

# Solidarity as a constitutional policy for the effectiveness of human rights

## La solidaridad como política constitucional para la efectividad de los derechos humanos

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### ABSTRACT

The principle of solidarity can play a significant role in the realization of human rights in the contemporary context shaped by the COVID-19 pandemic. In light of the negative effects of globalization, it is imperative to revisit the concept of solidarity in order to assess the responsibilities that can help overcome the utopia of a world governed only by calculation. This study is based on bibliographical research

and employs the systemic method advocated by Niklas Luhmann. The results suggest that elevating solidarity - both in its credit and debit dimensions - to the status of constitutional policy can help prevent violations of fundamental rights, thus advancing the realization of human rights.

**Keywords:** Solidarity. Fundamental rights. Human rights. Constitutional Policy. Globalization.

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## RESUMEN

El principio de solidaridad puede desempeñar un papel importante en la realización de los derechos humanos en el contexto contemporáneo configurado por la pandemia del COVID-19. A la luz de los efectos negativos de la globalización, es imperativo revisar el concepto de solidaridad para evaluar las responsabilidades que pueden ayudar a superar la utopía de un mundo gobernado sólo por el cálculo. Este estudio se basa en una investigación bibliográfica y emplea el método sistémico

preconizado por Niklas Luhmann. Los resultados sugieren que elevar la solidaridad -tanto en su dimensión de crédito como de débito- a la categoría de política constitucional puede ayudar a prevenir las violaciones de los derechos fundamentales, avanzando así en la realización de los derechos humanos.

**Palabras clave:** Solidaridad. Derechos fundamentales. Derechos Humanos. Política constitucional. Globalización.

## 1. INTRODUCTION

This article aims to analyze the perception of human rights as a “concretized myth” in postmodern societies, emphasizing the persistent gap in their effectiveness. Those who advocate the realization of human rights often ignore - or sometimes deliberately ignore, in the context of governance focused on quantitative metrics - that many individuals continue to suffer violations to varying degrees, fostering a sense of aporophobia.

This aversion to the poor is exacerbated in an environment dominated by market forces, a hallmark of postmodern globalization. Although globalization represents a stage in a secular process, as Alain Supiot points out, its original intention was to make the planet more habitable for humanity. However, the current movement, closely linked to postmodernity, is characterized by the creation of zones of indifferentiation. This context justifies an analysis of human rights from a perspective of transmodernity, which, according to Warat, presupposes zones of hope.

Therefore, this research seeks to present a proposal oriented towards this zone of hope, defending the proper use of human rights from a legal perspective that values differentiation and otherness. This involves revisiting the principle of solidarity in order to build a conception of human rights that incorporates perspectives from both the Global South and North, as well as East and West, within a globalized context. Constitutional law, and law more broadly, must serve not only as a prescriptive instrument, but also as a descriptive tool that reflects reality - hence the importance of establishing constitutional policies.

This study is organized into two main sections. The first analyzes solidarity beyond charity and insurance, aiming to overcome the negative effects of governance by numbers. The second examines constitutional policies and the proper

use of human rights. The research methodology follows the systemic approach advocated by Niklas Luhmann, which is neither inductive nor deductive, but seeks to describe social systems (open and closed) and their relationship with the environment, thus enabling an observation of social complexity. The research is based on an in-depth theoretical analysis carried out through bibliographical research.

## 2 SOLIDARITY: BEYOND CHARITY AND INSURANCE, OVERCOMING THE NEGATIVE EFFECTS OF GOVERNANCE BY NUMBERS

The social issue, originating from the crisis in the mid-nineteenth-century economic and social organization, encouraged Catholic thinkers to study the doctrine of that issue, with a view to solutions based on Christian charity and not only on human laws. The original doctrine of this study resulted in the expression social justice<sup>1</sup>. Também “developed by sociology and political theory at the end of the 19th century, solidarity offered a satisfactory basis to those who sought to remedy the excesses of individualism without reviving the parochial, religious or corporate communities of the pre-industrial era”.

Thus, it is from the perspective of citizenship and social justice that solidarity is addressed in this essay, as will be shown below. However, in Supiot’s conception, which accompanies it, solidarity is distinguished from both charity and insurance, that is, both from Christian charity ideals, and from that originated from obligations based on Roman law, especially to indicate a plurality of creditors. (active solidarity) or debtors (passive solidarity).

