



STUDY ON HUMAN RIGHTS AND THEIR IMPLICATIONS IN POST-MODERNITY

ORIGINAL ARTICLE

VISCONTI, Carlos Gustavo¹

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ABSTRACT

This work aims to present some considerations on human rights, reinforcing the idea of a system composed of dimensions of rights and with mutations in the definition of 'human' as per the historical evolution of human thought. What we see is a construction of rights, bearing in mind that there are no time limits for the various achievements of humanity, as this is a historical process, and there is a process of continuity between the classes of these fundamental prerogatives. It should also be emphasized the analysis of Human Rights and the change in the concept of 'Man' as thinking evolves. In this consumer society and in post-modernity, is there still the same rationale and definition of that man as seen in Kant?

Keywords: Human Rights, Dimensions of Rights, Consumer Society, Post-Modernity.

1. INTRODUCTION

In the study of Humanity, it's difficult not to make a necessary connection between the concept of Human Rights and their historical perspective and the evolution of their own definition. To understand the root of human rights, it is mandatory to construct the definition of 'Man' during the historical evolution of thought. What we see is that human achievements have always come from historical struggles in which the parties and subjects in conflict are identified. Even though there is a Universal Declaration of Human Rights from the United Nations in 1948, indicating that all are born equal and



endowed with rights, what we see is that humanity only secures its rights through historical struggles.

It's important to highlight the common elements in these struggles, consisting of a goal to emancipate the individual, develop them, promote their dignity as a human being, aiming for a more just and peaceful society. Does the Enlightenment understanding of a universal man, with ideals of freedom, equality, and fraternity, still have relevance in the current phase? Does the concept of the Universal Man still persist? Are we in a fourth dimension?

The study is expository in nature regarding the reflections of the General Theory of Human Rights and proposes questions for a future response with maturation and recognition of the future perspective in a Post-Modernity.

2. ORIGINS OF HUMAN RIGHTS

The historical turning point occurred with the French Revolution, where Man conquered and demanded from the State the prerogatives of freedom, equality, and fraternity.

It is from this idea that Norberto Bobbio (2004) understands that the association of historical contexts with different ideologies and specific needs of differentiated groups of people led to the codification of Human Rights: The Declaration of Human Rights.

Bobbio further argues (2004) in his work, "The Age of Rights," that there is no need for a single foundation to justify the drafting of the 1948 Declaration, characterizing it as a response to the infractions committed against humanity in the aftermath of the Second World War.

With the Declaration of Human Rights, there is a recovery of humanity's most primitive desires, aiming for a harmonious and free collective coexistence of human beings. As Bobbio states:

Do ponto de vista teórico, sempre defendi—e continuo a defender, fortalecido por novos argumentos—que os direitos do homem, por mais fundamentais que sejam, são direitos



históricos, ou seja, nascidos em certas circunstâncias, caracterizadas por lutas em defesa de novas liberdade contra velhos poderes, e nascidos de modo gradual, não todos de uma vez e nem de uma vez por todas (BOBBIO, 2004, p. 25).

Bobbio ends up showing that through historical movements and events, there was a need to formalize pacts and treaties that would provide a minimum guarantee of dignity to any individual. It is important to emphasize that the occurrence of various historical factors contributed to the codification of Human Rights, among them, the French Revolution. Norberto Bobbio (2004) highlighted phases or dimensions of human rights based on the motto of the French Revolution, emphasizing that the 'development of human rights went through three phases,' which are the first three generations/classical dimensions.

3. TERM DIMENSIONS OF RIGHTS

It is important to note that many names are given to the indicated phases of the evolution of rights by Bobbio in 2004. Some refer to them as generations, dimensions, stages, or phases of Human Rights. The term 'Dimensions' ends up being more appropriate, as it implies a sense of continuity among the rights of the respective classes. When other terms are used, it can create an idea of exclusion or that once a right is achieved, there is no need to remember it for subsequent phases. The conquest of rights is a daily and ongoing process. The freedom in the first phase can be discussed and extended to other phases. The same goes for equality. When discussing rights, discussions about freedom are not excluded. Therefore, all dimensions are interconnected and contained within each other. There are three dimensions of rights, and the question arises if there is a fourth dimension.

