

ARTICLE

Social management based on the language of law mediating the lifeworld and the system

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Abstract

This article aims to understand how the language of law mediates the relations between the lifeworld and system, theoretically supporting social management by considering society as the leading actor of public actions. Social management is considered a manifestation of a non-state public interest in the complex relationships between state, market and society, whose language of law socializes and integrates, make organizations and institutions interact and affects individuals' public and private autonomy. To solve problems related to the tension between the lifeworld and the systems, Habermas detailed his political theory along with the law, linking republicanism and liberalism, public and private autonomy, facticity, and validity. The transformations that understanding law undergo in Habermas' work: *Theory of communicative action* and *Law and democracy* stand out. In the tensions that threaten solidarity and understanding and result in the colonization in the lifeworld by functional subsystems, the law moves from the first condition of juridicalization of social relations to the mediating position between the life world and system of converting communicative power into administrative power. Social management is an expression of the tension and mediation between the lifeworld and the system is also expression. of the tension between facticity and validity of the law, between public autonomy, and between liberalism and republicanism.

Keywords: Social management. Lifeworld. System. Public autonomy. Private autonomy. Law.

Gestão social sob o crivo da linguagem do direito na mediação entre mundo da vida e sistema

Resumo

O objetivo deste trabalho é compreender como a linguagem do direito mediatiza as relações entre mundo-da-vida e sistema, fundamentando teoricamente a gestão social ao colocar a sociedade como protagonista das ações públicas. Consideramos, nesse aspecto, a gestão social como manifestação de um interesse público não-estatal no âmbito das relações complexas entre Estado, Mercado e Sociedade, cuja linguagem do direito socializa e integra, faz interagir organizações, instituições e afeta a autonomia pública e privada dos indivíduos. Para solucionar os problemas relativos à tensão entre mundo-da-vida e sistema, Habermas dedicou-se a detalhar sua teoria política juntamente com o direito, articulando republicanismo e liberalismo, autonomia pública e privada, facticidade e validade. O emprego do conceito de gestão social, em sua vertente habermasiana, suscita questões relativas ao direito, as quais receberam pouca atenção dos teóricos, apesar da centralidade que assumiram nas obras do autor. Destacam-se as transformações que a compreensão do direito sofre nas seguintes obras de Habermas: *Teoria do agir comunicativo* e *Direito e democracia*. As tensões que ameaçam a solidariedade e o entendimento e que resultam na colonização do mundo-da-vida pelos subsistemas funcionais, o direito transita da condição primeira de juridicalização das relações sociais para a posição mediadora entre o mundo-da-vida e o sistema, de conversão do poder comunicativo em poder administrativo. A gestão social como expressão da tensão e mediação entre mundo-da-vida e sistema é também expressão da tensão entre facticidade e validade do direito, entre autonomia pública e autonomia privada, entre liberalismo e republicanismo.

Palavras-chave: Gestão social. Mundo-da-vida. Sistema. Autonomia pública. Autonomia privada. Direito.

La gestión social bajo escrutinio del lenguaje del derecho en la mediación entre el mundo da vida y el sistema

Resumen

El objetivo de este trabajo es comprender como el lenguaje del derecho media las relaciones entre el mundo da vida y el sistema, fundamentando teóricamente la gestión social al situar a la sociedad como protagonista de las acciones públicas. Consideramos la gestión social como manifestación de un interés público no estatal en el contexto de las complejas relaciones entre Estado, Mercado y Sociedad, cuyo lenguaje del derecho socializa e integra, hace interactuar a las organizaciones instituciones y afecta la autonomía pública y privada de los individuos. Para resolver problemas relacionados con la tensión entre el mundo de la vida y el sistema, Habermas dedico a detallar su teoría política junto con el derecho, articulando republicanismo y liberalismo, autonomía pública y privada, facticidad y validez. Se destacan las transformaciones que sufre la comprensión del derecho en las siguientes obras de Habermas: *Teoría de la acción comunicativa* y *Derecho y democracia*. En las tensiones que amenazan la solidaridad y o entendimiento y que resultan en la colonización mundo de la vida por subsistemas funcionales, el derecho transita de la condición primera de juridización de las relaciones sociales a la posición mediadora ente el mundo da vida y el sistema, de la conversión del poder comunicativo em poder administrativo. La gestión social como expresión de la tensión entre facticidad y validez del derecho, entre autonomía pública y autonomía privada, entre liberalismo y republicanismo.

Palabras clave: Gestión social. Mundo de la vida. Sistema. Autonomía pública. Autonomía privada. Derecho.

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INTRODUCTION

The question of how the system and the life world interact without structurally threatening its own instrumental logic, is so significant for the material reproduction of society, that it led Habermas to construct his political theory together with the theory of law, which is the theme of *Between facts and norms: contributions to a discourse theory of law and democracy*. According to Nobre (2008), Habermas does not understand politics as something exclusively instrumental. There are two moments whose communicative elements emerge in the political process: one being the parliamentary process and the other peripheral networks of the public policy sphere which constitute the political system. These peripheral networks harbor the tensions between the life world and the system, which are political scenarios for the manifestation of social management. From this political conception emerges the locks metaphor to describe the flows of communication towards the center and the potential of the law as a mechanism of institutionalization in translating communicative power into administrative power. Initiated in this process is a transit which makes emancipatory mediation possible, that comes from the nature of social management and is understood as a managerial dialogue designed to construct the common good and social emancipation.

