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C OMMUNITY LAND TRUSTS AS A RESISTANCE INSTRUMENT TO NEOLIBERAL URBAN PROJECTS

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ABSTRACT

Community Land Trusts are established models designed to protect the maintenance of vulnerable communities in certain territories. The figure emerges in the United States in the 1960s, tied to civil rights movements and the population living in rural areas. The present article will evaluate the potentialities and limits of the application of the Community Land Trusts instrument in Brazil as resistance and biopotent practice in an urban space marked by high percentages of irregularity and by a serious situation of socio-spatial inequality. In a context that worsens after the mega-events at the beginning of the second decade of the twenty-first century and with the democratic rupture and deepening of neoliberal logic in cities from 2016 onwards, it is necessary and urgent to establish new practices and forms of property management in a way to draw possible subversions to the logic of Power. CLTs are proposed here as a form of subversive legal practice, either from the defense of the design of a specific legislation on the subject, or by the use of existing legal instruments in order to base the creation of an emancipatory proprietary model.

KEYWORDS

Community Land Trusts. Security of tenure. Social resistance.



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O COMMUNITY LAND TRUST COMO INSTRUMENTO DE RESISTÊNCIA AOS PROJETOS URBANOS NEOLIBERAIS

RESUMO

O *Community Land Trust* é um modelo estabelecido com vistas à proteção de permanência de comunidades vulneráveis. Ela surge nos Estados Unidos, na década de 1960, atrelada aos movimentos por direitos civis e à população residente em áreas rurais. Este artigo busca avaliar as potencialidades e os limites de sua aplicação no Brasil enquanto resistência e prática biopotente em um espaço urbano marcado por elevados percentuais de irregularidade e por uma grave situação de desigualdade socioespacial. Em um contexto que agrava após os megaeventos no início da segunda década do século XXI e com a ruptura democrática e o aprofundamento da lógica neoliberal nas cidades a partir de 2016, torna-se necessário e urgente o estabelecimento de novas práticas e formas de gestão da propriedade que desenhem possíveis subversões à lógica do Poder. Os *Community Land Trusts* são propostos aqui como forma de prática jurídica subversiva, seja a partir da defesa da necessidade de uma legislação própria sobre o tema, seja pela utilização dos instrumentos jurídicos já existentes de forma a basear a criação de um modelo proprietário emancipatório.

PALAVRAS-CHAVE

Community land trust. Segurança na posse. Resistências sociais. Neoliberalismo.

INTRODUCTION

Brazilian cities have been undergoing major transformations in recent decades, especially related to the demands of the neoliberal hegemonic model that has become decisively capillarized. This model transforms them into merchandise, and brings their management closer to entrepreneurship, with investments for profit and marketing. In this scenario, the rights of residents and the idea of building fairer and more egalitarian cities are set aside, with significant accentuation of fragmentation and socio-spatial inequalities.

Associated with this, cities are subject to normalization and discipline as a privileged locus of control over bodies, especially the most vulnerable, excluded and unwanted. However, in a seemingly bleak scenario, resistance also emerges, disruptive potential biopotent practices that are established in cities to make them more inclusive and fair.

This paper proposes the analysis of the Community Land Trust (CLT) as a possible instrument of biopotent resistance, which from private property can subvert its individualistic classic character towards collective land management..

SOCIO-TERRITORIAL INEQUALITIES IN BRAZIL AND FRAGMENTED CITIES

Analytical propositions about recent inequalities and transformations in Brazilian cities cannot ignore their insertion in a global scenario of neoliberal hegemony, which brings specific demands, especially in the global South.

These cities seek to adapt to such demands, which aim to favor, especially strikingly, the financial actors of the urban space. This is done through regulatory and spatial changes, and also ensures the creation of necessary infrastructures for new capitalist activities, especially financial ones.

Beyond these demands, cities are increasingly fulfilling a role of spatiotemporal adjustment (HARVEY, 2015) in the typical situations of capitalism over-accumulation. Thus, they stand as a privileged space for resource allocation, under a logic of capital absorption and guarantee of high profits, a fact that leads to an understanding of urban management as a kind of entrepreneurship, in which it is up to each city to establish itself as the most interesting product in order to attract capital.

This dynamic of urban entrepreneurship (HARVEY, 2005) and the transformation of cities according to the recent needs of a capitalism that operates under financial dominance (GUTTMAN, 2008) has been imposing

itself in Brazil in recent decades, especially the mega events (Copa do World 2014 and 2016 Olympic Games) of which the country has hosted in the last decade, the impacts of the recent democratic rupture on urban management and the growing assisted militarization movement in recent years.

