

JURIDICAL PLURALISM IN BRAZILIAN FAVELAS: COMMENTS ON LEGITIMACY

PLURALISMO JURÍDICO NAS FAVELAS BRASILEIRAS: OBSERVAÇÕES ACERCA DA LEGITIMIDADE

Recebido: 20.08.2020

Aprovado: 27.09.2020

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ABSTRACT: The Brazilian favelas shelter a large part of the Brazilian population, being largely composed of low-income and socially vulnerable residents, being not only away from the city centers but also from the social interest of the State. From its emergence to the present day, favelas are regarded as areas where formal state law does not arrive, and the lives of residents are run by informal norms, illegal from the point of view of the State and from social groups sometimes democratically instituted and others from criminal organizations that impose themselves with the use of force and violence. The following question that arises from this context of legal pluralism: in a reality of legal pluralism such as that of the Brazilian favelas, are there any alternative legal norms that are endowed with efficacy, acceptance and legitimacy? In order to answer this question, we sought, through the inductive method, the monographic procedure and the bibliographic research technique of the works of Wolkmer, Santos, Barbato Jr, among others, to demonstrate that legal norms developed in favelas whose origin whether in criminal organizations, has the legitimacy to coexist with state norms, as well as to fill the void left by the right of the State by its omission.

KEYWORDS: favelas; legal pluralism; legitimacy; organized crime; associations of residents.

RESUMO: As favelas brasileiras abrigam uma grande parte da população brasileira, sendo compostas em grande parte por moradores de baixa renda e em vulnerabilidade social, estando à margem não só dos centros das cidades como do interesse social do Estado. Desde o seu surgimento até os dias de hoje, as favelas são tidas como áreas onde o direito formal estatal não chega, sendo as vidas dos moradores regradas por normas informais, ilegais sob a ótica do Estado e advindas de grupos sociais ora democraticamente instituídos e ora de organizações criminosas que se impõem com o uso da força e da violência. Surge desse contexto de pluralismo jurídico o seguinte questionamento: em uma realidade de pluralismo jurídico como a das favelas brasileiras, existem normas jurídicas alternativas que sejam dotadas de eficácia, aceitação e legitimidade? A fim de responder a esse questionamento se buscou, através do método

indutivo, do procedimento monográfico e da técnica de pesquisa bibliográfica das obras de Wolkmer, Santos, Barbato Jr, dentre outros, demonstrar que as normas jurídicas gestadas nas favelas cuja origem não sejam advindas das organizações criminosas, detém legitimidade para coexistir com as normas estatais, bem como suprir o vazio deixado pelo direito do Estado por sua omissão.

PALAVRAS-CHAVE: favelas; pluralismo jurídico; legitimidade; crime organizado; associações de moradores.

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1 Introduction

The question: in a reality of legal pluralism, such as that of Brazilian slums, are there alternative legal norms that are endowed with effectiveness, acceptance and legitimacy? The hypothesis that will seek to answer this question is that the legal norms created in favelas whose origin is not in criminal organizations, have the legitimacy to coexist with state norms, as well as to fill the void left by State law through its omission.

The first part of the work will be dedicated to the study of the historical, social and political reasons that led to the Brazilian urban crisis and the emergence of favela communities, seeking to bring a panoramic and critical view of this social reality. The works of Milton Santos and Gilberto Freyre will be fundamental for the fulfillment of the objective of this section.

The second part will deal with the manifestations of legal pluralism in Brazilian favelas and the role of the various social actors that act in the creation and application of non-state law in the favelas, as well as those who submit to it, with special emphasis on the alternative right to participatory community roots. For this purpose, the works of Boaventura de Souza Santos, Gurvitch, Barbato Jr. and Antônio Carlos Wolkmer will be used as a theoretical basis.

Finally, the last part of the study will seek to discuss the question of the legitimacy of the legal norms created within the scope of Brazilian favelas in view of the nature of their settlements, their acceptance, effects, the interests they serve and their origin.

2 The Slum And The Boulevard: How Cities And Their Slums Arise In Brazil

The processes that led to urbanization in Brazil took place differently from the developed countries of the global north and, to a certain extent, from their peers in Latin America, giving Brazilian cities unique characteristics, their landscapes being quite distinct even under the inflows of standardization of urban spaces promoted by homogenizing globalization observed from the second half of the twentieth century. What makes Brazilian cities unique is what also makes understanding the social and political relations that are established in them so complex and worthy of study, which is one of the reasons for proposing this essay.

