of the domain or right in rem, confronting and responsible for the irregular nucleus;
- e) Analysis of APP Areas, Risk Areas, Conservation Areas, Reservoir Areas;
- f) Preparation of a technical environmental study and of the land tenure regularization project and;
- g) Issuance of the Land Regularization Certificate (CRF), a title capable of entering the Real Estate Registry, together with the approved land regularization project and other documents indicated by law (our translation).

Thus, the Land Regularization Certificate (CRF) is the document issued by the Municipality at the end of the Reurb procedure, consisting of the approved land regularization project and, in the case of land legitimation and possession legitimation, the list of occupants of the urban nucleus.

informal formalized, the proper qualification of these and the rights in rem granted to them (art. 41 c/c art. 11, caput, V of Law No. 13.465/2017).

The CRF will be accompanied by the project (art. 35, caput, of Law No. 13,465/2017), which must contain, at least, the following elements: i) planialtimetric and cadastral survey with georeferencing; ii) plan of the perimeter of the informal urban nucleus with a demonstration of the enrollments or transcripts reached, when possible; iii) preliminary study of the non-conformities and the legal, urban and environmental situation; iv) urban design (art. 36, caput, of Law No. 13,465/2017); v) descriptive memorials; vi) proposal of solutions for environmental, urban planning and occupant resettlement issues, when applicable; vii) technical study for a risk situation, when applicable; viii) technical environmental study, for the purposes set forth in this Law, when applicable; ix) physical schedule of services and implementation of essential infrastructure works, urban, environmental and other compensations, if any, defined at the time of approval of the land regularization project; and x) term of commitment to be signed by those responsible, public or private, for the fulfillment of the physical schedule defined in the previous item. It should be noted that the law allows the implementation of the project to be carried out after the registration (art. 36, §3º).

Well, having listed the main legal provisions of the current norm, many scholars assert that, among the most important changes brought by the current legislation, in a first sense, would be the debureaucratization of the procedure and prioritization of land registry-dominial regularization.

But they are wrong; In this sense, Vasques (2017, p. 13) asserts that:

By declaring that the REURB involves legal, urban, environmental and social measures, it is clearly seen that it is not just a combination of individual land regularization measures (as would be the case with cases of mass individual adverse possession), but a meta-junction of individual, collective interests (of the community of the area to be urbanized), of the environment (since the principle of sustainable development must be preserved) and of the polis (integration of the area in the city), where the final result is greater and more comprehensive than the simple sum of individual interests. Its correct application implies the need to combine law, urbanism, the environment and sociology to incorporate informal urban centers into urban territorial planning and the titling of their occupants.

Thus, full land tenure regularization must be fully effective when interpreting the new law from the constitutional principles and those set out in the norm itself, in order to maintain the progressive and holistic view of full land tenure regularization (CORREIA, 2017).



An important principle provided for in the Federal Constitution is that of human dignity. In fact, it is not inscribed with the other principles; he is in a superior position, integrating the principles of the Brazilian Republic (art. 1, III, of the CF).

It should not be understood only as a negative principle, as an obligation not to act on the part of the State, that is, not to practice acts that undermine dignity, such as offenses and humiliations. It also constitutes positive obligations of the State, in order to guarantee the existential minimum (TORRES, 1999), such as health, education and, especially for this study, decent housing, in order to guarantee the autonomy of man and the full development of your potentials (SARMENTO, 2002).

Thus, constitutional norms are aimed at guaranteeing and effective the right to decent housing, so that any infra-constitutional norms must be interpreted considering such parameters, in order to have their constitutionality conferred. Thus, there should be no titling without the guarantee of reurbanization, and vice versa (LIMA; FERREIRA; FRANÇA, 2019).

In turn, the REURB has as its principles economic, social and environmental sustainability, territorial organization and efficient land occupation, combining its use in a functional way (art. 9, §1), which should guide the interpretation of the rule as a whole.