This perspective converges with the social management approach used in the study *The locus of social management within the context of the interrelationships and tensions between the life world and the system* by Alcântara and Pereira (2017), which situates the *locus*, actions and practice of social management within a zone of tensions between the life world and the system, substituting a dichotomic approach with a relational approach from which emerge fluid borders, dialectic relationships, complementarities, exchanges, and conflicts of logic.

This work opens a research agenda concerning Habermas's political theory in its composition with the theory of law in the analysis of social management: "The *locus* of social management has to do with the deliberative processes of a public nature which circulate within the context of interrelationships and tensions between the life world and the system, which can be intermediated by the language of law" (Alcântara & Pereira, 2017, p. 427). Habermas's concept of society involves complex relationships between the life world and the system. These relationships are permeated by interactions and tensions which characterize the specificity of each society in a given time horizon based on communicative action. The life world and the system influence each other in a movement of dynamic reciprocity.

The life world is made up of three components: Culture, Society and Personality (Habermas, 2012). Culture has to do with the body of knowledge which people use to express their interpretations of a given theme-problem within the context of the communicative process which they are seeking to understand. Society is related to the legitimate orders which assure the solidarity of social groups and organizations that people belong to. Personality refers to the formation of people's identities and includes their abilities to act and speak in their search for understanding. Each participant in communicative action, within the context of the interactions and tensions between the life world and the system, has a "moving horizon" on which each individual bases his or her interpretations, because Habermas (2012b) understands the life world in an articulated and dynamic manner. Therefore, the life world, with its stock of knowledge and experience, is used as a linguistic repository for interpretations which are condensed in cultural traditions.

The link that establishes itself between the public interest and social management draws the law and politics to the center of the analysis. According to V. A. R. Oliveira (2012), the concept that distinguishes public management from social management is the public interest, which can be classified as the state public and the non-state public. Public management can unite the state and non-state forms, but social management is exclusively characterized by the interaction produced in non-state terms. We can, however, consider public management and social management as complements for each other. Based on its constitution as the public interest, which affects public and private freedoms, social management establishes its nexus with the law, which can also be explored in terms of its interfaces with managerial practices in processes in which communicative power is transformed into administrative power (Alcântara & Pereira, 2017).

The interpretation of the public interest assumes two perspectives: the interests of the state and those of civil society based on the representation of the state. However, the state always has polarized the public interest and acted as an arbiter in its identification of social and political relationships. For this reason, social management is not the titular type of the public interest, and this titular role is left for the state (V. A. R. Oliveira, 2012). From there we proceed to the law and institutionalization.

In Cançado, Pereira, and Tenório (2015), the nature of the public interest which characterizes social management is grounded in Tocqueville's liberal conception of *enlightened self-interest*. Tocqueville (1987) wrote *Democracy in America* between 1835 and 1840, in which he analyzes the singular type of liberalism which installed itself in the United States based on the Puritan cultural tradition and the republicanism of religion-inspired English communities. The liberal doctrine rests on the concern of limiting the state to preserve individual liberties. Cançado et al. (2015) understand Tocqueville's *enlightened self-interest* as aggregating individual well-being and collective well-being, in which individuals by defending collective interests are also satisfying their private interests, preserving the idea that "virtue is utility". Republican virtue, based on sacrifice for the greater good, leads to the doctrine that it is to the individual advantage of citizens to work for the greater good, that their private interests are doing good, and the clarification of this interest is the point of convergence between the public and the private. Thus, a strong link is established between *enlightened self-interest* and sociability.

According to Vianna and Carvalho (2000), modern American society, even though it is characterized by a strong process of individualization and the disaggregation of traditional identities which weakens the republican *ethos*, continues to be a society in which current practices of social cooperation persist, based on a private sphere in which initiatives of public scope prevail.

Enlightened self-interest is reportedly the root of the modern capitalist dynamic and the transformations that have occurred in the demographic, occupational, and workplace structures which have found ways of producing sociability itself for which new rights, be they environmental, female, or ethnic play a fundamental role, reinforcing the preservation and expansion of civil, political, social and republican rights (the right to the public economic patrimony and its historical and cultural archives).

The conception of social management is characterized by a counterpoint of dominant administrative theories, sustained by instrumental reason and capitalist approaches (Taylor, Ford, bureaucratic, and managerial).

Originating from the transformations that democratized Brazil during the last few decades of the twentieth century, social management studies have sought to construct an epistemological articulation around its paradigmatic status and its delineation. Peres and Pereira (2014) identify four theoretical approaches to social management: Habermasian, based on the concept of communicative action, the public sphere, and deliberative democracy (Tenório, 1998, 2008a, 2008b); social development and interorganizational management, based on the studies of Tânia Fisher (2002); the societal public administration approach, based on Paes-de-Paula (2005a), which emphasizes social movements and the third sector and its role in state management as well as fundamental aspects of administrative boards, participatory budgets, public hearings, and forums, among other things; and the PUC approach based on studies conducted at the Pontifical Catholic University of São Paulo, such as the articles organized by Rico and Raichelis (1999).

