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NOTARY'S ROLE IN THE DEJUDICIALIZATION PROCESS: A POST-POSITIVIST PERSPECTIVE OF ACCESS TO JUSTICE IN BRAZILIAN LAW

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ABSTRACT

The work intends to elucidate to what extent the notary's performance can represent the guarantee of access to justice under the aegis of post-positivist precepts in the context of Brazilian law. It was sought to emphasize the construction of the concept of theory of law in history and how social advances have elevated the discussion to the scope of post-positivism, which set the precedent of investigating the legal guarantee of fundamental rights, especially access to justice, something that needs attention, since the Brazilian judicial system deals with an overload of processes and, therefore, it becomes time-consuming and bureaucratic. In addition, this study aimed to contribute to the discussion about the insertion of the performance of notarial and registry services in the sense of protecting access to justice as a viable and accessory solution, proposing a debate on its concept and contributions to the legal universe, in addition to analyzing the activities in kind. Through the deductive method and the bibliographic research, the results were found that the inclusion of the notary's performance in the system of guarantee of access to justice, when combined with the law and under the support of legislation, meets the gaps of current needs regarding the inconsistencies of slowness of the judicial system, constituting a new, more agile way to ensure fundamental rights.

Keywords: Post-positivism. Access to Justice. Notary's performance.

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INTRODUCTION

Since the dawn of history, notions of law have emerged with the scope of diverting individuals from unrestricted and savage freedom, in order to ensure that life in community was possible with a defense of order. This more archaic abstraction of what would be considered law has been transformed over time and with the changes in paradigms and particularities related to societies, gaining importance and *status* of indispensability for the construction of the body of legal rules, from the evolution of a social context that has come to value philosophies such as Jusnaturalism, the School of Exegesis, Legal Realism and Positivism as theories responsible for organizing, containing, explaining the origin and emanating the Law. In current times, the advent of globalization and the rise of a dynamic, liquid and post-modern society have also caused profound transformations in Law, which has had to adapt to society's trends.

In this logic, innovations in social, political, scientific, economic, and technological conjunctures have transformed not only the behavior of human beings, but have also irrevocably changed society. As mentioned, this also affected the theory of Law which, impelled by the desire to guarantee the effectiveness of fundamental rights, gave rise to Post-Positivism, a current of jusphilosophical thought that does not deny Legal Positivism, but criticizes its theoretical formalism. Post-positivism sustains the concern with material Law and has the purpose of protecting fundamental rights, in addition to electing the principles and values of society as the source from which Law emanates. Thus, if, on the one hand, due process of law is important for the rule of law, the effectiveness of fundamental rights must be safeguarded even in the face of lapses, failures or omissions by the Judiciary. Therefore, there is concern about a fundamental right: access to justice.

Furthermore, it is known that, although the legislation covers the right of access to justice in several of its diplomas, such as the Federal Constitution of 1988, the current situation of the Judiciary makes this accessibility difficult, due to the large number of ongoing lawsuits, waiting for the magistrate's decision, which leads to obscurity with regard to the guarantee of access to justice. This disorder needs to be remedied, since the guarantee of accessibility to justice represents, in other words, that all the rights of the citizen must be respected, something that cannot be neglected, under penalty of causing instability in the foundations of the Rule of Law.

Thus, by understanding the magnitude of the problem, the present study presents the performance of notarial and registry services as a safe alternative in promoting access

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to justice. The notary, through the notarial activity, already fulfills typical State expedients and has the prerogative to act extrajudicially by attesting to legal acts and attesting to the manifestation of the parties' wills in various legal transactions. Because of this, it becomes an instrument for preventing judicial conflicts and prevents all legal acts from requiring the legal process, which would further drown the service of magistrates. Thus, the present work tries to understand the importance of simplified access to justice in the life of the citizen and its relationship with the guarantee of the rights of collectivities and how the performance of the notarial service can help jurists and legislators to fulfill their role, the greater purpose of the Law, to ensure respect for the social body and individuals to maintain order.

Thus, the general objective of the work is to attest to the positive contributions of the performance of notarial and registry services to access to justice and the improvement and adaptation of the State to post-modernity. To this end, it has as specific objectives to trace a historical profile of the theory of law and the precepts of post-positivism in a historical, legal and social context; conceptualize the right of access to justice and analyze how it relates to post-positivism; highlight its origin and functions; to investigate its practical application and its impact on today's society and to point out notarial and registry activities as services capable of simplifying access to justice and ensuring the promotion of the Law without the need for legal processes, which can speed up the judicial system in forwarding demands.