Favelas, vast portions of cities that develop on the margins of urban infrastructure, public facilities for culture and services, are ubiquitous in large Brazilian cities, not always in the geographical peripheries of cities, but always on the periphery of the social interest of political power and economic.

The form in which Brazilian cities are produced is closely linked to the historical processes of formation of Brazilian society, with its colonial, productive, migratory and political cycles. The rural exodus experienced in the country mainly in the 1960s and 1970s was the main catalyst for this massive urbanization process which shows no signs that it is a passing phenomenon, with approximately 85% of the population living in urban or urbanized spaces (IBGE, 2015).

There is also a contingent of 6% of Brazil's urban population that lives in favelas, communities or, as it has been technically called, *subnormal agglomerations*¹. (IBGE, 2013).

This immense part of the inhabitants of the cities is understood, in the vast majority, by individuals of the low income social classes. It is also where an important part of the workforce comes from that drives the economy and development of the country.

The emergence of these precarious settlements goes back to the genesis of urbanized occupations in Brazil, which always had the “center-periphery” design as their organizational model, the center being the place where bureaucratic equipment for the exploitation of the natural resources of Brazilian lands² was installed and where they lived public administrators and where the agrarian aristocracy maintained their houses and businesses and subsidiary services to rural activity. The working classes were concentrated in the peripheries of these incipient cities, basically composed of freed blacks, mestizos and Portuguese who did not enjoy prestige, such as peddlers and traders. (FREYRE, 1962).

The enslaved blacks in the early years of the colonial period lived on sugar cane or cattle ranches, where they were placed in the slave quarters, separated from the big houses, although they were located on the same property. It was during the gold mining cycle,

[...] There was great diversification in the colonial economy. First of all, due to the appearance of active production aimed at supplying the domestic market, such as cattle ranching in Rio Grande do Sul and in the São Francisco valley, or the production of groceries in the captaincy of Minas itself, in São Paulo and in Rio de Janeiro. The emergence of several

¹ It is worth mentioning here the origin of the term favela as a way of naming these subnormal urban agglomerations and with their own socio-cultural characteristics. The use of the name favela dates back to the beginning of the 20th century, when in Rio de Janeiro, the Morro da Providência (Providence Hill), which already housed residents from the tenements put down by Mayor Barata Ribeiro, in addition to blacks recently freed from the slavery regime, started to house ex-combatants from the Canudos War. These soldiers had been promised by the Ministry of War the payment of wages and bonuses, which was not fulfilled, forcing the group of soldiers to travel to the then Federal Capital to collect these amounts. Since there was no consensus between the Ministry of War and the ex-combatants of Canudos, many of them had to settle precisely in Morro da Providência, which was located in the vicinity of the Ministry building. Because this Carioca hill has a physical resemblance to a hill called Morro da Favella, located south of the Canudos settlement, the squares decided to rename Morro da Providência, using the name of the geographical accident they knew in Bahia. According to Cruz (1941, p. 14.), the favela has its toponymy linked to the so-called “Canudos war”. The fight was over in Bahia. The troops that had fought back and extinguished Antonio Conselheiro's fanaticism returned. Many unmarried soldiers were accompanied by “cabrochas” (women, maidens). They wanted to see the Court ... These soldiers had to find addresses. They went to the old S. Diogo hill and built their home there. The “cabrochas” were from a mountain called Favela, in the municipality of Monte Santo, in that state. They talked a lot, always about their Bay, their hill. And there was the Favela in the lands of Rio. The sheds appeared, one by one. First, in Providência, I live on a hill where a large population already lived; then it went up, turned to the other side, towards Livramento. The Favela was born. 1897 (CRUZ, 1941 p.14).

² In the early years of Lusitanian exploration in Brazil, when the cycle of extraction of pau-brasil was installed, the small towns that would become the first Brazilian cities housed, as a rule, a factory, a church, a fort or military barracks and registry. In the cycle of sugar cane and mining, more complex public equipment began to emerge, as well as the city councils (which were at the same time a forum, a notary, a lottery, a prison and the seat of the local government), the first workshops, markets and service provision and when urban elites appear, even if linked to agricultural activities. (FREYRE, 1962).

urban centers in Minas Gerais, and even the growth of old cities like Rio de Janeiro and Salvador, also activated the domestic economy. Tobacco production in Recôncavo Baiano was another activity that received a boost, as it was a central commodity for the acquisition of captives on the Costa da Mina, especially valued in mining areas. (MARQUESE, 2006).

