LUMEN ET VIRTUS

Universal Human Rights and socioeconomic disparities in Brazil: Dystopia to be propagated by the State

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Vinícius Fonseca-Nunes[1]

ABSTRACT

Universal Human Rights are the basic rights and freedoms necessary for all human beings to live with dignity. They are also those that oblige the State to promote the population's access to opportunities of all kinds, to the overcoming of social inequalities, to transparency in the use of power and to countless other rights. Thus, Brazilian society being placated by great socioeconomic differences and different social classes, in the face of the countless ills that engulf its population, because there is an urgent need for state intervention in favor of social welfare and popular participation in the democratic affairs of the State, so that the most serious problems of our society are diluted to the point of becoming non-existent. The effectiveness of Human Rights requires, therefore, efficient public policies on the part of the constituted power and organized civil society fighting for what is their right.

Keywords: Universal Human Rights, Social disparities, State.

INTRODUCTION

The Magna Carta of 1988 represents a great achievement in terms of Fundamental Human Rights, since it has in its core all the norms related to the Universal Declaration of Human Rights of 1948. Meanwhile, the effectiveness of these norms requires the direct intervention of the State in the economy and society. The effectiveness, or materialization, of Human Rights also depends, to a certain extent, on the performance of organized civil society, which must constantly demand from the State the fulfillment of its constitutional duty, since democracy (which placed the sovereignty of power in the hands of the people) requires popular participation, even if there is parliamentary representation.

[1] Master in Memory: Language and Society from the State University of Southwest Bahia (UESB)
Institution: State University of Southwest Bahia (UESB)
Address: Vitória da Conquista – BA, Brazil
E-mail: vinicius.fnunes@gmail.com
Phone: (77) 99117-4321
https://orcid.org/0000-0001-6081-918X

In the words of Vaz (2007, p. 31): "the Federal Constitution of 1988 is one of the most advanced in the world in relation to the protection of human rights and the first Brazilian to list the principle of the prevalence of human rights as fundamental to the international relations of the state",[2] and in it, it can be said, there is the imperative of the execution of various mandatory services by the State in relation to the population, but, unfortunately, several types of social services of a public nature, listed in the Political Charter, are not effective in the reality of the country. Brazil, in fact, has never managed to structure, despite the constitutional normative provisions for this, a Welfare State, unlike what has occurred in many first world countries.

Fundamental Human Rights, in order to be effective, cannot be presented only as a mere legislative creation, but as a creation historically conquered and constructed by the whole society, and which culturally must meet day after day of its implementation. Thus, one must understand what effectiveness is. According to Luis Roberto Barroso (2002), effectiveness is:

> The realization of Law, the concrete performance of its social function. It represents the materialization, in the world of facts, of legal precepts and symbolizes the approximation, as intimate as possible, between the normative ought-to-be and the being of social reality (BARROSO, 2002, p. 85).

According to José Afonso da Silva (2001), legal effectiveness:

> It designates the quality of producing, to a greater or lesser extent, legal effects, by regulating, from the outset, the situations, relationships and behaviors indicated therein; in this sense, effectiveness refers to the applicability, enforceability or enforceability of the rule, as a possibility of its legal application, and not effectiveness (SILVA, 2001, p. 66)

In the meantime, in view of the reality of the enormous socioeconomic disparities of individuals belonging to different social classes in Brazil, the State cannot exempt itself from its role of promoting, and inducing, the realization of Fundamental Human Rights, and must promote its own actions, regulate and execute public policies necessary for the development of the population with dignity, because the Federative Republic of Brazil must safeguard the dignity of the human person, as provided for in the second article, item III, of the Federal Constitution of 1988. The State, which is a tax collector, has the primary duty to implement the Human Rights that the constituent elected as necessary to the existential minimum.

VAZ, Anderson Rosa. **The clause of the reserve of what is financially possible as an instrument for the planned realization of economic, social and cultural human rights.** ***Journal of Constitutional and International Law*****,** a. 15, n. 61, Oct./Dec. 2007. p. 31.

UNIVERSAL HUMAN RIGHTS AND THEIR HISTORICAL EVOLUTION

Human Rights, as defined by UNICEF (United Nations Children's Fund), are:

> norms that recognize and protect the dignity of all human beings. Human rights govern the way in which individual human beings live in society and with each other, as well as their relationship with the State and the obligations that the State has towards them.
> Human rights law obliges governments to do some things and prevents them from doing others. Individuals also have responsibilities: in enjoying their human rights, they must respect the rights of others. No government, group, or individual has the right to do anything that violates the rights of another person.[3]

The question is, therefore: where do human rights come from and to what extent are they fundamental?