In this way, the teleological interpretation must always prevail, and take into account the principled guidelines of the law, in particular, economic, urban and environmental sustainability, arising from the right to a sustainable city (art. 2, inc. I, of the City Statute).

In this path, Tartuce (2018, p. 5) reinforces that:

In this context of effecting the social function of property and urban tenure, public authorities will formulate and develop in the urban space the policies of their competence in accordance with the principles of economic, social and environmental sustainability and territorial ordering, seeking to occupy the land of efficiently, combining its use in a functional way (art. 9º, § 1º, da Lei 13.465/2017).

Furthermore, for there to be titling, a prerequisite and necessary, is the land regularization project, an instrument through which the Public Power can not only enshrine the right to housing, but also plan better - and in a more sustainable way - the informal urban nucleus, in order to provide it with better conditions for the titled population.

It provides, among the minimum requirements, the preliminary study of non-conformities and the legal, urban and environmental situation and urban design. In this way, the project cannot escape the urban and socio-environmental character of regularization.



It will be up to the Municipality to approve the Land Regularization project, which will be valid as urban approval, as well as environmental approval, if the Municipality has a qualified environmental agency, according to art. 12 of Law 13.465/2017 (TARTUCE, 2018).

The preliminary study of the favela, and its legal, urban and environmental situation, reveals the primacy of full land tenure regularization (in its socio-environmental character). This is the time to get to know the community members, listen to their concerns, give them a leading role, as they are the main stakeholders in regularization.

Conciliation and debate are essential for land tenure regularization. Dialogue with promoting entities, with property owners, and, in particular, with community members (GÓES, 2017).

In this way, we must interpret the norm in order to prioritize cooperation and dialogue at all stages, at the time of project design, implementation and registration phase, with the property registrar acting as a conciliator and social peacemaker.

In addition, at the time of designing the project, it is also necessary to carry out a survey of environmental issues in the area and surroundings, as well as urban works and equipment that must be built (GÓES, 2017).

Thus, despite the facilitation of titling, the guarantee of full land regularization is a requirement of the norm, which does not dispense with the proper urban design.

Thus, if mere titling was in the interest of the norm, adverse possession itself would already have the power to do so, despite the practical difficulty of carrying out collective adverse possessions, which are still not widely accepted in Brazil. Reurb goes much further; it is necessary to be in direct contact with the community and suggest measures in order to re-urbanize it and integrate it into the city, giving dignities to the residents (VASQUES, 2017).

Although the law provides that urbanization works and housing and environmental improvements can occur before, during or after the conclusion of the Reurb (art. 36, § 3 of Law 13.465/17), it cannot fail to be carried out, under penalty of incurring illegalities (VASQUES, 2017) and not guaranteeing full land tenure regularization, which must be prioritized in order to correct a social injustice, by granting rights and dignity to the historically excluded, as we will see in the next section.

3. LAND REGULARIZATION AND THE THEORY OF RECOGNITION

The Brazilian land tenure reality, reviewed by Fraser's theory, is undeniably unfair, as it reveals, in an imbricated way, material (redistribution) and subjective (recognition) issues that affect the most vulnerable population.

Workers, poor, marginalized, slum dwellers, excluded from access to land as a result of historical segregation choices, started not to be recognized by society as a whole, and, what is even more painful, to have the appreciation of their self-recognition.

Excluded, forgotten. Seen and felt as inferior.

The lack of access to land increases the social abyss, in a material character, as well as makes non-owners second-rate citizens, in a subjective character, of recognition, often even prejudiced as criminals.

Thus, land regularization of social interest (REURB-S) brings a special reason for being. Much more than conferring titles and promoting reurbanization, which is really necessary in redistributive terms, it brings with it the power of recognition in Fraser's conception.

With the land tenure regularization, social excluded become holders of rights through titling, having a better redistribution in economic terms of properties in the city (TARTUCE, 2018).