The mega events, experienced more intensely by the city of Rio de Janeiro, can be considered as an important turning point towards urban entrepreneurship. Its preparation involved high public spending on the construction of infrastructures related not only to sports competitions, but also to the interests of fractions linked to real estate and financial capital.

An example is the process of “urban renewal” promoted in the Rio de Janeiro port region, which has consumed a significant amount of public resources and delivered, as its main results, a futuristic museum signed by a famous Spanish architect, an aquarium whose entrance makes it an inaccessible attraction. Most of the population and an inefficient and underused transport system - the light rail vehicle (VLT).

The construction of all this infrastructure, which is not justified from the point of view of sports competitions or the needs of the city population, must be considered from the aspect of urban marketing and the need for city production in the form of a company / commodity (VAINER, 2000), ready to be sold and able to attract as many investments as possible, preferably foreign ones. In this wake, cities “copy” each other, creating a basic infrastructure and amenities package for their insertion into privileged positions in the global hierarchy (SASSEN, 1998).

This whole process is accentuated and gains even more perennial dimensions from the democratic rupture established in Brazil with the 2016 parliamentary coup. The rupture has severe impacts on Brazilian cities, either by deepening their insertion in the international capitalist scenario through public policies and regulations built in this direction, either by intensifying territorial fragmentations by a security policy based on militarization and by the growth of processes of socio-spatial inequality, especially those driven by the market..

Thus, from the mega events and the democratic rupture experienced by the country in recent years, we experience an exacerbation of neoliberal logic in Brazilian cities, which is intrinsically related to the vision of urban entrepreneurship and the commodity city (VAINER, 2000), and management is eminently committed to economic interests, leaving aside the rights of the population and the ideas of fairer and more supportive cities.

This commodity city has exclusionary legislation as its instrument of maintenance and reproduction, because the modification of the urban space is facilitated from the legislative production and the use of legal instruments, such as urban consortium operations, created land or onerous rights grants. ramp up¹, political processes are mitigated (given the recent Anti-Terrorism Act, the use of the Criminal Organizations Act that has been used against rights-claiming movements, or even criminal typification for rights-based demonstrations) and capital is even more easily capillarized in the territory².

¹ Such legal and political instruments are brought by the City Statute as a means of instrumentalizing the implementation of urban policy as established by the City Master Plans, which should support a new urban order. It turns out that the instruments mentioned ended up with a history of implementation that far from providing the scope of the social function of the city, ended up making room for real estate speculation and private profits, reproducing and aggravating social problems. Interesting criticism about the use of consortium urban operations is João Sette Whitaker (2002), who says, “The power of real estate lobbies and the high degree of promiscuity between the state and the ruling classes in Brazil leads us to believe that it will not be easy to conduct urban operations for some of the purposes described herein”, such as the public and social interest.

² The urban is a condition for the realization of the processes of capital reproduction. We align with Harvey's (2011) thinking that “capital accumulation processes do not exist [...] outside their respective geographical contexts”. Still for the author, cities would be a virtuous solution to the increasingly frequent situations of over-accumulation in capitalism, which makes them a privileged scenario for their capillarization and application..

Normative production and neoliberalism go together and so we can see the advance of conservative agendas, the urgent and rapid reform of rights and legislative changes perceived after the parliamentary coup. Among the legislation produced in this scenario of neoliberal deepening, we can bring the new land regularization law, Law No. 13,465, of July 11, 2017 (BRAZIL, 2017), which substantially modifies the national land management model.

Without intending to more fully address the changes made by the new law, we wish to highlight here the issue of changing the “model” of land regularization and its possible impacts on cities.

Land regularization in Brazil had its first systematization at the national level only in 2009, with Chapter III of Law No. 11,977, of July 7, 2009 (BRASIL, 2009), which regulates the housing program “Minha Casa, Minha Vida”. This law brought a model of land regularization of a broad character, which considered the dominial, registry, urban and social aspects of irregular settlements, in order to promote security of tenure and guarantee rights to its residents.

However, with only eight years of effect (which is very little if we consider the need for capillarization of this federal legislation to more than 5,200 municipalities), and a few months after Michel Temer’s rise to power of illegitimate government, that legislative chapter was entirely repealed by Provisional Measure 759, later converted into Law No. 13,465 / 17, which became the new national regulatory framework on the issue of land regularization (BRAZIL, 2017)

This new framework leaves aside the plural aspect of the previous regularization model, making the clear choice for dominial and register regularization. In other words, urbanization and social assistance measures are no longer required, for example, in order to allow land tenure measures to be called land titling only. In this context, one should not lose sight of the fact that the new law favors the titling of full private property, disregarding other forms of domain acquisition such as concessions of use.