This work is justified by the importance of discussing possible strategies for the maintenance of the right of simplified access to justice, in the light of post-positivist precepts, since this problem affects the lives of individuals throughout the country and causes negative impacts on the promotion of other fundamental guarantees to the Rule of Law. In this sense, there is inevitable relevance in pointing out notarial and registry activities as viable solutions to resolve such conflict, since Brazilian notary offices already perform this typical function of the State as part of its core and, this time, assist the Law in its pursuit of social justice and guarantee of the effectiveness of fundamental rights, concerns inherent to the core of post-positivists.

The method used was the deductive and the bibliographic research technique. From then on, the research traces a contextualization of the concepts of theory of law in time, post-positivism, the fundamental right of access to justice and the performance of notarial

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and registry services as a way to promote this simplification of access, by containing the prerogative of some typical State services, which prevents and avoids judicial disputes.

Finally, it is worth considering that the deepening of the studies of the present research was based on works by authors such as Luís Roberto Barroso, Norberto Bobbio, Robert Alexy, Mauro Cappelletti and Bryant Garth, among other authors of scientific articles on the subject, and used them as bases and sources of citation to attest to the effectiveness and importance of the notary's performance as an indispensable instrument for simplifying the right to access to justice.

INTRODUCTORY NOTES ON THE THEORY OF LAW AND THE IMPORTANCE OF POST-POSITIVISM IN THE CONTEMPORARY LEGAL SYSTEM

The debates on the emanation of Law are not an innovation of post-modernity. The dichotomy relationship on the topic began in a philosophical sphere before reaching the legal sphere. Still in Ancient Greece, the antithesis between norms and nature, *Nómos* and *Phýsis*, was the north of a political-moral discussion about the exordium of Law. While the Socratic current of thought recognized the existence of a natural right, linked to the morals and values of the scenario in which the social body was inserted, the Sophists, in turn, argued about the inexistence of a universal right, of an immutable character, superior to human law. The Sophists' conviction was that positive law, generated by the State, was legitimate, as it came from the demands of order that prevailed in the communities (DUARTE et al., 2017; LIMA, 2021; CORREIA, 2019).

From now on, this conception and with due percipience, it is admitted that this bipartition of philosophical currents gave rise to the construction of a myriad of theories alluding to Law and influenced the ideation of a theoretical framework for legal dogmatics throughout history. Certainly, it is believed that the existence of Law comes from a moral problem, that is, the presence of the legal norm constitutes a factor external to the agent's will. With the intention of enriching the analysis for the progression of the present study, it is necessary to mention and discuss some of the most influential theories in postmodern Law, among which are Jusnaturalism, the School of Exegesis, Legal Realism, Positivism and Post-positivism (TORRANO, 2019; PEGHINI and MEYER-PFLUG, 2018; LIMA, 2021; DUARTE et al., 2017).

Initially, the present study focuses on the assertion that natural law is based on the axiom that the principles of law are born from sources outside the legal system imposed by

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the State. It is asserted, also from this point of view, that natural law is based on a perspective of fair law and based on logical and rational rules that, in general, assess legitimacy to positive law. In other words, this doctrine is based on the principle that there is an intrinsic order to human nature itself, a natural right that precedes the laws of the State. It is conjectured, therefore, that natural law assumes a dualistic character in which, in the face of an analysis of importance, natural law is the norm that emanates from human nature and, therefore, superimposes itself on positive law (PEGHINI and MEYER-PFLUG, 2018; LIMA, 2021; TORRANO, 2019; BOBBIO, 2016).

With regard to the School of Exegesis, it can be inferred that it starts from the troubled context of France after the revolution of 1789, in the middle of the nineteenth century. In this scenario, it is correct to state that the School represents a rupture with pre-existing conceptions about Law and bears the mark of the alteration of traditional relations made through natural law to positive law (NEVES, 1995; PEGHINI and MEYER-PFLUG, 2018).

It is understood that the School of Exegesis has as its philosophical presupposition the Kantian Enlightenment and its doctrinal and methodological expression is manifested through the legalism of codification, which proclaims that Law flows only from laws legitimized by the State. It is inferred that the School of Exegesis perceives Law as the set of legal texts systematized in codes, which is submitted to an exegetical hermeneutic, which culminates in a logical-analytical and deductive determination. Furthermore, the School of Exegesis notes the omnipotence of the legislator, who has the prerogative to place all the Law in codes and the exclusivity of the law as a legal criterion and normative source (NEVES, 1995; PEGHINI and MEYER-PFLUG, 2018).

