

# Citizenship, Human Rights And Fundamental Rights: A Conceptual Analysis And Their Interconnections

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## **Abstract:**

*This article analyzes the complex interaction between the concepts of citizenship, human rights, and fundamental rights, exploring their historical origins, philosophical foundations, and implications in the contemporary legal scenario. Starting from an analysis of the evolution of the concept of citizenship, from classical antiquity to multidimensional and cosmopolitan conceptions, the study deepens the distinction between human rights and fundamental rights, highlighting their specificities and mutual complementarity. The analysis extends to the contribution of thinkers such as T.H. Marshall, Norberto Bobbio, Hannah Arendt, and Ingo Wolfgang Sarlet, whose works are fundamental to the understanding of the subject. Finally, the article addresses the role of the 1988 Federal Constitution in the consolidation of these rights in Brazil and the challenges for their full effectiveness in a globalized world.*

**Key Word:** *Citizenship; Human Rights; Fundamental Rights; Multidimensional Citizenship; Cosmopolitan Citizenship*

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## **I. Introduction**

Understanding the relationships between citizenship, human rights, and fundamental rights is a central theme in contemporary legal studies, especially in the context of increasing globalization and growing demands for the realization of rights at both the national and international levels. Historically, the concept of citizenship has evolved since classical antiquity, when it was restricted to the political participation of privileged groups, to modern conceptions that encompass a broad spectrum of civil, political, and social rights. The distinction between human rights and fundamental rights, although often treated as synonyms, proves crucial for a proper understanding of the mechanisms for protecting human dignity. While human rights have a universal and supranational character, enshrined in international treaties and conventions, fundamental rights correspond to those rights incorporated into national constitutions, linked to the internal legal order of each State. This differentiation does not imply a hierarchy of values, but rather different realms of recognition and protection.

This article aims to deepen the analysis of these concepts, exploring their interconnections and the evolution of their meanings over time. To this end, we will conduct a bibliographic review of reference works, seeking not only conceptual precision, but also critical reflection on the challenges that impede the full realization of citizenship and human rights in the 21st century.

## **II. The Historical And Conceptual Evolution Of Citizenship**

The concept of citizenship, in its earliest sense, dates back to Ancient Greece, where, in the polis, a citizen was someone who actively participated in public affairs. However, this citizenship was exclusionary, restricted to a small portion of the population. Aristotle, in his work "Politics," already outlined the contours of this restricted citizenship, tied to participation in the administration of justice and the exercise of power.

Over the centuries, the concept of citizenship has been transformed. In modern times, with the advent of nation-states, citizenship became associated with nationality, the legal-political bond that ties an individual to a particular State. However, it was in the 20th century that the concept of citizenship acquired a new dimension, with the works of British sociologist T.H. Marshall. In his classic work "Citizenship and Social Class," Marshall proposes an analysis of citizenship based on three elements: civil, political, and social. "Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed" (Marshall, 1967, p. 76).

Marshall describes the evolution of citizenship in England as a process of expanding rights. Civil rights, won in the 18th century, refer to individual liberties, such as freedom of movement, thought, and expression. Political rights, consolidated in the 19th century, relate to participation in the exercise of political power, such as the right to vote and to run for office. Finally, social rights, which gained strength in the 20th century, encompass the right to a minimum of economic and social well-being, such as the right to education, health, and social security.

This multidimensional conception of citizenship, proposed by Marshall, is fundamental to understanding the complexity of the status of citizen in contemporary democracies. Full citizenship is not limited to the exercise of political rights, but presupposes the guarantee of a set of rights that ensure a dignified life for all individuals.

### **III. Human Rights And Fundamental Rights: Distinctions And Similarities**

Although the terms "human rights" and "fundamental rights" are often used as synonyms, it is important to establish a conceptual distinction between them. The main difference lies in the level at which they are enshrined. Human rights are those recognized in International Law, in treaties, conventions, and declarations, such as the Universal Declaration of Human Rights of 1948. They have a universal vocation, applying to all human beings, regardless of nationality, ethnicity, gender, or any other condition.