This model, which then intends to disseminate, through public policy, full and individual private property in Brazil, proves to be dangerous for vulnerable urban populations. This is because private property does not prove to be a sufficiently adequate instrument to guarantee the security of tenure of these populations, since it favors market expulsions, especially in settlements located in already valued areas of the cities (such as the slums located in southern Rio de Janeiro, for example).

In this process, we can see the intentionality of making room for the interests of capitalist fractions at the expense of the rights of the residents and the sociability present in the territory. The struggle for maintenance in the territory is an old agenda of the housing movements, which, with the Urban Reform agenda, had advances, such as articles 182 and 183 in the Federal Constitution of Brazil, the creation of the City Statute, the creation of the Ministry Cities or even the City Council and other representative and participatory spaces of public policies.

As it turns out, in just over a year of democratic disruption, many of these advances that were being built since before the 1988 constituent were quickly emptied and mitigated, and the much-glimpsed urban reform never came to fruition. increasingly distancing themselves from the possibilities with the objectives of the current political agenda of the Brazilian government. Along with urban reform, other rights defended by housing movements, such as the right to security of tenure, are also emptied at the current juncture.

BIOWEAPON, LEGISLATION AND PRIVATE PROPERTY: WHEN EXCLUSION BECOMES RIGHT

Western societies have developed over time mechanisms of coordination and population control power, which in their new format inaugurate what Michel Foucault calls "biopower", the right "to die and to let live". This right to make die and let live, which was initially marked by death, by "making die" (in the penalties and torments imposed on deviant bodies - theme worked on by Foucault's Watch and Punish), evolves into a new life-based power. (now controlled, disciplined and insured), transforming itself into "a power destined to produce forces, to make them grow and to order them", which is "positively exercised over life, which is in charge of managing, to value, to multiply it, to exercise precise controls and overall regulations over it" (EWALD, 1993, p. 77). A positive power exercised over life and managed by sovereign power.

³In the process of Brazilian urbanization, dating from the twentieth century, the cities of São Paulo and Rio de Janeiro were the scene of several urban modifications, based on hygienist thinking that expelled poor populations from central areas and modified the central urban space. In Rio de Janeiro, there were so many removals that the period is known to historians as the "Age of Demolitions".

In this case the sovereign exercises his right to life only by exercising his right to kill or to contain it; only its power over life for the death it can demand. The right that is formulated as "life or death" is, in fact, the right to cause death or to let live. After all, it was symbolized by the gladius. And perhaps this legal figure should be related to a historical type of society in which power was essentially exercised as an instance of confiscation, a mechanism of subtraction, the right to appropriate part of the wealth: extortion of products, goods, services, of work and blood imposed on the subjects. Power was, first and foremost, in this kind of society, the right to apprehend things, time, bodies, and finally life; it culminated in the privilege of seizing life to suppress it. (FOUCAULT, 2014, p. 146).

This power mechanism normalizes and manifests itself in the biopolitics of populations, in which the species-body becomes the center, the basis of biological processes. Interventions aimed at population control include mandatory vaccination, birth and mortality control, and lifestyle interventions through early twentieth-century hygienist and removalist policies.³, interventions and controls of population biopolitics (FOUCAULT, 2014).

It is important to mention that this control of the bodies is an indispensable element for the development of capitalism, making the control of the population compatible with the economic processes. This is because the power invested in the subject's body has its "utility" and is plunged into a political field..

This political investment of the body is linked, according to complex and reciprocal relations, to its economic use; It is, to a good extent, as a force of production that the body is invested with relations of power and domination; but in compensation its constitution as a labor force is possible only if it is trapped in a system of subjection (where necessity is also a carefully organized, calculated and utilized political instrument); The body only becomes a useful force if it is both a productive body and a submissive body. (FOUCAULT, 2013b, p. 28-29).

The development of biopower has in the norm, and not necessarily in the legal system of law, its support:

A power that has the task of taking charge of life will need continuous, regulatory and corrective mechanisms. [...] I do not mean that the law goes out or that the institutions of justice tend to disappear; but that the law is increasingly functioning as the norm, and that the judiciary is increasingly integrated into a continuum of apparatus (medical, administrative) whose functions are primarily regulatory. A normalizing society is the historical effect of a life-centered power technology. (FOUCAULT, 2014, p. 135).

