

THE CONCEPTUAL (DES)CONSTRUCTION OF HUMAN RIGHTS IN BRAZIL: A DISCUSSION ABOUT POPULAR PERCEPTION
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*Francisco Cleiton da Silva Paiva***SUMMARY**

This article aims to present the meaning of human rights and the process of (de)construction of its concept over the years in Brazil. The result of historical achievements and struggles, human rights refer to a set of rights, such as the right to life, freedom, food, work, among others, which underpin a dignified existence throughout history. Its implementation in the international order began at the end of the Second World War, with the promulgation of the Universal Declaration of Human Rights (UDHR), in 1948, by the United Nations (UN). The aforementioned declaration advocates the defense of the rights belonging to every human person, regardless of nationality, race, sex, religion or any other characteristic. In Brazil, human rights are contained in the Federal Constitution of 1988 as “fundamental rights”, which correspond to those referring to rights recognized and affirmed by the State. However, since Brazilian redemocratization in the 1980s, the meaning of human rights has been worked through a process of misinformation and misleading distortion, in an attempt to instill in society the idea that human rights are “the rights of criminals”, or

other pejorative forms of denomination, which in no way match its real meaning. In methodological terms, this article corresponds to a review study, categorized as qualitative research (in terms of nature), descriptive (in terms of objective) and bibliographic (in terms of object).

Key words: Rights Humans; Conceptual Deconstruction; Common sense.

ABSTRACT

This article aims to present the meaning of human rights and the process of (de)construction of its concepts over the years in Brazil. The result of historical conquests and struggles, human rights refer to a set of rights, such as the right to life, liberty, food, work, among others, that underlies a decent existence throughout history. Its implementation in the international order took place at the end of World War II, with the promulgation of the Universal Declaration of Human Rights (UDHR), in 1948, by the United Nations (UN). The declaration advocates the defense of the rights belonging to every human person, regardless of nationality, race, sex, religion, or any other characteristic. In Brazil, human rights are contained in the Federal Constitution of 1988 as “fundamental rights”, which

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corresponds to those referring to rights recognized and affirmed by the State. However, since the Brazilian democratization, in the 1980s, the meaning of human rights has been worked through a process of misinformation and misleading distortion, to instill in society, the idea that human rights are "the right of bandits", or other pejorative forms of denomination, which is in no way consistent

with its real meaning. In methodological terms, this article corresponds to a review study, categorized as qualitative (in terms of nature), descriptive (in terms of objective) and bibliographical (in terms of object) research.
Keywords: Human rights; Conceptual Deconstruction; Common sense.

1. INTRODUCTION

The United Nations (UN) defines human rights as a set of rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other condition (UN, 2020). The right to life, equality, freedom, freedom of opinion and expression, education, work, among others, is part of the list of rights protected and conferred on all humanity, without any distinction.

After the end of the Second World War (1945), due to all the atrocities committed during the conflict, countries decided to come together to prevent other events of this nature from happening again, thus seeking to provide greater protection for humanity. In this environment, the UN promulgated, in 1948, the Universal Declaration of Human Rights (UDHR), an international normative protection document to guide States in defending human rights throughout the world. This Declaration arose due to the need for an international protective architecture for human rights (FACHIN, 2015).

According to Moraes (1998), the Universal Declaration of Human Rights represented the most important achievement of fundamental human rights at the international level of the entire 20th century. Covering all nations, the document recognized the supreme values of equality, freedom and fraternity, the motto of the French Revolution of 1789. When the concern became the granting and guarantee of minimum and fundamental rights for all people, guaranteeing not only his right to life, but also to a full existence, being a subject of rights.

