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THE FUNDAMENTAL DUTY TO NOT ATTEMPT AGAINST THE DEMOCRATIC STATE OF LAW: AN APPROXIMATION BETWEEN JÜRGEN HABERMAS AND THOMAS S. KUHN AND THE EXTINCTION OF THE NATIONAL POLICY FOR SOCIAL PARTICIPATION

Adriano Sant'Ana Pedra[1]
Thiago Viola[2]

ABSTRACT

The present study aims to investigate whether the extinction of the National Policy of Popular Participation fails to fulfill the fundamental duty of not violating the Democratic Rule of Law. The first chapter presents the theoretical basis of the article, which uses Thomas S. Kuhn's epistemology and paradigm concept, reformulated as a disciplinary matrix in his post-critical works, in dialogue with the procedural paradigm of Habermasian discursive democracy. In the second chapter, a review of the scientific papers and the normative-political basis of the fundamental and human duty to respect the democratic order is carried out, not practicing acts or making speeches that attempt against it. In the third chapter, through a logical-deductive methodology of the sedimented theories, we study the normative act that extinguished the policy of social participation in Public Councils and Adin 6.121-DF, filed against that act. The article identifies in the judgment legal matrices still in conflict in our legal system, despite the fact that all STF judges emphasize the virtues of participatory democracy in the democratic rule of law paradigm. Finally, it is concluded that the extinction of the Councils in an unrestricted way violates the fundamental duty of not violating the democratic rule of law, in the light of Habermas' discursive theory of democracy.

Keywords: Constitutional. Paradigm. Democratic state. Jürgen Habermas. Thomas S. Kuhn.

[1] Doutor em Direito do Estado (PUC/SP), mestre em Direitos e Garantias Fundamentais (FDV/ES), mestre em Física Quântica (UFES/ES), especialista em Justiça Constitucional e Tutela Jurisdicional de Direitos (Università degli Studi di Pisa/Itália) e em Economia e Direito do Consumo (Universidad de Castilla-La Mancha/Espanha), bacharel em Direito (UFES) e bacharel em Física (UFES). Realizou pós-doutorado no Centro de Direitos Humanos da Faculdade de Direito da Universidade de Coimbra (Portugal). É Professor permanente do Programa de Pós-Graduação Stricto Sensu - Mestrado e Doutorado - em Direitos e Garantias Fundamentais da Faculdade de Direito de Vitória - FDV (conceito CAPES 5), e um dos líderes do Grupo de Pesquisa Estado, Democracia Constitucional e Direitos Fundamentais deste PPGD. Procurador Federal. Faculdade de Direito de Vitória. Espiríto Santo. Lattes: http://lattes.cnpq.br/0637600349096702 ORCID: https://orcid.org/0000-0002-8174-9122 E-mail: adrianopedra@fdv.br

[2] Mestrando em Direitos e Garantias Fundamentais (FDV/ES). Integrante do Grupo de Pesquisa "Estado, Democracia Constitucional e Direitos Fundamentais" vinculado ao PPGD-FDV/ES. Especialista em Direito Administrativo e Direito Público (UCAM/RJ). Graduado em Direito pela Universidade Federal Fluminense (UFF). Procurador do Município de Vila Velha (ES). Presidente da Associação de Procuradores do Município de Vila Velha (ES). Diretor Suplente de Eventos Científicos da Associação Nacional de Procuradores Municipais (ANPM). Faculdade de Direito de Vitória. Espiríto Santo. Lattes:http://lattes.cnpq.br/5546784792246489 ORCID: https://orcid.org/0000-0003-2926-7094 E-mail: thiagoviola@id.uff.br

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INTRODUCTION

The historic affirmation of democracy in modernity, intertwined with state power, inaugurated a new political-legal conception of the State, introducing new concepts that are not interchangeable with the previous notion, which, according to part of the constitutional doctrine that will be addressed in this study, translates into a shift in the "paradigm" of the science of law.

But which democracy are we talking about? What is the substance of this concept that moves away from the horizon of ideality every time we transfer it to reality? How does the Law align with this much-vaunted democratic notion, governing, transforming and being transformed by it? These are opening questions to which there are multiple answers, each one more or less convincing, but which every jurist must address in order to put the democratic principle into effect, even without knowing rigorously what this means; even if they say that democracy is doomed to failure by vigilant technocracies or dominating autocracies. If this last point is true, let us call on legal scientists to resist, in the name of fundamental rights, existential emancipation and active and effective citizenship.

The above issues, extremely important concerns, will be latent in this study, which, based on the explanatory bibliographical review of Thomas Samuel Kuhn's epistemology, will seek to defend the existence of a disciplinary matrix to guide jurists, within which the Habermasian dialectic presents its procedural theory, which coherently fits the democratic principle as an instrument of effective participation and citizen emancipation.

In this sense, the first chapter will present the concepts of the Discursive Theory of Habermasian Democracy, useful for the development of the study proposed here, and the procedural prism of the Democratic State of Law paradigm discussed in constitutional science, delimiting how the author responds to issues related to the participation of society in the elaboration and execution of public policies. Before, however, it is intended to understand the meaning of "paradigm" developed by Kuhn, from his post-critical writings that evolve and rethink the term coined in his most famous work, "The Structure of Scientific Revolutions".

At this point, the importance for society of the concept of the Rule of Law linked to democracy is delimited, as a Kuhnian "dominant disciplinary matrix" of science, on which every contemporary legal system must be built, thought and practiced in the order internal and international, including with considerable grounding in the normalization of fundamental rights.

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In the second chapter, two objectives are pursued, based on the literature review and descriptive analysis of existing laws. The first is to identify the normative expression of democracy in Brazil and in international treaties. The second is to analyze the normative-political basis of the fundamental and human duty to respect the democratic order, not performing acts or making speeches that attempt against it. In short, national constitutional provisions arising from the democratic principle will be brought together, as well as democratic clauses inserted in international treaties and foreign constitutions, with the aim of studying the spectrum related to the ventilated fundamental duty and the limits of its observance by each individual.

Once outlined and under the perspective of the desired duty, in the third chapter, within a logical-deductive basis of established theories, Federal Decree No. 9,759/2019 of April 11, 2019, which extinguished and limited the formation of collegiate bodies, will be analyzed in the Federal Administration, a measure that, despite being politically, socially and judicially contested, was put into practice and impacted approximately 700 (seven hundred) councils and revoked Federal Decree No. 8423 of May 23, 2014, which had established the National System of Social participation in public policies. This study will demand a qualitative analysis of a judicial precedent, ADIN 6.121-DF, under the focus of the theoretical framework presented in the previous chapters.

The research under discussion gains importance, as the democratic characteristics, which seemed to evolve into a consensus since the end of World War II, are under strong attack from a large portion of the individuals that make up the international legal order. At the same time that more freedom is called for to withdraw from public policies, more security is required, however the latter assumes a worryingly authoritarian facet, which calls for the suppression of fundamental rights and the reversal of historical constitutional developments at all times. The fear of a new authoritarian scenario is beginning to be felt in society.