There are few social management studies by Habermas which are dedicated to the interrelationships between law and legal autonomy, and these have not been analyzed in proper detail, despite their relevance to the work *Between facts and norms: contributions to a discourse theory of law and democracy* for the renewal of the ambivalent concepts of *Theory of communicative action*, including his conception of the role of law (Alcântara, 2018; Alcântara & Pereira, 2017; L. C. Oliveira, 2020). Habermas describes the decomposition of the traditional *ethos* which gave birth to modernity as a process which opens tensions between public and private autonomy, between facticity and validity, moved by the self-promoting coercion of the system or patterns of legitimization and recognition (Durão, 2015). This process has historically resulted in two political perspectives: one liberal, whose democracy is characterized by a compromise of interests and the defense of fundamental rights in the face of a limited state; and the other republican, whose democracy occurs through the construction of popular sovereignty, based culturally on political-ethical self-understanding. The purpose of the theory of deliberative democracy is to reconcile both perspectives, assimilating aspects from both sides. The tensions which threaten socialization and enlightened understanding result in functional subsystems colonizing the life world, because in the Habermasian approach of *Theory of communicative action*, the conception of rights varies from the theoretical condition of the legalization of social relationships to a mediating position which he establishes in *Between facts and norms: contributions to a discourse theory of law and democracy*. In this new understanding of *Between facts and norms: contributions to a discourse theory of law and democracy*, the language of law surges as an intermediary between the world of life and functional systems, representing an articulating function between them (Habermas, 2003b).

The premise defended in this work refers to the potential institutionalization of the demands and understandings in which social management relates to the political system, with its projections in the peripheral areas of the locks complex, with the maintenance of flows of communication between the life world and the system towards the political center with perspectives that could be emancipatory and be part of a group of social motors which act in the conversion of communicative power into administrative power, maintaining the cohesion of the relationship between the system and the life world through mediatic bases. In the political context, the locks model explains the flows of communication and emancipatory potential which open social management with the understanding of deliberative democracy presenting itself as an attempt to deal with the tensions between the facticity and validity of law. Therefore, considering that social management is a manifestation of non-state public interest within the context of the complex relationships among the state, the market and society, and that the language of law socializes and integrates society's individuals, makes organizations and institutions interact, and affects the public and private autonomy of individuals, the objective of this work is to understand how this language of law mediates the relationships between the life world and the system, providing a theoretical foundation for social management by placing society as a protagonist in public actions.

This work is organized as follows: in addition to this introduction, we will present the theoretical foundations of social management and a discussion of its current *locus* and its relationship with the law and politics according to Habermas, concluding with our final considerations.

THE HABERMASIAN PERSPECTIVE OF SOCIAL MANAGEMENT

This study seeks a theoretical understanding of social management based on the thinking of Jürgen Habermas, the origin of which could be associated with the works of Tenório *A conceptual perspective of social management* of 1998 and *(Re)visiting the concept of social management* of 2008. Under the influence of the thinking of Guerreiro Ramos, Habermas, and the other members of the Frankfurt School such as Marcuse, Horkheimer, and Adorno, Tenório (2008a) constructs an emancipatory approach in which social management emerges as a dialogic management in which decision-making authority is shared among the participants of the actions, which can be productive or formulate public policies (Cançado, 2011).

Tenório (2013) considers social management to be the free use of reason through dialogic means and the search for the common good, which pays attention to republican concerns, deliberative citizenship, and social control. Deliberative citizenship reappears in the approach adopted by Cançado et al. (2015), in which emerge the categories of Tocqueville's *enlightened self-interest*, Habermas's public sphere, and the emancipation of the Frankfurt School's Marcuse, Horkheimer and Adorno.

In *The theoretical fundamentals of social management*, Cançado (2011) performs a theoretical approximation which links Tocqueville's liberal thinking with Habermas's thinking. Habermas articulates republican and liberal thinking in a deliberative conception of the public interest and the assimilation of Tocqueville's proposal requires a complex integration with his republican perspective. By *enlightened self-interest* Cançado et al. (2015) understand the Tocqueville category which aggregates individual and collective well-being, according to which individuals by defending collective interests are satisfying their private interests, preserving the idea that "virtue is useful" and that it would be to the advantage of individuals to work for the good of all, and they are pursuing their private interests by doing good. This thus establishes a strong link between *enlightened self-interest* and social solidarity.

Cançado's approach (2011) defines the public interest, a characteristic of social management, as Tocqueville's *enlightened self-interest*. In Cançado et al. (2015), we find a more detailed theoretical proposal of the approximation between social management and Habermasian theory. The delineation of the scientific field and the construction of the theoretical fundamentals of social management have come to be defined based on the following Weberian ideas: *enlightened self-interest*, the public sphere, deliberative democracy, intersubjectivity, rationality, dialogicity, solidarity, sustainability, and emancipation. This approach was further developed by Cançado (2013), a new revision by Cançado et al. (2015), and a further refinement by Pereira and Cançado (2018), summarizing the *enlightened self-interest*, public sphere, and emancipation categories. In the definition of the non-state public interest, which is led by society, we find the conceptual integration of deliberative citizenship, *enlightened self-interest*, the public sphere, and emancipation, even though Habermas's analysis of law is missing as is the sociological perspective which evaluates the tense relationship between the life world and the system and its impact on social management.

In Cançado et al.'s approach (2015), we can highlight the conceptions of deliberative democracy, emancipation, the public sphere, Marxist thinking, and the critical thinking of the Frankfurt School upon which the emancipation category is based. The fundamentals of the Frankfurt School's thinking are related to the diagnoses, possible conditions, and obstacles to emancipation. They make an effort to integrate emancipatory theory and praxis, distancing themselves from a reading exclusively based on work as Marxist theory is, when we consider questions of politics and law. The renewed purpose of critical models is sustained by the thinking of emancipatory movements based on plurality and political self-determination. The authors point out the nature of autonomous thinking which underlies emancipation under Adorno's negative dialectic, in which there is no synthesis when both a thesis and anti-thesis are present.

