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Human Rights: imposition speech or an emancipation instrument?

Camila Franco Henriques
University of Lisbon, Faculty of Law
Alameda da Universidade, 1649-014, Lisbon

Abstract: Human rights emerged to protect the individual from the State and are undeniably part of today's world. However, the discourse of protecting the individual, promoting peace and enforcing dignity, often ends up serving as a justification for implementing a logic of imposing and dominating of the strongest over the weakest. That way, the main objective of the present paper is to analyze how human rights have been understood and interpreted in contemporary society, using universalist and relativistic theories to understand how universal human rights can be used as an anti-hegemonic instrument of protection. The research will be qualitative, hypothetical-deductive and done through bibliographic research.
Keywords: Human rights; protection; universalism; relativism; anti-hegemonic instrument.

1. Introduction

Human rights gained greater repercussion in the post-World War II context, due to the phenomenon of internationalization. They brought a seductive speech of protection and emancipation that took shape and currently permeates most countries in the world.

However, despite the undeniable contribution of human rights to the protection of individuals, countless violations continue to occur, violations perpetrated by the States that have committed themselves internationally to protect and enforce these rights. In fact, many current state actions use the human rights discourse as a basis for intervening in other countries as if their action were part of a "moral and political duty of protection", but they end up violating rights.

For this reason, when dealing with human rights, one must have a critical eye,to enable that they are used effectively for the protection of individuals, in the realization of their dignity, and not as an attempt to impose a supremacy of Western values and interests. In view of this, the research problem to which we seek to respond is: how can universal human rights be used as an anti-hegemonic protection instrument?

Thus, the present article aims to analyze how human rights have been understood and interpreted in contemporary society, based on universalist and relativistic theories.

In order to achieve this objective, it will be divided into four parts: at first it will deal with the creation, strengthening and internationalization of human rights; then, it will look at the contrast between universalist and relativist theories; then, it will reflect on the need to (re)think human rights in a critical way, when dealing with State's actions that use them as an excuse, and their current tensions; and, finally, it will analyze possible solutions to contemporary human rights tensions, especially the clash between universalists and relativists.

The research will be qualitative, hypothetical-deductive and done through bibliographic research, using articles, theses, books, and other materials available on the topic.

2. Human Rights: Creation, Strengthening and Internationalization

For this work, it is important to understand, first, on what these human rights consist. Its definition is far from being hegemonic, and many experts dedicated themselves to trying to conceptualize them. Peres Luño, for example, indicates three classifications so that human rights can be defined: the tautological one, which defines these rights without adding any new characteristics, they are human rights because they are human rights; the formal, that relates to the fact which they are governed by a legal regulation; and teleological, which defines human rights by their purpose, as being essential to live with dignity (RAMOS, 2014).

Even though there is no tightly closed concept when it comes to human rights, it is almost peaceful to accept the existence of these rights today, both internationally and nationally.It is worth mentioning that, in this context, Bobbio (1991) states that there is no longer any need for a theoretical foundation of human rights, as it was in the moments of "creation" of the first, second, third and fourth dimensions, but it must rather, the effective protection of these rights should be analyzed and studied.

When trying to understand today the strength of human rights and how they are protected, it is necessary to understand, first, the historical evolution of these rights, their affirmation over the years, what position they occupy in today's world and the conflicts over the theme. Therefore, this section will be divided into two parts: the first will

briefly deal with the precedents of the historical consolidation of human rights and the second with the phenomenon of the internationalization of human rights.

2.1. Precedents to the historic consolidation of human rights

Law is a way of regulating society and social relations, and what is currently put forward is the result of a long historical, cultural, social and legal evolution, which will be shortly discussed below.

From what is known, the rights of individuals have been regulated since ancient Egypt, not through codes or compilations of laws, but through legal decisions. This begins to change in Greece, which brings about a significant change with the formulation of democratically established laws, through its and political thinkers (COMPARATO, 2003; GUERRA, 2014).

The Romans, in turn, were the great jurists of antiquity. The process and the application of laws, mainly in the private sphere, were largely developed by them. But, until then, mechanisms were not created to defend the citizen against the emperor's mandates and wishes (COMPARATO, 2003; GUERRA, 2014).

With the decline of the Roman empire, the transition to the Middle Ages and the strengthening of Christianity, there was a direct christian influence on rights. This moment is considered a real turning point due to the importance of implementing the idea of human dignity in the legal sphere (COMPARATO, 2003; GUERRA, 2014).

From this moment on, the instruments considered precedents of human rights began to emerge, with the creation of institutions that limit the power of the monarch (COMPARATO, 2003; GUERRA, 2014).

The first example is the *Magna Carta*,or "Great Charter", from 1215, which was given by John of England, being considered as a document that gave rise to fundamental rights, since it was the first document to guarantee the rights of protection of the citizen against acts of the State, among the which can be cited: the offense-fine, due legal process, access to justice, non-government interference in the church and locomotion (COMPARATO, 2003; GUERRA, 2014).