From this perspective, it is imperative to combat authoritarian discourses and the construction of meanings that involve arguments and acts that violate the democratic order in force in most so-called civilized countries, seeking to bring to light normative, political and theoretical, constitutional and supraconstitutional instruments, to prohibit, coercively or not, conduct potentially violating democracy. Under this orientation, the option is to analyze a comprehensive normative act, through which a formal channel of civil society participation in the formation and implementation of federal public policies was extinguished.

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The question is then: does the federal normative act that extinguished the National Policy for Popular Participation affront the fundamental duty of not violating the democratic principle in light of the disciplinary matrix of the Democratic State of Law? The answer is sought with the hypothesis nominated, in an effort to carry out a true suspension of judgment on the subject and distance itself from the pre-comprehensive basis of the investigator.

1 THE PARADIGM OF THE DEMOCRATIC STATE OF LAW SEEN AS THE DOMINANT DISCIPLINARY MATRIX OF CONSTITUTIONAL LAW

1.1 What is a paradigm?

The term paradigm is used in the sense worked by Thomas Samuel Kuhn, in his work "The Structure of Scientific Revolutions (CATTONI DE OLIVEIRA, 2012; CARVALHO NETTO, 1999). However, the semantic force of use also carries with it a notable problem of polysemy (MASTERMAN, 1965), which unfolds into two difficulties: i) the necessary adaptations with the transference, since the author developed his theory thinking especially about science natural; ii) the lack of rigor with which his concept was put in his most famous work[3] and, even worse, how it was worked by the current language [4], something that he himself faced in later texts to clarify and classify the meanings of paradigm (KUHN, 2018 [1962]).

Thus, the concept of paradigm needs to be briefly contextualized with the original text, a source of consultation for authors who use it in Law, to specify which points need to be clarified in the transposition carried out in legal science. Afterwards, taking advantage of the reading of other titles, it will be necessary to broaden the debate, so that the transfer is carried out with greater semantic rigor, with regard to the Habermasian view of the Democratic State of Law as a paradigm of Constitutional Law.

[3] "I agree [...] that the term "paradigm" points to the central philosophical aspect of my book, but that the treatment it receives there is quite confusing. No aspect of my point of view has evolved more than this since the book was written [...]." (KUHN, 2017 [1970-1993], p.159)

[4] "Listening to some conversations, particularly among book enthusiasts, it was hard to believe that all the participants in the discussion were talking about the same work. Part of the reason for its success, as I sadly conclude, is that it can be almost anything to almost anyone. No aspect of the book is more responsible for this excessive plasticity than the introduction of the term "paradigm", a word that figures in its pages more often than any other, except for grammatical particles. (KUHN, 2011 [1972], p. 311-312)"

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Kuhn, in his most notorious book, stated that "'paradigms' are universally recognized scientific achievements that, for a time, provide model problems and solutions for a community of practitioners of a science (KUHN, 2018 [1962], p. 53)."

The paradigms have two essential characteristics: "their achievements were unprecedented enough to attract a lasting group of supporters [and] ... they were open enough to let all sorts of problems be solved by the redefined group of practitioners of science." The science practiced by scientists around a paradigm is "normal science", which means "research firmly based on one or more scientific achievements [...] recognized for some time by some specific scientific community as providing the foundation for its further practice." (KUHN, 2018 [1962], p.71-72)

Normal science would be a puzzle solver, approaching a puzzle, which seeks to accommodate and clarify the facts around existing theories, but without much interest in producing new ones. At certain times, however, scientists identify facts that are incompatible with current theoretical models. They may recognize this fact as an anomaly, or dismiss it as a curiosity. The dissonant fact discovered is called an anomaly, which, once recognized, becomes a discovery and calls into question the theoretical model considered to be the most adequate. Discovery begins only with awareness of the anomaly (KUHN, 2018 [1962]).

The persistent existence of the anomaly, which does not fit into the current paradigm, causes it to be questioned, entering a crisis for no longer answering the questions asked by the scientific community. There is a concurrent debate in search of new methods, ideas and instruments until, finally, from this moment of crisis, a new theory emerges that, in a more complete way, answers the scientists' questions, resolving the existing dissonance that persisted by the previous model (KUHN, 2018 [1962]).

At this moment - when the new theory is flourishing - there is a revolution that transforms normal science into extraordinary. This process of revolution, unlike what was widely defended, is not about the accumulation of knowledge, but about new knowledge, redefining the meaning of the terms used under the previous theory, reconstructed under different theoretical principles and generalizations.

An example used in the work can more clearly illustrate this process of fixing a paradigm, producing knowledge of normal science, discovering anomalies, crisis, inventing a new conceptual basis and theoretical abstractions to explain dissonant facts, revolution and leaping displacement to a new paradigm. The Ptolemaic system was successful in predicting the positions of planets and stars. However, over time, it was found that his theory did not fit

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the best available observations in relation to planetary positions and the equinoxes, causing small discrepancies, which was considered an anomaly, whose solution became the main objective of several scientists. With each attempt to resolve the discrepancy by improving the theory in vogue, others flourished, which after a period of crisis inevitably led astronomers to reject the theory and pursue another, culminating in the Copernican model. (KUHN, 2018 [1962]).

From this conceptual basis presented in 1962, several authors transposed the term to the most varied sciences, natural or human. With Constitutional Law, it was no different. However, at no time were the difficulty of transferring and schematizing epistemology addressed, nor were the criticisms made of the aforementioned theoretical construction.

Kuhn, to answer his critics, redirected his original reasoning by providing some primary explanations for specifying the concept of paradigm, as well as held even more important debates dealing with the difference between the structure of scientific revolutions in the natural sciences and the human sciences. second point, for pedagogical reasons, dealt with in the subsequent item.

Keeping in mind the essential points for the formation of the comprehensive structure of this article, it can be said that it separated its concept of the scientific community[5], and defined two major meanings for him: i) a global or sociological one; ii) another location or of an exemplary nature, this being a subset of that. The first refers to what is shared by a particular community of experts and justifies a relative unanimity of professional judgments. If asked, these members would say that they share theories, or a set of theories, however, due to the limitation of the term vis-à-vis the philosophy of modern science, the author prefers to use the term "disciplinary matrix". "'Discipline', as it refers to a common possession of practitioners of a particular discipline; 'matrix' because it is composed of ordered elements of several species, each of which requires a more detailed determination" (KUHN, 2018 [1962], p. 289).

