



A brief cultural historical study: achievements and challenges of people with disabilities A
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SUMMARY

THIS ARTICLE USED BIBLIOGRAPHICAL AND DOCUMENTARY RESEARCH BASED ON LEGISLATION TO ANALYZE THE CULTURAL HISTORY OF PEOPLE WITH DISABILITIES, HIGHLIGHTING THEIR ACHIEVEMENTS AND CHALLENGES. THROUGHOUT THE TEXT, THE HISTORICAL CONTEXT OF PERSONS WITH DISABILITIES WAS DISCUSSED, AS WELL AS THE CIVIL CAPACITY AND HUMAN RIGHTS OF PERSONS WITH DISABILITIES.

KEY WORDS:PERSON WITH DISABILITIES; HUMAN RIGHTS; CIVIL CAPACITY.

ABSTRACT

THIS ARTICLE USED BIBLIOGRAPHIC AND DOCUMENTARY RESEARCH BASED ON LEGISLATION TO ANALYZE THE CULTURAL HISTORY OF PEOPLE WITH DISABILITIES, HIGHLIGHTING THEIR ACHIEVEMENTS AND CHALLENGES. THROUGHOUT THE TEXT, THE HISTORICAL CONTEXT OF THE DISABLED PERSON WAS DISCUSSED, AS WELL AS THE CIVIL CAPACITY AND HUMAN RIGHTS OF THE DISABLED PERSON

KEYWORDS:DISABLED PERSON; HUMAN RIGHTS; CIVILIAN CAPACITY.

1. INTRODUCTION

Since the beginning of time there have been records of people with special needs. The cultural idea of disability, impotence and dependence of people with motor difficulties cross cultures, societies, sociocultural groups, religions and social practices. The breakdown of parents' expectations with the birth of children affected by some type of motor problem, the acquisition of some sequelae resulting from illnesses or accidents, are certainly events that are difficult to deal with and have already been experienced in many cultures in atypical ways (GUGEL, 2011).

According to Koyama (2017), people with physical disabilities have always faced different situations, In the period of ancient Greece, this was especially portrayed by the city-state of Sparta, as children who were born with some type of disability were considered useless in that society and thrown into an abyss. In this article we will reflect on what is social utility and uselessness, the stigma of sb different in society and social rights.

Life in society is only acceptable because people use the same language, are judged by certain common laws, in addition to having a common history and customs that make them feel like they belong to a social group. The important thing is to understand what belongs to each person, what is common and what is shared by everyone – the individual is not separate. On the contrary, it is in this process that relationships are formed according to reactions to those situations that we face in everyday life.

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2 HISTORICAL CONTEXT OF PERSONS WITH DISABILITIES

Koyama (2017) says that throughout history, people with disabilities have always fought a great struggle for life and to gain their space in society, since the culture imposed by society on people has always marginalized them and acted in an exclusionary manner towards these people.



Ancient Egypt, according to Clemente (2015, p.34), was known as the “Land of the Blind because his people were constantly affected by eye infections, resulting in blindness.” On the other hand, there are historical records that in places in ancient Greece and Sparta, children with deformities were abandoned in the forests or thrown from gorges.

Ancient Roman laws did not protect people with disabilities, on the contrary, legitimized parents to kill their children, through drowning, abandoned in baskets in the Tiber River, or in other sacred places, with some being exposed and used as entertainment in circuses. Studies carried out by Lourenzetto (2006) confirm how, in the first four centuries of the Christian era, there was no significant expression that favored the inclusion of people with disabilities as subjects of dignity and rights.

In antiquity, there are few records of society's relationship with people with disabilities on a daily basis. Through biblical passages, the discrimination that existed at the time against people with disabilities can be seen, as they are always mentioned as beggars or rejected by the community, that is, they lived on the margins of social and community coexistence. Many believed that these people were punished by the gods (LOURENZETTO, 2006, P. 3).

In the Middle Ages, disability was considered a metaphysical phenomenon, determined by demonic possession or as punishment from God. Such people were seen as “possessing evil due to a pact with the devil”, a justification used to socially legitimize the extreme use of bonfires as punishment (MAINIERI, 2012).