With the social, cultural, political and legal transformations, other documents emerged, such as: the Petition of Rights, from 1628 – which ratified the freedoms provided for in the Magna Carta, prohibiting detention or any other form of unrest due to taxes or their default; Habeas Corpus Amendment Act, from 1679 – that marked history, since it annulled arbitrary arrests, again protecting the individual from unfounded and unmotivated actions by the State; and the Bill of Rights, from 1689 – which was the most important precedent among those exposed, as it submitted the monarchy to popular sovereignty, putting an end to the absolutist regime, transforming it into a constitutional monarchy (COMPARATO, 2003; GUERRA, 2014).

The Bill of Rights limited the monarch's powers to protect individuals from arbitrariness and violations by states (Rosso, 2004). This is the cradle for the emergence of the Human Rights Theory, because at this moment the individual is seen as an object of protection before the State. And it is from this construction that the idea of rights emerges that today are understood as human rights, with the primary function of protecting the individual from its greatest violator, the State.

In this environment of expansion of fundamental rightshappens whatBobbio (1991) calls "the phenomenon of multiplication of fundamental rights". This institute has basically three reasons: the expansion of tutelage assets, the expansion of ownership and an individualized view of the human being. The expansion of tutelage assets consists of the fact that throughout history several assets have gained legal protection; in the expansion of the ownership of fundamental rights, there is an increase in the subjects that come to be considered as rights holders, with a consequent universalization of human rights; and the individualization comes to apply the material equality, because while in the expansion of ownership human beings are seen as equal rights holders in an abstract way (formal equality), their individualization allows their peculiarities to be observed and characteristics, so there can be an effective protection, treating equals as equals and unequal ones as unequal to the extent of their inequality.

2.2. Strengthening the international community and post-World War II

Still in a historical conception, but with a time jump to the 20th century, human rights underwent a significant transformation, starting from its international regulation.

At the international level, humanitarian law, known as the law of war, was the first expression of human rights, in the sense of limits State's actions. It was built to define limits to state actions and to safeguard fundamental rights in situations of war, being aimed at civilians and military personnel out of combat (PIOVESAN, 2013).

Afterwards, there was the creation of the League of Nations, which appeared in the post-World War I period, in 1919. This organization was another milestone in the relativization of state sovereignty, and sought international cooperation and security, in addition to peace and condemnation. of aggressions. In this logic, there is a significant change in the legal paradigm, as the individual, in its atomized form, becomes a subject of International Law, feature that is no longer exclusive of States (PIOVESAN, 2013; GUERRA, 2014).

There is also the emergence of the International Labor Organization, an institute that aims to promote international standards of working conditions and well-being (PIOVESAN, 2013). This organ, unlike the League of Nations that was replaced in 1945 by the United Nations, continues existing nowadays and remains one of the most important and international institutions.

These three milestones (Humanitarian Law, League of Nations and International Labor Organization) are considered the precedents of the phenomenon of internationalization of human rights. From them, the individual is inserted as a subject of international law, the logic of international law as the right of exclusive regulation of the relationship between two States is excelled and there is a fracture in the idea of absolute state sovereignty, which was of fundamental importance for the creation and structuring of the current international human rights community (PIOVESAN, 2013).

But, even with the significant strengthening of the protection of human rights at the international level, the relativization of state sovereignty was still viewed with reservations and concern by States, since the prevailing idea was that sovereignty consisted of a maximum principle, which could not be relativized, in accordance with peoples' self-determination.

With the subsidy of this reservation, among other factors, obviously, the Second World War broke out, which culminated in the extermination of approximately 11 million people, and the terror of the global community when seeing what a State could accomplish with its absolute sovereignty (MAZZUOLI, 2004; PIOVENSAN, 2013).

As a result of everything that was experienced by international society at the time, the end of this dark period is marked by the strengthening of the principle of human dignity and the consolidation of a logic of relativization of sovereignty with the creation of international organizations that aim to protect the minimum existence of human beings (MAZZUOLI, 2004; PIOVENSAN, 2013).

This is fueled by the idea that the atrocities seen could have been prevented had there been an effective international system for the protection of human rights. Then, in 1945, the United Nations (UN) emerged, which aims to maintain peace, international security and the protection of man (GUERRA, 2014).

An international consciousness is formed of the need for greater reach and more concrete protection of citizens' human rights. In this logic, Cançado Trindade (1991) argues that international law has been used as an instrument to improve and strengthen the protection of these rights, and in this context emerges, as Guerra (2014) explains, the International Human Rights Law.

Thus, it is said that there was an International Law before and a new one after the Second World War. And the creation of the UN, by the United Nations Charter, in 1945, replacing the League of Nations, consolidated this new International Law (PIOVESAN, 2013).

The objectives of the UN are: the maintenance of international peace and security, the development of friendly relations between States, the adoption of international cooperation at the economic, social and cultural level, the adoption of an international standard of health, the protection of the environment, the creation of a new international economic order and the international protection of human rights (PIOVESAN, 2013).