[5] The scientific community was initially presented as the set "of practitioners of a scientific specialty […] who underwent a similar professional initiation and education, […] absorbed the same technical literature and drew from it many of the same lessons. Usually the boundaries of this standard literature mark the limits of a scientific object of study and in general each community has its own object of study. [...] Within such groups, communication is relatively broad and professional judgments are relatively unanimous. [...] The most global community is made up of all scientists linked to the natural sciences. At an immediately lower level, the main professional scientific groups are communities: physicists, chemists, astronomers, zoologists and the like (KUHN, 2018 [1962] p. 283)." Later, Kuhn clarifies that they can be seen in four successive levels of progressive specialization: i) natural scientists; ii) physicists, chemists, astronomers, zoologists, among other branches; iii) subgroups that use similar techniques, such as organic chemists, solid state physicists, radio astronomers, etc; iv) level at which empirical difficulties begin to appear, within which, for example, a virologist can study bacteriophage viruses (KUHN, 2011 [1972]).

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The components of this matrix are: symbolic generalizations, such as Newton's second law formula (f = ma), which serves as a general law to be applied by all scientists, as well as presenting its own definitions for each of its elements (force, mass and acceleration have a meaning in the equation); commitments to beliefs shared by members of a scientific community in a given model, which provide indispensable analogies to the definition of solvable or non-solvable problems; common values that bring a sense of belonging to community members as well as internal coherence; concrete solutions to "exemplary" problems that students in the field of science encounter since the beginning of their learning (KUHN, 2018 [1962]).

Kuhn refers to this last component of the matrix as the deepest sense of paradigm, understanding it as a shared example that empirically enables the student to solve numerous problems and, through experience, acquire a tacit and contextual knowledge of nature and words, simultaneously, by similarity relations. For example, by repeatedly using Newton's second law, a student improves. With this knowledge internalized by experience, he becomes an expert and begins to identify similar supervening situations in nature that can be solved by the same law or by the genealogy of their transformations (the symbolic generalization f = ma serves as a learning basis for the fall free $m.g = m.d^2s/dt^2$) (KUHN, 2018 [1962])[6].

With the information brought so far, it is already advisable to go into detail on the notion of the Democratic State of Law paradigm outlined by Habermas and see to what extent it can be associated with Kuhnian theory, with special attention to the issue of hermeneutics.

1.2 The Habermasian Democratic State of Law Paradigm

In the book "Theory of Communicative Action" ([1981] 2012a; 2012b), Jürgen Habermas develops a concept of communicative rationality based on Weber's theory of rationalization and the reading of this theorist from the perspective of Lukács, Horkheimer and Adorno, the first generation of the Frankfurt school, which the author succeeded.

Rationality can be understood from the way in which descriptive knowledge is used through language. In this conceptualization, pointed out as the strict sense of rationality or its cognitive version, the propositional exposition of knowledge can take two directions: an action oriented towards an end, called "cognitive-instrumental rationality", or a communicative action aimed at understanding (HABERMAS, [1981] 2012a).

[6] The explanation is further elaborated in A Tensão Essencial, from p. 320 (KUHN, 2011).

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The first performs speech acts in an instrumental way aiming at success, that is, it intuits to reach a specific purpose, through arguments intelligently adapted to the contingent environment, with information and instruments suitable for achieving success. The second, communicative rationality, part of a "spontaneously unitive and consensus-generating force inherent to argumentative speech, in which several participants overcome their initially subjective conceptions [...] thanks to the agreement of rationally motivated convictions" (HABERMAS, [1981] 2012a, p. 35).

In this sense, when a subject performs speech acts, he can assume two positions: one strategic or instrumental; the other communicative, based on specific consensual conditions that enable mutual understanding. This differs from that, as it aims, especially, at a harmonization of actions in which the actors (two or more) involved are in agreement with their consequences for all (ANDREWS, 2011).

All speech acts, regardless of their kind, if they are rational, claim the validity of their statement, which can be rejected or accepted, depending on the reasons and justifications given. These validity claims refer structurally to speeches that aim to present a “sense of truth” under three kinds of worlds, the cultural (objective), the social (society or intersubjective) and the individual (subjective).

According to the author,

> “under the presuppositions of acting guided by the understanding, validity claims cannot be accepted or rejected without a reason [...] that frees them from the sphere of simple arbitration [...] seeking [...] a rationally motivated consensus that allow them to coordinate their plans and actions, without the need to resort to coercion [..]” (HABERMAS, [1981] 2012b, p.51-52).

The above passage, applied to the legal system, orients that the rules of conduct are already included in a linguistic structure of basic normative consensus, prior to any sanction, which walks with individuals since primitive societies. Thus, a norm, regardless of the application of a sanction or any coercion, to ensure its observance, only acquires effectiveness when it finds its basis of social legitimacy and subjective validity in the intersubjective consensus of social interaction (RODRIGUES; VELOSO, 2018).

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The interaction and social evolution are approached using a concept of societies in two dimensions, as the world of life, the place where all subjects live daily in an unproblematic way, at the level of common sense[7], and as a system, in which a process of systemic differentiation takes place, embodied in the formation of organizations that start to adopt increasingly complex and progressively differentiated forms of communication from the world of life, transforming themselves into subsystems. These subsystems, however, remain anchored in the world of life that sustains the social system as a whole (HABERMAS, [1981] 2012b).

As this structural configuration, subsystems are now functionalized by means and instruments outside of language, such as money and bureaucratic procedures, and no longer directly and exclusively by norms and values, but at the same time they need a basis of legitimacy in the world of life. . Individuals feel the need to seek the institutionalization that is essential for mutual and systemic coexistence, discharging individuals from, at each interaction or social action, starting the laborious journey of communicative action to justify the existence of an interaction or social action (ANDREWS, 2011).

Two subsystems stand out in contemporary society, the administrative, composed of the bureaucratic state, and the economic, represented by the market. The legal subsystem, on the other hand, which acquires great importance in this study, is related to the two subsystems mentioned above and to the life-world, mediating the tension between them. When approaching this conflicting relationship, Habermas proposes the law as a category of mediation between facticity and validity (HABERMAS, 1997).

Facticity refers to the application of the norms that make up the legal system and, at this point, it is emphasized that an instrument for obtaining normative effectiveness in contemporary societies is coercion. But even for institutions to be recognized and coercion to be welcomed, it needs to find its source of legitimacy and acceptance in rational validity claims in the lifeworld, which explains the author's association with the tension between facticity and validity of the legal system (ANDREWS, 2011).

With this analytical and conceptual basis, the author begins to analyze the relationship between law and democracy, critically presenting two models, the liberal and the republican, proposing, however, a third, the procedural-deliberative concept, read in accordance with the discourse theory (HABERMAS, 2011).

[7] For a brief but adequately explored analysis of the concept of the world of life and its complexification and relationship with the theory of systems in Habermas' work, it is suggested to read "World of Life and System in the Theory of Communicative Action" (SIEBENEICHLER, 2018).