Thus, it is up to the present study to scrutinize the postulates of the School of Legal Realism, which dates back to the period of the first half of the twentieth century and had as exponents in its movement the region of Scandinavia and the United States of America. Legal Realism brings in its theoretical framework the tendency of a more social and concrete approach to Law. It is opposed to the principles of normative formalism, in which the judge's decision is based only on pre-established norms. In other words, Law is guided more by judicial activity than by systematized rules (PEGHINI and MEYER-PFLUG, 2018; BRANDO, 2013; SCHAUER 2012).

From an epistemological perspective, Legal Realism is opposed to the School of Exegesis, by interpreting that Law is dynamic and the legal system must be a practical

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exercise. In this sense, according to Legal Realism, the judge's act of deciding is discretionary, defining the law through its concrete application to the dispute, perhaps based on subjective criteria. In line with the studies of Brando (2013), Law, from the perspective of Legal Realism, is something indeterminate and it is up to the judicial activity to have its creative and empirical design. Therefore, legal rules are not able to guide judges in the decision-making process and are only decisive in rare moments. For Legal Realism, the justification of a judge's decision does not correspond to the legal system (PEGHINI and MEYER-PFLUG, 2018; BRANDO, 2013; SCHAUER 2012).

Therefore, it is possible to infer that Legal Realism has the link to make the Law closer to reality, humanizing the experience of the search for the judiciary to resolve legal disputes through the concrete and discretionary action of the judge, who abandons the automatic relationship of application of the law to have an interpretative response on a case-by-case basis. including to have a normative production plan, when courts need to make decisions on more difficult cases (PEGHINI and MEYER-PFLUG, 2018; BRANDO, 2013; SCHAUER, 2012).

That said, the study is responsible for describing another branch of the Theory of Law, subsequent to Legal Realism. In this context, it is mentioned that the currents that are linked to natural law believe in the existence of positive law and natural law. Old, medieval, and modern natural law assert that natural law is superior, timeless, immutable, and unconditional, while positive law is conventional, dynamic, and truly imperfect. In view of this support, it is important to point out that the doctrine now scrutinized concerns Legal Positivism, which carries at its core the adage of opposing natural law. In this way, Legal Positivism rejects the distinction between natural and positive rights. There are no "natural rights" for Positivism, while using the term "positive law" is a pleonasm, given that all law is positive (TORRANO, 2019; BOBBIO, 2016).

In this vein, with regard to the conception of Legal Positivism, it is asserted that it emerged in the legal universe during the twentieth century, in opposition to the natural law model and based on the recognition of the validity and efficacy of positive law. From this perspective, according to the guidelines of Norberto Bobbio (2016), the precepts of Positivism fit into the idea that there is a difference between real law and the ideal, between what law is and what should be. At its apex, Positivism evokes the jurist's prerogative to stick to what the law is in fact, and not to what it should be (PEGHINI and MEYER-PFLUG, 2018; BOBBIO, 2016; TORRANO, 2019; KELSEN, 2003).

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Also in this context, the present study elucidates that the doctrine of Legal Positivism is subdivided into sociological positivism, which deals with the analysis and systematization of data and information about social relations, and legal positivism, responsible for the construction of law as a *science stricto sensu*. Thus, it is configured that Legal Positivism guarantees that in the law is found, in a codified way, the material content of the social relations that were systematized by the scientific and jurisdictional activity of the State to generate the norm. In other words, the body competent to create laws must do so so so that the norm is legitimate. It is also worth mentioning that all norms are articulated with each other and must respect a primary hierarchy in decision-making competence. In addition, it is also stated, according to Positivism, that the enforcer must use the law as a guide when it does not offer support for the resolution of a conflict, which separates Positivism from the legalism brought by the School of Exegesis (PEGHINI and MEYER-PFLUG, 2018; BOBBIO, 2016; TORRANO, 2019; KELSEN, 2003).

In summary, based on the philosophy of Legal Positivism, it can be inferred that law is born from the teleological sense of the will of men and is a dynamic organism that transforms as society changes over time. In this context, it is understood that Law is not a static instrument and needs updates so that it fulfills its social function of marking relationships and maintaining community order. To better understand this concept, according to Torrano (2019 "for legal positivism, law arises from the will of men and serves for these men, in a certain space and place, to achieve goods and objectives considered valuable." Therefore, law can be considered "as a kind of artifact that can be instrumentally handled and transformed by the community as its moral convictions and political opinions change over time" (p. 104).

Later, considering the positivist perspective itself and its conviction about the volatile nature of social reality, which makes Law an instrument adaptable to the will of society, the study suggests the investigation of how Positivism had its postulates contradicted through the analysis of its historical context. It is therefore considered that humanity experienced numerous tragic episodes during the Second World War, still in the first half of the twentieth century. Human rights were disrespected beyond the threshold of genocide, and barbarism caused a profound transformation in society in the appreciation of how social values matter for the realization of justice. While juspositivism proclaimed that only the legislative process was legitimate in the promotion of Law, it was perceived that this rigid guideline was almost arbitrary and devastated the effectiveness of material justice in several cases. Legal

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Positivism was not able to encompass justice in its parameters, given the unusual reality that was experienced in the period (DUARTE et al., 2017; VIDAL, 2019; TORRANO, 2019; LUNARDI, 2020).