⁴Terminology of the Brazilian Institute of Geography and Statistics (IBGE) since 1987, which defines "set consisting of 51 or more housing units characterized by absence of title deed and at least one of the following characteristics: irregularity of circulation routes and size or shape of lots and / or lack of essential public services (garbage collection, sewerage, water supply, electricity and public lighting. "(MILANO, 2016, p. 18).

The formation of a normalized society provokes legislative proliferation, in which the norm is constantly designating the mean, the standard, in order to counteract and appreciate the deviation, that is, "the norm now takes its value from the game of oppositions between normal and abnormal or between normal and pathological "(EWALD, 1993, p. 79).

This delimitation between the normal and the abnormal can be transposed to the urban space in the norms of public, administrative or urban law that delimit the legal and the illegal, the owner and the invader, the regular allotment and the subnormal cluster.⁴, always from the proprietary logic, which leverages private property to fundamental individual right and consequently makes exclusion a right.

Property, the juridical arrangement of social relations, proves, as well as a natural or essential right, a condition for individual autonomy. So much so that Article 17 of the Declaration of the Rights of Man and Citizen of August 26, 1789, treats it as a sacred and inviolable right.

Since the property is an inviolable and sacred right, no one of it can be confidential, except when legally proven public need requires it and in the condition of fair and prior indemnity. (statement..., 20—).

We can say that the main social meaning of the right to property is to be an individual freedom that is constituted over the exclusion of the other. This other is socially constructed along with the standards established by the instituting rights norms, such as the right to live, to circulate or to participate in cities. Thus, there are several power relations in the urban space, which are tensioned and negotiated at all times and which determine the legalities and illegalities, in what Foucault calls "management of illegalisms". In this "management", the limits of tolerance are crossed out, the owners are defined, others are excluded from the property, others are neutralized.

It was undoubtedly against the new land tenure regime - established by the bourgeoisie, that took advantage of the Revolution - that the peasant illegality developed that undoubtedly knew its most violent forms from the Termidor to the Consulate, but did not disappear then; It was against the new regime of legal exploitation of labor that the illegality of workers developed in the early nineteenth century: from the most violent, such as the breaking of machines, or the most durable, such as the formation of associations, to the most everyday, such as absenteeism, abandonment of service, loitering, fraud in raw materials, quantity and quality of work completed. A series of illegalities arise in struggles where we know that the law and the class that imposed it are at the same time. (FOUCAULT, 2013b, p. 268-269)

The Foucaultian notion of illegalism enables us to understand the power relations that occur at certain times and spaces, breaking with the binary of legal and illegal and us and them (the others), since we see that “they” are porous. and that the prejudices that synthesize the stereotype that defines the difference are many and vary in each society and context, such as poor young people from precarious communities or a certain political category (subversive, bourgeois). The characteristics of these stigmatized groups change over time and place, but will define those groups that will be vulnerable in their rights.

Ignoring the course that constitutes the socio-spatial manifestations and their underlying conflicts, law and the judiciary are concerned only with the maintenance and protection of property and the property security of the owners.

These are slums, tenements, informal occupations, outlying neighborhoods, “subnormal agglomerations” and other indicative names of spaces hidden by the rationality of formal ownership of property and which become preferential in the performance of punitive social control of the state. (MILANO, 2016, p. 18).

Such intentionality meets the neoliberal legislative scenario for cities, since legislation and discourse delimit those who may have access to goods and territories, housing and the city. That is, it is a vision of the right to the city as a luxury commodity, aimed at an elite group of potential buyers who are soluble (VAINER, 2000). Anyone who does not fit this city’s consumption trend must then be neutralized, excluded.

However, if the right to the city, the right to housing and security of tenure cannot be guaranteed and made possible within the political-legal frameworks existing in the neoliberal scenario, if the residents, occupants outside the normalizing legality of the city, are seen as targets of elimination, how to think about practices and resistances that go beyond the right “to die and let live”, to guarantee a positive action on the life and existence of this population? In the following lines we will present the CLT model and consider if this practice can configure a resistance to “biopower”

COMMUNITY LAND TRUSTS: A RECENT STORY

It can be argued that CLTs are, before any other more technical definition, an instrument to guarantee security of tenure for vulnerable populations.