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Habermas justifies his theoretical construction as being more adequate than the previous ones, as it encompasses elements from both sides, in an ideal democratic process that establishes an internal cohesion between negotiations, discourses of self-understanding and justice that, under such conditions, can achieve results rational and equitable (HABERMAS, 1997).

He then formulates his democratic theory, connecting law and political power. In this view, the Constitution is the expression of the legal system, which finds its basis of legitimacy in political and social deliberations. More importantly, it proceduralizes the forms of legitimate circulation of power, permanently renewing itself as the plurality of rights and claims emerge from informal forums in the public sphere (ANDREWS, 2011).

The Constitution, despite its importance, by itself, does not guarantee the legitimacy of political power under the democratic principle. The autocracy has already found fertile ground and was justified in political-constitutional letters, not being enough by itself to effect a deliberative democracy. In this sense, the circularity of public opinions gains relevance for the assertion that public councils, as a means of consultation and debate for civil society, are intermediary organizations with the potential to link and elevate discourses in informal to institutionalized forums.

However, at this point, we turn to the analysis of the paradigms of law presented by Habermas, and then return to this theme in the direct analysis of the concrete case to be refined in the third chapter. The author defines them as follows:

> "a legal paradigm explains, with the help of a model of contemporary society, how the principles of the rule of law and fundamental rights should be understood and handled, so that they can fulfill, in the given context, the functions that are normatively assigned to them. A 'social model of law' (Wieacker) represents something like society's implicit theory of the legal system, its image of its social environment. The legal paradigm indicates, then, how within the framework of such a model, fundamental rights and the principles of the Rule of Law can be understood and realized. The two legal paradigms, which had the most consequences in the history of modern Law, and which still compete with each other today, are that of formal bourgeois Law and Law materialized in terms of the Welfare State. With my interpretation of law and politics in terms of discourse theory, my intention is to give clearer outlines to a third paradigm of law, which recapitulates the other two themselves." (HABERMAS, 2005, p. 263-264)[8].

[8] Translation into Portuguese by the author, based on the original in Spanish: "a legal paradigm explains, with the help of a model of contemporary society, how to understand and manage the principles of the State of law and fundamental rights, so that they can comply in the context given the functions that are normatively assigned. A social model of right (Wieacker) represents something like the implicit theory that society has in the legal system, that is, the image that is made of its social environment. The legal paradigm thus indicates how in the framework of such a model the fundamental rights and principles of the State of Right can be understood and realized. These are the legal paradigms that have had bad consequences in the history of modern law and which still compete

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In his words, two legal paradigms of modern law still compete with each other, that of formal bourgeois Law and Law materialized in the Welfare State. The two, however, entered a successive crisis, as their theoretical bases no longer responded to the current problems related to private and public autonomy. This is because both have lost sight of the "internal link that exists between private autonomy and citizen autonomy – and, with that, the democratic sense of self-organization of a legal community" (HABERMAS, 2011, p. 146).

In this light, the rights related to private autonomy only have legitimacy when they come from the discursive formation of opinion, guaranteed in the public sphere through participation rights linked to the democratic principle. And from this critique begins his proposal for a procedural paradigm of law linked to a model of a democratic State.

From the reading of the definition presented, however, before searching for the elements of this new paradigm presented by the author, it is important to question whether the definition reproduced above in totum presents schematic compatibility with the Kuhnian proposal of paradigms, because the author himself glimpsed his reflections based on the natural Sciences.

As seen in the previous chapter, after the crisis, a legal paradigm is displaced by leaps or revolutions in the legal-state bureaucratic field, from a "break" in the widely accepted theory that explains the State and Law model, under the which jurists undertake their studies, emerging a new set of understandings, languages and practices, according to which legal interpretation is performed. Thus, legal science (normal science) before the displacement, starts to be questioned, through the visualization of points that do not correspond to its structure, culminating in a rupture, based on the proposal of a new model (extraordinary science) that is not interchangeable with the previous. The new extraordinary legal science, with its settlement in the community of jurists, would start to position itself as a normal science, awaiting its development, questioning, rupture and replacement.

How to reconcile, then, paradigms concurring with each other, as said by Habermas, with the thesis developed by Kuhn, according to which the consolidation of a new paradigm would presuppose the overcoming of the previous one? In other words, if it is possible to have multiple paradigms, how to shape the rupture and establishment of a new science, an indispensable element to the "structure of scientific revolutions?"

between themselves between formal bourgeois law and materialized law in terms of the social state. With the interpretation that I believe in making the right and the policy in terms of the theory of discourse, my intention is to give more contours to a third paradigm of the right, which recapitulates in itself the other of the" (HABERMAS, 2005, p. 263-264).

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The issue was addressed through a dialogue with Charles Taylor. Taylor will defend that there is a fundamental difference that separates the natural sciences from the human ones: the latter would be based on a hermeneutic structure, while the latter would be forged on objective elements, whose existence would not need interpretation, after all, the Japanese sky is the same as the American sky or European, but the same cannot be said of social concepts such as negotiation and equity, as understood by different cultures. (TAYLOR, 1971).

Kuhn will agree that there is a boundary between the human and natural sciences, but will refute the thesis of the need for interpretation or not, invoking that the natural sciences are also structured on a hermeneutical basis. Returning to the example, Kuhn will say that the Greek skies were apprehended in antiquity by different categories from today, forming a completely different relational understanding. For example, the sun and moon were considered as species in the planet category, basing the science of the time on this understanding, which is no longer used today, although the planet category still serves as a taxonomic basis for modern astronomy (KUHN, 2017).

In this sense, the existence of a hermeneutical basis would not be the fundamental difference to separate the natural and human sciences. The author will carry out some conjectures in this regard, a complexification that has no place in the present study, however, in a brief summary, he concludes: i) the human sciences are totally hermeneutic, while the natural ones have interpretative elements; ii) that the paradigm shift in natural sciences through a reinterpretation is often an accident along the way, aiming to conform research with normal science, unlike human science, in which new and deeper interpretations are the objective; iii) the possibility of the existence of a paradigmatic normal science with the evolutionary maturity of the human sciences, something that may have already occurred in the fields of economics and psychology (KUHN, 2017).

There are those who point sociology together with the other hypotheses raised by Kuhn, given that this field of knowledge is matured and sedimented in two methodological streams that are viable and permanent objects of study, the materialist one based on dialectics and the contradiction between opposites, and the Weberian one , based on the ideal typology (MOTTA, 2017).

The permanence of the object of study and of basic methodologies, however, are not the only elements to outline a paradigm in legal science, adding the one about which Kuhn demonstrates conviction: the degree of intensity in the interpretation. Legal science can and should adopt a normal science, moving away from paradigms that are already anachronistic. In

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other words, an outdated paradigm after a legal crisis can no longer be catapulted from its past to the present, under the argument that the current one is also in crisis. The crisis means a new paradigm, not a return to those who are known to have not responded to the legal questions raised.