It was believed that this practice allowed humiliation and victory against the supposed enemy that needed to be defeated. For Gugel (2011), in addition to giving people with disabilities special wizard powers, the children who survived were separated from their families and almost always ridiculed.

Lourenzetto (2006) makes references to papal documents, which in the case of a person with mental disability To escape his reason, he was considered a diabolical being, being persecuted, tortured and exterminated. In the 15th century, such individuals were not yet perceived as human persons.

In these examples, it is clear how segregation and fatalism affected people with blindness problems and any others who deviated from the standards established as normal (BIANCHETTI; FREIRE, 2007). The penalty of amputation was also used to control and punish traitors in the Roman Constitutions of Emperor Leo III, a process that was in force in the Roman Empire and the East.

The reasoning introduced notably during the Inquisition period adopted the practice of burning people who carried in their body some difference considered non-normal, or that presented ideas that differ from the status quo or that behaved in a way that was considered inappropriate. For this reason, in the records of the Inquisition and in the Church's justifications there are no statements that it burned people. As Bianchetti and Ida Freire (2007, p. 33) state, the Church enunciated such an action as “[...] purification by flames”. Another explanation for the existence of blind, mute, paralyzed, insane and lepers was that they were conceived as:

[...] instruments of God to warn men and women about appropriate behavior or to provide them with the opportunity to do charity. Thus, the misfortune of some provides means of salvation for others. (BIANCHETTI; FREIRE, 2007, p. 33).

People with disabilities had some of their rights recognized only in the Universal Declaration of Human Rights and from then on, a kick was given to what would be the standardization of fundamental principles for these people, from that moment they emerged: the principle of human dignity, principle of equality, among other situations. (KOYAMA, 2017)

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According to Gugel (2011), the process of people with disabilities being recognized as people of dignity and value emerged with the first charity hospitals. For the author, between 1214 and 1270, King Louis IX founded the first hospital for blind people who were victims of the Crusades. The construction of new conceptions about disability was only historically possible in the 16th century, when technological and scientific advances enabled the emergence of different conceptions in Medicine.

It was only in the 16th century, with scientific advances in the field of medicine, that the first dissonant statements appeared regarding the treatment given to the disabled (GUGEL, 2011).

Most men and women simply lived their daily lives, in a miserable way, involved in with production for subsistence. With the gradual predominance of market-oriented production, the possibility of accumulation, the development of science and new technologies, obtains relative dominance over nature. With this process, the material, social and cultural conditions were created for the construction of emancipatory processes that enable the transition from the sphere of necessity to freedom.

Only from the 16th century onwards was another historical process possible, different from the previous historical situation. With the advances in medicine that occurred in the 17th century, physical disability began to be understood as an object of study in medical practice. The process of medicalization of disabilities implied criticism of historically present views, that each man presided over a morbid state, the presence of evil demons influencing health and illness (BIANCHETTI; FREIRE, 2007).

Metaphysical explanations of the religious sphere are confronted with the positivist scientific paradigm, so that the theological vision about difference loses strength, but influences the theoretical bases for an organicist interpretation. In the 17th century, there was a great closure of everyone who did not participate in the Universal Reason, which was emerging. Anyone who showed the absence of reason in any of its forms, such as logical, political and moral reason, was cloistered. (ROSS, 1998 apud BIANCHETTI; FREIRE, 2007).

It was only from the middle of the 19th century that the first institutions to care for people with physical disabilities began to emerge. For a long time, such people were considered only as patients who needed special care and they were seen as people with low potential and countless limitations. In Brazil, in the same period, by order of D. Pedro II, the Imperial Instituto dos Meninos Cegos and the Imperial Instituto de Surdos-Mudos were established, a fact considered as one of the first Brazilian attitudes towards the integration of disabled people in society (SOUSA, 2012).

However, the creation of enclosure devices also generated processes of segregation of the social environment, resulting in the construction of what Goffman (2008, p.13) defines as stigma, “[...] a special type of relationship between attribute and stereotype”, understood in the context of human relations and not substantiated. “An attribute that stigmatizes someone can confirm the normality of someone else.”