To fulfill its purposes, the United Nations (UN) was constituted by several organs, each with its own function, such as: The General Assembly, responsible for issuing recommendations and resolutions; the Security Council, which deals with issues of security and international peace, being the only competent body to decide on intervention within a State; the International Court of Justice, which is the UN's jurisdictional body, having contentious and consultative jurisdiction in accordance with the Statute of the Court; the Economic and Social Council, which seeks to promote international cooperation in the economic, social and cultural spheres, in addition to promoting recommendations and carrying out studies to present draft conventions to the General Assembly; and, finally, the Secretariat, which is the UN administrative body. Therefore, a complex international body was created to deal with the protection and enforcement of human rights (PIOVESAN, 2013).

With this new global consciousness, there is the development of an international standardization, with the Universal Declaration of Human Rights, promulgated in 1948, considered the landmark of the beginning of the work of the UN, with 48 votes in favor and 8 abstentions, and its acceptance without any refusal or reservation transformed it into an "International Code of Human Rights" (GUERRA, 2014). Therefore, there is the materialization of the concept of internationalization of human rights, since the vertical relations that takes place in a national sphere, that is, the relations between the State and its citizens that occur internally, have possibility of becoming the object of analysis and intervention by the international community (PIOVESAN, 2013).

It should be borne in mind that, this new order of international codification stems from the fact that the State continues to be the greatest violator of the rights of individuals (GUERRA, 2014).

Still regarding the phenomenon of international codification, in 1966, there was the creation of the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. At this historic moment, the Tehran Conference, in 1968, still took place, with the purpose of ascertaining what had been implemented in those twenty years after the Universal Declaration of Human Rights, and the principle of the universality of Human

Rights was solidified (GUERRA, 2014). Since then, numerous international standards have been created that aim to expand and strengthen the scope of protection of human rights.

With all this normative promotion and the intensification of the protection of human rights, in addition to the universal system for the protection of these rights (UN), regional systems for the protection of human rights has been created, such as the European, the Inter-American and the African.

Among them, the Inter-American Regional Systemwas chosen to be analyzed, because it is where Brazil, the author's country, is inserted. This system is based on two documents: the letter from the Organization of American States and the San José Pact of Costa Rica, a document also known as the American Convention on Human Rights (ACHR) (ROSA, 2004), which was promulgated in 1969, but it was only ratified by Brazil in 1992.

The American Convention regulates both human rights and the apparatus for monitoring and implementing these rights within the Inter-American Human Rights System, which is made up of the Inter-American Commission on Human Rights and the Inter-American Court (ROSA, 2004).

Each of these bodies has its scope of action. The Inter-American Court has jurisdictional and consultative functions, that is, it is responsible for the judgments of lawsuits and advisory opinions on doubt of interpretation, provided that the same matter is not being discussed in conflict on the agenda of judgments, so that there is no pre-litigation judgment. While the Inter-American Commission on Human Rights (IACHR) is responsible, among others, for promoting on-site studies, giving opinions and recommendations that are not binding on States, receiving individual petitions, trying to reconcile the alleged victim with the State and bringing actions before the Court (PIOVESAN, 2013; GUERRA, 2014; ROSA, 2004).

It has been stated that,because there is no coercive mechanism to enforce the judgments, international protection systems do not operate in a forceful way. But that does not mean that there is no impact on the decisions of the Inter-American Human Rights System[1].

As a concrete example of the effectiveness of the decisions of the Inter-American Court, it is enough to observe the actions taken by Brazil as a result of international pressure, such as, for example, the exclusion of the asylum system for the treatment of people with mental disabilities; the creation of the Truth Commission to investigate crimes committed during the Military Regime in Brazil; and the recognition of the existence of slave labor in the national territory in 1995 – the first two examples being derived from Brazil's condemnations before the Inter-American Court, Damião Ximenes Lopes and Gomes Lund, respectively, and the latter was the result of the José Pereira case at the Inter-American Commission on Human Rights.

Even when are unequivocal the evolution and proliferation of international norms of rights, the strengthening of the international community for the protection of human rights and the interference between national and international orders, it is noticed, especially with recent governments, the questioning about the limit's intervention in the States. And it is in this sense that the following session is developed.

3. Relativism and Cultural Universalism

To address this topic, we start from the conception of a secular solidification of the idea of independent and sovereign states protected by the prohibition of intervention in internal affairs that, from the 20th century, began to be questioned, and today there is a different form of interference, a new concept, a new language, a new form of international and legal relations: human rights.

This scenario of questioning and paradigm shift was consolidated with the creation of the UN and the promulgation of the Universal Declaration of Human Rights (UDHR), signed by almost all member states of the United Nations, as explained in the previous session.

However, the State continued to show itself as a major violator of rights and, as a result, there were situations in which some countries used violations – such as hostage maintenance and cases of countries with systematic human rights violations, as occurred in the division of Yugoslavia, with rapes and massacres of civilians – as justifications for intervening in others, in search of "maximizing justice", arising a "moral and political duty to intervene"(TODOROV, 2012).