In view of this scenario, under the aegis of the need to reconstitute legal science from the apologetic point of view of social values and the realization of fundamental rights, Post-Positivism emerged as a jusphilosophical model that criticizes the legal dogmatics of positivism, the objectivity of the Law and the neutrality of the interpreter. It is necessary to assert that the post-positivist current is not contrary to positivism, it only adds to it a vision that goes beyond written legality. While Legal Positivism centers on the law as its normative source, Post-Positivism elevates the importance of values and principles (DUARTE et al., 2017; VIDAL, 2019; KELSEN, 2003; BARROSO, 2001).

Based on the theoretical foundation built during the present study, it is understood that Post-Positivism is a product of contemporary and post-modern society, in which there is volatility in all areas, rapid paradigm shifts and a constant exponential evolution of technologies that affect society at its core. In a heterogeneous way, the post-positivist criticizes the strict legalism of juspositivism for not having the same dynamism that reality presents, that is, Positivism does not meet the current demands of society. However, it is not up to Post-Positivism to deny the importance of the theoretical matrix of Positivism (BAUMAN, 2007; BARROSO, 2001; DUARTE et al., 2017; CARBONELL, 2003). To better understand these precepts, Correia et al. (2015) affirm the incompatibility of juspositivist rigidity in a liquid and adaptive society "this new normative arrangement reflects the postmodern society, which requires rapid responses from the State. Thus, the capacity for agility and adaptability are valued in the legal norm, which is little consistent with the normative rigidity brought by the formal law." Thus, it is inferred "by the crisis of formal law, transmuting the idea of legality to that of legality, in which there is a legal system capable of meeting the will of the people, through normative sources far beyond the law" (CORREIA et al., 2015, p. 24).

Furthermore, even though they do not resort to the criteria of subjective reason of natural law, the post-positivists bring to the new hermeneutics a current discussion about ethics. The post-positivist philosophy intends, in its scope, to combine the interpretation of reality with the law, to translate the weight of values, to reveal the importance of principles as living normative sources, to use the weighing of interests in the resolution of disputes to resolve conflicts in a more agile way and to guarantee the indispensability of fundamental

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rights in the realization of justice, the purpose idealized by Law since its formation (BARROSO, 2001; DWORKIN, 2002; CARBONELL, 2003; CORREIA et al., 2015).

Principles are recognized as a kind of norm and the tendency of social legislation of Post-Positivism, to assess one of the innovations instilled in post-positivist thought of approximation of formal Law to material reality with special attention to the realization of fundamental rights, that is, access to justice (WALDRON, 2003; ALEXY, 2008).

EPISTEMOLOGY OF ACCESS TO JUSTICE: CONTRIBUTIONS OF THE DEBUREAUCRATIZATION OF JUSTICE IN BRAZIL

Based on the theoretical framework elaborated, an epistemological approach is drawn on the roots of accessibility to justice in Brazil. On this occasion, it is endorsed as essential to probe the historical context in which its current meaning has taken root, as a result of the social dynamism present in post-modernity. It is conceivable that access to justice, as well as the law itself, has a dynamic character and that it has changed according to the technological, scientific, economic, political and social advances that have been the mainstay of any and all societies since the beginning of history (CORREIA et al., 2015; BAUMAN, 2007; CARBONELL, 2003; AVANCI, 2019).

In view of this scenario, it is clear that, until recently, access to justice had an aspect of natural law, of individual, formalistic and dogmatic basis. Inserted in a bourgeois liberal perspective in force in the eighteenth and nineteenth centuries, the right of access to justice did not represent a concern for the State, which limited itself to the purpose of protecting it in the face of a violation. That is, the State was not responsible for providing people with access to the judicial system, but only for ensuring that this right exists, which is not reflected in the characteristics of current law (CAPPELLETTI and GARTH, 1988; MENDES, 2019; AVANCI, 2019).