Another concept which emerges as one of the fundamental categories of the model proposed by Cançado et al. (2015) is the public sphere. Habermas's concept appeared first in *The structural transformation of the public sphere* (Habermas, 2014) and then was revised in *Between facts and norms: contributions to a discourse theory of law and democracy* (Habermas, 2003b). According to Habermas, the social modeling which results in the public sphere is characterized by a rigid separation between the public and private, and it is private people reunited in public who mediate between the demands of society and the state.

Cançado et al. (2015) state that to construct social management a new public sphere has to be sought which seeks to approximate the portion of the population that is far removed from politics: "A space where private people meet again in a public space (but with different intentions) to deliberate on their needs and the future" (Cançado et al., 2015, p. 145). They believe social management which develops in a public sphere is distinct from the bourgeoisie and that it helps the emancipation of the individual.

In *Between facts and norms: contributions to a discourse theory of law and democracy*, Habermas (2003b) reconstitutes the concept of the public sphere, conceiving of it as an "elementary social phenomenon" like actions, actors, groups, or collectivity. The public sphere also "cannot be understood as an institution nor an organization, because it does not constitute a normative structure which is capable of differentiating between skills and roles and does not regulate the way one belongs to an organization, etc." (Habermas, 2003a, p. 92). The public sphere cannot even be considered a system whose limits can be defined:

The public sphere can be described as a **network** which is appropriate for communicating content, taking positions, and having **opinions**, in it flows of communication are filtered and summarized to the point at which they are condensed into **public** opinions on specific subjects. In the same way that the life world is taken globally, the public sphere is reproduced through communicative action, implying just the domain of natural language: it is in harmony with the **general understandability** of daily communicative practices (Habermas, 2003b, p. 92, author's bold).

According to Cançado et al. (2015), the concept of the public sphere is intertwined with the categories of deliberative democracies, dialogicity, intersubjectivity, and rationality. The public sphere transforms itself through the *enlightened self-interest* developed by actors in the presence of a rationality which helps enlightenment and deliberative democracy. In order for the reconfiguration of the public sphere to occur, it is necessary to have the emergence of an enlightenment which is compatible with the liberal *enlightened self-interest* and deliberative democracy categories. According to Nobre (2008), Habermas conceives of deliberative democracy as an expression of the tensions between the facticity and validity of the law in its mediating form as we will discuss below in which liberalism and republicanism articulate themselves in the procedural model.

A LOCUS FOR SOCIAL MANAGEMENT

In Cançado et al.'s approach (2015), there is no analysis of the Habermasian conception which articulates a political theory, a theory of law, and a sociological approach which deals with the tensions between the life world and the system and its impact on social management. The sociological approach is developed in the study by Alcântara and Pereira (2017), entitled *The locus of social management within the context of the interrelationships and tensions between the life world and the system*. According to this perspective, the life world and system conceptual categories constitute "a key to the sociological and epistemological reading of the *locus* of social management's actions and practices" (Alcântara & Pereira, 2017, p. 412). This approach enables

the examination of “the tensions between the state, the market, and civil society, between communicative and strategic actions, public and private, coercion and free space to speak, conflict and censorship, domination and emancipation, and technical, practical and emancipatory interests.” This approach is proposed to overcome the dichotomies constructed based on the understanding of intersubjective processes which link the life world and the system through tensions which translate into “possibilities of complementarity, juxtapositions, dialectic moments, fluid borders, and exchanges and conflicts of logic” (Alcântara & Pereira, 2017, p. 412).

Like many subjects, given the youth of the social management field, the relationships between politics and law within the context of these tensions need to be examined further to move beyond the incipient stage and overcome theoretical gaps in studies such as Cançado et al. (2015), Alcântara and Pereira (2017), Alcântara (2018) and L. C. Oliveira (2020).