The translation of the term into Portuguese is controversial and involves more than the search for words whose meaning is closer to the English terms. Given its origin in the United States of America (USA), which adopts the common law legal system, based more on judicial precedents over legal texts, the Land Trust figure is not reproducible or translatable into Portuguese. Therefore, we prefer to work with the translation of the Territorial Community Term, evoking the consensual and communitarian aspect of the instrument.

The first experiments were conducted in the US in the 1960s, linked to civil rights movements and located entirely in rural areas. In the beginning, the project faced resistance from the residents and few were actually implemented at this first moment. The first urban CLT was organized only in 1980.

The first CLTs failed, especially due to difficulties in obtaining resources for land acquisition. However, these early experiments proved to be fundamental to the model's next steps, and the reflections from them led to a 1972 publication called *The Community Land Trust*, which featured a prototype of CLT from failed experiments and eventually became a guide to model deployment retries.

However, it was not until 1982, with the publication of a new book, *The Community Land Trust Handbook*, that the formatting of the model could be considered complete, defining the common foundations on which CLTs are still founded today. In addition, the publication was responsible for an unprecedented diffusion of the model, giving rise to a true movement around it.

Over time, the CLT model has been refined and the income statement has begun to overcome the initial suspicions, giving it more strength: in 1995 there were about 100 CLTs in the US, by 2005 there were over 200, with an estimated 12 new each year. Currently, CLTs are operating in 45 states and other countries, such as Canada, England, Scotland, Australia, and Kenya (DAVIS, 2010). Much of this expansion is due to the fact that CLTs have left the rural boundaries and have had significant application in cities where, in fact, situations of vulnerability are multiple and severe.

Its diffusion made its modeling malleable so that it could adapt to local diversity. In the words of Davis (2010, p. 10):

The CLT has been reinvented repeatedly over the years, adapting to new audiences, conditions, and applications. Such flexibility has been a perennial source of renewal and vigor, helping the CLT to spread far and wide. A deeper appreciation for the model's evolution may encourage today's practitioners to continue the experimentation that gave rise to the model in the first place.

⁵ Provided for in Article 21, paragraph 1, of the City Statute (BRAZIL, 2001), it states that the surface right consists of the right to use the ground, or subsoil or the airspace of the land, as established in the contract, for a fixed or indefinite period. The Civil Code subsequently also regulated the matter in Articles 1369 to 1377.

The legal and institutional arrangements of the CLTs in fact began to vary according to the reality of each of the locations in which it was established. However, it is possible to define some characteristics common to the actions that come under the heading of CLT, which are: (i) land of collective ownership; (ii) individually owned buildings / dwellings; (iii) sustainability in the maintenance of CLT; (iv) participatory management; and (v) voluntary admission.

Collective land ownership is the basic foundation of tenure security provided by the CLT. The institutional arrangements that guarantee this collectivity generally involve the constitution of a legal entity that will be the formal owner of the land, with the participation of residents in its management. Collective management gives the model the possibility to make restrictions on potential new residents of the area in order to maintain their original characteristics, for example, allowing only real estate to be transferred to low-income people.

The CLT seeks a format of private land grabbing that promotes emancipation and ensures the tenure security of residents in the face of the numerous threats posed by the constant (re) production of the city in capitalism. Among the threats, we highlight especially the successive changes in the valuation gradients that imply the market expulsion of the residents, from places that are (over) valuing themselves, towards the ever renewed fringes of the city.

In turn, and corroborating the argument developed above, another feature common to CLTs is the private ownership of the buildings. There is not a proposal of complete communion between the residents, but the attempt to promote an arrangement that can effectively guarantee their rights, including that of entering the market and selling their property, even if dissociated from the land.

From the legal point of view, several instruments can be used to guarantee this decoupling, especially the surface right,⁵ foreseen in our legal system decades ago and which lends itself precisely to fulfilling this role of separating land and buildings.

From this feature, it is important to dismiss the idea that CLT immobilize residents regarding the sale of their properties. In fact, what may be present - as long as it is by collective decision of the residents - is a limitation related to the buyers of these properties, in order to maintain the protection purposes of a particular community or social group, such as the low-income, in CLT area. This limitation to the resale process may prove fundamental to the continuity of the project of offering affordable housing to vulnerable populations (THADEN; LOWE, 2014).

Moreover, the guarantee of its sustainability is indispensable for the establishment of CLT, that is, it is necessary that the institutional arrangement that sustains it can be maintained without external aid. This measure is important to ensure the safety of the CLT regardless of any conjuncture, economic or political change that affects the institutionality of the model.

The sustainability goal can be achieved in different ways, such as by imposing a real estate transaction fee or periodic contributions by residents - even if in

symbolic value - or even by conducting economic activities within the CLT area, whose values be reverted to its administration and maintenance.