Thinking of Human Rights as simple rights does not reflect reality, since they are the result of great historical achievements resulting from a wide range of struggles of human beings in different social contexts and at different times, which had the purpose of interrupting the nefarious arbitrariness of the State in relation to the individual and, also, which had the purpose of improving the relations of human beings with each other and with the collectivity.

There are those who say that harbingers of Human Rights occurred as early as the eleventh century B.C., when King David, in ancient Israel, ruled respecting, most of the time, the Mosaic legality of that people, unlike his predecessor Saul, who ruled in an abusive and arbitrary way, at his authoritarian pleasure, disrespecting the established legality and satisfying his personal whims.

According to the UN[4], meanwhile, in 539 B.C., the first king of ancient Persia, Cyrus the Great, by conquering Babylon, through decrees, took a great step worthy of Human Rights by freeing the imprisoned slaves and declaring that all people had the right to choose their own religion, also establishing racial equality. This was vitally important, because from Babylon the idea of Human Rights spread to India, to Ancient Greece and finally to Ancient Rome.

In summary, in this short essay, it can be stated that, at a time much later than Classical Antiquity, Human Rights became fundamental, that is, their recognition and their constitutional positivization was only possible with the historical evolution of societies, confirming rights that were discovered, declared and forged in the fire of social struggles that inflamed peoples in favor of the dreamed freedom.

In the meantime, it should be asserted that, for the majority doctrine, fundamental human rights have observed phases or dimensions (which, cumulatively, have complemented each other), which will be described below.

In view of the above, the first generation of Human Rights took place in Europe, and according to Ingo Wolfgang Sarlet (2005):

[3] https://www.unicef.org/brazil/o-que-sao-direitos-humanos
[4] https://www.unidospelosdireitoshumanos.org.br/what-are-human-rights/brief-history/)

> The fundamental human rights of the first dimension find their roots especially in the Enlightenment and Natural Law doctrine of the seventeenth and eighteenth centuries (names such as Hobbes, Locke, Rousseau and Kant), according to which the primary purpose of the State is the realization of the freedom of the individual (SARLET, 2005, p. 54).

Thus, according to Queiroz (2001, p.42), "the fundamental rights of the first generation, or rights of freedom, are those that are entitled to the individual. They are enforceable against the State, and are translated as faculties or attributes of the person." As for second-generation Human Rights, it should be noted that they originated from profound social transformations in the world, in the nineteenth and early twentieth centuries, after the industrial revolution and the movements of the proletariat, and also because of the Russian revolution and the Mexican constitution of 1917 and the German constitution of 1919. In this context, LAFER (1988) states that:

> The second-generation rights are those of work, health, education, among others, informing that the taxable person is the State, which has the duty to provide positive services to its holders, the citizens, as opposed to the passive position that was claimed when the first-generation rights were claimed (LAFER, 1988, p. 127).

With regard to third-generation Human Rights, these emerged to recompose human dignity in the post-war period (after the horrors of World War II). With regard to them, Bregalda (2007, p. 97) asserts that: "The Third Generation (Dimension) of Human Rights elects the rights of solidarity and fraternity, its components being a balanced environment, a healthy and peaceful life, and progress". In this regard, Sarlet (2005) teaches that:

> The fundamental rights of the third dimension, also called rights of fraternity or solidarity, have as a distinctive note the fact that they are detached, in principle, from the figure of the man-individual as their holder, and are intended for the protection of human groups (family, people, nation) (SARLET, 2005, p. 57).

Fourth-generation Human Rights are those that encompass technological evolution, bioethics, genetic manipulation, democracy, etc. On the subject, Professor Paulo Bonavides (2005, p. 572) states that:

> The right to democracy, the right to information and the right to pluralism are rights of the fourth generation. The realization of the open society of the future depends on them, in its dimension of maximum universality, towards which the world seems to lean in the plane of all relations of coexistence (BONAVIDES, 2005, p. 572).

And, finally, the fifth generation Human Rights, despite the controversies on the subject, according to Paulo Bonavides (2008), refer to the transfer of the right to peace from the third generation to the fifth generation of fundamental rights, because, for him, "the right to peace is conceived literally as an immanent right to life, being an indispensable condition for the progress of all nations, large and small, in all spheres" (BONAVIDES, 2008, p. 83).

In terms of what has been exposed so far, then, it is necessary to clarify that Human Rights are those rights inherent to the human person (in general) that aim to safeguard their integrity before other human beings and before the State, that is, they are those that every person possesses by the fact of being born in the human condition, such as those linked to freedom, equality, social welfare, fraternity, and many others linked to human dignity. Fundamental Human Rights are all the Human Rights already mentioned, present in international Treaties and Conventions and in Universal Declarations, when incorporated/affirmed in the constitutions of countries, guaranteeing the dignity of the human person in a broad sense.