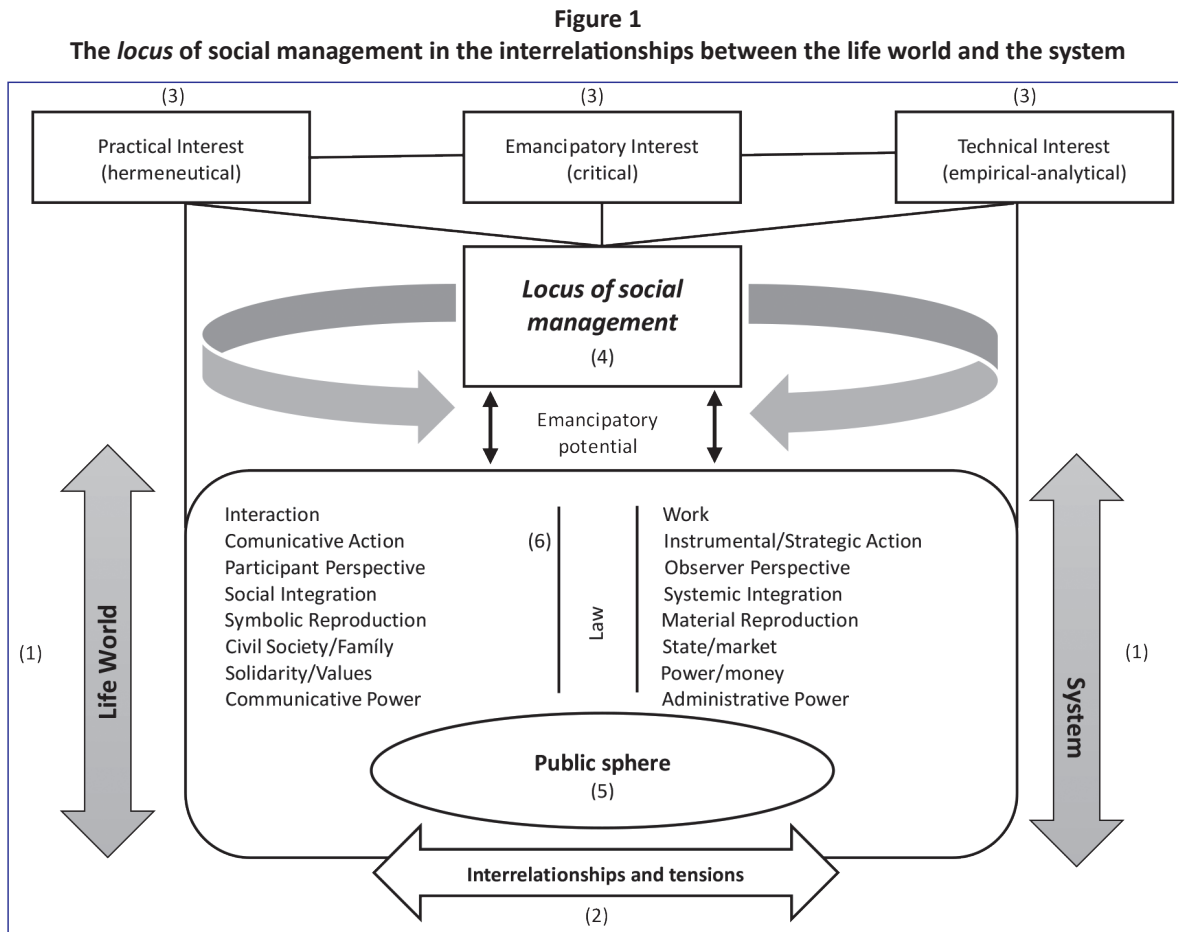
The absence of a theoretical and conceptual consensus also characterizes the definition of the *locus* of social management among researchers. According to França (2003), civil society occupies this post, to Araújo and Boullosa (2013) it is the social sphere; to Tenório (2008a, 2013) in his initial works, it is social movements and the third sector; to Cançado et al. (2015) it is a space shared by the state, the market, and civil society. Alcântara and Pereira argue that the *locus* of social management is situated in the interrelationships between the life world and the system.

In *Theory of communicative action*, Habermas (2012b) establishes, according to tensions between social and systemic integration, a dual understanding of societies in modernity: the life world and the system. The life world is antecedent and is where the system is anchored, and the life world is colonized by the system due to market efficiency and the power of the bureaucracy. The material reproduction occurs in the system (teleological rational action) and the symbolic reproduction occurs in the life world (communicative action).

Habermas (2012a) subdivides the conception of the life world into structural components: **culture** (cultural traditions); **society** (institutional orders) and **personality** (identities derived from the socialization process). The system considers society from the point of view of its self-regulating mechanisms such as the market (money) and the state (administrative power). These two subsystems are characterized by the predominance of strategic or rational actions oriented by success. Thus, societies are integrated systematically and symbolically in a simultaneous manner. Habermas emphasizes the understanding of rationality which is subdivided into the life world and the system, assuming distinct characteristics. Only communicative rationality, unlike instrumental rationality which informs the system's actions, can reflect a self-centered understanding of modernity which assures cultural reproduction, social integration, and socialization using value parameters, abstractions of truth, sincerity, normative corrections, and intelligibility.

The life world and the system are not antagonistic. On the contrary, they complement each other in the symbolic and material production of society, and the fundamental point is that their rationalities in each of these instances do not pass their limits and result in a phenomenon characteristic of contemporary capitalism. This consists of the system's colonization of the life world with the penetration of economic and administrative rationality in cultural processes ranging from socialization to the formation of personality (Habermas, 2012b).

Alcântara and Pereira (2017, p. 422) present an analytical proposal in which the understanding of the *locus* of social management is also a conceptual proposition and an empirical guideline. This work proposes thinking of social management based on the interrelationships and tensions that show communicative and strategic actions, symbolic and material reproduction, and communicative and administrative power from the perspective of both the participants and the observers.



Source: Alcântara and Pereira (2017).

The model reproduces the association between the conceptions of practical (hermeneutical) interests and communicative action, between technical (empirical-analytical) interests and instrumental action. Figure 1 above suggests the interrelationships and tensions between the pairs of categories which constitute the life world and the system. Thus, it is not possible to think of social management or the system in an exclusive manner. They represent society understood in a complementary manner. The pairs of categories interact in a relational manner to constitute social management, in a manner which is different from forms of public management and private management which are engrained in the system:

[...] integration depends on both types of rationality (strategic and communicative) and its interpretation depends on both types of vision (life world and the system). Our relational proposal makes social management (potentially) possible by identifying the colonizing elements as well as the emancipatory forces which emerge from possible relationships between the life world and the system (Alcântara & Pereira, 2017, p. 424).