The sustainability of the CLT can also result in the advent of conditions of direct action in the territory, either with technical or material support to buildings, or in the improvement of the conditions of common use areas or through other interventions that may be necessary as required. local demands.

Still at the institutional level, it is indispensable for the CLT model that a participative management by agents interested in the territory is guaranteed. In a classic formulation, this management is done in a tripartite format, with the formation of a sort of collegiate deliberative body composed of 1/3 of residents; 1/3 of technicians nominated by residents and 1/3 of residents of neighboring neighborhoods (DAVIS; JACOBUS, 2008).

Although this classic format is not reproducible in all places where the CLT model is intended to be implemented, it is essential that institutional management is done in a participatory manner and that participation is guaranteed materially throughout the decision-making process. the territory, not just formally.

Finally, a last common feature of the CLT would be the voluntary entry of its members. As much of its potential is contained in its participatory deliberative dimension and the achievement of a common goal of tenure security for a particular community, it is indispensable that members enter voluntarily. This willingness establishes a base of common interests among the members that can represent the communion link on which the success of the initiative will depend.

The willingness of participation and entry is also related to the guarantee of the principle of autonomy of will and is consistent with all the associative culture necessary for the formation of the collective that manages common property. This characteristic is also fundamental to the participatory deliberative dimension of the CLT, since voluntariness establishes a base of common interests among the members and represents the communion link on which the success of the initiative depends.

From a foray into its history and characteristics, it is possible to add to the definition of the CLT an emancipatory potential, of substantial success in protecting the security of tenure of certain communities from an initiative and management of residents that will be better explored. from now on.

APPLICABILITY OF COMMUNITY LAND TRUSTS AND THEIR POSSIBILITIES

CLTs have been successfully implemented in several countries around the world, with equally diverse realities, in terms of their ability to protect the security of tenure of vulnerable populations. The fact that it is an instrument that allows a large margin of flexibility regarding its practical implementation model has greatly helped in reaching this current dissemination scenario.

⁶ Fica is a fund managed by the formally registered, non-profit Community Property Association. It is made up of money and real estate, with the aim of ensuring affordable housing in large cities on a permanent basis, in the form of social rent, as well as complementary equipment to social housing. This avoids the expulsion of the poorest from the central regions. More information is available at: <https://www.fundofica.org/>.

In Brazil, although there are collective ownership experiences that resemble CLT, as is the case with⁶, In São Paulo, there is still no structure defined as a model for implementation in Brazil with all the characteristics listed above.

The possibilities of implementation are diverse, but depend on legislative changes or a great effort of composition of existing instruments, since the logic of individual property permeates the Brazilian normative production and the current legislation does not cover, individually and directly, all the needs of a collective model of ownership.

In a first overview on the subject, we can identify that the establishment of a CLT should be carried out in stages, which could be defined in a more general analysis: (i) institutionalization of legal entity that will manage the CLT; (ii) land regularization and titling; and (iii) organization and management of the CLT.

The institution of legal entity is a key element in the consolidation and maintenance of a CLT, since they will promote the collective management of property and sometimes acquire its ownership. There are several associative formats present in the Brazilian legislation and that a CLT can assume, among them the association, foundation or cooperative, depending on the personal configurations of each group and area to be inserted in the model.

Once the legal entity responsible for the management of the CLT is established, another fundamental step is the regularization of land ownership, because the CLT is based on pre-constituted private property, an unusual situation in Brazil. In fact, given its land history and the difficulties involved in land management since the early days of colonization, it is estimated that Brazil has most of its territory today with some level of land irregularity. This scenario tends to be even more highlighted in areas occupied by low-income population, which confirms the importance of using the available instruments for land regularization as a means of implementing a CLT.

The subversive aspect of law in this use of land regularization cannot be stressed here. This is because, as previously seen, it is an institute recently changed to meet the interests of capitalist fractions, leaving behind the protection and guarantee of rights to vulnerable urban populations, which is now used as a basis for institution of legal regime that demonstrates the potential exactly to guarantee these rights and the security of possession of these populations.

The last of the steps we highlight refers to the organization and management of the CLT, assuming the overcoming of the previous steps and their effective implementation. It may be the one with the greatest emancipatory potential and should receive the most attention. The CLT cannot be considered as such without a collective management model, based on the co-responsibility of individuals for collective ownership.