Piovesan (2006, p. 07), in turn, explains that after the Universal Declaration of 1948, the meaning of "human rights" began to be redesigned: "Considering the historicity of these rights, it can be stated that the definition of human rights human beings points to a plurality of meanings." In this aspect, the so-called contemporary conception of rights stands out.

human rights, which is based on the dignity of the human person as its foundation. In the same sense, it is necessary to highlight that, in expressions, there are several ways of designating “human rights”, depending on the period in which the object of study is concerned. A variety of terminologies can be observed both in doctrines and in national and international diplomas, but they all serve to designate the essential rights of the individual, namely: human rights, human rights, individual rights, fundamental rights, natural rights, public freedoms, subjective public rights, fundamental freedoms (RAMOS, 2018). Therefore, there are several nomenclatures, but with the same meaning.

The majority doctrine tends to recognize that human rights are used to “define the rights established by International Law in treaties and other international norms on the matter, while the expression 'fundamental rights' would delimit those rights recognized and affirmed by the Constitutional Law of a State specific”, as taught by Ramos (2018, p. 53-54).

With the consolidation of the importance of human rights as values to be preserved in the international order, States began to incorporate such rights into their normative body, as the central core of modern constitutions. This is the case of Brazil, for example, where human rights were incorporated as fundamental rights in the 1988 Federal Constitution. The 1988 Magna Carta adopts the dignity of the human person as one of its principles, a matrix principle that guides the entire text, as expressed in every conception of fundamental rights and guarantees.

Currently, however, it is common to find mention of human rights, often through distorted concepts and not consistent with their true meaning. Phrases like “human rights only defend criminals” are an example of this mistaken perception. But this does not happen by chance.

Since Brazilian redemocratization in the 1980s, human rights have been the target of an attempt to deconstruct not only their meaning, but also their importance. This process of disinformation was the result of work that consisted of disseminating the image of human rights as being synonymous with the defense of bandits and criminals, a concept that still remains in the imagination of many people, as shown by public opinion polls (CALDEIRA, 1991).

Whether due to bad faith or lack of knowledge, it is necessary that any interpretation of human rights that does not match reality be demystified or combated, as

that incorrectly understanding its meaning is, consequently, not understanding one's own rights and the rights of Brazilian society. Thus, when someone states that they are against human rights, they are stating that they are against the rights provided for in the 1988 Constitution. In the same way, when a politician or public agent propagates a negative view of human rights, they are also denying the people's own rights. . Therefore, it is something to fight, in the search for the defense of this set of rights that are so important for today's societies, not only here in Brazil, but also in other countries.

2 THEORETICAL FRAMEWORK

Cavalcante Filho (2010, p. 06) defines human rights “as rights considered basic for any human being, regardless of specific personal conditions.” These rights make up an intangible core of human rights in a given legal system.

The doctrine shows that to be subject to human rights there is only one condition: being human. Thus, Castilho (2019, p. 244), teaches that human rights can also be defined as a “set of rights that are recognized as belonging to human beings by their own nature”.

Understanding the meaning of human rights is the basic assumption for identifying the individual guarantees contained in human rights documents, as well as the obligations and protections arising from them. However, in today's Brazil, this understanding is compromised, as a result of a conceptual deformation carried out by the media over the years, resulting in a mistaken view of human rights in common sense.

The “deconstruction” of the meaning of human rights was worked on in the popular imagination, with a large part of the Brazilian population today understanding that human rights are something that serves to “protect criminals”. However, according to Fernandes (2018, p. 01), “despite the strength of this narrative, experts point out that those who repeat these phrases have no knowledge of what human rights are.” The author explains that the concept of human rights has been linked to issues of public security, such as the treatment of prisoners. However, we must emphasize that this speech was constructed little by little and with a reason for being. The distorted view of human rights is the result of a deconstruction of the concept,

promoted after the Military Dictatorship, in 1985. At the center of discussions about redemocratization was also the fight against torture practices by the police and repressive bodies during the regime, which was not something that stopped existing overnight. In this sense, Marques (2008, p. 207) states: "The change of political regime and the return of elections did not alter the arbitrary practices of agents of the State's repressive bodies on the most vulnerable groups of the population."