Thus, the succession of conceptions of State occurred in four paradigms: the first in the Middle Ages and the other three included in modernity, divided into Liberal Law, Social Welfare State and Democratic Law. They succeeded each other through a process of overcoming and subsuming, although some aspects of the previous paradigms are still raised at the factual level, this survival translates into inadequate and anachronistic readings of the Constitution (CARVALHO NETTO, 2004). Habermas' procedural democracy as a disciplinary matrix can be understood in axes, characterizing the "Democratic Rule of Law" as a dominant theory that links society, the legal system, Fundamental Rights and the State (CATTONI, 2012)[9].

2 THE FUNDAMENTAL DUTY NOT TO INFRINGE THE DEMOCRATIC STATE OF LAW

As defended, the paradigm of the Democratic State of Law, in the Habermasian procedural view, translates a contemporary notion of an irreversible matrix civilizing pact under the normative-constitutional, social and political spectrum, both in the internal order and in the international order of the so-called civilized countries and committed to democracy and human rights.

[9] Society: The processes of individuation and socialization are interdependent, in such a way that social conflicts cannot be reduced to inter-individual or collective; The public is wider than the state and the private larger than the market; Civil society formed by groups, movements and organizations that aim to train and mobilize public opinion. Law: Open system, dynamically constituted by rules, principles and policies; Law as a guarantee of Rights; Constitution as a guarantee of equity in public and private autonomy; Constitution as a long-term public learning process; The Constitution cannot be reduced to a mere juridical-political instrument (EL), but neither can it be seen as a material measure of society (ES). The Constitution as a guarantee of the internal relationship between DE and democracy. Fundamental Rights: Internal relationship between public and private autonomy; Indivisibility and interdependence between fundamental rights; Fundamental rights as constituents of democracy; The measure of equality and difference must be defined with the participation of policy recipients in deliberative processes; Redistribution policies are linked to the struggle for recognition; Citizen participating in public deliberative processes. State: State as the institutionalization of channels of participation and public deliberation; Redefining the separation of powers; Centrality of the democratic legislative process; Dialogical or participatory public administration; Social co-responsibility in guaranteeing rights and in the planning, management and execution of public policies; Judiciary and principled application of law. Judicial control of public policies; Due process and guarantee of informed decision; Co-originality between individual and collective process; Redefining State Sovereignty and Popular Sovereignty: International Commitments to Human Rights and Recognition of Reasonable Social and Cultural Pluralism (Rawls) (CATTONI, 2012, p. 249-251)."

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As it is a pact of a certain social body, it is assumed the explicit and implicit adherence of all individuals submitted to it, who, in turn, may enjoy the fundamental rights constitutionally protected by the State, but must also ensure the maintenance of the order that guarantees the rights to which they are entitled. A retrogression towards autocratic regimes is no longer admitted, because due to illegitimate force, there is no true rule of law. Contemporary constitutional democracy is a real advance to be protected in the face of the inseparable link between the Rule of Law and Fundamental Rights, not only by state institutions, but also by the individual-recipient who, in order to enjoy rights, must jointly observe their duties.

Along these lines, alongside fundamental rights and guarantees, there is a less discussed counterpart that gains a central aspect here: fundamental duties. The following concept of fundamental duty is adopted, developed collectively in the research group "State, Constitutional Democracy and Fundamental Rights" of the Graduate Program Stricto Sensu of the Faculty of Law of Vitória:

> "fundamental duty is a juridical-constitutional category, based on solidarity, which imposes proportional behaviors on those submitted to a certain democratic order, subject to sanction or not, with the purpose of promoting fundamental rights." (GONÇALVES; FABRIZ, 2013, p. 93).

By the above definition, the relevance that the democratic order acquires is also verified, since, by itself, it is already an element of the concept's structure itself. Before submission to any duty, there is submission to the democratic order, as regulated in the domestic constitutional law and in accordance with the norms of international law to which Brazil adhered.

The demarcation of democracy as an element of the concept of duty is of paramount importance, as under the liberal paradigm, the materialization of private law was largely authoritarian, with the attribution of duties to protect individual freedoms (HABERMAS, 2011).

Even authoritarianism is one of the reasons why duties are not adequately received in the most recent national Constitutions (NABAIS, 2005), alongside the legacy of liberal constitutions, in which there were prerogatives of non-intervention in the sphere of individual freedom. The past linked to autocratic regimes was a phenomenon that especially affected Brazil with the military dictatorship (VIEIRA and PEDRA, 2013). But in defending the overcoming of the liberal paradigm and a right to a democratic regime that should not be violated, either with acts or speeches, the duty, as a counterpart of that right, emerges as a pillar of legitimacy for the maintenance of the legal system itself. .

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But to what do we owe the assertion that, in addition to the right to enjoy a democratic regime, there is a fundamental and human duty of all individuals to respect the democratic principle? The rule of law is erected under a concession, or, in other words, by abstaining from a portion of what the individual holds dearest to him - which is his freedom -, in favor of expectations: to seek respect and protection of rights others. From a liberal or republican perspective, private or public, the restriction to this freedom must always be linked to a legitimate action. As this process of limiting freedom is not watertight, as it often requires more or a different type of emancipation, the permission must be updated under the participation of every citizen-grantor, so that legitimate social aspirations can be received by the recipient of the part of our freedom, the state.

When advocating the breakup of a democratic regime or its weakening, it is actually breaking out as the reason for the concession originally made, militating in favor of an illegitimate regime, which receives something under justification and with a purpose, but maintains this capital completely dissociated from its foundational legitimacy.

The oppression of an autocratic regime in the current civilizatory stage is not conceivable, as "fundamental rights create a personal space against the exercise of undemocratic power, [because] [...] the democratic regime is not a political option between many others, but the only legitimate solution for the organization of the State" (PEDRA, 2018, p. 221).

By such arguments, it is defended the existence of a duty to limit commission behaviors contrary to the principle that allows each individual to receive the basis of state legitimacy. After all, "rights only become instruments of democracy and the satisfaction of legitimate individual claims when they can count on political unity and duties of solidarity as values that found and develop the civilizing process (LYRA et al., 2019)"[10].

In addition to the internal order, in which CRFB/88 expressly mentions it in the preamble and in art. 1st, democracy is also seen as a fourth-generation fundamental right, exercised in the international legal order, linking its holders and holders of public and political offices (BONAVIDES, 2013). According to this understanding, the necessary demandability of the democratic regime is regulated in the Brazilian Constitutional text as a fundamental duty,

[10] It must be stressed, under this approach, that fraternity imposes on every citizen, regardless of their professional occupation, public or private, especially for those who have great power to influence the political environment, the duty to maintain a peaceful social environment and healthy for the production of legitimate law, with strict deference to constitutional predicates (SIQUEIRA, 2010).