With this understanding, it is known that only due to the overcoming of formalistic precepts attributed to Legal Positivism, exegetical and commanded by the formal will of the legislator, there was room for a new current of thought with a more flexible matrix in relation to the sources and interpretations of Law, that is, Post-Positivism. Although he did not deny Juspositivism, the Post-Positivist presented criticisms of the system that, in times of paradigm change in society, revealed omissions in guaranteeing certain rights in the course of processes, that is, the Positivist Law no longer met the needs of society. Thus, the Post-positivist matrix began to demand a greater role of the constitutional rule of law in

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guaranteeing fundamental rights, access to justice received the care and status of a more concrete guarantee (CAPPELLETTI and GARTH, 1988; MENDES, 2019; BARROSO, 2001; SILVA, 2009; ARAKAKI et al., 2017).

This new model, which determined a rereading of the Law from a constitutional perspective, made it impossible to take a passive stance in the face of the guarantee of fundamental rights. The Democratic State has undergone changes throughout its history and fundamental rights, previously seen through the prism of freedoms, have come to be understood as rights that should be effectively guaranteed to all citizens. At this juncture, the principle of access to justice was elevated and gained the status of a fundamental right (CAPPELLETTI and GARTH, 1988; MENDES, 2019; SPENGLER and PINHO, 2018).

Even so, Mauro Cappelletti and Bryant Garth (1988) point out that there is a great difficulty in defining the concept of 'access to justice'

and suggest that its conception manifests itself with two basic objectives, since it is possible to demand rights or even resolve conflicts for the protection of the State. In the first perspective, it is considered that all citizens have access to this system and in the second it is said that resolutions must be specific and fair, according to their individuality (CAPPELLETTI and GARTH, 1988; MENDES, 2019; SPENGLER and PINHO, 2018).

With regard to the foundation, the right of access to justice is seen as an imposition to achieve efficiency and validity of any legal system that aspires to guarantee individual and collective rights. It is required that access to justice be attributed the condition of a basic fundamental right for the citizen, in order to maintain the legitimacy of the Democratic Rule of Law. To complement this reasoning, as taught by Barroso (2001), it is understood that the relationship between values, principles and rules, characteristics of the new constitutional hermeneutics, is built on the foundation of the theory of fundamental rights and the principle of human dignity (BARROSO, 2001; ARAKAKI et al., 2017; MENDES, 2019; CAPPELLETTI and GARTH, 1988).

In this vein, it is possible to understand that access to justice, as a fundamental right, guarantees that the execution of justice is carried out to all citizens who have been subjected to the lawsuit or legal process, so that their rights are, in fact, executed. Therefore, it is understood that both the right of defense and the right of action must be made effective by the legal system, so that respect for those under jurisdiction is ensured. That is, access to justice requires that problems be remedied, violated rights recomposed,

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and threats to guaranteed rights cease (ARAKAKI et al., 2017; MENDES, 2019; CAPPELLETTI and GARTH, 1988).

Thus, it can be seen that access to justice contains a vast prerogative in relation to the State's commitment to provide jurisdictional support suitable for conflict resolution, with due compliance with essential rules and values that guarantee human rights. Therefore, access to justice should not be understood as mere access to the Judiciary, because, once done, it commits a restriction. Access to justice is the guarantee that all rights guaranteed by the legal system will be fulfilled, safeguarded. In view of this scenario, it is noted that access to justice represents the foundation of the Brazilian jurisdictional system, and, even so, there is a long way to go for its guarantee to be fulfilled. Access should be an obligation of the State and not understood as its benevolence and democratization has been optimized and has claimed a more effective position of the State and society so that an improvement in the quality of the application of justice is made (ARAKAKI et al., 2017; MENDES, 2019; SILVA, 2016).

From this perspective, it is necessary to adduce that the Democratic Rule of Law was introduced in Brazil due to the promulgation of the Federal Constitution of 1988, which was a milestone in the redemocratization of the country and had a great influence of neo-constitutionalist ideals, which have a protectionist bias in relation to fundamental rights. In this way, the current Federal Constitution aims not only to regulate acts and facts. It goes far beyond that, as it also aims for a more prosperous future for citizens (ARAKAKI et. al., 2017; MENDES, 2019).

It is noted that the norms and principles of the Constitution are considered of great esteem and must be respected by all powers. It is up to the State, in this sense, the scope of making these fundamental guarantees effective to the population. Within the Democratic State, human rights are fundamental and prohibit any type of discrimination, so that even minorities and people with less education have access to justice, since this is seen as a prerequisite of dignity and should not distinguish between people, as provided for in the caput of article 5 of the constitutional diploma. From this perspective, it is analyzed that access to justice and its rights is a topic of great relevance in debates that deal with the effectiveness of fundamental human rights, and the principle of judicial protection (article 5, XXXV, of the FC/1988), should be understood both as a right to seek justice, but also as a guarantee of a concise solution, agile and beneficial (CAPPELLETTI; GARTH, 1988; ARAKAKI et. al., 2017; MENDES, 2019). It is therefore apprehended that:

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> First, the premise that the structure established in the CF/1988 incorporates the revolutionary component of transformation of the status quo, (1) with the option to constitute the Federative Republic of Brazil into a "Democratic State of Law" (CF/1988, art. 1, caput); (2) with the consecration of the separation of state functions (CF/1988, art. 2); (3) based on, among others, "citizenship" (CF/1988, art. 1, II) and the "dignity of the human person" (CF/1988, art. 1, III); (4) with fundamental objectives, including "building a free, fair and solidary society" (CF/1988, art. 3, I), "eradicating poverty and marginalization and reducing social and regional inequalities" (CF/1988, art. 3, III); and (5) with the adoption of an extensive and non-exhaustive list of fundamental rights and guarantees (CF/1988, art. 5 and subparagraphs). In this context, the right of access to justice has gained unprecedented and very relevant contours. (SILVA, 2009, p. 126).

According to Gabbay (2019), access to justice for all is still an unfeasible guarantee and, once its main difficulties in existing are analyzed, a pattern is noted in which the greatest obstacles in the legal system fall on smaller demands. These difficulties grow even more if one of the parties involved is poor or has less access to social resources. This situation further hinders the right to justice of disadvantaged people against large organizations (GABBAY et al., 2019; CAPPELLETTI; GARTH, 1988; MENDES, 2019).

In summary, when analyzing access to justice more closely, it is notable that there are several obstacles, such as discrimination in social classes, lack of legal guidance for the less favored and a deprivation of knowledge of basic human rights for the population. In addition, there are the high costs included in the search for justice that are not only directed to the initial amounts, but also to those that appear during the process, in addition to the existence of a problem of corruption in the Judiciary and, therefore, because they do not have the financial conditions to pay, due to the slowness in resolving the process or even due to lack of access to information, many parties end up looking for alternative means to solve their conflicts and do not they do so through justice (MENDES, 2019; VALENTE and PINHEIRO, 2021; ARAKAKI et al., 2017).

ROLE OF THE NOTARY IN THE PROCESS OF DEJUDICIALIZATION OF THE LAW BRAZILIAN UNDER THE AEGIS OF POST-POSITIVISM

In view of the theoretical foundation engendered on the object of study of the present work, it is ratified that the post-positivist precepts offered a break with the rigidity of formalism incited by juspositivism and led to material law the task of making it more agile and adaptable to the factual reality of post-modernity, liquid and dynamic. Post-positivism is also responsible for the objective of promoting the horizontal effectiveness of fundamental rights, immediately and without the mandatory intermediation of the legislator, to make

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legal-private relations simpler. It is reiterated that access to justice is a fundamental guarantee provided for in the Federal Constitution of 1988 and aims to resolve the obstacles that prevent society from claiming its rights by reducing bureaucracy in legal relations (DUARTE et al., 2017; PEGHINI and MEYER-PFLUG, 2018; BARROSO, 2001; AVANCI, 2019). From this perspective, Valente and Pinheiro (2021, p. 3) assert that Law, "understood as being a social science of fundamental importance for the functioning of contemporary societies, is not something that is immovable or perpetual, it is, on the contrary, a science that develops together with the social modifications of the community that aims to establish and regulate coexistence.

In this way, knowing that the mechanisms to promote access to justice have advanced as a result of a post-positivist teleological and social construction, the present study tends to conjecture about which tools would be able to be associated with this fundamental guarantee as a good invitation and is faced with the role of the notary in the process of dejudicialization of the Law, in the sense of following the novelties related to the theory of law in order to apply them in practice and facilitate the population's access to services that, at a previous time, would have been delegated to lengthy and bureaucratic procedures (BARROSO, 2001; ARAKAKI et al., 2017; MENDES, 2019; VALENTE and PINHEIRO, 2021; AVANCI, 2019).

Essentially, the fact that the number of new cases is higher than the number of judged cases is scrutinized, something that hinders the system of the Judiciary, overloads the magistrate and delays the resolution of conflicts, preventing the reduction of the procedural load in progress in the courts and crowding the offices with more and more disputes. On the other hand, it is noted that the notarial and registration activity is part of the daily life of citizens and has the scope of endorsing the publicity and authenticity of legal acts, something that has great relevance when it is necessary to resolve conflicts to prevent fraud, for example. It can be inferred that, through these acts, notarial services speed up the Law and serve to relieve the judicial system, giving access to rights in a preventive way. It should also be noted that the services provided by the notarial activity are less expensive than the judicial ones, another factor that gives it the quality of making the law more accessible. Consequently, the notary's activity fulfills its social responsibility and strengthens the exercise of citizenship (SILVA, 2016; ALVES and SILVA, 2014; OLIVEIRA and FRAGA, 2021; BITTENCOURT et al., 2018).