When placing the property in the formal market, it can be given as a guarantee for granting credit, which gives greater income to the holders (SOTO, 2001). Of course, such a concession must be granted sparingly, in order to guarantee, in fact, the right to housing, to the detriment of merely market interests, in view of the possible default of the loan installments.

Furthermore, the security of possession/property allied to the guarantee of rights makes the sense of dignity and, therefore, of recognition exalted. From non-owners, excluded, they are finally recognized. It is a source of pride, of overcoming.

But land tenure regularization goes further, much further. Going beyond the character of titling and recognition of property rights. Land tenure regularization, said to be full, guarantees the redevelopment of the community, with the construction of public facilities, which guarantee greater dignity. The concern for socio-environmental issues, for dialogue with the local community, by giving them a voice, demonstrates the recognition of their aspirations.

Regularization must result from actions by the residents themselves, from public investment and local partnerships (WILLIAMSON, 2013), in order to value the favela, its history and culture, giving autonomy to its members.

There is no doubt about the importance of titling, but recognition is largely guaranteed, in the realization of full land regularization, so that the current norm must be interpreted according to its informing principles.

Recognition is to give visibility to social claims, which allows the active participation of communities in the formation of the city, with the implementation of specific regularization for each local particularity, in order to integrate it into the legal structure (LE ROY et al., 1996, p. . 269).

Let's go further, art. 10, item XI, of Law 13.465/2017, aimed to recognize other minorities, in this case women, with the provision of preferential title to this group.

In a patriarchal and sexist society, the role of women for reproduction and domestic work is a fundamental element, which makes women have a prominent place in the struggle for housing (MAESTRO, 2017).

Low-wage women, single mothers and black women increase the number of “homeless”, without seeing alternatives for survival (MAESTRO, 2017).

Access to adequate housing is difficult for women, in view of the various barriers to ascension to the job market, or, when inserted, the blatant salary differences between genders, which therefore make women have less income (VELOSO, 2017; PINHEIRO, 2017).

Faced with such a reality, of oppression, preference was given to women in urban land tenure regularization (Law n. 13.465/2017), which demonstrates recognition for their demands.

Recognition, then, is a positive reassessment of the identity of minorities in all their diversity, changing the ways in which each individuality is perceived (FERREIRA, 2010).

It is also worth mentioning the resignification of the term 'favela', today appropriated by the residents themselves, no longer understood as something negative or inferior, but as something of great value.

The stories, achievements and qualities of the favelados cannot be forgotten and should, rather, be the starting point for land regularization actions, in order to improve access to housing. Thus, the protagonism of the residents of the regularized areas should be praised, having the power to make their own decisions, recognized as capable and autonomous agents.

The choice of measures to be taken must be discussed with the community, in order to recognize and value the local culture and avoid any veiled attempt by capital in the face of regularization, which can lead to gentrification, which, in turn, increases injustice, by be contrary to both recognition and redistribution.

Therefore, favelas must be understood as cultural entities, which have their own very rich way of acting, full of colors, swings and flavors. The recognition of these minorities as subjects of law and agents of their destinies, by giving voice to express themselves regarding land regularization actions, exalts their importance, without the imposition of a dominant culture or veiled intentions of the State.

In this way, it can be said that full land regularization aims to guarantee justice in the sense used by Fraser, by promoting redistribution as well as recognition.

In spite of the fact that the Reurb Law leaves doubts as to its intention, when interpreted according to constitutional principles, or even positive principles in the text of the law itself, it reveals that full land regularization does correspond to its object. Such an interpretation is more than necessary to avoid injustice and guarantee recognition.

Thus, a community hitherto invisible and despised, even excluded from the map of the city, through dialogue starts to occupy an active position in regularization policies, with autonomy to, together with the State, define the regularization actions in the community. That is why dialogue, often abundant in public policies, must have a prominent role, in view of social emancipation.

Society, which recognizes minorities as dignified, on equal terms, will have the possibility to develop autonomous individuals and this influences the way a person represents himself, in addition to how society sees him.