In this context, the figure of the urban slave emerges, who cohabited the houses of the embryonic Brazilian urban aristocracy, being fully inserted in the daily life of the Brazilian cities of the period. These slaves were engaged in profitable commercial activities (such as black women who sold delicacies, also called *negras ganhadeiras*³), provided more complex services and often won tips, which enabled them to eventually seek freedom through the purchase of the document that would guarantee their freedom and the possibility of disengagement from the slave owner and his family. (SOARES, 1996).

Thus, in this period, a few freed blacks, together with other mestizo workers, low-ranking soldiers, among other individuals without the real right to own urban land, began to occupy tenements (some of them still in city centers) and land on the outskirts of cities or in hilly areas. As much as these precarious occupations were common, they did not acquire, at the time, the characteristics of the current favelas, with the dimension and importance in the urban scenario that they currently have. (SOARES, 1996).

It was only at the end of the 19th century and the beginning of the 20th, already in an independent Brazil and in a decadent empire, that the decisive historical facts occurred so that these peripheral settlements could obtain the current proportions and the attributes that define them. The abolition of slavery in 1888 is fundamental for the urbanization process in Brazil to gain strength, with the influx of freed workers who left the monoculture farms and installed in the incipient industries of processing agrarian production. The other fact that determined the formation of the first favela in Brazil was the end of the War of Canudos in 1897, when the ex-combatants of this conflict were promised as paid land for the construction of their homes according to article 2 of Law 3.371 known as the National Volunteer Law of 1865⁴.

By not fulfilling their right to grant land granted by the political power of the time, the ex-combatants of Canudos had no option but to go to Rio de Janeiro, at the time the headquarters of the Ministry of War, to exert pressure in order to have your right guaranteed. Having no positive feedback from the public authorities, they had no choice but to occupy shacks in parts of Morro da Providência, near the Ministry of War building, which was already a stronghold of newly freed and quilombolas blacks and to establish their residences there.

Later, so many others joined them from different parts of Brazil and for different reasons they came together, and in a short time the place was consolidated as a territory of illegal, irregular occupation, without respect to norms or the law (...). (GONÇALVES, 2011).

The urban hygiene and modernization projects carried out at the same time, coupled with the institutions' lack of interest in their infrastructure and security, also contributed to the formation of these occupations which, even after the promulgation of the Law of Lands

³ About the *negras ganhadeiras* (black women who made profit), it is worth reading the work of Cecília Moreira Soares "AS GANHADEIRAS: women and black resistance in Salvador in the 19th century". (SOARES, 1996).

⁴ Article 2 - The volunteers who are not National Guards will have, in addition to the salary that the army volunteers receive, another 300 réis daily and the bonus of 300 \$ 000, when they drop and land term of 22,500 square fathoms in the military or agricultural colonies .

of 1850, which inaugurated the regularization land rights and real land rights in Brazil, would remain illegal⁵.

The destruction at the behest of the Municipality of Rio de Janeiro of the Cabeça-de-Porco (Pig's Head) tenement in 1893⁶ for the construction of the João Ricardo tunnel, which passes right under the Morro da Providência, is an example of this phenomenon that helped to increase the number of inhabitants of the surrounding hills, since the displaced population had nowhere to go after the destruction of their homes⁷.

In the 1950s, 1960s and early 1970s, Brazilian cities started to receive tens of thousands of migrants from rural areas looking for a better life in the new economic cycle of industries that were being installed in urban centers. Likewise, urban planners have to adapt to the influx of automobiles produced by the installed automobile industry that had been growing since the 1950s, and for that, a new cycle of expropriations, removals and dismantling of socially marginalized communities was necessary to be marginal also in urban space.

The new avenues, highways and expressways, which represented the driving force of the so-called "economic miracle" carried out by the military regime, were also one of the reasons for the growth of favelas in Brazilian cities, in view of the expulsion of populations from the centers to the peripheries and also for the protagonism of the car to the detriment of passersby in urban spaces in the country. (SANTOS, 2018, p. 39).

From then on, favelas become the immense housing clusters that are observed in their ubiquity in Brazilian cities, inhabited by people who do not own their homes, do not enjoy public policies of the State, and who present themselves as marginal, in the broadest sense of the word. If, on the one hand, the state power and its institutions are not concerned with giving these populations the dignity that the laws guarantee, on the other hand they are concerned with the violence that these marginal beings can bring to the formal, legal city, with deed, being the Brazilian state indifferent to the well-being of the favela and vigilant about the lives that the favelados lead.