The fight against these practices was a campaign defended by human rights groups at the time, who protested against the mistreatment and repression of individual freedoms carried out by state bodies. However, Marques (2008) explains that, at the beginning of the 1980s, practices of violations of rights continued. After all, a policy of persecution, a routine of torture and murder by repressive bodies was not easy to change.

During the military regime, human rights violations drew the attention of society and social defense groups. And it was in this environment of violations that the issue of human rights gained great relevance. Therefore, we can say that the fight for human rights in Brazil is the result of the fight against the Military Regime (BRASIL, 2007).

Initially, human rights groups protested against the persecution of people for political crimes, such as those who were imprisoned, tortured, exiled or killed for disagreeing with the dictatorial regime. The majority of these political prisoners came from the middle and upper classes, such as journalists, students, artists and intellectuals, as Marques (2008) points out.

After the military period, the banner of human rights groups was no longer the defense of political rights (which have now been recovered). Concerned about the continuation of violations by State agents, human rights defenders began to systematically denounce the torture and ill-treatment carried out against people arrested for common crimes (mostly poor people). For a large part of the population, people who committed common crimes did not have the same rights as those who committed political crimes. In other words, they were not worthy of having rights (CALDEIRA, 1991).

In Caldeira's view (1991), the connection of human rights to ordinary prisoners had a characteristic that explains the acceptance of the discourse of deconstruction of human rights, namely, the fact that the vast majority of prisoners for common crimes are poor people, therefore, victims of all prejudice and discrimination on the part of Brazilian society, which,

Often, it associates the image of poverty with the stereotype of criminals or the propensity to commit crimes.

It was from the 1980s onwards that they became confused with the meaning of rights and human rights (CALDEIRA, 1991). For example, when we talk about the right to health, housing, education, food, in common sense, we are not talking about human rights, since, in common sense, there is the idea that human rights refer to the rights of prisoners or criminals.

The demand by human rights groups that prisons offer decent conditions to prisoners was used politically by groups opposing human rights, associating their image and agenda with the defense of prisoners. It turns out that, in the early 1980s until 1985, there was a considerable increase in crime rates in the country's large cities, which made it not difficult to link the image of human rights to crime. Among the main organizers of this discourse against human rights were representatives of the police (which at the time was trying to reformulate itself), political leaders and some mass media, especially those programs specialized in police and sensationalist matters (CALDEIRA, 1991).

It was said that human rights groups, by wanting to “humanize” prisons and police violence, were an attempt to grant privileges to criminals, who, as they preached, were beings who should not have rights. So, the discourse that human rights defend privileges for criminals worked, using the media and mass media to consolidate this idea. Caldeira (1991, p. 169) explains well how this happened:

And they had no qualms about abusing the images, stating that they wanted to offer luxury, a good life, a five-star hotel, everything to criminals who thus mocked honest good men who fought to survive with dignity. Once the association human rights=privileges for criminals was made, it was easy to destroy the legitimacy of the rights that were being claimed, and of their defenders, treated as "protectors of criminals".

Thus, in the popular imagination, the idea was constructed that defending human rights is something linked to bandits, criminals and criminals. It was such a strong and well-structured denial speech that, even after the violence subsided, it was not possible to undo it (and remains the case to this day).

Therefore, it is necessary to show and emphasize that this distortion is an injustice that is committed with the entire history of human rights and their struggles, as well as with everything that these rights defend and represent. We know that this perception is not easy to correct, since a large part of Brazilians have already assimilated it incorrectly, as some research points out. Even so, the effort to rectify an error is of great importance, even if this correction does not happen overnight.

However, changing this already widespread misconception is not an easy task, because it depends on a set of clarification and education actions for human rights. And, in the same way that this conceptual deconstruction is the result of a historical process over the years, the opposite path also demands time and a specific public policy. Furthermore, we realized that the Public Power could take the leading role in this educational process. However, we see that, now, this would be almost impossible, with the country's highest leader denying human rights.^{two}.