The issue of disability obtains another focus due to the observation of the change in paradigms, notably in the 1970s of the last century, integrative actions were advocated, in order to favor the presence/insertion of people with disabilities in the same social spheres as others. However, this possibility appears as something utopian in its real functionality, because as Goffman (2008, p. 134) explains:

The special situation of the stigmatized is that society tells him that he is a member of the wider group, which means that he is a normal human being, but also that he is to some extent “different”, and that it would be absurd to deny this difference. Difference itself derives from society, because, in general, before a difference is important, it must be collectively conceptualized by society as a whole.

In this way, the insertion of this public in different social spheres is increasing every year, although the facilities facilities, the supply of material and the training of professionals to care for people with special needs are still precarious.

2.1 CIVIL CAPACITY OF PERSON WITH DISABILITIES

3 Law no. 13,146, of July 6, 2015, came to establish the Brazilian Law for the Inclusion of Persons with Disabilities (Statute of Persons with Disabilities), amending the Civil Code by bringing in its article 2 the recognition of persons with disabilities their full participation in society, in addition to its article 6 highlighting that disability does not affect the individual's civil capacity, this being the important changes brought about that reflect on the theory of disability. The aforementioned article provides that:

Art. 6. Disability does not affect the person's full civil capacity, including to: I - marry and form a stable union;
II- exercise sexual and reproductive rights; III
- exercise the right to decide on the number of children and to have access to information adequate information on reproduction and family planning;

- IV - preserve their fertility, with compulsory sterilization being prohibited;
- V - exercise the right to family and family and community coexistence; It is
- VI - exercise the right to custody, guardianship, guardianship and adoption, as an adopter or adoptee, on equal opportunities with other people.

As can be seen, the emphasis brought to the civil capacity of people with disabilities rests on Family Law, giving people with disabilities the ability to decide on their marital and reproductive status, as well as to raise their children, being able to receive custody of them. It is important to mention that the law under study ratified people with disabilities as subjects of law, highlighting the duty of the State, family and society to guarantee these rights with priority.

One of the main changes brought by the aforementioned law to the Civil Code was the repeal of its article 3, as well as changes made to article 4, since a person with a mental disability is considered absolutely incapable, and cannot respond civilly for their actions. With the new wording given to section III, article 4, people with disabilities were considered relatively capable. Regarding these changes brought about, Cristiano Chaves de Farias, Rogério Sanches Cunha and Ronaldo Batista Pinto (2016, p. 309) states:

By greatly altering the theory of incapacities enshrined in the original draft of the 2002 Civil Code, the Statutory Standard uncoupled the concepts of incapacity and person with a disability. There is no longer, effectively, an implicational relationship between disability (physical, mental or intellectual) and the incapacity for acts of civil life. Especially because a person with a disability may not suffer any restrictions on the possibility of expressing their wishes and preferences.

It is noteworthy that these changes have generated discussions in social, doctrinal and jurisprudential circles, bearing in mind that for people with mild mental disorders it is seen as an advance, however, for those who have no idea of the current reality, it is even being considered as a setback, as it requires their active participation in their civil decisions.

That said, there was a repersonalization of the traditional civil theory of incapacity, as only those under sixteen years of age will be absolutely incapable. Therefore, the action of absolute interdiction was abolished from the Brazilian civil system, since minors are not interdicted (BRUNA DE OLIVEIRA ARAÚJO, 2016, p. 1).

Thus, the law under study overturned the theory of incapacity in relation to people with disabilities, by equating them with so-called normal people and highlighting their full social exercise, as well as by modifying the Civil Code, which left only minors as incapacitated. 16 years, giving civil capacity relative to those who presented mental disabilities.