Thus, the favelas appear in Brazil, as the result of extreme social, racial and cultural inequality, of the socially indifferent role of formal institutions, of colonial exploiter heritage, of the paradoxical illegality so convenient and thus inconvenient to the State. The favelas became like ghettos where blacks, mulattos, northeasterners, workers, unemployed, criminals and all those who, invisible or not, are invisible and, like favelas, illegal beings from birth to death, either because they fail to comply legality, or because they do not benefit from it.

3 The Law Of Illegals: Legal Pluralism In Brazilian Slums

⁵ The land regularization provided for in the Law of Lands of 1850 and, subsequently regulated by Decree No. 1.318, of January 30, 1854, established that it was incumbent on the vicar, in the circumscription of their parishes, to receive the land registration declarations and validate them before the Holy See. What happened, in fact, was that the effect of this registration was merely declaratory within the Church and, later, with the Brazilian Empire, not recognizing over the property, the real right of use to whoever owned the land, serving only to charge fees, on the part of the Church, as a result of the occupation and use of the land. In this sense, only those who were able to afford the registration, maintenance and other taxes on the assigned land, were able to have any kind of recognition, even if precarious, of the possession and fruition of real estate in Brazil. (SOBREIRA DOS SANTOS, 2016, p. 29).

⁶ It is estimated that at the time of its demolition, the tenement was home to 2,000 to 4,000 inhabitants.

⁷ This phenomenon occurred throughout Brazil, and is not exclusive to Rio de Janeiro. For a similar process in Porto Alegre, see: SILVEIRA, Alexandre Barcelos. From African colony to Rio Branco neighborhood: deterritorialization and social exile in the land of the latifundium: Porto Alegre, 1920-1950. Porto Alegre: Pontifical Catholic University of Rio Grande do Sul. 2015. Available at: <<http://hdl.handle.net/10923/7278>> Accessed on 27 July. 2019.

The marginality of the favelas is felt not only in relation to the scope of public policies for urban development, but also in relation to State norms, being, more often than not, compelled to create their own legal norms or else submit to a state of relative anomie⁸.

State law, in this context, places itself as a coercive force hierarchically established based on its monopoly of coercive power, behaving not as a democratic and integrative legal order, but as an order of subordination. In this case, resistance is created on the part of populations subjected to this subordination, since they were never able to participate in the constitution of the impositions established by this state right reinforced only by the monopolistic justification of coercive power.

In this sense, in view of this representative deficit on the part of the positive law, in the favelas, their own legal systems, exclusive to the territoriality from which they arise, dependent or subsidiary to the coercive power of the State and often inspired by it, which they seek, inserted in the community reality for social, cultural and spatial reasons, regulate business conducted within the community and also aim to ensure the resolution of conflicts, the maintenance of peace and public security. Therefore, the only entities capable of reaching the level of organization and social permeability necessary to create and guarantee the fulfillment of this alternative right are, as a rule, neighborhood associations and crime organizations, whether factions of drug trafficking.

The legal norms that are formed in the “vacuum” left by the selective absence of state power certainly have efficacy in the daily life of the favelas, which also ensures that these norms are accepted and respected by the residents who are subject to them. However, the question of the legitimacy of these alternative legal norms, especially those that come from organized criminal groups, is a fundamental point in order to be able to critically assess the effects that this phenomenon has on the populations of the favelas.

The favelas in Brazil suffer from state indifference with regard to the application of public policies aimed at the development of their inhabitants, being lacking in public health services, basic sanitation, land tenure regularization, education, public lighting, among other fundamental guarantees human dignity. Because of this precariousness of life and the difficulties in finding formal jobs in city centers, the populations of the favelas are left with informality and criminality to satisfy their basic needs.

With the increase in population, who sought housing in the favelas, conflicts over space and land ownership in the hills became inevitable. The total unconcern of the State with the result of these conflicts, as well as the distance of these disputes from the state law, either due to its illegal nature or due to the inaccessibility of those involved to the judiciary, often the “law of the strongest” would be imposed through physical violence, through knives and revolvers”. (SANTOS, 1993).

Still, the absence of state power and the invisibility caused by it was what allowed criminal activities such as drug trafficking to settle in the favelas, causing these communities to submit to the inevitable violence caused by the activity of these criminal groups. The Military Police, made up of state power and the justice system, becomes the only presence of the State in the favelas, although the same, in the search for the fight against organized crime, often goes beyond its limit of action, with disastrous results for non-trafficking residents.