2.1 HUMAN RIGHTS IN THE PERCEPTION OF COMMON SENSE

At some point in our lives, we have come across some reference to human rights as something bad or someone saying they are against human rights, whether in newspapers, interviews, articles, among others. This is not correct. Few untruths have become as strong in the Brazilian popular imagination as this distorted concept about human rights, which makes us question how we got to this point.

We must know that human rights are the rights of everyone and are based on the pursuit of human dignity. However, in Brazil today, it is not uncommon to find people who say they are against human rights. In 2018, for example, the Ipsos Institute carried out a widely publicized survey on human rights in 28 countries, called *Human Rights in 2018 – Global Advisor Survey*. Of the 1200 people interviewed, 30% confessed that they knew little about human rights and 50% said they wanted to know more about the subject. Of the total number of respondents, 63% were “in favor” of human rights, 21% were “against” and 16% responded “don’t know” (IPSOS, 2018).

^{two}Available in: <https://congressoemfoco.uol.com.br/especial/noticias/direitos-humanos-e-%E2%80%9C9Cesterco-da-vagabundagem%E2%80%9D-diz-bolsonaro/> Accessed on: 05 Oct. 2021.

When asked openly what people understood by human rights, 21% said it was “equal rights”, while 20% of those interviewed said it meant “the rights of criminals or criminals”. When asked in a closed manner about the perception that human rights defend victims or criminals more, 20% said they defend victims, 14% could not answer and 66% said they defend criminals more.

When interviewees were presented with pre-defined questions, 56% responded that those who benefit most from human rights are criminals. The rest said they were: the richest (9%), the entire Brazilian society (9%), victims of crimes (6%), the poorest (6%), the police (2%), NGOs (2 %) and do not know or did not answer (10%).

The negative perception pointed out by Ipsos (2018) is very similar to what the Brazilian Public Security Yearbook (FBSP, 2016) revealed, which indicates that 57% of Brazilians argue that “a good criminal is a dead criminal”.

These are worrying numbers, given the importance of human rights and their understanding. Not understanding its true meaning is also not understanding your own rights, which are fundamental under the terms of the Federal Constitution.

In theory, it means saying that these people are against the right to life, freedom, work, food, health, voting, the environment, among others. Or are these people talking about things they don't know what it means? One of the two: when they claim to be against human rights, they are either referring to something in particular or something that has nothing to do with the real meaning. In any case, whatever the interpretative meaning of the expression, it does not do justice to its meaning.

3 METHODOLOGY

According to Andrade (2007, p. 119), “methodology is the set of methods or paths that are followed in the search for knowledge.” Seeking solutions to problems motivates human beings to develop instruments capable of answering the most varied questions, from the simple to the most complex. Therefore, each problem requires a different instrument (a method). Gil (2012, p. 08) defines method “as a path to reach a certain end. It is scientific method as the set of intellectual and technical procedures adopted to achieve knowledge”. It is, therefore, the path to be taken in the search for

desired objective. It is the form, means or instruments designed to solve the proposed problems, in the search for the truth about the facts and the basis for the construction of knowledge.

The act of research arises from the need to offer answers to certain problems, and, to this end, it uses knowledge available through methods and techniques of scientific investigation.

Some authors tend to classify research, to facilitate understanding of what is sought to be achieved, so that the outline of the research structure clarifies how the objectives will be achieved. As research usually refers to different objects and objectives, classification becomes necessary (GIL, 2012).

In view of this, this research will be categorized by four aspects: in terms of nature, in terms of research objectives, in terms of object and in terms of procedures.

As for the nature, we chose the qualitative approach, as it is the most appropriate methodology for the purposes of this study, as it covers in great detail the understanding that we seek to establish regarding the object of study. According to Oliveira (2011, p. 80), "qualitative research corresponds to the grouping and analysis of information, in a non-numerical way, with texts and images, with the use of formal research methods".