While in the 16th century the moral justification for intervention was the need for evangelization, in the 21st century the moral justification for intervention is the protection of human rights and the institution of democracy. This caused, for example, the USA to "self-authorize" to intervene in Iraq, without considering all the problems that this intervention brought, such as the increase in violence and the worsening of economic conditions, being completely ignored the principle of lesser evil(TODOROV, 2012).

[1] Cf. NEVES, Rafaela Teixeira Sena. **Compliance na corte interamericana de direitos humanos**: um estudo a partir da propriedade comunal indígena. 2016. 155 f. Dissertação (Mestrado). Instituto de Ciências Jurídicas, Programa de Pós-Graduação em Direito, Universidade Federal do Pará, Belém, 2016. Disponível em: http://repositorio.ufpa.br:8080/jspui/handle/2011/7564. Acesso em: 20 nov. 2020.

This leads to the reflection of who has the right to intervene, why, when and how. Referring to the discussion between universalism and cultural relativism, which is one of the most complex themes in human rights theory (PIOVESAN, 2015).

There is no point in talking about global universalism without it being truly global, there is no point in prescribing crimes against humanity as powerful countries are not subject to punishment. One must reflect on the superiority and veracity of our morals, and more, always seek to disseminate ideas based on dialogue, empirical evidence and convincing, but never based on strength and imposition (TODOROV, 2012).

It cannot be overlooked that this idea of evaluative superiority is ingrained in the Western world. As, historically, the colonization process has figured as a way of extinguishing or diminishing the rights of colonized peoples, for the benefit of the colonizers, who imposed their models on those. The individual rights of the colonized people were denied and they imposed a culture, a way of life, a political economy and even a community with a strong vocation to dominate and another to be dominated (CLAVERO, 2014)– the "strong and weak" relation.

In this sense, care must be taken when using human rights, so theydo not present themselves just as reproduction of the colonizing logic. Especially because, as Donnelly (2007) states, currently the number of countries that challenge or claim that human rights do not apply to them is very small.

So, one must ask about who are the holders and implementers of human rights as universal values, and if there really are said universal values. And it is in this bias that the clash between universalism and relativism arises, which will be analyzed below.

3.1 Cultural Relativism

Relativism resides in the affirmation, belief, perception, of several realities, several moral, as there are several societies, each with its own value. There are, then, no universal human rights, only fundamental rights, citizens' rights, because there are no common rights, but only the rights recognized within a society. In this theory the notion of rights is restricted to the political, economic, cultural, social and moral system in force in a society (PIOVESAN, 2015).

Donelly (2007) indicates the existence of several relativisms: the radical cultural, which defends custom as the only source of legal or moral norms; strong relativism, which argues that custom is the main source; and weak cultural relativism, which argues that culture can be an important source of validity. He argues that even though cultural relativism is an important antidote to mistaken universalism, it is a deeply problematic moral theory that offers a poor understanding of human rights relativity.

Among this issue, it still opens the opportunity for the discussion of what is right and wrong. Skeptics believe that it is not possible to identify for humanity what is right or wrong as it does not exist. While *boazistas* believe that it is not possible for humanity to identify what is right or wrong, as there are several understandings. The idea of right or wrong depends on externalities, that is, on cultures, religions, and regions, depends on the reality in which the subject is inserted. Which leads to reflection on ways of defining what is right and what is not, reflection on which truths should be considered and which ones should not.

Like any other theory, relativism receives criticism, usually from universalists, based on the following arguments: it is true that universality may not exist at this very moment, but it must be pursued; diversity within universal standards is possible, universal standards, and this is seen every day in democracy; the fact that there are several cultures does not mean that all are morally valid and that all must be protected, that all defended values must be protected; relativism leads to traditionalism, it can lead to the maintenance of the status quo, and often the defense of the status quo is the defense of the oppressive dominant group; it is possible to reach a consensus, there is part of the doctrine that argues that to reach this consensus, one must be guided by "humans wrongs", experiences to which human beings should not be submitted, and not by "human rights".

3.2 Cultural Universalism

Universalism is composed of the idea of human rights for all human beings without distinction. It is based on the idea that there are common valid values in all corners of the world and, thus, human rights are universal and based on dignity, which is intrinsic to the human condition (PIOVESAN, 2015, p. 52).

There are varying degrees of universalism depending on the achievement of the irreducible minimum. It states that universalism has two perspectives: conceptual universalism and substantive universalism. Conceptual universalism is linked to the very idea of human rights, which are inherent to all human beings, being equal and inalienable. Meanwhile, substantive universalism is related to a particular concept or list of human rights (DONELLY, 2007).

This leads to the discussion of universal morality. In this sense, there are two currents about universal morality: moral monism for which there is only one moral, since there is only one human nature, with human reason being able to reveal common values, the minimum rights to be protected, arising from the essence human, and by identifying, protects them; and the minimal universalism that defends that it is possible that there is a moral

plurality, but these modalities can be analyzed ("judged") by universal values, that is, there are several morals, but moral criteria could be established so that there was a control of the values plural.