Fundamental rights, on the other hand, are human rights enshrined in the internal legal order of a State, usually in its Constitution. Once incorporated into the Constitution, these rights acquire the status of supreme norms, binding all branches of government and serving as standards for the validity of other laws.

Ingo Wolfgang Sarlet (2015, p. 29), in his work "The Effectiveness of Fundamental Rights," clarifies this distinction:

The expression 'fundamental rights' applies to those rights of the human being recognized and enshrined in the sphere of the positive constitutional law of a particular State, while the expression 'human rights' relates to documents of international law, referring to those legal positions recognized for the human being as such, regardless of their connection to a particular constitutional order, and which, therefore, aspire to universal validity, for all peoples and times, thus revealing an unmistakable supranational (international) character. (Sarlet, 2015, p. 29)

Despite this distinction, there is an undeniable deep connection between human rights and fundamental rights. Fundamental rights are, in essence, human rights that have been internalized by the State. The 1988 Federal Constitution, in its article 4, section II, establishes the prevalence of human rights as one of the principles guiding Brazil's international relations, demonstrating the openness of the Brazilian legal order to International Human Rights Law.

### **IV. Generations Of Rights And The Contribution Of Norberto Bobbio**

Another way to understand the evolution of human rights is through the theory of generations or dimensions of rights. This theory, popularized by Norberto Bobbio in "The Age of Rights," classifies rights into generations, according to the historical moment of their emergence and the social struggles that drove them.

The first generation of rights, also known as liberty rights, corresponds to civil and political rights. These are rights that impose a negative obligation on the State, to refrain from interfering in individuals' sphere of liberty. The second generation, in turn, includes social, economic, and cultural rights. These are rights of equality, which require positive action from the State, to promote social justice and guarantee dignified living conditions for all. The third generation of rights, more recent, encompasses fraternity or solidarity rights, such as the right to development, peace, and a balanced environment.

Bobbio, however, warns of the risk of uncontrolled proliferation of rights, which could lead to their trivialization: "The serious problem of our time, in relation to human rights, is no longer to ground them, but to protect them. It is not a philosophical problem, but a political one" (Bobbio, 1992, p. 25).

For Bobbio, more important than proclaiming new rights is guaranteeing the effectiveness of those already existing. The protection of human rights depends largely on the political will of States and the existence of effective mechanisms for oversight and accountability.

Hannah Arendt, in her monumental work "The Origins of Totalitarianism," offers a unique and forceful perspective on the issue of human rights. In analyzing the situation of stateless persons and refugees between the two world wars, Arendt notes the fragility of human rights when detached from a political community.

For Arendt, the most fundamental right, the "right to have rights," is the right to belong to a political community, to have a place in the world where one's words and actions have meaning. Without this belonging, individuals become superfluous, devoid of any protection.

The calamity of those without rights does not lie in the fact that they are deprived of life, liberty, or the pursuit of happiness, or equality before the law and freedom of opinion—formulas that were conceived to solve

problems within specific communities—but in the fact that they no longer belong to any community. (Arendt, 1989, p. 329-330)

Arendt's reflection warns us of the danger of an abstract and universalist conception of human rights that ignores the importance of citizenship and political participation. The protection of human rights cannot depend solely on international declarations and treaties, but requires the engagement of citizens in building a pluralistic and democratic public sphere.

Today, cosmopolitan citizenship is championed by authors such as Flávia Piovesan, who sees it as an instrument of emancipation and protection of the human person on a global scale. For Piovesan, strengthening international systems for the protection of human rights is essential for building a fairer and more supportive world order. "Cosmopolitan citizenship, instead of denying national citizenship, complements and improves it, as it broadens the spectrum of rights and the sphere of protection of the human person" (PIOVESAN, 2013, p. 72).

However, the construction of cosmopolitan citizenship faces several challenges, such as states' resistance to ceding part of their sovereignty, the rise of nationalisms and xenophobia, and the persistence of deep social and economic inequalities on a global level.

The 1988 Federal Constitution, enacted in a context of the country's redemocratization, represents a milestone in the history of human rights in Brazil. Known as the "Citizen Constitution," it devotes an entire chapter to fundamental rights and guarantees, and enshrines the dignity of the human person as one of its foundations.