⁸ The term anomie here represents, according to Durkheimian theory, the absence of rules or legal norms capable of curbing individual or collective selfish impulses that arise from the absence of cohesion offered by an ordered society. (DURKHEIM, 2010, p. 428).

In view of this selective absence of the State and the growing conflicts over land tenure or disputes over territories promoted by drug traffickers, the populations of the favelas, in order to escape the anomie that was taking place and the increasingly severe violence that imposed itself in the resolution of conflicts, it was creating alternative forms of control and conflict resolution to those of the State.

State law, when not riddled with truly democratic instruments for the resolution of conflicts and policies for the promotion and guarantee of rights, starts to be sustained merely by the monopoly of coercive power, which is used with more and more violence, leading to communities most excluded from the State's legal protection to create their own systems.

En síntesis, cuando el Estado es una asociación igualitaria de colaboración, el monopolio de coacción incondicionada, que le pertenece, no impide a su orden jurídico afirmarse como una especie particular del derecho social. Al contrario, cuando el Estado es una asociación jerárquica de dominación, su relación con la coacción incondicionada subraya de forma especial el carácter subordinador de su orden jurídico. (GURVITCH, 2005, p. 94).

Territorial disputes over illegal lands, based on the assumption that they cannot be resolved in formal courts because of their nature, are now resolved within the scope of residents' associations that impose their rules and have the power to decide on this matter. It is worth mentioning that

The emergence of the first associations of favela residents, in the 1940s, took place in a context of reaction by favelados to proposals to remove their homes to places far from the city center. In the early 1960s, in order to try to contain its growth, the municipal government encouraged the formation of several associations, which would be state agencies within the communities to “assist the government in the implementation of basic services and in the maintenance of internal order” (ROCHA, 2018).

However, what happened was the abandonment of the associations' project by the public power, with the associations enjoying great autonomy of action and starting to manage different aspects of the lives of their members. The power that would be exercised by the State would become the property of those who hold the power of organization and agglutination, as is the case with residents' associations. But it would also pass its title to those with greater firepower, as is the case with drug traffickers and militiamen.

In one way or another, conflicts arising from the performance of drug trafficking are resolved by the “drug courts” and by the rules they create. The conducts of residents, in this measure, are also equally controlled by drug traffickers:

For some of the members of the reality in which drug trafficking is circumscribed, the informally imposed conducts serve to attribute security to them. The leaders of the slum play a clearly assistentialist role, offering all kinds of favours to those who do not have state protection. (BARBATO JR, 2013).

It is essential that the favela is somehow “pacified” so that the narcotics trafficking, distribution and manufacturing activities can be carried out safely and profitably, which is the reason for sponsoring assistance actions - again in the vacuum of the power / duty of the State - and be the agents that maintain some order in the place. The rules of conduct created and imposed by traffickers are invariably reinforced through violence and the use of force, with summary executions, tortures and threats being frequent.

Despite the violence and abuses committed by drug traffickers in the hills, in order to maintain order through its norms and impositions, many favela residents believe that this is an effective way to resolve conflicts, maintain peace and provide services in the community. It is evident that this is not the unanimous opinion among the residents of the

favelas, let alone the forces outside the reality of the slum and the power of the State, which does not admit the existence of legal systems that are alien to the hegemonic.

Hence, in order to combat the control exercised by drug trafficking in favela communities, militia groups that, under this pretext, end up just exchanging an alternative and criminal legal order in its origin, for another equally oppressive and felonious order. The militias, usually composed of ex-policemen, ex-military personnel or private security agents, when expelling traffickers, take their place and impose their own rules, opposed to those of the former “owners of the slum”, but no less violent and distant to the minimum consensus on the current moral and ethics. (BARBATO JR, 2013).

The services provided by the militia range from security, prohibiting robberies and thefts on the outskirts of the favela, the provision of cable TV services, distribution of cooking gas for private transportation and even civil construction, all provided against payment by residents, who are often obliged to hire and default results in beatings and deaths.

This is indeed a very ambiguous reality, since these criminal groups evidently exercise their power in a violent and illegal way, however, they maintain the legal and social order in the favelas by meeting the demands that the State has no interest in meeting.

In another spectrum of analysis about the legitimacy of these extra-state rights, the associations of residents still survive and stand out, which also exercise normative power in the favelas by regulating, as stated, issues of possessory disputes among residents, as well as meeting other demands that arise, such as cultural, leisure and collective representation activities before State bodies. The action of the residents' associations was of paramount importance for the regulation of the so-called “slab right”, which consists of the possibility of building a house on the slab or in the basement of another construction, constituting two separate households with different owners. (GIACOBBO, 2017).