Among the arguments used, usually by relativists, to criticize universalism, are: until today, there is no scientific technique for evaluating cultures, and it is not possible to identify based on exclusively objective parameters, what is good or bad in a given culture; men only exist as members of communities, men do not exist in isolation, thus, they only exist according to the culture in which they participate; it is possible to identify values, but these values historically belong to the winners, thus, the values that are intended to be universal, "by coincidence", are values of victorious societies (observing in a historical panorama it is possible to observe that the strength of values is proportional to the strength of who has these values. In this context, the term cultural imperativism is used, the values being considered universal are those of Western society); any society has basic moral principles, the problem is that the content of these principles differs.

When confronting the two theories, it appears that there are fractures within the theory of human rights, fractures that are important so that these rights, which are accepted in an almost hegemonic way in the world, are thought and critically rethought. It is in this sense that the next topic develops.

4. Human Rights in Crisis: The Need to Critically (Re) Think Them

As Boaventura Santos and MarilenaChaui (2013) well explain, today there is a big problem: The Human Rights Paradox, from which on one hand is used as a language of universal human dignity, but on the other hand does not reach most of the world population, that is, a large portion of the world population is not subject to human rights. Hence it is questioned about the use of these rights. About by and for whom they are being used.

For human rights to be used in a way that is disconnectedfrom Western prejudices and values, in a counter-hegemonic view, it is necessary to adopt a critical posture. First, the problems of the current language used must be recognized.

In this bias, the illusions on which the concept of construction linearity and hegemony of human rights are based are identified, and the tensions that today cross political struggles built with reference to human rights (SANTOS; CHAUI, 2013).

The first of the five illusions cited by the authors is the teleological one, which consists in the practice of starting from the current conception of human rights to analyze its creation and evolution, as if the step had walked linearly to reach the result that we have today, which prevents the view that the result today results from the combination of several factors, which could not be determined years ago.

The second is triumphalism, which is the consideration of the ethical and political superiority of human rights, considered an unconditional human good. But this must be seen critically, and it must be demonstrated that human rights have a real merit of emancipatory language and not that they have this character due to their victory due to other conceptions.

The third is the decontextualization that consists in ignoring the context in which human rights are inserted, because depending on the context, human rights can even sustain oppressive discourses and legitimize practices that violate human rights. Thus, it is important to know whether human rights discourse is currently used as an emancipatory practice or a counterrevolutionary practice.

The fourth illusion is monolithism, which comprises the denial of tensions and contradictions in human rights theories. Such as, for example, the gradual international positivization and incorporation of rights in national Constitutions, but the lack of effectiveness in protecting these rights, or the evocation of human rights in times of crisis, of violation of rights. To ignore these tensions and contradictions is not to accept the limitations of this doctrine, even hindering its improvement.

The fifth and final illusion is that anti-statism is based on the withdrawal of the State from the center of human rights debates so that the consequent transformations of neoliberalism are possible, because the intrinsic relationship between political and economic powers has removed functions from the State, diluting its sovereignty and with that the political mandates that should be democratic, end up being mandates of interests of the minority portion, but that it holds the power. Not seeing this social phenomenon implies ignoring the relationship between powerful non-state actors and massive human rights violations.

Furthermore, due to the way in which the language of human rights is presented today, that is, in a hegemonic manner, and seeking a reconstruction of the theory and policy of human rights, Boaventura and Chaui (2013) identify nine social tensions, through which he builds his theory.

The first tension is between the universal and the foundational which is related to the tension between equality and the recognition of difference, which has already been analyzed in a previous topic. In this sense, there is currently a universalism based on Western values, but this reality is increasingly threatened by the emergence of valid values in other social contexts, the valorization of diversity and self-determination. The end of the dichotomy between the universal and the foundational is sought with a field of intercultural exchanges and experiences.

At this point, it is worth mentioning that the European colonizing concept was justified by the ideal of spreading civilization, progress and economic development, as if the colonizers were doing a greater good for the colonized peoples. But colonization, despite its beneficial ideological discourse, brought, among other ailments, the decimation of indigenous peoples by the proliferation of diseases, the use of physical force and consequent deaths to claim land (WALLERSTEIN, 2007), and care needs to be taken, so this history does not repeat itself.

The second tension occurs between individual and collective rights, with the former receiving better protection. In this bias, the author takes as an example even the Universal Declaration of Human Rights, which only knew the individual and the state as subjects, and meanwhile the various collectivities continued as subjects of domination. Thus, there is a predominance of individualism to the detriment of the collectivity, with collective rights aiming to minimize the injustice that oppressed groups suffer and that they seek to eliminate through social struggles. Here, the problems of gender violence faced by Brazilian society can be framed.

The third is the tension between the State and the anti-State, which is related to the illusion of anti-statism, that is, the centrality of the State, as this ends up ignoring the relationship between the powerful non-state actors and massive violations of human rights. In addition, in recent years there has been a great acceptance of the indivisibility of human rights, so the protection of rights together is fundamental for the protection of each right individually.

The fourth tension occurs between secularism and post-secularism and is based on the paradox of the secular state, but which institutionalizes religions. And this interference by the religious, which should be private, in the public sphere, is called post-secularization. In this vein, one can mention in Brazil the institutionalization of the Catholic Church, as seen by the religious holidays of the national calendar, which end up giving prominence to one religion to the detriment of others.