THE BRAZILIAN SOCIOECONOMIC ISSUE THAT EXISTS DESPITE THE HISTORICAL EVOLUTION OF UNIVERSAL HUMAN RIGHTS

Despite all the above, about the historical evolution of Universal Human Rights, and the knowledge that they are affirmed in the Federal Constitution of 1988, it is important to point out that, according to Rehbein and Rocha (2020), as with European societies, Brazil still has a clearly visible hierarchy of social classes. However, the pre-capitalist origins of the Brazilian hierarchy are much more visible than in most European societies. And these origins are rooted mainly in colonial slave society. Slavery, the authors say, was abandoned in Brazil only in 1888, long after independence, and continues to persist in a transformed form as part of a postcolonial socioculture in the country, so that facets of Brazilian postcolonial socioculture are still incorporated into institutions.

In the words of Rehbein and Rocha (2020, p. 161):

> Brazil transformed into a developmental state in the early 20th century, especially from the 1930s onwards, with postcolonial society transforming into an industrial society. Urban structures changed rapidly and significantly, while rural structures remained rooted in postcolonial socioculture. The urban population was quite small at first, but outnumbered the rural population by the end of the military dictatorship. Urbanites developed a habitus, which differed significantly from postcolonial socioculture. This industrial socio-culture was stratified into capitalists, functional elites, and workers. The workers, in turn, were divided into two distinct classes, skilled and unskilled. This division largely coincided with skin color. While the pool of unskilled workers consisted primarily of former slaves and their descendants, the skilled laborers were primarily European immigrants. Some highly educated immigrants made their way to the elites, while some Brazilian farmers made their way into the ranks of skilled labor, so some social mobility occurred in this transition. The postcolonial bureaucracy became the functional elite of the developmental state, retaining some elements of the previous habitus. A portion of the landowners in this period invested in industry and became capitalists.[5]

[5] "Brazil turned into a developmental state in the early 20th century, especially from the 1930s onward, with postcolonial society transforming into an industrial one. Urban structures changed quickly and signifi cantly, while rural structures remained rooted in the postcolonial socioculture. The urban population was rather small at the beginning, but outnumbered the rural population at the end of the military dictatorship. The urbanites developed a habitus, which diff ered signifi cantly from the postcolonial socioculture. This industrial socioculture was stratifi ed into capitalists, functional elites, and laborers. The laborers in turn were divided into two distinct classes, skilled and unskilled. This division largely coincided with skin color. Whereas the group of unskilled laborers consisted mostly of former slaves and their off spring, the skilled laborers were mainly European immigrants. A few highly educated immigrants made it into the elites, while a few Brazilian farmers made it into the ranks of skilled labor, thus some social mobility occurred in this transition. The postcolonial bureaucracy became the functional elite of the developmental state, retaining some elements

Thus, according to the authors' study, the social hierarchies of post-colonial and industrial society have the same bases as the contemporary Brazilian hierarchy of social classes, so that we can distinguish, today, in contemporary Brazil, five social classes: the marginalized, the fighters, the middle class, the established and the distant.

As for the marginalized, according to Rehbein and Rocha (2020), they are by far the largest social class in Brazil, who are in economic positions of decapitalized self-employment, unskilled work, and intermittent jobs. This social class today represents something around 30% to 40% of the population. This class is characterized by the fewest assets of any kind, such as income, wealth, formal education, and social networks. Regarding their initial conditions in the family and community, they not only lived under economic deprivation, but also experienced an absence of care, nutrition, and stimuli to develop and evolve socially valuable skills. Their general attitude toward life and society reflects insecurity, lack of autonomy, and a hard difficulty in consolidating a long-term base of goals.

According to Rehbein and Rocha (2020), the social class above the marginalized, that of the "fighters", shares with the former many of its characteristics and much of the historical and social context of those below them. From the point of view of the upper classes, these may be, according to the aforementioned authors, the "honest poor", a lower class, but one that does useful work and deserves a social existence. With regard to social origins, the main characteristic that differentiates this class from its social (and often physical) aspects refers to non-economic aspects: parenting may not have been particularly encouraging and caring, but it was also not negligent or a hindrance. Usually, the fighters have basic or technical education and incomes slightly above the minimum wage. Their social networks are narrow, but not irrelevant to their life chances. As far as attitudes are concerned, the fighters have a very nervous self-confidence and a sense of autonomy, which seems to persist thanks to an active attitude towards life. However, with basic educational qualifications, and even diplomas, they are in very insecure positions in the job market. Fighters must constantly fight not to be relegated to the lower class, as any accident, illness, unforeseen expense, or rupture of relevant solidarity ties (e.g., family) can imply a demotion. This social class can cover up to 30% of the population.