The demographic density of the favelas and their own physical geography requires the verticalization of housing, which gave rise to the social practice of slab law and its application and regulation by residents' associations. These entities intervened in the recognition of the possessory right of properties built on top of others, as well as their quality as an autonomous housing unit in relation to the property on which it was built.

The performance of these extra-state social institutions for the recognition of the property right (although not recognized by the positive right) of buildings in slabs was such that, in a rare inflection, the state legislature recognized the validity of this slab right in the favelas and embraced it in its legal order first under Provisional Measure 759/2016 and later under the letter of Law No. 13,456 / 2017. As much as there is no need for this state reception for a right to be recognized as legitimate and effective, just because that right already *worked out*, with or without the State, this phenomenon indicates that the right practiced in the favelas, in this case, is endowed with these prerogatives, confirming, under the auspices of the State, the alternative legal practice.

Law No. 13,456 / 2017 still provides the full concession of the right to property built in slabs, contributing to the land regularization so important for the development of urbanism in Brazilian favelas, since the Municipality, responsible for regularization, must prepare urban and infrastructure projects for these areas, as well as registering residents. The positive presence of the State would obviously not occur without the tax consideration, since regularization imposes the payment of Property Tax and Urban Territorial Tax (IPTU), which meets, in a very timely manner, the fiscal interests of the state entity. (GIACOBBO, 2017).

In any case, the norms and impositions given to the population by the residents' associations are also respected and endowed with effectiveness, being the sanctions for

those who do not respect the application of fines and even the exclusion of the individual from the membership. These rules, which emerged within the scope of these underlying communities, are capable of resolving, more efficiently and in a more democratic manner, issues that State law cannot or does not have any interest in being involved with, the importance of these alternative jurisdictional activities being evident. in the slums.

The socially driven indifference of state law to favela communities exposes the need for the active participation of the actors that produce these social rights in the underlying communities in the construction of a plural legal system, built by local agents in conjunction with state powers.

This could translate into the expansion of interpreters of the Constitution, which would continue to be the limiting goal of the performance of these new legal agents, so that, in a democratic and participatory way, they can relate to the State in the search and consolidation of more democratic, plural forms and socially concerned with creating right. (GIACOBBO, 2017).

As much as there is also an interest behind the activities of residents' associations, whatever the political interest of their members, and also the economic interest, it is perceived that the activities of these social actors do not result from criminal conduct or are imposed on the residents of the favelas in a violent or immoral way, and it is feasible to even find resonance and acceptance in state legislation. It is clear, therefore, that in the slums communities of Brazil, various forms of legal power outside the State coexist, with a situation in which different rights are applied in various ways and simultaneously. (BARBATO JR, 2013).

Almost at the turn of the 21st century, the Brazilian State has not yet managed to monopolize the production and enforcement of law, which continues to be appropriated by a society that, feeling distant from the Judiciary, develops its own mechanisms for resolving conflicts. (JUNQUEIRA, 1993).

Therefore, starting from the idea that legal pluralism is understood as the coexistence, within the same society, of the dominant state law and other forms of legality (WOLKMER, 2001), it is clear that in the reality of favelas what is required is a multifaceted legal pluralism, including, albeit selectively, the performance of state law, the law of militias, drug traffickers and residents' associations, although it should be clear that the latter, perhaps the most legitimate, is of all the most subsidiary.

All of these legal orders enjoy some degree of effectiveness and acceptance by those who submit to them, however, given that some arise within criminal organizations and others arise from spontaneous movements of residents, the question of the legitimacy of these rights remains open alternatives, which will be discussed in the next section of the paper.

4 The Legitimacy Of Laws Mande In The Favelas: The Ethical And Moral Limits Of Alternative Law

The legal norms that emerge in the gaps left by the State vacuum to meet the demands for justice and public services in the favelas, have different origins and forms of application and are, as a rule, due to the need to meet demands for order, security, peace and the guarantee of basic services to lead a dignified life. However, the exception to this rule is the legal norms that have their origin in the performance of groups of evident criminal character that, in search of maintaining the success of their activities, create rules to maintain order and security, as well as to gain friendliness of residents in the places where they operate.