Another important change brought about by the law under study was related to the legal treatment of guardianship, which was an extraordinary measure and limited to rights of a patrimonial and business nature, according to article 85, caput. With this change, the decision made by people with mental or intellectual disabilities was supported, taking on a more flexible and less invasive characteristic. The change brought about by the aforementioned law brought the subsidiarity and exceptionality of the guardianship institute, intended only for the most serious cases of mental impairment and, even so, limited to the patrimonial and business aspects of the guardianship (FLADEMIR JERONIMO BELINATI MARTINS, 2016). It is important to mention that Law no. 13,146/2015 did not extinguish the interdiction procedure, however, it limited it. Flademir Jeronimo Belinati Martins (2016, p. 7) also mentions that:

In any case, whether under the name of interdiction or guardianship process, the Statute of Persons with Disabilities gave the institute a new look, making it possible to establish it in relation to mentally or intellectually disabled people, even if considered fully capable by the CC. Furthermore, its replacement with a more flexible procedure, supported decision-making, becomes preferential, depending on the degree of understanding of reality presented by the individual. Thus, instead of being banned, the mentally or intellectually disabled person will be able to nominate two people they trust to support them in their civil life decisions, thus maintaining their autonomy and the legal relevance of their expression of will. In view of the legislative omission, in relation to the ongoing and completed interdiction processes, Pablo Stolze clarifies that, in the case of not converting the procedure into a rite of supported decision-making (preferential procedure), the interdiction must follow its procedural course, observing the limits imposed by the Statute, especially regarding the term of trusteeship, which must expressly determine the limits of the trustee's activities, whose activities will be restricted to acts of a business or economic nature. The same applies in relation to interdictions already concluded, in relation to which, in the case of no lifting or entry of a request for a supported decision, the terms already drawn up and issued remain valid, however, with limited effectiveness under the terms of the Law 13,146/2015, or

that is, restricted to patrimonial and business acts. In the opinion of the same scholar, it would be reckless, especially due to the risk to legal and social security, to consider that the Statute would automatically render the thousands of terms of guardianship existing in Brazil invalid and ineffective, even more so because the institute of guardianship did not cease to exist. .

Thus, it appears that the theory of incapacity was also modified in relation to the procedure of ban, with people with disabilities having the autonomy to nominate people they trust for supported decision-making. In an overview of the changes brought about by the law in question, Flávio Tartuce (2015, p. 1) says:

In short, there is no longer, in the Brazilian private system, an absolutely incapable person who is of legal age. As a consequence, there is no longer any need to talk about absolute interdiction actions in our civil system, as minors are not interdicted. All people with disabilities, as mentioned in the previous command, are, as a rule, fully capable of Civil Law, aiming at their full social inclusion, in favor of their dignity.

In this context, it appears that the changes brought appear to overturn the theory of incapacity, and may have repercussions on society as a whole, considering that it promotes greater social inclusion of people with disabilities, giving them greater autonomy to carry out their activities as citizens.

2.2 HUMAN RIGHTS AND PERSONS WITH DISABILITIES

Human rights with an emphasis on people with disabilities, in addition to human dignity and equality, need to highlight the right to mobility and the city, as well as education and health, considering that they are crucial factors for can guarantee the social inclusion of these people. Throughout the evolutionary process of human civilization there was a search for rights ranging from locomotion to circulation in public and private environments independently.

Historically, people were disrespected and completely excluded from social life, mainly from the social context and this was based on the ideas they had about the human being and society inculcated in individuals, forming a mental model that is installed in this and never disappears. . It just transforms (LOPES, et. al, 2009, p. 29).

The historically achieved perspective of citizen rights brought the idea of integration, inclusion, equality to combat processes of social exclusion, discrimination and stigmatization. This process is fundamental, like sidewalks that guarantee the right to come and go for any citizen in the city where they live.

In Brazil, this process implied the recognition of the right to accessibility. In the Federal Constitution, chap. VII, art. 227, provides for the “facilitation of access to collective goods and services, with the elimination of prejudices and architectural obstacles”, therefore providing standards that guarantee the construction of adaptation of public spaces, public buildings and public transport. (NOGUEIRA, 2010, p. 51).

In 1981, for example, the UN recognized the International Year of People with Disabilities in a convention. In 1989, these rights were changed by Law No. 7,853, whose purpose aims to establish “the judicial protection of collective or diffuse interests of these people, discipline the actions of the Public Prosecutor's Office, define crimes, and provide other measures” (BRASIL, 1988, p.1). The same law determines compliance with the implementation of standards by municipalities to promote the functionality of buildings and public roads for people with disabilities.