The contemporary Brazilian middle class, according to Rehbein and Rocha (2020), originated from the group of skilled workers, who were partly rural-urban migrants, but mainly immigrants. This group later spread to the other new urban occupations, such as services, white-collar employees, and small entrepreneurs. Members of this class typically have technical or vocational education and an income of about five times the minimum wage or higher. They are able to accumulate some

of the former's habitus (Stoll 2012, 65). A portion of landowners in this period invested in industry and became capitalists".

wealth during their lifetimes and have relevant social networks. In addition, the beginning of their life says a lot about what separates them from the fighters. Not only did they live in families and communities with economic resources available to them, but their education was exceptionally caring, encouraging, and nurturing, which distinguishes them even from the upper classes. Members of the middle class have valuable positions and capital, but their volume and structure of assets do not allow for losses, especially in terms of human resources. Perhaps it does not constitute more than 20% of the Brazilian population.

The class of the "established", according to the aforementioned authors, that is, the upper middle class, is distinguished from the lower classes in terms of the role played by educational degrees, but also – and perhaps more importantly – due to their historical origins, since they were at the administrative base of post-colonialism and in the functional elites of industrialism. Generally, members of the established class earn more than ten minimum wages, are rich and can count on relevant social networks. They invest heavily in specialized education and work as professionals or, more often, as specialists. During their childhood, they lived in affluent environments. In addition, his education was encouraging, careful, and nurturing, though not to the extent of the middle class. Members of this class are possibly less self-confident, autonomous, and active than members of the middle class, because of the more "laid-back" character of their struggles for social recognition and economic rewards. The established class comprises less than 10% of the Brazilian population.

Continuing, for Rehbein and Rocha (2020), the "distant", the Brazilian real upper class, are made up of large employers and very rich professionals, obviously the richest in terms of economic capital and economically relevant resources. They have extremely relevant social networks and can also be experts or professionals, but mostly, they are employers or managers rooted in old money. One of the main differences in relation to the established class is the relatively lower investment in cultural capital, recognizable by the lower attendance in graduate courses. As in the established class, members of the upper class lived their childhood in an economically affluent context, but there is a salient difference in terms of parenting. While encouraging and caring, an upper-class childhood is not typically very nurturing, indicating that, unlike the middle classes, intergenerational economic strategies do not directly correlate with nurturing caregiving. Regarding attitudes, members of the upper class are highly self-confident, active, autonomous, and goal-oriented, eliciting an energetic, ambitious, and probably anxious position toward (economic) life.

In this context, it should be remembered that in the Portuguese Ancien Regime, which generated the beginning of Brazilian culture, society was basically stratified into clergy, nobility and people, in a reality in which the nobility was granted military, judicial, and also administrative and bureaucratic offices within the scope of the political action of the monarchy, so that the State, through laws, defined differences between people within the same collectivity. And in this context,

Fonseca (2021, p. 12) adds that it is necessary to remember that both in Portugal and in Brazil "evidently, as the nobleman belonged to a social body of greater prestige and power, his rights were more extensive". And it must be stated: this persists to this day in Brazil, in order to disrespect the entire historical construction of Universal Human Rights that has been exposed elsewhere, which was watered by the blood of the martyrs of the social struggles that made our current Constitution of the Republic of 1988 full of fundamental rights that, at least on paper, dignify Brazilian citizens.

CONCLUSION

Ex positis, it is possible to understand the historical-social reasons of the Brazilian socio-political-economic inequalities, in such a way that it can be affirmed that, in the face of our Brazilian Democratic State of Law, both in relation to its principled formation, and with regard to the development of the formation of our social classes, any system of privileges should not be appropriate in Brazil, for moral reasons, ethical, normative (Human Rights), philosophical, civic, political and historical-social.

Brazil has an adequate legislative framework for the implementation and enforcement of Universal Human Rights for the population, but, empirically, there is no effective protection network for these rights in the country. In terms of first-generation Human Rights, there is a certain respect for them in general in the country, but when it comes to social rights (second generation) the issue becomes more complicated, since they encounter obstacles and obstacles to their implementation.

Thus, finally, in Brazil the Federal Constitution of 1988 represents a great achievement in terms of Fundamental Human Rights, but it must be said that in order for these to be effective in Brazilian society, and social welfare, to the detriment of the socioeconomic disparities of the social classes present here, the Brazilian State cannot exempt itself from its role as a direct promoter of the norms that guarantee the human dignity of its citizens. To this end, the Brazilian State cannot comply with a minimal State agenda, only encouraging private individuals to comply with their social designs in a helpless way, in the midst of a perverse market economy, because the idea of transferring responsibility from the State to civil society is a perverse project that, in fact, It preaches a market ideology that camouflages a project of power of small economic groups, to the detriment of the less affluent classes of Brazilian society.

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