In addition to seeking, considering the specificities of each group, the most appropriate formal arrangement to guarantee this participation, it is necessary to create structures for the transmission of information and the permanent

collection of opinions and perceptions from residents. A participatory process towards the establishment of a CLT model must go through truly participatory practices, without being limited to the establishment of equal weighted voting among agents.

This aspect of collective management, rather than the formal and legal arrangements necessary for the implementation of a CLT, is what can bring a truly emancipatory and subversive character to the instrument, especially in a scenario of predominance of an individualistic view of property and ownership. increasing socio-spatial inequality in cities.

COMMUNITY LAND TRUSTS AS BIOPOTENT RESISTANCES

The management of life and death of populations is enhanced in a neoliberal model, so that individuals who do not serve the hegemonic system can be easily dismissed. Achille Mbembe (2017) states, speaking of the violence of capitalism that afflicts the world, that the processes of abstraction and classification that historically affected specific peoples (such as the slave trade and colonizing processes of the nineteenth and twentieth centuries) were increasingly spreading. globally. Contemporary power, according to Giorgio Agamben (1999, p. 205 apud PELBART, s. D.), Becomes responsible for producing survival:

For it is no longer life, it is no longer death, it is the production of a modulated and virtually infinite survival that constitutes the decisive performance of the biopower of our time. It is a question of separating organic life from animal life, the nonhuman from the human, the Muslim from the witness, the vegetative life, prolonged by the techniques of resuscitation, from conscious life, to a limit that Like geopolitical boundaries, it remains essentially mobile, retreating as scientific or political technologies advance. The supreme ambition of biopower is to realize in the human body the absolute separation of the living and the speaker, of *zoè* and *bíos*, from nonman and man: survival (AGAMBEN, 1999 apud PELBART, s. D.)

Contemporary biopower creates survivors and produces survival. However, it also produces fighting force, which emerges from life itself, through death and the suffering generated by the neoliberal advance, which Deleuze calls a life as power. Where power comes most strongly to life, resistance to that power also arises.

This power of life can be seen in the various contesting movements, organized in the most diverse and varied formats, from the "traditional"⁷ to the so-called brand new social movements, spontaneist manifestations⁸ or networks. In these movements, at least one similarity is perceptible: with the crisis of modernity and the emergence of new forms of rationality, the territory comes to be seen as a resignified category and one of the most used to explain localized actions, that is, the territory. increasingly it stands as a space for dispute and action.

⁷Gohn (2014, p. 14), when studying social movements, traces certain characteristics and common constituent elements: (1) demands that shape his identity; (2) opponents and allies; (3) bases, leaderships and advisory services - which are organized into articulators and articulations and form mobilization networks; (4) diverse communicative practices ranging from direct orality to modern technological resources; (5) projects or worldviews that support your demands; (6) their own cultures in the ways in which they sustain and forward their claims, characteristics that are beginning to be blurred by the brand new social or collective movements..

⁸Spontaneous manifestations and movements, which are constructed when they are expressed.

As the territory is the largest locus of dispute, it is also important to think of it as a space for the materialization of rights and, therefore, as a key to the anti-capitalist struggle and the defense of rights, as a space of biopotent practice that responds with power over life. the power of life. Now, private property is a central issue for private enterprise, the capitalist, so that new glances and experimentation with new practices that, if not overcome, at least partially break with private property are strong examples of potential biopotent practices.

In this sense, the CLT can be characterized as life power in their experiments of collective property management, since the model has in its constitution characteristics such as sustainability in the maintenance of CLT, participatory management and voluntariness of entry. They have the potential to create spaces where the individual gives way to the collective, in a common search for new democratic forms of property management, new associations and new forms of cooperation.

There is still a long way to go when it comes to proprietary logic and the communization of goods, but there is no denying how much the CLT contributes to ensuring security of tenure and thus building not only a new political imagination but also a potentially emancipatory practice.

FINAL CONSIDERATIONS

The CLT, far from denying or disputing the private property paradigm, represents the search for a private land appropriation format that guarantees the security of tenure of the residents in the face of the numerous threats posed by the constant (re) construction of the city. in capitalism, especially those related to the successive changes in the valuation gradients, which imply the market expulsion of the residents of localities that are valuing themselves towards the always renewed fringes of the city.

From an incursion into its history and characteristics, it is possible to add to the definition of the CLT an emancipatory potential, of substantial success in protecting the security of tenure of certain communities through an initiative and management of residents. Although there is no frontal confrontation of ideology and legal and institutional arrangements of private property, there is a use of them to empower residents and ensure their permanence in territories from which they would otherwise have been expelled by state or market forces. . This potential of the CLT is fundamental in the current scenario of deepening a market vision of city and housing under a capitalism dominated by finance.