The fifth tension is between human rights and duties. This is because there is almost no attention to human duties, and the theory of rights does not end up with duties, as it is passed, even though rights and duties are diametrically related. To illustrate this tension, we can mention a municipal case regarding the use of quotas: the student, who studied at one of the best schools in the city, being a scholarship holder because her father was a professor and owner of the institution, entered the state university through quotas; opinions differed, and it was argued by the majority that she only used her right, since the law allowed for so much. In this case, there is a total disregard for the purpose of creating the quota system, due to the lack of sense of social responsibility created in individuals, always accustomed to thinking of themselves as alien to the social environment and subject to rights, but never of duties.

The sixth tension occurs between the reasons of state and rights, which deals with the recognition or not of massive violations of human rights committed by states of exception. The Transitional Justice is guided by this logic, which, in Brazil, seeks to reconcile an oppressive past with a democratic present. In this context, after Brazil's condemnation before the Inter-American Court of Human Rights, several policies were created, such as the Truth Commission, Amnesty Caravans, Brazil's Political Amnesty Memorial, but the most controversial point is in relation to Amnesty Law, considered unconventional by the Inter-American Court, but maintained in the national legal order. What is most relevant in this context of transitional justice is to preserve the right to the truth and the right to memory for society to learn from its past so as not to repeat in the future.

The seventh tension occurs between the human and the non-human. At this point there are two dimensions: the first is that there are human men and non-human men, after all, how else could slavery be legitimized? Currently, in what way is the death penalty justified, who are deprived of their right to life? The second dimension is the restriction of the protection of human rights to the human being, without considering any cosmic relationship or any relationship with the environment in which he is inserted. And here is an example of the cosmic relationship that native peoples have with the land, without which they lose part of their identity.

The eighth point of tension occurs between the recognition of equality and difference, which is directly related to the first tension, between the universal and the foundational. Boaventura argues that there must be a balance between equality and the recognition of difference. In this context, there are actions for the inclusion and empowerment of vulnerable groups, such as the example of the requirement of a minimum percentage of women for representation in political parties.

The last is the tension between the right to development and other individual and collective human rights such as self-determination, a healthy environment, land and health. The economic development of today ends up overriding rights as a healthy environment and the health of human beings, as an example of the excessive use of pesticides in agricultural production, with Brazil being responsible for 19% of the world consumption of pesticides in 2010. In addition, from the tension related to the environment and health, there is also the conflict with indigenous self-determination and their right to land, since agribusiness is violent in terms of territorial occupation, and indigenous peoples are often seen as obstacles to development.

Among all these tensions, several existingfractures in the theory of human rights are highlighted and it is suggested to think about these rights, from now on, always in a critical way. And, from these matters, the

development of the next topic is with emphasis on the analysis of the first tension, in the search for a way of the effective use of human rights as an instrument of protection.

5. In the Counterposition between Universalism and Relativism: What Should Preval?

In the world, mainly in the West, a vision of Human Rights is impregnated with hegemonic values, which ends up leading individuals to see these rights in an uncritical way. However, global society is perpetrated by diversity, cultures, languages, races, etc., and the concept of dignity does not escape this variety. Thus, when using human rights as an institute for the protection of the individual, care must be taken that it does not serve as a mechanism for domination and perpetuation of inequalities and social exclusion.

When observed in a pragmatic way, it is possible to glimpse currently existing articulations by the dominant countries to ensure their power and interests. Todorov (2012) translates this, for the purposes of reflection, as the idea of a possible political "salvation" promoted by a few (the most powerful, by the way, especially the USA), who place their interests over those of the others (almost all of them - especially their political enemies), legitimized by the supposed adherence of the people. From this "legitimation" of the people, there is a possibility of excessive interference by some countries in others, to establish their principles and rules, including through force and violence.

The actions of powerful countries are reportedly practiced in favor of freedom and democracy, the Good and the Just. But, in line with the hypothesis constructed by Todorov (2012), it is believable that the real objective is solely political and stems from the will of these powerful and dominant countries, despite these are being hidden.

The people - the messiah - are the "owner" of the will, constituting an abstraction that allows certain individuals to present themselves as "reincarnation of the messiah" and thus, if the will is of the messiah, it is the common human will, and will bring the Well and everyone's salvation. The Good and the salvation of all will not occur in Heaven (after-death), but on Earth and now.

Political messianism, in reality, will serve its own purpose – to bring what is equivalent to "Paradise on Earth" – from any means that the powerful country (mis)understands(s) to be necessary(s) (particularly, in the Revolution and Terror) (TODOROV, 2012).

Even if the Good is achieved, the violence cannot stop, because it must be "perpetuated". This is seen when, for example, the USA, even though it has already "conquered" world power, continues to invest in armaments and to sustain war conflicts, even investing 600 billion dollars in military budget per year (which represents more than what is used in all countries of the world together) (TODOROV, 2012).