The first generation consists of rights of a political and civil nature and was recognized to protect public liberties. Humanity was coming from an Absolutist phase where power was concentrated in one person or a group of people. What is sought is non-intervention by the State. In this first phase, the State is required to refrain from certain actions. The State is prohibited from interfering in the intimate and private sphere of the citizen.



In the relationship between the individual and the State, the citizen's freedom takes center stage, and the State must refrain from performing certain acts to preserve and ensure the free exercise of rights by individuals. This marks the transition from absolutism to the Rule of Law, with an emphasis on the valorization of the individual and the establishment of limits on the power of the State (LAFER, 1988, p. 122). Rights such as freedom of movement, inviolability of the home, and correspondence become inviolable against the State itself.

Second-generation rights (which do not exclude the first) belong to the group of civil, social, and political prerogatives. This is a great achievement for humanity involving participation and the exercise of power over the State. The citizen is part of the State and exercises power through voting and the deliberation of interests through representation. This dimension focuses on the individual's well-being. This relationship led to the emergence of social rights. The goal was to improve the quality of life for the individual (BOBBIO, 2004). Examples of these rights include vacations, thirteenth salary, retirement, and social security, among others.

Finally, there is the group of third-generation rights, which corresponds to rights of fraternity. For humanity, it is not only the State that is responsible for defending individual and social interests, but also other types of rights arising from a community characterized by urbanization and industrialization. This dimension recognizes diffuse, collective, and individual interests.

What can be seen in these dimensions is the presence of positivization and universality of human interests, which are significant for Bobbio, who indicates the dispensability of justifying human rights and rejects the existence of a single and absolute foundation that justifies all Human Rights. Bobbio discusses the implementation of human rights, arguing that it is unnecessary to defend their existence or declaration, as it is established through Legal Instruments promulgated by States.

As Bobbio states next:

Pois bem: dois direitos fundamentais, mas antinômicos, não podem ter, um e outro, um fundamento absoluto, ou seja, um



fundamento que torne um direito e o seu oposto, ambos, inquestionáveis e irresistíveis. Aliás, vale a pena recordar que, historicamente, a ilusão do fundamento absoluto de alguns direitos estabelecidos foi um obstáculo à introdução de novos direitos, total ou parcialmente incompatíveis com aqueles. Basta pensar nos empecilhos colocados ao progresso da legislação social pela teoria jusnaturalista do fundamento absoluto da propriedade: a oposição quase secular contra a introdução dos direitos sociais foi feita em nome do fundamento absoluto dos direitos de liberdade. O fundamento absoluto não é apenas uma ilusão; em alguns casos, é também um pretexto para de fender posições conservadoras (BOBBIO, 2004, p. 15).

4. CHARACTERISTICS OF FUNDAMENTAL RIGHTS

As characteristics of Fundamental Rights include heterogeneity, as well as openness in their definitions. Bobbio argues that human rights are heterogeneous and yet complementary. It can be said that there are rights of freedom, which are guaranteed when the State does not intervene, as well as those that are guaranteed only with the State's intervention. This further indicates that the dimensions overlap despite different values to be safeguarded.

Furthermore, it is stated that they are not hermetic since they can be expanded precisely because they are variable. It is worth noting that despite many rights already being included in the legal framework, other fundamental rights may arise in response to new human needs. In other words, no right is inherent, but all can be constructed. It's worth bringing the teachings of Bobbio '*in verbis*.'