Regarding the objectives, Gil (2010) classifies research as exploratory, descriptive and explanatory. Our study will use descriptive research to achieve what it proposes.

Descriptive research aims to describe characteristics of a given population. In this type of research, facts are observed, recorded, analyzed, classified and interpreted, without the researcher's interference, but they can also be elaborated with the aim of identifying possible relationships between variables (ANDRADE, 2007).

Michel (2005, p. 36) highlights that descriptive research is used in the areas of human and social sciences and has the purpose of "analyzing, with the greatest possible precision, facts or phenomena in their nature and characteristics, seeking to observe, record and analyze their relationships, connections and interferences." This type of research seeks to understand and compare situations related to human behavior, individual or collective, in its social, economic, environmental, cultural aspects, among others.

Regarding the object, according to Andrade (2007), research can be grouped into three types: bibliographic, laboratory and field. This research will be characterized, in terms of

its object of study, as bibliography. According to Gil (2010, p. 50), “bibliographic research is developed based on already prepared material, consisting of books and scientific articles.” However, this type is not restricted to research in books, covering a variety of material.

It is noteworthy that bibliographic research covers all bibliography already published on the researched topic, “from separate publications, bulletins, newspapers, magazines, books, research, monographs, theses, cartographic material, etc., to oral means of communication: radio, recordings on magnetic tape and audiovisuals: films and television” (LAKATOS; MARCONI, 2003, p. 183). Therefore, when we talk about “bibliographic” we are referring to various types of materials. In this research, in addition to books and scientific articles, newspaper articles, reports and videos found in the *web* and in other media.

FINAL CONSIDERATIONS

This article aims to present the meaning of human rights and the process of (de)construction of its concept over the years in Brazil. We start from the assumption that human rights in Brazil have been undergoing a process of conceptual deterioration over the years, as part of a project to misinform society about their true meaning and importance.

The research is of great relevance for several aspects. In the scientific aspect, the choice to build an investigative study on human rights is justified by the fact that it is a subject pertinent to the current academic debate, at the same time that it seeks to stimulate other studies on the topic. We believe that academia will contribute in this sense, as it is a solid instrument for knowledge formation and a driver of social change.

From a social point of view, it is the search for understanding a topic that permeates the conduct of political-social actions. In the current scenario, it is something that leads to the need to promote awareness, as a way of protecting the truth. The search for disseminating the truth must be constant, as a lie is a form of dishonesty that is uncomfortable. This is a scenario that is difficult to correct, given that most Brazilians have already assimilated their understanding of human rights in a wrong and distorted way. Changing this depends on a public education policy for human rights, in which misinformation would give way to a set of informative and clarification actions about

of this very important topic that impacts the entire society, as they are universal rights that protect everyone.

REFERENCES

ANDRADE, MM de. **Introduction to the methodology of scientific work**: preparation of undergraduate work. 8. ed. São Paulo: Atlas, 2007.

BRAZIL. **Constitution (1988)**. Constitution of the Federative Republic of Brazil. Brasília: Federal Supreme Court, Documentation Secretariat, 2021.

BRAZIL. Special Secretariat for Human Rights of the Presidency of the Republic. **National Human Rights Education Plan**. Brasília: SEDH/PR. 2007. Available at: <http://portal.mec.gov.br/docman/2191-plano-nacional-pdf/file> Accessed on: 01 Oct. 2021.

CALDEIRA, TP do R. Human rights or the privilege of criminals? misadventures of Brazilian democratization. **New CEBRAP studies**. São Paulo, no. 30, p. 162-174, 1991.

CAVALCANTE FILHO, JT **General theory of fundamental rights**. 2010. Available at:

<http://www.stf.jus.br/repositorio/cms/portalTvJustica/portalTvJusticaNoticia/anexo/JoaoTrindadeTeoriaGeraldosdireitosfundamentais.pdf> Accessed on: 01 Oct. 2021.