Evil is done in the name of good and explained by an end that is exposed as sublime. It is noticed that there is an "enlightened interest" (to contribute to the promotion of citizenship) and a real interest (maintenance of the interests and power of the great powers, especially the USA).

For those "who lack the Good and the Just", there are only two paths left: or they spontaneously submit to the power of the great power (which does not prevent the use of violence and force by the country) powerful simply to demonstrate its power), or war (without limits of any kind) happens, with the reactive country doomed to failure and all its consequences.

For the deceived people, there is only the possibility of knowing, in a future and uncertain event, the truth: that they were deceived and, therefore, legitimized war and other acts of barbarism. Thus, political messianism leads to the idea of a policy in the name of Good and Fair, but which, in the end, will harm both the other (TODOROV, 2012).

The international order does not become better when one group of countries is allowed, without restriction, to impose its will on all the others, since the temptation to overdo it becomes too great. This can, and probably will, have consequences for democracy and for the people who benefit from it, deflating its principles (TODOROV, 2012).

Western political messianism, therefore, always uses the same plan: when action is taken, universal and moral ends are proclaimed (to improve the fortunes of mankind, ensuring essential rights). This excites the population, which, consequently, makes the project feasible, guaranteeing the freedom to advance in an excessive way towards its realization. And it is only after some time (sometimes many years, decades, or centuries) that we realize that the declared universal goal was not the one that had been said. There were other interests: they were the private interests of those who had thought about the project. Then, one swears to no longer act in the same way, until new interests arise and the situation is repeated.

However, in this logic, the means end up canceling out the ends, because the means of the ends cannot be untied, thus, "there are no humanitarian bombs or merciful wars, the populations that suffer them count the corpses and ignore the sublime objectives (Dignity! Freedom! Human rights! Civilization!)" (TORODOV, 2012, p. 84, our translation).

For these reasons, wars linked to the messianic project are not legitimate, whose justification is to impose a higher social order on another country or to make human rights reign there. Morals and justice (in addition to the

other "universal values"), which are placed as a justification for actions, in fact, do not serve the ideas of morality and justice, being only instruments used to justify the actions of the powerful, appearing in reality, as a "hypocritical veil" used to defend your interests (TODOROV, 2012).

In the past decade, most discussions have tried to go beyond a dichotomous presentation of the issue between relativism and universalism, and the most sophisticated advocates of both sides recognize the dangers of extreme commitment and recognize at least some attractions and insights in the positions of its critics and opponents.

In this sense, Donnelly (2007) seeks a theory of convergence between universalism and relativism, denying both ontological universalism and absolute cultural relativism. He considers himself an advocate of a "relative universality", whereby human rights are universal (relatively) at the concept level, broad formulations such as the claims in Article 3 of the Universal Declaration, which everyone has "the right to life, freedom and security folks". But the concepts of particular rights have several defensible conceptions and any conception, in turn, will have many defensible implementations.

He defends, then, a form of universalism that makes room for the claims of relativism. It sustains a universality of overlapping consensus, stating that today the moral equality of all human beings is strongly supported by most of the main comprehensive doctrines in all regions of the world. This overlapping consensus implies that human rights have, in the contemporary world, several bases, which refutes an ontological universality, which is based on an only "transhistorical" foundation and presupposes a single moral code.

Thus, the essence of the law, and human rights, is absolute, universal, but the nuances of each are filled according to social and cultural aspects, and therefore, relative.

This refers to the realistic theory brought by Barzotto (2010), which consists of a mixture between idealism, for which reality is composed of ideas and essences, feeding a univocal vision of human rights in an abstract universalism, and empiricism, for which reality derives from factual and human rights are derived only from what historical and local experiences have shown, with no human essence shared by all. In realism, the essence is combined with existence, the essence of law being the same, but with different determinations due to the reality in which it is inserted, constituting an analogical universal, that is, the same human rights manifested in different ways.

Dworkin (2012) also discusses the clash now exposed. He asks himself: are human rights universal or local? Do they always depend on cultural and historical characteristics or are they independent of these factors?

When facing this dilemma, it first focuses on political rights understood as assets. He explains that they are so important that they serve as an asset, limit the general social welfare, and the principles of dignity (equal consideration and special responsibility) configure abstract political rights, constituting assets in relation to the actions of the State, serving as basis for all political rights. However, there is a fundamental abstract right, which is the right to attitude, which translates the right to be treated with dignity regarding a human being.

In this regard, the State must always respect abstract political rights, namely: equal consideration and special responsibility, and the right to attitude. Therefore, a policy that distinguishes members of a population considering some superior to others, for example, violates human rights by not respecting the abstract political right of equal consideration and attitude.

He considers that the abstract pattern is universal, being understood by dignity, which demands equal concern for everyone's destiny and total respect for personal responsibility.

It states that this understanding is not hegemonic, but that if there is a belief in human rights, a position must be taken on its basis. He admits that pluralism must be considered when defining human rights in treaties, but for there to be a negotiation, one must first know what one believes in, assuming in a humble way and after deep reflection of it as being true.