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but it can also be identified in the international order as a "human duty"[11]. In spite of the multiplicity of international treaties and normative acts, the option is to bring as an example of normative expression of the democratic principle the American Conventions on Human Rights (CADH)[12], the Ushuaia Protocols I[13] and II[14] and the OAS Inter-American Democratic Charter (CDIOEA).

The CADH[15], in its first topic, it reaffirms that the basis of its devices' legitimacy is the "framework of democratic institutions". Article 23 provides for the right and opportunity of every citizen to "participate in public affairs". Other rights are directly related to the exercise of democracy, a constant concern throughout the document, as in arts. 15, 16 (item 2) and 22. But it is from article 32 that the duties gain express mention. It is understood that its wording expressly provides for the duty not to violate the democratic order, in its item 2, whose wording asserts that "the rights of each person are limited by the rights of others, by the safety of all and by the fair demands of the good common, in a democratic society". It is seen that the device mentioned in the international standard recognizes the double face of the correlation of rights and duties, stating that the exercise of any right presupposes safeguarding the rights of others, a maxim that is only possible in democratic societies.

Art. 29, left prominently as the last mentioned provision, brings a relevant hermeneutic orientation: it is required that the provisions of the ACHR be interpreted in the sense of prohibiting any setback in the rights arising from the representative democratic form of government.

The Ushuaia Protocols, in turn, are commitments related to the democratic principle assumed between the member states of Mercosur. The first protocol was received in the national legal system and formalized by Decree No. 4,210/2002. The second considers as a condition for participation in Mercosur "the full validity of democratic institutions and respect for human

[11] "Almost all the constituent aspects of the concept adopted for fundamental duties can be automatically transported to the international context, except for the legal-constitutional categorization, for an explicit reason: there is no constitutional norm in the international order. However, this is resolved by the very foundation of international law, which has in its sources the normative basis for interpretations and applications like this. In other words, it is proposed here that international human duty be understood as the international normative category based on solidarity, which imposes proportional behaviors on those submitted to the international democratic order, subject to sanction or not, for the purpose of promoting fundamental rights" (GONÇALVES; PEDRA, 2020, no prelo).

[12] <https://www.cidh.oas.org/basicos/portugues/c.convencao_americana.htm>. Accessed on:10 abril 2020.

[13] http://www.planalto.gov.br/ccivil_03/decreto/2002/D4210.htm>. Accessed on: 10 abril 2020.

[14]http://www.mercosul.gov.br/index.php/40-normativa/tratados-e-protocolos/151-protocolo-de-ushuaia-ii. Accessed on: 10 abril 2020.

[15] http://www.oas.org/OASpage/port/Documents/Democractic_Charter.htm. Accessed on: 10 abril 2020.

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rights and fundamental freedoms", reinforcing the commitment of member states to the defense and protection of the democratic order, bringing along its text mechanism for the preservation of fundamental rights in the face of a democratic rupture or for their preservation in exceptional situations of institutional instability.

Under the same orientation, several countries have express provision in the constitutional text about the necessary observance of the Democratic Rule of Law. For example, in Colombia, the aforementioned form of socio-political organization is enshrined in art. 1st, guiding the manifestation of second and third generation human rights, through the creation of mechanisms of participatory democracy, political and legal control of Power and the consecration of fundamental rights that guide the interpretation and operation of political organizations.

Finally, the CDIOEA has the duty of the member countries to guarantee the full validity of the democratic principle in their institutional order, with the institutional rupture of the democratic order being an obstacle to integration in the organization. The document reaffirms the "participatory character of democracy [...] in the different spheres of public activity [...] based on the effective exercise of representative democracy [...]" underscoring the interdependence of this ideal with the values of justice and equity . Still in his preliminary considerations, it stands out "education is an effective means to foster the awareness of citizens [...] and, in this way, achieve a significant participation in the decision-making process [...] to achieve a solid democratic system"[16].

The international adjustment serves the premises defended here in two senses: the verification that throughout its articles the participatory and deliberative character in formal institutions is reinforced, not being restricted to the merely representative mention, as seen in its preliminary justifications, and it is worth mentioning art. 2, which highlights the need for "permanent, ethical and responsible citizen participation within a framework of legality, in accordance with the respective constitutional order". And the same art. 2, as in art. 6th, attribute not only to the Member States, but to all their citizens, the "duty" of participating in the improvement of institutions and the strengthening of the democratic principle[17].

[16] One cannot fail to consider, furthermore, the measures to ensure compliance with the CDIOEA, as, for example, provided for in arts. 17 and ff., which establish the possibility of consultations and requests to the Secretary General or the Permanent Council of the OAS to guarantee and oversee the legitimate exercise of the democratic institutional political process.

[17]Article 6: The participation of citizens in decisions concerning their own development is a right and a responsibility. It is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering different forms of participation strengthens democracy.

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In South America, art. 95 of the Colombian diploma lists a catalog of fundamental duties, highlighting the duty to respect and support democratically elected authorities, maintaining national integrity, defending and disseminating human rights, participating in the country's political, civic and community life, ensuring their maintenance of peace and collaborate for the proper functioning of the administration of justice (LONDONO JARAMILLO, 2007).

Despite the scenario presented, there are many anti-democratic practices constantly worshiped with acts and speeches by individuals from different social classes. The feeling that implicit or explicit authoritarianism contributes to the weakening of institutions is empirically suggested by several opinion polls (EL PAÍS, 2018; EXAME, 2019; DATA FOLHA, 2018).

The autocrats and dictators themselves recognize the value of the democratic ideal, trying to cover practices that are potentially and effectively attacking democracy in discourses worshiping values in favor of it. Modern democracies, as a rule, are no longer weakened by a sudden seizure of constituted powers, but on the contrary, they are progressively and inadvertently subverted, most often under the tutelage of the democratic rules themselves or by weakening them (LEVITSKY; ZIBLATT, 2018).

For these reasons, and especially because of the silent action of autocratic nuances, which use fundamental rights and guarantees, subvert the functioning of institutions and use the rules of the game to reduce the spectrum of deliberative democracy, it is urgent to expose and characterize undemocratic conduct as potentially or effectively violators of a fundamental (and human) duty.

Given the temporal impossibility of developing a thorough work and classifying the types of acts that violate the duty to respect the democratic principle and to identify possible responsibilities and sanctions, without however developing the theme in the light of a pedagogical approach in forthcoming study, to the qualitative examination of a concrete case, substantiated in a judicial precedent, which will allow to glimpse some points of the theoretical advances reached in the previous chapters. The focus will be to verify if the judicial reasoning is consistent with the defended Democratic State of Law under the proceduralist Habermasian bias, verifying whether the paradigm supposedly in force limits the judicial interpretation and to what extent resuscitating residual paradigms appears to be nonsense, thus delimiting, the scope of duty in kind presented in this chapter.