In this way, land regularization, in addition to granting a fair distribution, makes recognition possible, by granting voice and dignity.

FINAL CONSIDERATIONS

When we resume our research question and objective, in order to reinterpret Brazilian land regularization in the light of Nancy Fraser's Theory of Recognition, we see that the new interpretation given to the institute proved to be essential for the recognition of a portion of society that had been excluded until then.

Historically, the Brazilian land tenure reality is unfair. Access to land was segmented and public policies aimed at maintaining the status quo. Rich owners and poor non-owners, polarization in every sense. Without dignity, thrown off the map, erased, removed, unrecognized.



The primary legislation, Law no. 11,977/2009, by changing all paradigms, it finally provided recognition and redistribution for minorities. It brought with it concepts of full land regularization, in order to enable the recognition of rights, through titling, and, above all, emancipation, by conferring dignity with reurbanization and socio-environmental policies.

Law 13,465/2017, in turn, was instituted with the aim of facilitating titling, an important form of redistribution. However, it was harshly criticized for overlapping, in theory, two important areas of land tenure regularization: urban and socio-environmental.

It is noteworthy, however, that all the advances brought by the previous rule cannot be abandoned, so that the new legislation cannot be interpreted without taking into account constitutional principles and those present in the text of the law itself. Only in this way will it be possible to guarantee, in addition to redistribution, recognition, thus making Fraser's concept of justice effective.

It is with the recognition of the value of minorities that dialogue and cooperation are enhanced. No regularization can be carried out without community participation. Giving them a voice, protagonism, allows their value to be recognized.

Reurbanization and “customized” regularization, taking into account the socio-environmental reality of the place, are the foundations of recognition. With the space and voice, the community will be able to reposition itself in the place where it was inserted, recognizing itself as responsible agents for changes, for its life and emancipation.

Dialogue makes the individual recognize and value himself as a person, feel belonging to the community and glimpse its importance for its development, in order to confer social protagonism, empowerment and autonomy.

Certainly, in a scenario of constant oppression, exclusion and segregation, such policies are capable of generating structural changes, of power and recognition as belonging to a group, inserting themselves in the context of the city and the enjoyment of all its opportunities.

It can be said, in a bold way, that the recognition of society, through regularization policies, ends up causing the internal self-esteem of community members, for being listened to, valued and, thus, inserted in the city.

By allowing the participation of citizens, paradigms of a segregated city are broken and themes that give representation to a minority are brought to light. The end of segregation occurs, preliminarily, through the knowledge of the other's reality, which generates empathy and recognition.



We are a plural society and that is our wealth. Defending a unique way of thinking takes away all the colors, flavors and beauties of living in the city. Therefore, it is necessary to recognize all the power coming from the slums and periphery, by giving full protagonism and seeking to reduce vulnerabilities and social segregation.

When it is possible to see and value this, to recognize the importance of each social group, in short, there will be a fair society in Fraser's conception. Land tenure regularization, said to be full, with the stimulus of dialogue, is an important step towards this direction.

REFERENCES

AMADEO, Javier. Identidade, Reconhecimento e Redistribuição: uma análise crítica do pensamento de Charles Taylor, Axel Honneth e Nancy Fraser. In: *Política & Sociedade*, Florianópolis, v. 16, n. 35, p. 242-270, Jan./Abr. de 2017.

BALDEZ, Miguel. *Ainda a Reforma Urbana*: notas sobre algumas conquistas institucionais. Mecanismos de concretização dos Conselhos de participação Popular. Petrópolis: Reproarte Gráfica, 1991.

BRASIL. Constituição (1988). *Constituição da República Federativa do Brasil*. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm Acesso em 15 dez. 2020.

BRASIL. *Decreto-Lei nº 271, de 28 de fevereiro de 1967*. Dispõe sobre loteamento urbano, responsabilidade do loteador concessão de uso e espaço aéreo e dá outras providências. Disponível em: http://www.planalto.gov.br/ccivil_03/LEIS/L6766.htm. Acesso em: 17 dez. 2020.