Article 5 of the Constitution lists an extensive set of individual and collective rights and duties, ranging from classical freedoms to rights of a social and cultural nature. Additionally, paragraph 2 of the same article states that the rights and guarantees expressed in the Constitution do not exclude others deriving from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party.

This openness clause materializes the interaction between domestic law and international human rights law, allowing for the incorporation of new rights into the Brazilian legal system. Constitutional Amendment No. 45/2004, by introducing paragraph 3 to article 5, further reinforced this interaction by establishing that international human rights treaties and conventions approved, in each House of Congress, in two rounds, by three-fifths of the votes of the respective members, will be equivalent to constitutional amendments.

The debate over the hierarchy of international human rights treaties is not exclusive to Brazil. In the context of the "new Latin American constitutionalism," several countries in the region have adopted innovative solutions for integrating international law into their domestic systems. The constitutions of Ecuador (2008) and Bolivia (2009), for example, expressly recognize the direct and immediate application of rights provided for in international instruments, granting them, in some cases, a supraconstitutional hierarchy.

This approach reflects a growing awareness of the importance of dialogue between national courts and international human rights protection bodies, such as the Inter-American Court of Human Rights. The so-called "conventionality control," whereby domestic judges must verify the compatibility of laws not only with the constitution but also with international human rights treaties, has become a powerful tool for the realization of these rights in the region.

Despite normative advances, the realization of citizenship and human rights faces enormous challenges in the 21st century. The digital age, while opening new possibilities for participation and access to information, also raises concerns about privacy, data manipulation, and the spread of misinformation. The rise of hate speech and anti-democratic movements, amplified by social networks, represents a serious threat to the foundations of the rule of law.

In addition, the climate crisis, global pandemics, and the persistence of abysmal inequalities demand a new generation of public policies and more robust international cooperation. The protection of human rights in the future will depend on our ability to build collective responses to these global challenges, in a spirit of solidarity and shared responsibility.

### **Final Considerations**

Throughout this article, we have sought to demonstrate the richness and complexity of the concepts of citizenship, human rights, and fundamental rights. We have seen that citizenship, in its contemporary conception, goes beyond mere political participation, encompassing a set of civil, political, and social rights that are essential for a dignified life. The distinction between human rights and fundamental rights, in turn, reveals the existence of different spheres of protection that complement each other in the pursuit of the realization of human dignity.

The contributions of thinkers such as T.H. Marshall, Norberto Bobbio, Hannah Arendt, and Ingo Wolfgang Sarlet have allowed us to deepen our understanding of these concepts, highlighting their historical,

philosophical, and political dimensions. The analysis of the 1988 Constitution, finally, demonstrated the Brazilian State's commitment to the promotion and defense of human rights.

This analytical journey through the concepts of citizenship, human rights, and fundamental rights reveals a field in constant dispute and transformation. From the Greek polis to cosmopolitan citizenship, what we observe is a historical process of expanding the circle of recognition and protection of human dignity. The enshrinement of these rights, whether in national constitutions or international treaties, is a fundamental step, but not a sufficient one. As Bobbio reminds us, the crucial problem of our time is the protection, guarantee, and realization of these rights.

The work of Hannah Arendt serves as a perpetual warning against complacency: the most solemnly declared rights can become dead letter when the political community that sustains them collapses. Therefore, the defense of human rights is inseparable from the defense of democracy, the public sphere, and the "right to have rights."

In the Brazilian context, the 1988 Constitution offers a robust framework for the protection of fundamental rights and for dialogue with the international system. The challenge lies in translating the constitutional promise into lived reality for all Brazilians, overcoming structural barriers that still perpetuate exclusion and injustice. The construction of full citizenship and a culture of respect for human rights is an ongoing task that calls for the effort of the entire society.

However, the challenges to the full realization of citizenship and human rights are still immense. The persistence of poverty and social inequality, violence, discrimination, and environmental degradation are just some of the obstacles that must be overcome. Building a more just, free, and united society requires the engagement of all: the State, civil society, and each of us, as citizens and human beings.

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