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3 THE EXTINCTION OF THE NATIONAL POLICY ON SOCIAL PARTICIPATION AND ADIN 6.121/2019

Decree 8,243/2014 instituted the National Social Participation Policy and System, whose primary objective was to strengthen the dialogue with democratic instances, enabling a more effective participation of individuals in the elaboration and implementation of public policies (art. 1). This general objective is branched among several specific objectives provided for in art. 4th, which, in short, externalize a programmatic action aimed at creating a channel of communication between opinion formation in unofficial and official media, transforming the dialogue between the public and private into a true government policy (BRASIL, 2014) .

The aforementioned norm also presents, among its general guidelines, the "recognition of social participation as a citizen's right and expression of their autonomy", the "appreciation of education for active citizenship", the "autonomy, free functioning and independence of the organizations of the civil society" and "expansion of social control mechanisms", in art. 3, items I, V, VI and VII (BRASIL, 2014).

As can be seen, an apparent suitability of its programmatic part with the Habermasian theory emerges from the analyzed norm, as the existence of councils and other similar bodies would be a viable instrument as an intermediary bridge between the formation of social opinion, its consideration and externalization in the forums public, involving the recipients of the norm in discussions that directly affect it (HABERMAS, 2011, p. 161)

Furthermore, participation in the formation and execution of policies can be conceived as a principle, a right and, above all, a duty, which goes far beyond the mere exercise of suffrage (PEDRA, 2010). Councils, in this sense, are "important instruments of popular participation and social control, [through which] citizens can relate, in a dialogical way, in the search for an affirmative consensus for democracy". (SOUZA; CARDOSO, 2018). For this duty to be exercised, pre-conditions related to the education and training of the individual are necessary, which are hardly provided in late-modern countries such as Brazil, removing the citizen from public life.

It so happens that, regardless of the effectiveness of the functioning of the aforementioned councils, the aforementioned rule was revoked by Decree 9,759/2019, which indistinctly extinguished hundreds of councils and similar bodies in a generic and non-specific

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manner. The justification published in the explanatory memorandum[18] uses three arguments that support the repealing norm, one of an administrative-financial nature (expenses with meetings and public agents), one of a formal nature (excessive linkage of technical norms) and one with statements that we can call ideological (existence of "groups of pressure" internal and external to the administration)[19].

The justification of the Chief of Staff did not show what expenses were being made with the functioning of the Councils, nor did it exemplified which infra-legal acts were being edited technically or with overlapping competences. In the last point, the representative of the elected representative understands democracy only through the formal bias of the majority principle, according to which the government project of a representative does not support popular participation with divergent opinions. In this sense, the limit of the councils would be to debate policies that have already been imposed, subverting the logic of the collegiate formation of social representation and its consideration by the manager in the elaboration and execution of public policies.

The act of revocation is also not consistent with the direction provided for by the constituent, which in various constitutional provisions favors social participation, although not necessarily through the formation of intermediate bodies, including: user participation in public administration (art. 37, § 3º); community participation in the Unified Health System (art. 198, III, and art.77); social security management (art. 194, VII); popular participation in social assistance (art. 204, II); and the democratic management of education (Article 206, VI).

The participation of society in the formulation and implementation of the aforementioned public policies is not to be confused with the social inspection of government acts, since this, which is more numerous under treatment by the constituent, is a subjective public right arising from citizenship and freedom, while the former is a true expression of political power legitimized by effective and participatory popular sovereignty, ensured by the formatting of a community standardized by the predicates of the Democratic State of Law (BRITTO, 1992, p. 119-121).

[18] Available in: <http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Exm/Exm-Dec-9759-19.pdf>. Accessed on: 20 abril 2020.

[19] According to the Chief of Staff, external and internal pressure groups "use the collegiate [...] to try to settle claims that are not in line with the democratically elected authorities". It goes on to stress that the participation program "aims to encourage the creation [...] of collegiate bodies made up of political groups [...] to counteract the power of elected authorities", which for the author of the justification would be "an aberration", calling the Decree that created the program "Bolivarian Decree" (BRASIL, 2019).

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The repealing normative act was the subject of direct action of unconstitutionality No. 6.121/2019. The rapporteur of the concentrated control action, Minister Marco Aurélio, when analyzing the demand in the preliminary injunction, emphasized the incompatibility of the interpretation under the liberal paradigm with the extinction of participatory politics, as "any supposedly democratic process must offer conditions for everyone to feel equally qualified to participate in the decision-making process, [...] a condition for the very existence of democracy" (BRASIL, 2019, p. 9).

The foregoing demonstrates the judge's caution in hitting the concrete case within the disciplinary matrix of the State worked by him, as a "conceptual and empirical condition of democracy", in the face of a complex and plural society, as effective participation is an instrument of collective rationality, opening, "in the public debate, an identical opportunity for all citizens to influence and persuade in an open, free and egalitarian discursive context" (BRASIL, 2019, p.10).

The reasoning presented by Minister Marco Aurélio, as seen above, explained that under the new disciplinary matrix of the Constitution, it would be a step backwards to generically extinguish all the councils that honor and include various social actors in the public space for discussion, with demands coming from the private space. Participatory democracy is not limited to ordinary direct participation instruments, such as the plebiscite and referendum, but the "effective influence of popular action in the formulation of political decisions and in the management of public affairs, providing them with the necessary democratic legitimacy" (BRASIL, 2019, p. 11).

The speech that substantiated the vote was notable for facing, with a rational justification, the impossibility of, under the pretext of saving resources, the executive move away from the full and participative exercise of society in the management of public policies that directly affect it, using it as a matrix discipline the democratic rule of law. However, by granting the claim only partially, its justification in the expository part considered unconstitutional only the formal prism, that is, the impossibility of a lower normative act to revoke a higher one, given that it only avoided the extinction of councils with legal provision.

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The issue was technically observed by Minister Edson Fachin, who corroborated the formal point of view, but also exposed, in a vowel vote, the compelling need to verify the compatibility of the normative act according to the materiality of the constitutional text[20]. According to the partial dissent vote, the material issue underlying the concentrated control action brought to light the breadth of the constitutional right to influence popular sovereignty in government bodies, substantiating the participatory principle (BRASIL, 2019, p. 43). Thus, indiscriminate extinction would imply a veritable setback of an entrenched clause, which would be incompatible with the constitutional hermeneutics practiced in the Court.

Following Minister Edson Fachin, Ministers Luís Roberto Barroso, Rosa Weber and Cármen Lúcia, reinforced the arguments in favor of participatory democracy as an assumption of the Democratic Rule of Law and the impossibility, through a vague and unspecific Decree, to carry out a step backwards in the which concerns the realization of the fundamental guarantee to political participation.

In the end, as a precautionary measure, despite the arguments developed in favor of material unconstitutionality, the thesis of the Minister-Rapporteur won, despite the substance of the arguments in favor of participatory democracy, suspended the extinction only of bodies with legal provision.