BRASIL. *Lei nº 6.766, de 19 de dezembro de 1979*. Dispõe sobre o Parcelamento do Solo Urbano e dá outras Providências. Disponível em: http://www.planalto.gov.br/ccivil_03/LEIS/L6766.htm. Acesso em: 17 dez. 2020.

BRASIL. *Lei nº 10.257, de 10 de julho de 2001*. Regulamenta os arts. 182 e 183 da Constituição Federal, estabelece diretrizes gerais da política urbana e dá outras providências. Disponível em: http://www.planalto.gov.br/ccivil_03/leis/leis_2001/110257.htm. Acesso em: 17 dez. 2020.

BRASIL. *Lei nº 11.977, de 07 de julho de 2009*. Dispõe sobre o Programa Minha Casa, Minha Vida – PMCMV e a regularização fundiária de assentamentos localizados em áreas urbanas; altera o Decreto-Lei no 3.365, de 21 de junho de 1941, as Leis nos 4.380, de 21 de agosto de 1964, 6.015, de 31 de dezembro de 1973, 8.036, de 11 de maio de 1990, e 10.257, de 10 de julho de 2001, e a Medida Provisória no 2.197-43, de 24 de agosto de 2001; e dá outras providências. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/lei/111977.htm. Acesso em: 17 dez. 2020.



BRASIL. *Lei nº 13.465, de 11 de julho de 2017*. Dispõe sobre a regularização fundiária rural e urbana, sobre a liquidação de créditos concedidos aos assentados da reforma agrária e sobre a regularização fundiária no âmbito da Amazônia Legal; institui mecanismos para aprimorar a eficiência dos procedimentos de alienação de imóveis da União; altera as Leis n os 8.629, de 25 de fevereiro de 1993 , 13.001, de 20 de junho de 2014 , 11.952, de 25 de junho de 2009, 13.340, de 28 de setembro de 2016, 8.666, de 21 de junho de 1993, 6.015, de 31 de dezembro de 1973, 12.512, de 14 de outubro de 2011 ,10.406, de 10 de janeiro de 2002 (Código Civil), 13.105, de 16 de março de 2015 (Código de Processo Civil), 11.977, de 7 de julho de 2009, 9.514, de 20 de novembro de 1997, 11.124, de 16 de junho de 2005, 6.766, de 19 de dezembro de 1979, 10.257, de 10 de julho de 2001, 12.651, de 25 de maio de 2012, 13.240, de 30 de dezembro de 2015, 9.636, de 15 de maio de 1998, 8.036, de 11 de maio de 1990, 13.139, de 26 de junho de 2015, 11.483, de 31 de maio de 2007, e a 12.712, de 30 de agosto de 2012, a Medida Provisória nº 2.220, de 4 de setembro de 2001, e os Decretos-Leis nº 2.398, de 21 de dezembro de 1987, 1.876, de 15 de julho de 1981, 9.760, de 5 de setembro de 1946, e 3.365, de 21 de junho de 1941; revoga dispositivos da Lei Complementar nº 76, de 6 de julho de 1993, e da Lei nº 13.347, de 10 de outubro de 2016; e dá outras providências. Disponível em: http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13465.htm. Acesso em: 17 dez. 2020.

BRESSIANI, Nathalie. Redistribuição e reconhecimento - Nancy Fraser entre Jürgen Habermas e Axel Honneth. In *Cad. CRH*, Salvador, v. 24, n. 62, p. 331-352, ago. 2011. Disponível em http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-49792011000200007&lng=pt&nrm=iso. Acesso em 13 dez. 2020.

CAMILO, Marla. Regularização Fundiária. In: *Revista Síntese Direito Imobiliário*. v. 6, n. 37, 2017.