O elenco dos direitos do homem se modificou, e continua a se modificar, com a mudança das condições históricas, ou seja, dos carecimentos e dos interesses, das classes no poder, dos meios disponíveis para a realização dos mesmos, das transformações técnicas, etc. Direitos que foram declarados absolutos no final do século XVIII, como a propriedade *sacre et inviolable*, foram submetidos a radicais limitações nas declarações contemporâneas; direitos que as declarações do século XVIII nem sequer mencionavam, como os direitos sociais, são agora proclamados com grande ostentação nas recentes declarações. Não é difícil prever que, no futuro, poderão emergir novas pretensões que no momento nem sequer podemos imaginar, como o direito a não portar armas contra a própria vontade, ou o direito de respeitar a vida também dos animais e não só dos homens (BOBBIO, 2004).



4.1 EFFECTIVENESS OF HUMAN RIGHTS

We can find in Bobbio that Human Rights are of historical construction, presenting prerogatives that change all the time, having a great dynamism, and all are capable of being improved and expanded limitlessly. When we talk about historicity, there is a reflection that human rights do not arise all at once since circumstances always arise that lead to an expansion of guarantees and security over the years, according to the needs of peoples, as already explained.

Thus, for Bobbio, what is a fundamental right in one historical phase may not have the same nature or aspect in other eras or even for the respective nations. Each State, within its sovereignty, has the freedom to establish the values they consider fundamental, remembering that rights can change aspects according to their time or nation.

An important warning is highlighted that one cannot regress in a process already concretized or "humanized." A reduction or retrogression in what has been achieved by Humanity is not allowed. Thus, despite man always advancing in various areas of development, fundamental rights cannot cease to be a priority, and all progress must be suitable for promoting human dignity, with no limits to its protection.

Every individual has duties to the community in which the free and full development of their personality is possible. In the exercise of their rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. No provision of this Declaration may be interpreted as implying for any State, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein (BOBBIO, 2004, p. 13).



Therefore, the existence of a declaration of rights is as important as their actual realization for the advancement of Humanity. What can be inferred is that there are many instruments ensuring fundamental rights, but little is developed on how to achieve the effectiveness of these prerogatives. The question arises as to how individuals can effectively enjoy fundamental rights in their essence without any State limitation or restriction. In this sense, Bobbio teaches the following:

Nada impede que se use o mesmo termo para indicar direitos apenas proclamados numa declaração, até mesmo solene, e direitos efetivamente protegidos num ordenamento jurídico inspirado nos princípios do constitucionalismo, onde haja juizes imparciais e várias formas de poder executivo das decisões dos juizes num ordenamento jurídico inspirado nos princípios do constitucionalismo, onde haja juizes imparciais e várias formas de poder executivo das decisões dos juizes. Mas entre uns e outros há uma bela diferença já a maior parte dos direitos sociais, os chamados direitos de segunda geração, que são exibidos brilhantemente em todas as declarações nacionais e internacionais, permaneceu no papel. O que dizer dos direitos de terceira e de quarta geração? A única coisa que até agora se pode dizer é que são expressão de aspirações ideais, às quais o nome de “direitos” serve unicamente para atribuir um título de nobreza. Proclamar o direito dos indivíduos, não importa em que parte do mundo se encontrem (os direitos do homem são por si mesmos universais), de viver num mundo não poluído não significa mais do que expressar a aspiração a obter uma futura legislação que imponha limites ao uso de substâncias poluentes. Mas uma coisa é proclamar esse direito, outra é desfrutá-lo efetivamente. A linguagem dos direitos tem indubitavelmente uma grande função prática, que é emprestar uma força particular às reivindicações dos movimentos que demandam para si e para os outros a satisfação de novos carecimentos materiais e morais; mas ela se torna enganadora se obscurecer ou ocultar a diferença entre o direito reivindicado e o direito reconhecido e protegido (BOBBIO, 2004, p.29).

In the meantime, the mere proclamation of Human Rights is not sufficient. It is necessary to emphasize the need to find mechanisms or tools for the practice of the prerogatives of freedom and equality. Through individual evolution, the effectiveness of measures or tools necessarily depends on self-awareness and self-recognition of rights. The evolution of society is indispensable to seek the effectiveness of rights. The problem is that nowadays we see a flirtation with measures that aim to flexibilize and even eliminate fundamental rights, including social rights, putting democracy and the



much-desired peace in question. These current obstacles cause social instability and must be purged to avoid corrupting the democratic system.