Finally, Federal Law no.

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access tion. To date, however, this law has not been put into practice, as items such as access to public buildings, permanence and use available in these buildings, such as education and health, have not been fully covered.

Sidewalks are a portrait of an exclusionary society, making it necessary to resolve emergency issues, such as potholes in the streets, cars on the sidewalks interrupting mobility, standardization of ramps, handrails, walkways, public bathrooms and special signage so that accessibility problems can be minimized (COELHO, 2010).

In this sense, the right to accessibility is an indispensable factor not only for those who have some type of disability or reduced mobility but for society as a whole, as based on the principle of equality,

everyone is equal before the law and enjoys the same rights to come and go, education, leisure, work, housing, tourism and culture. According to the Declaration of the Rights of Disabled Persons, approved at the general assembly of the United Nations (UN) in 1975, proclaimed among other resolutions that: “Disabled people have the right to measures aimed at enabling them to become as self-reliant as possible”.

The World Charter on the Right to the City approved at the Social Forum of the Americas in Quito, the World Urban Forum in Barcelona in 2004 and the V World Social Forum in Porto Alegre in 2005 establishes commitments between governments and organized civil society with a view to promoting cities based on principles of solidarity, freedom, equality, social justice and dignity.

The right to the city is defined in the Charter as: “The equitable enjoyment of cities in accordance with the principles of sustainability, democracy and social justice [...] is interdependent with all internationally recognized rights”. In this document, the city is conceived as a “culturally rich and diverse collective space that belongs to all citizens” (CARTA MUNDIAL DO DIREITO A CIDADE, 2004, p. 2). Regarding the special protection of vulnerable groups and people, the City Charter states:

Cities, through policies of positive affirmation for vulnerable groups, must overcome the political, economic and social obstacles that limit the freedom, equity and equality of citizens, and prevent the full development of the human person and effective participation in society. political, economic, cultural and social organization of the city (WORLD LETTER OF THE RIGHT TO THE CITY, 2004, p. 3).

In relation to urban mobility, article 13 states:

1. Cities guarantee the right to mobility and circulation in the city through a public transport system accessible to all people according to an urban and interurban travel plan and, based on means of transport appropriate to different social needs (gender, age, disability) and environmental, with prices appropriate to citizens' income. The use of non-polluting vehicles will be encouraged and areas will be permanently reserved for pedestrians at certain times of the day.
2. Cities will promote the removal of architectural barriers for the implementation of equipment necessary for the mobility and circulation system and the adaptation of all public buildings or public use, workplaces, to guarantee accessibility for people with needs special needs (WORLD CHARTER OF THE RIGHT TO THE CITY, 2004, p. 3).

FINAL CONSIDERATIONS

Accessibility is not limited to the physical space where it is installed, it is about citizenship as a whole that represents the political, social, economic and intellectual process of society. Sidewalks and streets, especially in large cities, corroborate and reflect the exclusionary society that we still experience in the 21st century. People with disabilities, in today's society, have not achieved adequate accessibility, perhaps all the rights of a citizen in a broad and equal way.

It is important that there are equal conditions for social interaction. In a society, each person reacts in their own way, some are more passive, others more active, but it is in this process that the society in which we live is built, that is, in the singularity of the Human Being. This is just an example of individuality, being individual beings and, therefore, different, there needs to be respect.

Often, the right to come and go is taken away from a physically disabled person with restricted mobility, for example, when they come across sidewalks without ramps. This cannot happen, people with disabilities must be respected as belonging to their social core, just like everyone else.

There are many challenges facing a society, every citizen must be able to observe the historical and social context of where they live. This article discusses some historical-social achievements and developments that took place over many years. Evolution has been slow, but it has been positive. Although reality is still far from ideal, it is important that it be recognized. It is through the democratization of knowledge about the rights achieved, the search for approval of laws, the struggle to demand compliance with these laws, that we will achieve a more egalitarian society.

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