CORREIA, Arícia Fernandes. Direito da regularização fundiária urbana e autonomia municipal: a conversão da medida provisória n. 759/2016 na lei federal n. 13.465/2017 e as titulações da Prefeitura da Cidade do Rio De Janeiro no primeiro quadrimestre de 2017. *Revista Geo UERJ*. nº 31. UERJ: Rio de Janeiro, 2017.

FERRACIOLI, L. Aprendizagem, Desenvolvimento e Conhecimento na Obra de Jean Piaget: Uma Análise do Processo de Ensino - Aprendizagem em Ciências. In *Revista Brasileira de Estudos Pedagógicos*, v. 80 n.194 p. 81-92. 2001.

FERREIRA, Wallace. Justiça e reconhecimento em Nancy Fraser: interpretação teórica das ações afirmativas no caso brasileiro. In *Perspectiva Sociológica*, v. 5, n. 6, 2010, p. 1-14.

FRASER, N. Social Justice in the age of identity politics: Redistribution, Recognition, and Participation. In: FRASER, N; HONNETH, A. *Redistribution or Recognition*. A political Philosophical exchange. Londres/Nova York: Verso, 2003. p. 07-109.

FRASER, Nancy. Rethinking recognition. In: *New Left Review* (II), 3, p.107-120, 2000.

FREITAS, Niely Lorrane de; RESENDE, Julieth Laís do Carmo Matosinhos. Direito de moradia e a regularização fundiária urbana de interesse social. In *Revista ATHENAS de Direito, Política e Filosofia*, Faculdade de Direito de Conselheiro Lafaiete, v. I, ano VIII, 2019.



FUNDAÇÃO JOÃO PINHEIRO. Centro de Estatística e Informações. *Déficit habitacional no Brasil 2015*, Belo Horizonte, 2018.

GIL, Antonio Carlos. *Métodos e técnicas em pesquisa social*. 5. ed. São Paulo: Atlas, 2011. Como elaborar projetos de pesquisa. 5. ed. São Paulo: Atlas, 2010.

GODOY, Fernando Henrique Caldeira Rovere de. A regularização fundiária urbana de acordo com a Lei 13.465/2017: uma tentativa de inserir a cidade informal dentro da cidade formal. In: *Revista de Direito Imobiliário*, v. 83, n. 40, p. 455-476. São Paulo: Ed. RT, 2017.

GÓES, Renato. Procedimento de Regularização Fundiária no Município. In: *Boletim do Irib em Revista*, n. 359, p. 142-.153, maio 2019.

GONÇALVES, Rafael Soares. *Favelas no Rio de Janeiro*. História e Direito. Rio de Janeiro: Pallas, 2013.

HONNETH, Axel. Recognition or redistribution? Changing Perspectives on the Moral Order of Society. In *Theory, Culture & Society*, Londres, v. 18 (2-3), p. 43-55, 2001.

HONNETH, Axel. *Luta por reconhecimento: a gramática moral dos conflitos sociais*. São Paulo: Ed. 34, 2003. [1992]. 296p.

HONNETH, Axel. The point of recognition: a rejoinder to the rejoinder. In: FRASER, N; HONNETH, A. *Redistribution or Recognition*. Londres/NY: Verso, 2003c. p. 237-267.

LAMANA PAIVA, Joao Pedro. Regularização fundiária e seus impactos no reassentamento: problemática urbana, propriedade e sistema registral. In: *Revista Síntese: Direito Imobiliário*, v. 6, n. 7, 2017.

LEFEBVRE, Henri. *O Direito à Cidade*. Trad. Rubens Frias. São Paulo: Centauro, 2001.

LE ROY, E. et al. *La sécurisation foncière en Afrique. Pour une gestion viable des ressources renouvelables*. Paris: Editions Karthala, 1996.