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It is necessary to understand that the notarial activity is a typical State service and the notary public enters this service through the public tender. However, the notary public does not appear as a public servant, nor as an occupant of public office. This is because, according to article 236 of the Federal Constitution of 1988 and according to Law No. 8,935 of November 18, 1994, the notary performs a public function in a private capacity. This time, it is understood that the notary, as responsible for maintaining the notarial service, brings with him the scope of providing legal solutions to problems of individuals and entering into legal transactions by being in charge of the manifestation of the will of the parties. From this perspective, it is clear that the notary has the prerogative to practice efficient management to promote a more agile and satisfactory service to the public, while relieving the Judiciary by facilitating simplified access to justice (ALVES and SILVA, 2014; OLIVEIRA and FRAGA, 2021; BRAZIL, 1994; BITTENCOURT et al., 2018).

From this perspective, we seek in the knowledge of Alves and Silva (2014) a record of how the action of the notary public has the ability to speed up the law and, thus, to guarantee access to justice. Thus, it is noted that:

> The Notary Public nowadays with the attributions they already have, already help the Judiciary, but they can be expanded and this is the most logical path to be taken, since there is even the possibility of issuing letters of sentences extracted from judicial proceedings, thus speeding up the procedure, which was previously carried out only in the forums, after the payment of fees related to the authentication of the copies and waiting for the court to issue the letter of judgment after the request made by the interested parties or lawyers, often proving to be slow in the face of the need to ensure prompt effectiveness of judicial decisions, which can be issued by the formal Notaries of Sharing, letters of adjudication, letters of auction, judicial writs of registration, registration or rectification and all other letters of judgment whose effectiveness depends on the forwarding of the procedural documents to the addressee of the order (ALVES and SILVA, 2014, p. 79).

Considering that there is a large number of extrajudicial services provided by the notary offices, their physical and material scope, and the fact that the popularly known as notary offices are spread across all municipalities in the country, the importance of the notarial activity is deliberated. It is worth mentioning that, in some cities far from large centers, the notarial service, with its attributions incorporated into the function of justice, is the only arm of the jurisdictional public power, that is, through the notarial service, the State promotes justice in places where the Judiciary cannot reach, even more so when it comes to a world increasingly adapted to connectivity and with more and more urgent needs. In this way, even the notarial service makes the citizen's life more comfortable, so that he no longer needs to travel to other cities to resolve his legal business. Because of this, the

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delegation of powers from the Judiciary to the notarial service is so important and must be put into practice[3] (OLIVEIRA and FRAGA, 2021; MOREIRA, 2020; LOBATO, 2020; LOMAZINI et al., 2021).

Other benefits of the performance of the notarial service to relieve the Judiciary and promote access to justice are evident in the economy of the Public Power, which the notary's activity avoids and prevents disputes in legal proceedings, since it is the taxpayers who pay for the operation of the machine. Furthermore, it is important to emphasize that the process of dejudicialization does not consist of a removal of the Judiciary, there is no intention here to reduce judicial services, but to increase the channels of access to justice, diversifying the ways in which society seeks rights. In fact, in the fight against excessive procedural judicialization, under the aegis of post-positivist precepts, one can see in acts of the CNJ, National Council of Justice, a group of rules with the purpose of helping to dejudicialize and debureaucratization, as well as laws such as No. 11,441 of January 4, 2007, which deals with divorces and extrajudicial inventories (OLIVEIRA and FRAGA, 2021; LOBATO, 2020; LOMAZINI et al., 2021).

It can be seen that there is a multitude of laws that are concerned with attributing judicial services to notaries. Of these services, we can mention the permission for the settlement of conflicts by private arbitrators with the effects of res judicata, the permission for rectification of registration in the royal folio by the Real Estate Registry Office, the permission for extrajudicial reorganization of the entrepreneur and the business company, among other laws with the same scope of assisting in the process of dejudicialization[4] (ALVES and SILVA, 2014).

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[3] Examples of services provided by notaries with regard to notarial and registry activity:
Registrars and notaries had already been called upon to act in the relevant movement of dejudicialization, by starting to carry out marriage licenses without judicial intervention (article 1526, CC/02), inventories, partitions and consensual divorces (Federal Law No. 11,441/2007)17, late birth registrations without judicial intervention (Federal Law No. 11,790/08)18, division and demarcation of private lands (article 570, CPC/2015), ratification of the legal pledge (article 703, §§2, 3 and 4, CPC/2015), extrajudicial adverse possession (article 216-A, Federal Law No. 6,015/73), direct registration of a foreign judgment of pure divorce in the civil registry, with the waiver of the ratification action by the STJ (article 961, §5, CPC/2015)19, spontaneous recognition of biological paternity/maternity (Provision No. 16/2012 of the CNJ) and socio-affective (Provision No. 63/2017 of the CNJ), administrative rectification of registration (article 110, Federal Law No. 6,015/73), registration of change of first name and gender in the civil registry as a result of transsexuality (Provision No. 73/2018 of the CNJ), among others" (HILL, 2018, p. 303).