Social management should seek “the objective possibility of democratizing the life world (its institutional and everyday dimensions) and the system (the market and the state)” (Alcântara & Pereira, 2017, p. 424). However, it is necessary to solve the problems of the state, which can become a colonizer, and civil society, which can become anti-democratic:

[...] it is necessary to break with the essentialism of a monolithic civil society in search of **more plural conceptions of the state, civil society, and the market (which conflicts, practices, actions, actors, and experiences are related with each of these elements?)** Therefore, the tensions are also establishing borders and zones for interaction between these spheres of society (Alcântara & Pereira, 2017, p. 424, author’s bold).

The thesis that it is possible to explain the performance of social management through the *locus* of the context of the interrelationships and tensions between the life world and the system, opens the prerogative for social management to also be understood through the tensions between the facticity and validity of law, between public and private autonomy, and republicanism and liberalism. Alcântara and Pereira (2017) also point out that the law acquires empirical and theoretical importance for social management due to the relationship that it has with the public interest. We have added the political subsystem as a receiver of flows of communication in the analysis.

UNDER THE MEDIATION OF THE LAW

To characterize modernity, Habermas describes it as a process which develops tensions between public and private autonomy and between facticity and validity which has historically resulted in two perspectives: one liberal, the other republican. The purpose of the author's theory of deliberative democracy is to reconcile both prerogatives. The formula of *Between facts and norms: contributions to a discourse theory of law and democracy* integrates both perceptions, liberal and republican, to understand the common good which sustains the conception of communicative freedom. The deliberative forms need to be institutionalized, which makes the constitutional form relevant (Habermas, 2003a).

As an expression of non-state public interest, social management relates to the political system. By employing the theoretical categories of communicative power and the law, an analysis of the political system emerges, which according to Habermas (2003a) is not restricted to the system's condition. It is subdivided into two communicative elements: the parliamentary complex and the peripheral networks of the political public sphere which are constituted around it. These peripheral networks contain the tensions between the life world and the system and are political scenarios for the manifestation of social management in its emancipatory format. In this approach, a concept of the center and the periphery emerges, ordered according to the metaphor of the locks of a reservoir. They design the flows of communication towards the center and the potential of the law as a mechanism of institutionalization, in translating communicative power into administrative power. Habermas uses the locks model in which there is a dynamic representation of what can be transposed. Communicational flows circulate around the barriers in the relationship between the life world and the system which become institutionalization and possible emancipation. This communicational mobility characterizes social management and projects it in a course that has emancipatory possibilities.

In *Theory of communicative action*, the transposition of the life world to the system is not possible, not only because different and counterpoint rationalities exist, but also because democracy has not gone through an institutionalization process. Habermas (2003a) perceives civil society and the social movements which make it up as organizing themselves to transpose this barrier. The increase of social freedom depends on the possibility of influencing the economic system and not maintaining the systemic logic intact. The life world can influence the logic of the political and the economic system with its demands. Law is what will make this transposition and mediation. Habermas's idea is that social movements are not fighting against the system but are rather fighting to influence the logic of the system. The confrontation is not aimed against the state and justice, but rather at influencing the state and gaining access to justice. The conflict is not waged against the judicial branch and the law, instead it seeks a reform of the judiciary to broaden laws, because the greater access there is to law, the greater the emancipatory potential will be (Habermas, 2003a).

The law can also be exploited in terms of social management practices, given that this approximation elucidates its mediating and institutionalizing role. The movement which created Supplementary Law No. 135 in 2010 (Lei Complementar nº 135, de 4 de junho de 2010), known as the Clean Slate Law, was born from a popular initiative, and was conceived of by the leadership of Judge Marlon Reis and supported by other jurists who collected 1.6 million signatures. This law affects the ineligibility conditions of candidates who have had their mandates revoked, have resigned to avoid having them revoked, or have been condemned by juries, even if they still are out on appeal. This bill began on the social networks and directed its flows of communication to the political system, conquering spaces of emancipation. Approved by the House of Representatives on May 5, 2010, and unanimously by the Senate on May 10, 2010, it was signed by the President, and the Supreme Court determined that it was constitutional and valid for subsequent elections.

The case of the Clean Slate Law has been studied as an example of social management from the Habermasian perspective by Tinôco (2017). Other examples from social movements such as the LGBTQIA+ movement have resulted in action by the Supreme Court, recognizing actions based on fear of these individuals as a form of racism. Various social movements have sent their flows of communication to the political system attaining notable achievements in terms of institutionalization such as the movement to fight violence against women which resulted in the Maria da Penha Law, and movements for racial equality, such as anti-discrimination laws and the Statute of Racial Equality.

It is not enough to think of emancipation without going through an institutionalization process in a democracy supplied by law and law supplied by democracy. The importance of *Between facts and norms: contributions to a discourse theory of law and democracy* is that, unlike *Theory of communicative action*, it is not possible to separate the law and democracy. Since law and democracy continue to have ambiguous aspects, it is necessary to qualify what is law and what is democracy. In *Between facts and norms: contributions to a discourse theory of law and democracy* we find a *co-originality*, a tense relationship between two instances.

Social management, like non-state public interest, is at the center of this tension between the life world and the system, between democracy and the law, collating the political system within the context of emancipatory battles. Made up of various social movements, it experiments the co-originality of the antagonisms which integrate the tension between the law's facticity and validity.