The question of the validity of these alternative juridicities to state monism, their effectiveness, their recognition and their legitimacy are fundamental for the qualitative assessment of the effects that these informal rights bring to the communities where they are exercised. To this end, we seek to understand each of these elements that constitute the legal norms in order to be able to carry out this evaluative exercise on the example of legal pluralism witnessed in Brazilian favelas.

Therefore, it is based on the basic assumption that the rules arising in the favelas are strictly legal norms, since they are imposed not by mere individual choice, but by an intricate and complex social arrangement that must be respected. In this sense, it can be said that

The rules of the law stand out from the rest [of the rules] because they are felt and considered obligations of one person and fair rights of another. They are sanctioned not for a simple psychological reason, but for a defined social mechanism of compulsory force, based, as we know, on mutual dependence and carried out on the equivalent arrangement of reciprocal services and on the combination of these rights in multiple relationship currents. (MALINOWSKI, 2003, p.47.)

Law, therefore, presents itself, in this perspective, as a much broader social phenomenon and prior to the conception of the State (and the social contract) (GURVITCH, 2005, p. 164). In this sense, the laws that emerged in the favelas are in fact legal norms, and should therefore be treated as such in order to study them from the perspective of legal pluralism as conceived by Wolkmer (2001). It then moves on to the analysis of the effectiveness and acceptance of these legal rules.

The laws that emerged in the favelas, whether they are the result of drug trafficking or militias, or the actions of residents' associations, are fully effective, since they are adhered to and enforced by residents, sometimes through violent coercion, sometimes through consensus collective on which it relies. The rules achieve their goals of conflict resolution and order maintenance in the favelas, regardless of how they are enforced and, for the purpose of analyzing effectiveness, compliance with the law's purpose is quite a lot.

These laws are likewise widely accepted by the population of the communities, with a sense of justice being present in them. Nevertheless, however important is that this feeling is recognized by the recipients of an alternative legal system, that feeling can only be properly assessed if an arrangement is more or less fair, taking as a parameter the lack of another with a higher degree of consensus, precisely the state law itself, in the fullness of its rules and principles⁹.

For Barbato Jr. (2013), in the case of Brazilian favelas, populations have never been fully aware of or even addressed the state law, therefore lacking a counterpoint to know whether the law applied daily is indeed fair or not. On the other hand, it is considered opportune to ensure that the question of the recognition of similarity with state law is much more for the interpreter of the phenomenon than for its author. If someone respects the night-time silence schedule in order to protect the sleep of others, because they think it is reasonable, or because it is in a religious text and not because they know that there is a

⁹ Based on this assumption, it can be seen that the legitimacy of an alternative legal rule *extra legem*, adopted in the context of Brazilian favela communities, is not measured in the same way as the legal standards produced in indigenous communities, whose legitimacy is even recognized by the legal system of the Brazilian State, in spite of, eventually, being against it. This reality raises another interesting question, but which, however, will not be discussed in this work, which is the following: whether Brazilian law accepts indigenous community traditions, which are marginal communities for historical and geographical reasons, because it does not recognize the norms alternatives for favela communities that, like indigenous peoples, are also marginally positioned?

Municipal norm in this regard, the fact is that they recognize a norm of respect for silence and this is consistent with values contained in state law, even though he, the practitioner of the norm, does not even know it.

In any case, it is possible to state that the laws produced in the favelas are:

a) in fact legal norms;

b) endowed with efficiency, fulfilling its objectives and;

c) endowed with wide acceptance and recognition by the populations submitted to them.

Thus, there remains an analysis of the legitimacy of these laws, arising from different origins with regard to the legality of the legal source and the *modus operandi* of its enforcers.

For Bobbio, even though these rules are formulated by a criminal institution, if their purpose is to maintain order among its members, they are a legitimate legal order, in his words, "even an association of offenders, as long as it is organized for the purpose of maintaining order among its members, it is a legal order" (2003, p. 31). This thought is very dangerous when it is transferred to the reality of Brazilian favelas, since a legal system based on severe violations of the most fundamental rights of its recipients would be legitimized.

For Wolkmer (2001), the legitimacy of an alternative legal system is closely linked to the notion of the need to create this system, in the first place. For the author, it is essential that alternative law be created so that it meets a need for regulation that is not being met by formal law or another form of legal social control, which is the case in the reality of Brazilian favelas.