Dworkin identifies human rights as a type of special, more important, and fundamental political rights. While international treaties and conventions condense them as clauses. These clauses are abstract and do not seek to detail human rights, but rather serve as guidelines, guides for the application of these rights by nations.

So, the rights would be equal in the abstract plan, but they could be expressed in different ways depending on the interpretation and application, always respecting the maxim of dignity. In this path, the history of that society can be used, but history is not necessarily a determining factor for the interpretation of abstract concepts such as freedom, equality and democracy.

In addition, even if concepts are shared, there may be disagreements about the application criteria and, therefore, acceptance of a concept does not mean acceptance of equal application criteria. It is in this sense that Dworkin's theory gives rise to relativism.

Therefore, a similar line of reasoning is perceived between Donelly, Barzotto and Dworkin, who present the understanding that human rights are both universal and relative. Universal because the protection of human beings by law and abstract concepts are universal, and relative because the form of protection, implementation and interpretation of these rights and concepts depends on the culture and history of society, being relative.

What at first seemed paradoxical, goes to the point of possibility of convergence. It is inferred that, it is due to be careful with any form of radicalism, within the scope of universalism, lest it led to imperialism, distorting the purpose of human rights discourse, such as the illusions and tensions presented by Boaventura Santos and Marilena Chaui (2013). And, in the context of relativism, so that it does not give rise to cultural and political arrogance, using this ideology to perpetrate practices that violate the integrity of humanity. In addition, it should always be borne in mind that personal interpretation of a particular concept is unlikely to be the only one that exists, and a dialogue should be provided to try to reach consensus.

6. Conclusions

In view of the above, it is possible to see that human rights start from the idea of instrumentalizing the protection of the individual. They were created by the need to protect the citizen of the State and have been identified, made positive and strengthened over the centuries, making it impossible to think of a legal system today without taking them into account.

With the creation of a new international order and the insertion of the individual in international law by the theory of human rights and the creation of International Human Rights Law, in the second half of the 20th century, the legal system underwent a significant hermeneutic and practical transformation, through having to consider international regulations and the creation of international mechanisms for the protection of human rights.

But, from a pragmatic point of view, what is perceived today is that countries that hold power often use human rights discourse, placing themselves as defenders of good, morality, justice and human rights, to ensure their own interests, intervene in other countries and, consequently, violating rights. Those who hold economic and political power, act in pursuit of their interests and continue to impose their ideological dominance.

This context reinforces one of the debates that permeate the theme of the general theory of human rights: the conflict between universalism and relativism, inserted in the reflections about the illusions and tensions within the Human Rights Paradox. On one hand, there is the defense of universal rights that are inherent to all individuals, for their protection, and on the other, the defense of relativism, against the imposition of hegemonic western values, the prevalence of the truth of the winners and the perpetuation of the logic of evaluative colonial oppression.

From what was shown in the present work, the current trend, which it is followed here, is the search for a convergence between the two currents, with human rights being considered universal and relative.Universal becausethe protection of human beings by law and abstract concepts are universal, and relative because the form of protection, implementation and interpretation of these rights and concepts depends on the culture and history of society, being relative.

Thus, when analyzing how human rights have been understood and interpreted in contemporary society, based on universalist and relativistic theories, we have that universal human rights can be used as an anti-hegemonic protection instrument insofar as they are recognized as universal and relative, in a convergence between universalism and relativism. This is one way for the subjects to become effective subjects of rights and no longer merely objects of human rights discourses.

For this reason, it is important points out, as affirmed by Donnelly, that human rights deserve the prominence they have received in recent years, and it is likely that they will continue to be a vital element in the fight for social justice and human dignity – and in this sense, relative universality of these rights is a powerful resource that can be used to help build more just and humane societies, with a balance between equality and respect for differences – but they are not a panacea for the world's problems, even if, in a first contact, look like.

So, it is imperative that scholars maintain a critical stance towards them, so that they can contribute to their evolution, and not be part of the problem. After all, looking at any doctrine with a critical and rational eye, even one that proves to be as seductive as that of human rights, is essential for its development and better framing in different social contexts, in the search for a convergence of national and international orders, for building a more just society.

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Author Profile

PhD candidate at the Lisbon University, Faculty of Law. Researcher on Human Rights, Social Inclusion and Gender Inequality. Member of the *Núcleo de História do Direito* (NHD) (Center of History of Law) at Lisbon University, Faculty of Law. Member of the Research Project - *Corpo, Gênero, Relações de Poder, em uma interface com o Direito* (Body, Gender, Power Relations, in an interface with the Law). Member of the Interdisciplinary Research and Study Group Lélia Gonzalez. Have master's in human Rights and Social Inclusion at Federal University of Pará (UFPA), Brazil, with a period of studies at PUC/PR, Brazil, and visiting scholar at American University Washington College of Law (AUWCL) (2017-2018). Lawyer. Member of the Commission of Women Lawyer (CMA) - OAB / PA. Co-founder of Projete-se, Academic Consulting. Graduated in the Bachelor of Law course at CESUPA.Graduate student in Material and Procedural Labor Law at CESUPA. Post-graduated in Constitutional Law from Estácio / CERS.