Social management, in the Habermasian approach, combines the liberal perspective, which impedes the assimilation of the individual into collectivity and affirms constitutional rights, with the republican perspective of the ethical-political understanding of a dialogic nature. The law which acts as a linguistic medium for social management in the interaction between the system and the life world can be understood as an imposed law, which we obey due to coercion (facticity), and as a legitimate norm recognized and accepted by those it applies to (validity). The tension between facticity and validity will be taken up by Habermas as the conducting thread and the structural element of the language for the modern understanding of law.

The law is a language which is linked to the theory of discourse. Social Management uses the law as a medium, and its tensions it uses to realize the transpositions between the life world and the system. These transpositions involve the political system and the demands of institutionalization. According to Nobre (2008), the tension between facticity and validity is the expression of two forms of logic: on one hand that of administration, and on the other that of the system. In one norms and sanctions are inseparable, and in the other the formation of opinions and will are, and both are articulated by law. In the absence of metasocial guarantees, this tension develops into another marked by the opposition between human rights and popular sovereignty, between public and private autonomy, and between liberalism and republicanism.

To Habermas, the tension between facticity and validity is not an exclusive characteristic of the internality of law, given that it extends beyond the environment of social contexts, constituting an externality that is transmitted "between the facticity of power and the validity sought by the political autonomy of citizens" (Nobre, 2008, p. 31). This tension characterizes how a critical theory of law and politics translates into an emancipatory perspective.

Habermas supports the unity among the internal and external dimensions of the law, the idea of procedures, which are the base that makes it possible for citizens to have their communicative freedoms and achieve a democratic state of law. Procedural logic is the guarantee that the processes involved in constituting opinions will be able to achieve the institutionalization of the forms of deliberation and participation for the largest contingent of individuals.

The procedure to Habermas is "formal", but not in opposition to certain content, of which it will be the abstraction or in relation to which it would be "empty", but rather the process which enables the appearance of the largest number of possible voices, alternatives for action, and ways of life, guaranteeing their right to expression and participation. It is also formal in the sense that the process of political deliberation cannot be guided by any given form of life, or a concrete model of what a society or citizens who live in a democratic state of law should be (Nobre, 2008, p. 34).

The procedural nature of democracy in Habermas results in an effort to exercise rights associated with forms of public and private autonomy for citizens as well as republican and liberal forms through demonstrations, institutional milestones, and pragmatic, moral and ethical-political discourses (Habermas, 2003b).

To Habermas, solidarity is understood here in the conception that the author has of Durkheim (Habermas, 2014), from the perspective of the ties that link individuals to each other and society as a form of interdependence or similarity, or the tensions which open up between positive and negative freedom pointing to a reinterpretation of public and private legal autonomy. Liberalism, defined by subjective rights, would establish a competitive relationship with republicanism in situating negative freedoms in opposition to the state. To republicanism, freedom is based on a citizen participation process in the constitution of the people's sovereign will, based on a search for the common good and the self-understanding of a public community as a cultural unit (Habermas, 2003b).

According to Habermas, the movement of tension between the public and private aspects of legal autonomy has never achieved harmony, and, on the contrary, it has experienced alternations. Habermas works to overcome the conflict between public and private autonomy, eliminating any superiority that may emerge from one perspective or the other. It is for this reason that Habermas conceives of the theory of discourse as anchoring public autonomy in the republican conception of government:

The theory of discourse, which attributes greater normative connotations to democratic processes than the liberal model, which, however, are weaker than those of the republican model, assumes elements of both parts composing them in a new way. In the republican line, it places the formation process of public opinions and will in the center, without, however, understanding the constitution of the state of law as something secondary [...] it understands the principles of the state of law as a coherent answer to questions regarding the way pretentious forms of communication regarding the democratic formation of opinions and will are institutionalized. In the theory of discourse, the opening up of deliberative politics does not depend on a citizenry capable of acting collectively, but rather the institutionalization of the corresponding processes and communicative assumptions, as well as the interplay between institutionalized deliberations and public opinions which form in an informal manner (Habermas, 2003b, p. 21).

According to Durão (2015), Habermas establishes an intersubjective interpretation of politics and the law through the recognition of popular sovereignty and human rights. A co-originating conception emerges between private autonomy based on subjective freedom and public autonomy based on communicative freedom.

Habermas's (2012b) conception of popular sovereignty is sustained by Arendt's concept of communicative freedom, which was already utilized in *Theory of communicative action*. Communicative freedom is referred to in the conditions under which rationally motivated citizens present themselves to enter an understanding freely through a debate that democratically forms opinions and will. Communicative freedom presents the critical condition for individuals, who through language, position themselves in relation to the validity intentions of a speaker. In this way, the motivating force of the public employment of communicative freedom is characterized as a generator of power. To Habermas (2003b), communicatively constructed popular sovereignty appears through the power of public discourses, which results in the intertwining of autonomous public spheres. The communicative power of Habermas is sustained by Arendt's conception of power:

To Hannah Arendt, political power is not the potential to impose one's interests or realize collective goals, nor is it administrative power which is capable of making mandatory decisions collectively. Instead, it is an authorizing force which manifests itself in the creation of legitimate rights and in the foundation of institutions. It manifests itself in orders which protect political freedom and in opposition to repression which threatens political freedom from inside or outside (Habermas, 2003a, p. 187).

Habermas adopts Arendt's conception, according to which "the utilization of power and its acquisition and maintenance depend on the communicative formation and renewal of this power" (Habermas, 2003a, p. 189). The discursive nature of the formation of opinions and will expressed in the political public sphere and within the parliamentary context generate intact relationships of understanding and intersubjectivity, which are removed from violence, which according to Arendt, awakens the force of communicative freedom (Habermas, 2003a, p. 191). The discursive principle reproduces a rational acceptance based on the legitimacy of law.