Yet, other assumptions must be met in order to have the legitimacy of an alternative legal system,

(...) not every non-state legal manifestation or not every "right" produced there can be fair, valid and ethical, because any intermediate social body or any leading group can create perverse rules, aiming to serve interests contrary to the community, directly expressing intentions of minorities identified with power, domination, exploitation and selfishness. In that case, there are particular rights produced by a plurality of social groups that are not justified and legitimate. (...) The absence of minimum and universal values related to ethics and justice undermines the legitimacy of these "rights". An example of this can be seen in corporate groups such as the Mafia in Italy, the Ku Klux Klan in the USA, the Medellín Cartel in Colombia and the former death squads in Brazil. (WOLKMER, 2001, p. 324).

In this sense, it is seen that the legal rules produced by criminal organizations present in Brazilian favelas are illegitimate, since they do not meet the fundamental requirement of complying with the minimum values of ethics and morals that are universally recognized, these being the "limit criteria" for the recognition of the legitimacy of laws.

Still, their performance and the way in which they apply their rules, using violence, torture, death and terror do not meet the basic needs of slum populations, since the burden of submitting to these laws is greater than the benefit received by the order brought by them. (BARBATO JR, 2013).

Alternative norms, to be legitimate, must come from groups committed to the causes of the "just" of the "ethical" and the "common good" of a large part of the community, which is not the case in the case of drug traffickers and militiamen who, in addition to being distant from the "limit criteria" of legitimacy, they basically aim at the attention of their own interests to the detriment of the collectivity.

The same cannot be said of the right conceived by residents' associations. This decision-making and conduct regulation system, since its inception, has been concerned with meeting the just demands of favela residents, seeking, in the most democratic and open way possible, to resolve conflicts that have arisen in a peaceful manner.

As much as conflicts of interest or the corruption of these associations may exist to meet particular ambitions, this reality does not substantially affect the lives of members, with the rules applied by these entities being built collectively in assemblies and meetings, with particularizing impulses of the leaders of diminished institutions. Thus, it can be seen that even the judicial activity of associations of favela residents is legitimate, being a fully valid and effective mean so that the populations affected by the State's indifference to their interests have recognized their demands and have their conflicts resolved in a timely fair and efficient manner.

As such, there is a clear difference between the legal norms arising from residents' associations and those imposed by drug and militia leaders. The former are capable of meeting the collective interest in an efficient judicial order that is capable of resolving conflicts between residents peacefully, in addition to meeting demands for assistance and well-being, within morally and ethically acceptable levels focused on the common good.

The rules imposed by organized crime, on the other hand, have the sole purpose of maintaining order and peace, in a paradoxical violent manner, so that the criminal activities of its agents can prosper, and, however much they serve some interests of the residents, they do so illegitimate manner and by unethical and immoral means.

It is clear, therefore, that there are alternative legal rules created within the scope of Brazilian favelas that meet the criteria of effectiveness, recognition and legitimacy, whose example is the case of residents' associations, while others, such as those created by leaders of the drug trafficking and militiamen lack the last requirement of validity, legitimacy.

5 Conclusions

The main focus of this article is to investigate whether in a reality of legal pluralism, such as that of Brazilian favelas, there are alternative legal rules that are endowed with effectiveness, acceptance and legitimacy.

It was observed, under the terms of item 1, that, since the creation of the favelas, the people who live there have to deal with a paradoxical reality in several aspects. If, on the one hand, they suffer from the State's indifference and absence, on the other, the State is a constant presence to repress and exercise its power of surveillance and violence over residents; if at times they are forced to live with a state of total anomie, at other times they have to submit to a plurality of rights in force at the same time from different origins.

As seen in item 2, In order to escape from a state of total anomie, extra-state legal orders appear in the favelas that seek to meet social demands, impose order and resolve conflicts that may arise. These alternative rights often arise from the leaders who stand out on the hill, in part from residents' associations, from drug traffickers or militia members.

In Chapter 3, it was seen that these new legal systems occupy the vacuum left by the State, fulfilling its objectives and enjoying acceptance and recognition by most favela residents. However, given the criminal origin of the legal rules imposed by organized crime, which are imposed through the use of violence, intimidation and terror and aim to reach many interests outside the collective, these normative impositions cannot be considered legitimate.

In contrast, the right that arises from residents' associations is, in fact, legitimate, being able to promote collective social assistance actions and assist in resolving conflicts

that are set aside by formal State law in a peaceful manner and within the criteria- limit, the Constitution, morals and ethics universally recognized. In this way, the hypothesis brought up and proven here is that there are extra-state legal rules conceived in Brazilian favelas endowed with efficiency, recognition and legitimacy, it is confirmed in the face of this reality, provided that those created by criminal groups are excluded from this list.

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