[4] Due to this problem, the slowness is evident and the logical ineffectiveness of the judiciary in carrying out justice quickly is impaired, reaching all who need it.
In view of this, measures must be taken to relieve the Judiciary, such as the laws that have been sanctioned in recent years to assist the Judiciary, such as: - Law No. 9.307 of 09/23/1996, which allows the settlement of disputes by private arbitrators with final and unappealable effects; - Law No. 10.931 of 08/02/2004, which allows the rectification of registration in the real folio by the Real Estate Registry Officer; - Law No. 11.101 of 02/09/2005 which deals with the extrajudicial reorganization of the entrepreneur and the business company. -

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That said, it is necessary to admit that the more laws that sanction new attributions to notarial and registry services, as long as they are actions in which the parties are in agreement and do not present a matter of litigation, it will be more advantageous for the judicial system and for the State, by unburdening the machine and reducing the costs of justice for the taxpayer, and for the population, by having all their fundamental rights guaranteed, through the greater prerogative of access to justice (ALVES and SILVA, 2014; OLIVEIRA and FRAGA, 2021; MOREIRA, 2020; LOBATO, 2020; LOMAZINI et al., 2021).

CONCLUSION

This study focused on the analysis of the performance of notarial services as instruments to guarantee access to justice in the process of deconstruction of the still insurgent bureaucracy in the system of the Judiciary, under the aegis of the jusphilosophical precepts of Post-Positivism in order to safeguard the effectiveness of fundamental rights. Based on the framework of knowledge gathered during the present work, it was understood that, for a long time, the conception of the theory of law has been molded according to the realities and cultural changes and behavior patterns of society as a whole. From the most archaic conceptions of natural rights as opposed to positive rights, the schools of natural law, Exegesis, Realism, Positivism, to being based on the post-positivist scope of postmodernity, which, although it has critics, has been a bulwark in the protection of individual and collective rights, essential to the maintenance of the Democratic State of Law.

Over the years and the cultural, social, political, scientific and technological transformations since the middle of the twentieth century, in the post-war period, there has been a move towards a new paradigm shift with the expansion of the defense of fundamental rights and the malleability in relation to legal formalism. The conception of Law has been affected and its sources have undergone new changes, with the figuration of principles and values. Thus, the movement of scientific-legal projects and research on the subject is growing, in addition to innovations not only in the law, but in the entire movement of legal science, in which the debate on how to guarantee the fundamental right of access to justice with a judicial system crammed with ongoing lawsuits is leveraged.

Law No. 11.441 of 01/04/2007 which deals with the possibility of drawing up deeds of probate and consensual partition, separation and divorce by Notary Public (ALVES and SILVA, 2014, p. 78).

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From this perspective, it is noted that there are several artifices employed in guaranteeing the right of access to justice, which act directly in order to help people avoid incursion into the judicial field, but which still represent very short steps in relation to the actions that are necessary to ally with the Brazilian Judiciary. That said, it was understood in the course of the study that notarial and registry services, with the action of the notary public as a mediator of legal acts that prevent and avoid the need for judicial litigation, constitute a current axiom in the fight against bureaucracy and the slowness of justice and have the scope of ensuring not only respect for the fundamental right of access to justice, but also of values inseparable from the Democratic Rule of Law. Thus, the notary's activity emerges as an important tool in the dejudicialization of the Law and in the fundamental guarantee of access to justice.

It is worth emphasizing that the advantages of notarial and registry activity are necessary for the process of debureaucratization of justice and elevation of the concept of access to justice. With this, it was emphasized that the notary's services represent essential tasks not only with regard to this guarantee, but also in the daily routine of the citizen's registration, conferring legitimacy to the most banal acts in the lives of individuals. Therefore, in order to understand how the mechanism of notarial activity can meet the needs of the population and, thus, serve the interest of protecting access to justice, the study discussed how these services have already triggered their importance in the order of legal praxis.

From the analysis, it was found that jurists, legislators and researchers in the area of notarial and registry law have moved to update the legal norm and entrust the notary public with new tasks that relieve the magistrate in a praxis, while improving social relations, to discover new ways of investigating the right of access to justice.

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