The central aspect conferred to communicative freedom in Habermas's work regarding political analysis resides in the fact that it does not focus on aspects related to the exercise of fundamental political rights, but rather pays attention to public political autonomy which emerges under a democratic state of law. The institutionalization process of the life world's demands is made possible by the law, which ensures the fundamental features of the democratic process.

The analysis of social management from the Habermasian perspective of involving law as a medium raises questions about freedom and legal autonomy. Liberal freedom, protection from assimilation by the community, the law, and the constitutionally ensured vote articulate with freedom under popular sovereignty and communitarianism, which is constructed dialogically through understanding, but above all by communicative freedom which unites these aspects.

The aspect of the common good produced through public autonomy which for Habermas assumes a republican character, opens an approach to social management which is the opposite of the liberal conception of Tocqueville's *enlightened self-interest*. A *locus* of intermediation between the life world and the system for the development of social management, sustained by the role of a political system which is not exclusively a system opens two paths for the flows of communication coming from the public sphere and from the periphery, which characterizes a dynamic marked by the presence of the law as a medium.

FINAL CONSIDERATIONS

In this work we have rethought the role of law as a potential integrator between the life world and the system to understand the way in which they affect social management. We consider, like Alcântara and Pereira (2017), the *locus* of social management to be within the context of the interrelationships and tensions between the life world and the system which represents a break with dualisms and assumes a relational aspect with the following pairs of categories: communicative action and instrumental action; the participant and the observer perspectives; social integration and systemic integration; symbolic reproduction and material production; civil society and the state/market; solidarity/values; power/money; and communicative power/administrative power. This substitution of a dual understanding with a relational one brings with it complementarities, juxtapositions, exchanges, fluid borders, dialectic moments and conflicts of logic. However, each pair of categories is related through the mediation of the law, which is a kind of hinge between the system and the life world that performs system functions and carries various forms of logic, including converting communicative power into administrative power.

Concern about the question of how the redirection process of the system occurs in the life world without structurally threatening the instrumental and reproductive logic of society led Habermas to construct a political theory associated with the theory of law which was the theme of his book *Between facts and norms: contributions to a discourse theory of law and democracy*. While in traditional societies, the system and the life world overlap and are indivisible, in modern societies they uncouple and become autonomous, which leads to a confrontation between systemic logic and communicative logic. This shock between different types of logic leads to the colonization of the communicative domain by the systemic domain, due to the preponderance of instrumental rationality. Communicative logic is opposed to resistance against the colonizing logic. According to a theory conceived around the emancipation of these initiatives, it is not enough to resist this colonizing logic. The domains where understanding predominates need to be expanded.

According to Habermas, the disintegration of the traditional *ethos*, which gave birth to modernity, has developed tensions between public and private autonomy, between facticity and validity, between liberalism and republicanism. This duality results in a commitment to defend fundamental rights and restrict the powers of the state on one hand, and on the other to guarantee popular sovereignty, sustained by an ethical-political understanding. The point of integration of these tensions, to Habermas, is the theory of discourse, expressed in the formulations of deliberative democracy.

According to Habermas, the political system cannot be understood as something exclusively instrumental and systemic, because communicative elements emerge at two times during the political process: in the parliamentary complex and the peripheral networks that surround the political system. Social management, as a manifestation of the non-state public interest, is linked to the political system, which emerges in a conception of the center and the periphery, elaborated in *Between facts and norms: contributions to a discourse theory of law and democracy*, in an order in which they appear as lock metaphors, designing the flows of communication and permitting the transit from the life world to the system. Social management through the medium of law goes through institutionalization processes which consist of the conversion of communicative power into administrative power and the transposition of barriers to conduct emancipatory processes.

Social management involves the concept of communicative freedom, which is opposed to liberal freedoms, and subjective freedoms of action, which implies a situation in which citizens motivated by rationality strive to achieve a free understanding through the formation of opinions and will. According to Habermas (2003b), on one hand communicatively divided sovereignty

appears in the power of public discourses, and on the other hand, the subjective freedoms which sustain private autonomy are not able to protect the individual against communicative freedom for the following reasons: communicative freedom depends on the employment of language to facilitate understanding which corresponds to making it mandatory in a valid manner, and they come before any legal institutionalization which should proceed symmetrically.

Social management which manifests itself in a *locus* of tensions between interrelationships and between the life world and the system, also manifests itself through the medium of the law in the tensions between popular sovereignty and fundamental freedoms, between republicanism and liberalism, and between facticity and validity. These tensions overflow from the transpositions between flows of communication which transit from the life world to the system, which can be institutional and emancipatory products.

This work points out new research perspectives in which social battles mediated by the law can be described and analyzed, considering Habermasian mediation, in the sense of an epistemological construct of social management. Another aspect that can be researched is the appropriateness of Tocqueville's *enlightened self-interest*, which has a utilitarian nature, as pointed out by Vianna and Carvalho (2000), to the Habermasian approaches to social management of Cançado (2011) and Cançado et al. (2015), which have been followed by young researchers such as Alcântara (2017) and L. C. Oliveira (2020). It is difficult to articulate Tocqueville's liberal concept with Habermasian republican thinking. This work substitutes the common good and communicative freedom with the Tocquevillian concept of *enlightened self-interest*, which thus proposes a new debate.

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