In addition to its pragmatic importance, as a guarantee instrument for the security of tenure of vulnerable populations, CLTs have the potential to be placed as a potent and biopolitical practice that emerges in private property, but subverts its classic individual sense to advance towards the collective, especially regarding management mechanisms.

REFERENCES

- BRAZIL. Law No. 10,257, of July 10, 2001. Regulates arts. 182 and 183 of the Federal Constitution, establishes general guidelines for urban policy and other measures. Brasília, DF: Presidency of the Republic, 2001. Available at: <https://bit.ly/2DwSI0I>. Accessed on: 29 nov. 2019.
- BRAZIL. Law No. 11,977, of July 7, 2009. It deals with the Minha Casa, Minha Vida [...] Program and the land tenure regularization of settlements located in urban areas [...] and other measures. Brasília, DF: Presidency of the Republic, 2009. Available at: <https://bit.ly/34wPgPV>. Accessed on: 29 nov. 2019.
- BRAZIL. Law No. 13,465, of July 11, 2017. Provides for rural and urban land regularization, settlement of credits granted to agrarian reform settlers, and land regularization within the Legal Amazon; establishes mechanisms to improve the efficiency of the Union real estate sale procedures [...] and other measures. Brasília, DF: Presidency of the Republic, 2017. Available at: <https://bit.ly/33x5Mha>. Accessed on: 29 nov. 2019.
- DAVIS, John Emmeus. *The Community land trust reader*. Cambridge, MA: Lincoln Institute of Land Policy, 2010.
- DAVIS, John Emmeus; JACOBUS, Rick. *The city-CLT partnership: municipal support for community land trusts*. Cambridge, MA: Lincoln Institute of Land Policy, 2008.
- DECLARATION of human and citizen rights. Virtual Library of Human Rights, São Paulo, [20—]. Available at: <https://bit.ly/2XXa68x>. Accessed on: 28 nov. 2019.
- DELETE, Gilles. Foucault. São Paulo: Brasiliense, 2006. EWALD, François. Foucault, the norm and the law. Vegas, 1993.
- FOUCAULT, Michel. *History of sexuality I: the desire to know*. Maria Thereza da Costa Albuquerque; Jose Augusto Guilhon Albuquerque. São Paulo: Peace & Earth, 2014.
- FOUCAULT, Michel. *Watch and punish: birth of prison*. Rachel Bouquet Translation. Petrópolis: Voices, 2013b.
- HARVEY, David. *The social justice and the city*. São Paulo: Hucitec, 1980.
- HARVEY, David. *The capitalist production of space*. São Paulo: Annablume, 2005.
- HARVEY, David. *The riddle of capital: and the crises of capitalism*. São Paulo: Boitempo, 2011.
- HARVEY, David. *The limits of capital*. São Paulo: Boitempo, 2015.
- GOHN, Maria da Gloria. *New theories of social movements*. São Paulo: Loyola, 2014.
- MBEMBE, Achille. *Critique of black reason*. Lisbon: Antigone, 2017.
- MILANO, Giovanna Bonilha. *Urban land conflicts and the judiciary: jurisdictional decisions in the production of socio-spatial segregation*. 2016. Thesis (Doctorate in Law) - Federal University of Paraná. Curitiba, 2016. Available at: <https://bit.ly/37LiR9Y>. Access on: 27 nov. 2019.
- PELBART, Peter Pál. *Naked life, stupid life, a life*. Wow, [s. l.], [s. d.]. Available at: <https://bit.ly/347enaV>. Accessed on: 7 Dec. 2019.
- SASSEN, Saskia. *The cities in the world economy*. São Paulo: Studio Nobel, 1998.
- THADEN, Emily; LOWE, Jeffrey. *Residents and community engagement in Community Land Trusts*. Cambridge: Lincoln Institute of Land Policy, 2014.
- VAINER, Carlos B. *Homeland, enterprise and commodity: notes on the discursive strategy of urban strategic planning*. In: ARANTES, Otilia; VAINER, Carlos; MARICATO, Erminia. *The city of unique thinking*. Petrópolis: Voices, 2000.
- WHITAKER, John Sette. *Consortium urban operation: participatory urban diversification or deepening inequality?* Cities for Who Blog, [São Paulo], 1 jul. 2002. Available at: <https://bit.ly/2QZ5wFl>. Access on: 28 May 2018.

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