The great importance of the subject of human rights depends on the fact that it is closely related to the two fundamental problems of our time, democracy and peace. The recognition and protection of human rights are the foundation of democratic constitutions, and at the same time, peace is the necessary prerequisite for the effective protection of human rights in each state and in the international system. The old saying always holds true, and we have recently had a new experience — *inter arma silente leges*. Today, we are increasingly convinced that the ideal of perpetual peace can only be pursued through the progressive democratization of the international system, and this democratization cannot be separated from the gradual and increasingly effective protection of human rights. Democracy and peace are three necessary moments in the same historical movement: without recognized and effectively protected human rights, there is no democracy, and without democracy, there are no minimum conditions for the peaceful resolution of conflicts that arise between individuals, groups, and the large collectivities traditionally unruly and tendentially autocratic, which are the States, despite being democratic with their own citizens (BOBBIO, 2004).

5. MUTABLE CONCEPTS AND THEIR FIT INTO POST-MODERN SOCIETY

Established the original concept of Human Rights, how to fit them into this post-modern era society?

In the analysis of the Law concerning these dimensions of Human prerogatives, what is perceived is that the concepts have changed over the years and no longer align with current facts or phenomena.

In this construction of Rights, it is observed that from the 20th century, there was a break in the concepts with impactful consequences on relationships, on Humanity, on



the economy, and other sectors. There was a change in Law, social relationships, and in the way individuals identify themselves.

We can understand this break through the book titled "*L'Ère du Vide*" [The Era of the Empty, Ed. Gallimard, 1983], in which Lipovetsky provides an analysis of this transition that occurred between the modernity and post-modernity phases, with the transition taking place in the 1960s/70s, from the perspective of the breakdown of individual autonomy that breaks with the world of tradition and its normalization structures. There is a new individual with the predominance of the individual over the universal.

“[...] a operação saber pós-moderno, com sua heterogeneidade, dispersão das linguagens e teorias flutuantes, não passa de uma manifestação do abalo geral, fluido e plural que nos faz sair da era disciplinar e que, assim fazendo, esvazia a lógica do homo clausus ocidental. É apenas nessa ampla continuidade democrática e individualista que se desenha a originalidade do momento pós-moderno, a saber, a predominância do individual sobre o universal” (LIPOVETSKY, 1983, p. 2)

Does the Enlightenment notion of freedom or Kant's Universal Man still exist? Have the interests of humanity changed with the advancement of fundamental rights?

What is observed from authors like Baumann and Lipovetsky is that with the rupture felt in the 1960s/70s, the process of the crisis of the Human in their identity and consequently for the Law begins. The classifications presented by Bobbio no longer fit the present moment.

The concept of Human Rights faces issues in this new societal configuration. We can give various names to this society, such as liquid society, consumer society, risk society, fatigue society, and so on.

It is evident that the crisis of the concept is due to the new configuration of society based on consumption and globalization. Among countless reasons for the change in concept, globalization and consumption are elements to be highlighted in this new social and rights configuration.



Relationships have been shifted towards consumption, and people have become products. The hyperconsumer society becomes hostage to the pursuit of happiness, justifying the acquisition of products and services. Happiness ends up being associated with what the individual consumes, bringing a sense of joy and satisfaction. In this sense, Gilles Lipovetsky comments '*in verbis*':

Realizando o 'milagre de consumo', a fase II dá origem a um poder de compra discricionário em camadas sociais cada vez mais alargadas, que podem aspirar, confiantes, ao melhoramento constante dos seus recursos; difundiu o crédito e permitiu à maioria das pessoas libertarem-se da urgência das necessidades imediatas. Pela primeira vez, as massas acendem a uma procura material mais psicologizada e mais individualizada, a um modo de vida (bens duradouros, atividades de lazer, férias, moda) até então exclusivo das elites sociais (LIPOVETSKY, 2007; p.29).