By adopting a precedent as an object of analysis, it is not intended to establish the social vision of the judges exposed in the decision as a theoretical construction, but, on the contrary, to verify how the jurisdictional act fits into the Habermasian disciplinary matrix, this rather a theoretical construction on the relationship between society, law and political system. The same methodological path was adopted by the German author to exemplify the shift from the liberal paradigm to that of the welfare state in the legal interpretation in cases of liability for damages in commercial areas (HABERMAS, 2011).

Regarding this judgment, we must return to the theoretical framework to carry out some reflections. Habermas develops a model of deliberative democracy proceduralized in two ways that communicate, through an institutionalized decision-making process – parliament, public administration, judiciary and law production – and the other through communicative action in the public sphere. Situated between this influx, coming from informal forums to institutionalized forums, in Brazil, are the Councils, which in some cases are mere bureaucratic

[20] The second question that I believe must also be faced (...) is this: to understand whether or not there is material unconstitutionality in the broad extinction of bodies that substantiate the direct participation of collegiate bodies in the Administration's deliberations (...). (BRASIL, 2019, p.34)

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structures, but in others they become effective forums for democratic participation (ANDREWS, 2011)[21].

The judgment specifically covers two distinct groups, but all the ministers mentioned here presented arguments that go beyond merely representative democracy, praising and defending substantial, deliberative and participatory aspects in the basis of their votes, in line with the theoretical framework of the Democratic State matrix right.

On the other hand, the first group of judges reached the conclusion that the decree was partially unconstitutional due to a formal defect, that is, the extinction by decree of councils with legal provision. The second group, headed by Minister Edson Fachin, in accordance with the chosen theoretical framework, also voted for knowledge of the material unconstitutionality and, therefore, recognized the nullity of the entire normative act.

It is important to clarify that the tendencies of the judges more or less related to the classical liberal state or the "welfare state", paradigms that in their purity have been surpassed, do not mean that the court decision deviated from the procedural paradigm. When such trends are adopted sparingly, honoring participation and observing legitimate procedures, they should be understood as disputes "of citizens in the public social space, through a legitimate conflict resolution process that is the judicialization of politics" (MOTA, 2012 , p. 308).

However, the analyzed decision places discourse at the center of his convictions through the circularity of ideas and opinions. This is because, by not fully suspending the normative act that aimed at the generic extinction of the councils - for outstandingly illegitimate reasons[22]-, the material conditions and access channels for broad and effective social participation in the formatting of public policies were reduced.

Thus, it is possible to affirm that the majority of Supreme Court justices adhered to the notion of participatory democracy inherent to the Democratic State of Law, when basing their votes, but did not position themselves in the dispositive part of the judgment in a manner consistent with the blatantly disciplinary matrix chosen in her votes, which demonstrates the survival and anachronistic validity of previous matrices coexisting in the structure of contemporary legal-state legal science, demonstrating the lack of maturity that Kuhn highlighted.

[21] A deep empirical analysis is carried out by the author regarding the social participation and effectiveness of the functioning of the Councils of the Municipal Education Network of São Paulo in her master's dissertation (ANDREWS, 1999).
[22]It is worth remembering, at this point, that one of the foundations used by the Minister of Civil Affairs was, in clearer words, the extirpation of members with contrary opinions.

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4 CONCLUSION

It is defended, in the exposed context and transposing the Kuhnian theory, that the Democratic State of Law consists, in fact, in a new disciplinary matrix of the legal sciences, a consensus on which all Law operators (legal scientific community) and society are settlers and must think about their public and private relations, under penalty of answering questions that no longer interest Western society.

The basis of this consensus is located, as stated, in basic axes, within which popular participation, effective and guaranteed by the State, must seek ways to be increased and implemented by the current constitutional procedure, a prerequisite to materialize the exercise of the fundamental rights provided for and legitimated in the Constitutions of each society.

The democratic ideal, while far from being perfectly adequate, does not exclude its status as an objective to be pursued. The horizon of ideality allows us to continue advancing to expand democratic limits, using increasingly new and improved means that bring society to the political agenda.

The issue is highlighted in this study, given that the qualitative and divisive force of this disciplinary matrix is essential to deal with the Constitution, the State and Fundamental Rights, and to conceive a minimum content of civilization and scientific advancement, under penalty of discussing models outdated and that have proven not to answer the current questions.

Acting in this way, there is an effort for legal science to mature and evolve as predicated by Kuhn, following the path reached by natural sciences that, in the past, already suffered from the same subordinate view from the point of view of scientificity. In summary: it is necessary to move away from disciplinary matrices that remain in the imagination of scientists, zombified in the science of Law, piling up on the path of truly normal science for most of the scientific community in Western countries.

The Ministers, in the analyzed precedent, based on theoretical convictions of a disciplinary matrix, considered that the classical liberal aspect of the majority principle is not consistent with the current stage of political-legal science, strengthening the conviction that there is, in fact, a matrix whose hermeneutics must be operated in the current civilizing stage of the legal community and in Western political instances, called the Democratic State of Law.

It should be added that the Habermasian view is not the only one that answers questions related to the rule of law, nor the most accepted, being the target of sophisticated and well-founded criticisms. But it operates on a broadly accepted disciplinary matrix that still suffers

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from the coexistence of others that should not permeate the imagination of legal practitioners, but as an outdated and introductory example to the basis of understanding more adequate to the evolution of science. The criticisms of the theoretical basis defended here were not faced, as an undertaking like this does not answer the problem-question of this article.

It is defended, therefore, that the Democratic Rule of Law is the disciplinary matrix of Constitutional Legal Science, with special importance for the evolution of contemporary constitutionalism, in which participation should be the strongest basis of this matrix, as the procedural and substantial exercise of democracy presupposes and improves the notion of state.

Conducts understood as an attempt to violate the public debate, oppressing and restricting its material conditions instead of improving it, must be understood as a nonsense of the matrix and an anachronistic attempt to impose strategic worldviews not contained in contemporary constitutional rights law , which must advance and renew itself in light of the plurality and complexity of a globalized, technically demanding and digitally interconnected world.

It defends, moreover, the existence of a constitutional duty not to attack the Democratic State of Law with acts and speeches. Democracy, as a right enshrined in the modern civilizing pact, as well as a presupposition for the exercise of fundamental rights, is also a fundamental duty of the individual, based on fraternity, solidarity and cooperation. The broad and concrete participation in the realization of social rights and in the formation and implementation of public policies, therefore, should not be violated or vilified by measures aimed at reducing the advances achieved.

It is concluded that the presented matrix contains a fundamental duty of not attacking with acts and speeches against the democratic principle and, under the guidance of the theoretical construction developed in this study, a normative act that indiscriminately extinguishes Public Councils and removes social participation of matters that directly affect all citizens, disregards the aforementioned duty.

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