LIMA, Rafael Negreiros Dantas de; FERREIRA, Allan Ramalho; FRANÇA, Vanessa Chalegre de Andrade. A Regularização Fundiária Urbana de Interesse Social (Reurb-S) como Solução Jurisdicional Prioritária: uma diretriz para a atuação da defensoria pública na figura de custos vulnerabilis nos litígios coletivos possessórios urbanos. In: *XIV CONADEP*, Rio de Janeiro, 2019. Disponível em: https://www.anadep.org.br/wtksite/cms/conteudo/42526/A_regulariza__o_Fundi_ria_urbana_de_i nteresse_social__como_sele__o_jurisdicional_probit_ria.pdf Acesso em 9 dez 2020.

MAESTRO, Irene. O papel histórico das mulheres nas lutas territoriais. In IBDU, *Direito à Cidade: uma visão por gênero* - São Paulo: IBDU, 2017.

MARCONI, Marina de Andrade; LAKATOS, Eva Maria. *Fundamentos de metodologia científica*. 6. ed. São Paulo: Atlas, 2007.



MARX, Karl. *O capital*. Livro 2: O processo de circulação do capital. Trad. Reginaldo Sant'anna. Rio de Janeiro: Civilização Brasileira, 1970.

MENDONÇA, Ricardo Fabrino. Reconhecimento em debate: os modelos de Honneth e Fraser em sua relação com o legado habermasiano. In: *I Congresso Anual da Associação Brasileira de Pesquisadores de Comunicação e Política*, Salvador-BA, 2006. Disponível em: http://www.compolitica.org/home/wp-content/uploads/2011/01/Mendonca_2006.pdf Acesso em 05 dez. 2020.

MINAYO, Maria Cecília de Souza. *O desafio do conhecimento: pesquisas qualitativas em saúde*. 11. ed. São Paulo: Hutitec, 2008.

SARMENTO, Daniel. *A ponderação de interesses na Constituição Federal*. 1ª edição, segunda tiragem. Rio de Janeiro: Lumen Juris, 2002.

SILVA, Ligia Osório. *Terras devolutas e latifúndio*. Campinas: Unicamp, 2008.

SOTO, Hernando de. *O mistério do capital*. Tradução: Zaida Maldonado. Rio de Janeiro: Record, 2001.

TARTUCE, Flávio. A lei da regularização fundiária (Lei 13.465/2017): análise inicial de suas principais repercussões para o direito de propriedade. In *Pensar*, r, v. 23, n. 3, p. 1-23, jul./set. 2018.

TAYLOR, Charles. *As fontes do self*. São Paulo: Edições Loyola, 1997. p. 9-145.

TAYLOR, Charles. The politics of recognition. In: GUTMANN, Amy (ed.) *Multiculturalism: examining the politics of recognition*. Princeton/Chichester: Princeton University Press, 1994 [1992]. p. 25-73.

TORRES, Ricardo Lobo. *Tratado de Direito Constitucional Financeiro e Tributário*. v. III Os Direitos Humanos e a Tributação – imunidades e isonomia. Rio de Janeiro: Renovar, 1999.

TRECCANI, Girolamo. Título de Posse e a Legitimação de Posse como Formas de Aquisição da Propriedade. In: *Revista da Procuradoria Geral do Estado do Pará*. Belém: Paragraphics, 2009.

VASQUES, Ana Beatriz. Apresentação do Tema. In *CONPEDI*, 2017. Disponível em: <http://conpedi.danielolr.info/publicacoes/0ds65m46/60572696/T40O22C8dD3d3iVM.pdf> Acesso em 30 nov. 2020.

VELOSO, Luiza Lins. O papel das mulheres na luta pelo direito à moradia. In *IBDU, Direito à Cidade: uma visão por gênero* - São Paulo: IBDU, 2017.

WEBER, Max. *Ensaio de Sociologia*. Rio de Janeiro: Zahar Editores, 1979.

WILLIAMSON, Theresa. *Regularização Fundiária e Planejamento Urbano nas Favelas Cariocas*. 2013. Disponível em: <https://rioonwatch.org.br/?p=7436>. Acesso em 29 dez. 2020.



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