Kant's concept of human dignity is atrophied because it has turned into a commodity. This is because, in this consumer society, the individual is a consumer before being a citizen. The consumer role completely contaminates the idea of the human.

Kant presented a Universal Man, a Universal Law. He translated the universal law of right as follows: "Act externally in such a way that the free use of your will can coexist with the freedom of everyone else according to a universal law" (Kant 2003, p. 51).

Universal human value is replaced by the value of money or brand. There is a recognition in society of people as consumers before they are considered citizens.

It should be noted that concurrently in this consumer society, where human life has been transformed into a commodity, society itself changes its form, becoming liquid. According to Baumann, individuals in this society stop committing themselves. We have individuals with no commitment to their own lives, with a rationale completely emptied by the idea of liquidity of things. What is observed is the fragmentation of the human, with no more holistic concept. Fragmentation of interests is noticed.

Society itself ends up having a liquid form, no longer being solid. As Baumann asserts '*in verbis*':



As condições necessárias para garantir a sobrevivência humana (ou, ao menos, para aumentar suas probabilidades) deixou de ser divisível e 'localizável'. O sofrimento e os problemas de nossos dias têm, em todas as suas múltiplas formas e verdades, raízes planetárias que precisam de soluções planetárias. (BAUMAN, 2015).

The crisis of this consumer and liquid society is amplified by globalization, also bringing an absence of identity for the human. That Enlightenment project of human rights ends up dying, influencing the construction of a new ethics in this new fluid scenario. The process is globalizing.

Globalization is established in society as a way to abolish borders; however, at the same time, it presents itself with a perverse nature. Philosopher Milton Santos teaches that, despite the unification of the world through human actions that have effects beyond their borders, globalization also imposes perverse consequences on humanity. In Milton's words, "Space is globalized, but it is not global as a whole, but as a metaphor. All places are global, but there is no global space. What really globalizes is people" (SANTOS, 1993).

In this process of globalization, culture ends up being transformed as well. Literature professor Frederic Jameson expresses concerns about the effects of globalization, aiming for homogeneity. Being critical of this homogenizing trend, he writes:

se tudo é estético, não faz muito sentido evocar uma teoria distinta do estético; se toda a realidade tornou-se profundamente visual e tende para a imagem, então, na mesma medida, torna-se cada vez mais difícil conceituar uma experiência específica da imagem que se distinguiria de outras formas de experiência (JAMESON, 1994:120-121).

With globalization, the world has become smaller, and small actions in distant places interfere, while others in very distant and even small and peripheral civilizations bring about changes in relationships, making them more complex. And what about Fundamental Rights with these changes? Does globalization, in a sense, interfere with the idea of sovereignty exercised in a particular location? How can the idea of Universal Law be reclaimed?



6. FINAL CONSIDERATIONS

Based on the above, the aim of this study is to present some considerations regarding Human Rights in this new context of globalization, consumer society in what is classified as the "post-modern or liquid" society.

This work provided some considerations about human rights, including their original concepts and characteristics, while also raising questions about the shift in perspective regarding humanity, which directly impacts the definitions of Man and their respective rights and responsibilities. It is evident that there is a crisis, and it can be concluded that the originally defined concepts of Human Rights no longer fit in this post-modern era, as the very definition of Man and their objectives are no longer the same.

Several factors are contributing to this crisis, as highlighted above, and what emerges is a sense of uncertainty about the direction of humanity and its respective concepts. Are we in a new paradigm? Have we not yet figured out the path to follow? Are we facing a sixth extinction event?

Humanity needs to start understanding itself better in a real, less digital way and consider the long-term effects, thinking about future generations. It's important to remember that we don't need to have all the answers; we just need to have a cautious and precautionary perspective on the present and its realities.

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¹ Master's student at PUC/SP. ORCID: 0009-0009-7658-9978. Currículo Lattes: <https://lattes.cnpq.br/1966410463884958>.