CASTILHO, R. **Human rights**. 6. ed. São Paulo: Saraiva Educação, 2019.

ENGELMANN, F.; MADEIRA, LM **The cause and policies of human rights in Brazil**. CRH Notebook, Salvador, v. 28, no. 75, p. 623-637, Dec. 2015. Available at: https://www.scielo.br/scielo.php?script=sci_arttext&pid=S0103-49792015000300623&lng=pt&nrm=iso Accessed on: 01 Oct. 2021.

FACHIN, MG **Human rights and development**. Rio de Janeiro: Renew, 2015.

GIL, A.C. **How to design research projects**. 5. ed. São Paulo: Atlas, 2010.

GIL, A.C. **Methods and techniques of social research**. 6. ed. São Paulo: Atlas, 2012

FBSP, Brazilian Public Security Forum. **Brazilian Public Security Yearbook**. Year 10. São Paulo: FBSP, 2016. Available at: <https://www.forumseguranca.org.br/storage/10anuariosite18-11-2016-rectificado.pdf> Accessed on: 01 Oct. 2021.

FERNANDES, M. **How dictatorship and inequality fueled the discourse against human rights**. Huffpost, 2018. Available at:

<https://www.huffpostbrasil.com/2018/12/10/como-a-ditadura-ea-desigualdade-alimentaramo-discurso-contra-direitos-humanosa23611993/> Accessed on: 20 Sep. 2021.

IPSOS.Pulse Brazil Survey.(*Human Rights in 2018 – Global Advisor Survey*).**Ipsos Public Affairs**. São Paulo: Ipsos, 2018. Available at: <https://www.ipsos.com/sites/default/files/ct/news/documents/2018-07/human-rights-in-2018-ipsos-global-advisor.pdf> Accessed on: 01 Oct. 2021.

MARCONI, M. de A.; LAKATOS, I.**Fundamentals of scientific methodology**.6. ed. São Paulo: Atlas, 2003.

MARQUES, G. Human rights movement in São Paulo: challenges and perspectives. **Human rights in the 21st Century**:tension scenarios. Coordination: Eduardo CB Bittar. 1st ed. Rio de Janeiro: University Forensics; São Paulo: ANDHEP; Brasília: Special Secretariat for Human Rights, 2008.

MICHEL, M.H.**Methodology and scientific research in social sciences**.São Paulo: Atlas, 2005.

MORAES, A.de.**Fundamental human rights**:general theory, comments on arts. 1st to 5th of the Constitution of the Federative Republic of Brazil, doctrine and jurisprudence. São Paulo: Atlas, 1998.

NATAL, AL Democratization has barely changed the structure of the police.**IHU Online Magazine**. São Leopoldo, Instituto Humanitas Unisinos. University of Vale do Rio do Sinos, n. 497, p. 30, 2016. Available at: <http://www.ihuonline.unisinos.br/media/pdf/IHUOnlineEdicao497.pdf> Accessed on: 01 Oct. 2021.

OLIVEIRA, ABS**Accounting research methods**.São Paulo: Atlas, 2011.

UN. United Nations Organization.**Universal Declaration of Human Rights (1948)**.United Nations Brazil. Rio de Janeiro: UNIC, 2009.

UN. United Nations Organization.**What are human rights?**UN Information Center for Brazil. Rio de Janeiro: UNIC, 2020. Available at: <https://nacoesunidas.org/direitoshumanos/> Accessed on: 01 Oct. 2021.

PIOVESAN, F.**Constitutional Law Notebook**.Module V. School of Judiciary of the Federal Regional Court of the 4th Region. EMAGIS, 2006.

RAMOS, A. de C.**Human rights course**.5. ed. São Paulo: Saraiva Educação, 2018.

SILVA, ACR da.**Research methodology applied to accounting**:study guidelines, projects, articles, reports, monographs, dissertations, theses.3. ed. São Paulo: Atlas, 2010.