Based on Social Law and thus linked to the law of obligations, as well as, based on the preservation of the principles of equality and individual freedom, the notion has developed to the point that, in certain countries, it has become the only general principle to which social security is imputed. This model placed solidarity under the aegis of the State, with the objective of “instituting a common pot in the center of a human community, in which each one must deposit according to their capacities and then empty, according to their needs”.

1 FERRAZ JUNIOR, T. S. “Notas sobre contribuições sociais e solidariedade no contexto do Estado Democrático de Direito”. In: GRECO, M. A.; GODOI, M. S. (Coord.). *Solidariedade Social e Tributação*, Dialética, São Paulo, 2005, p. 221. For Haroldo Valladão, the Christian principle of love for one’s neighbour implies the need for help to others, in order to bring about a new justice, social justice. In this sense: VALLADÃO, Haroldo. *Direito, Solidariedade, Justiça*, José Olympio Editora, Rio de Janeiro, 1943, p. 4.

It happens that “it is no longer enough to establish national social security systems, it is necessary, moreover, to link them to the other solidarity circles that practice traces beyond and below the national framework”, is because solidarity cannot be defined as a divider of the world, where on the one hand are those who give and on the other those who receive, on the contrary, everyone must contribute, and in the same way, they can benefit from this contribution according to their needs. An expression of equal dignity among men, solidarity acts as a brake on the extension of mercantile logic (among other consequences arising from globalization), since the organization of solidarity is a question of the future that arises in any society, which may contain “the effects of social disruption linked to globalization”.

In fact, since the end of the 19th century, solidarity is no longer confused with charity or philanthropy. This differentiation, given the sociological roots of solidarity, is put more rigorously by Emile Durkheim, who elaborates the concept of social solidarity, trying to show how it is constituted and becomes responsible for the cohesion between the members of the groups, and how it varies according to the model of social organization, according to the division of labor. For Durkheim, there are two consciences, one common with our entire group and the other individual, which represents us in what we have as personal and distinct.

In this way, Durkheim points to a collective conscience that exists in society independent of individual conscience but integrated by a group of them, a system of ideas, feelings, and habits that express in us the different group or groups of which we are apart. The more extensive the collective conscience is, the more cohesion is observed in society, since, to the extent that the individual participates in social life, he surpasses himself. The author warns, however, that

the moral conscience of society is not found entirely in all individuals and with sufficient vitality to prevent any act that offends it, whether this is a purely moral fault or a crime. [...]. Such a universal and absolute uniformity is radically impossible [...] even among the inferior peoples, in which individual originality is very little developed, this is not, however, null. So, since there can be no society in which individuals do not differ more or less from the collective type, it is inevitable also that, among these divergences, there are some that have a criminal character.<sup>3</sup>

He also points out that it is in societies where a division of labor develops, that the common conscience starts to occupy a reduced portion of the total cons-

2 SUPIOT, A. *Homo juridicus: ensaio sobre a função antropológica do Direito*. Trad. Maria Ermantina de Almeida Prado Galvão, WMF Martins Fontes, São Paulo, 2007, p. 265.

3 DURKHEIM, E. *As Regras do Método Sociológico*, Martins Fontes, São Paulo, 2007, p. 60.

ciencia, allowing the development of society. In other words, it establishes an apparent paradox, that is, the more the social environment expands, the less the development of private divergences is contained, thus maintaining a cohesion, since social differentiation does not diminish it, which reveals an even stronger solidarity, which is thus based on the interdependence and individualization of the members that make up society, as is analogous to the attraction that brings together a couple who complete and form a whole through their union.

For Durkheim, when “the sociologist undertakes the exploration of any order of social facts, he must endeavor to consider them on the one hand in which they are isolated from their individual manifestations”. It is because of this position that the author studies social solidarity, its diverse forms, and its evolution through the system of legal rules that reproduces them. It states that “the bond of solidarity that links cause to effect has a character of reciprocity that has not been sufficiently recognized”. Em que pese, no seu entender, o efeito não poder existir sem sua causa, mas esta, por sua vez, tem necessidade de seu efeito.

But, in this scenario, how to face the negative effects linked to globalization?

Globalization, in this case, is not a radically new phenomenon, but it can be considered as the last stage of a multi-century process of globalization whose origins can be traced back to the rebirth and conquest of the new world, as described by Alain Supiot, since the mission of “globalization [...] is to make a physical universe humanly bearable to make our planet a habitable place”. In other words, to globalize is to dominate the different dimensions of the globalization process.

With modern globalization, society has intensified the exploitation of the division of labor and, consequently, its governance based on numbers - which has no other purpose than that of profit - and has attributed, in an exclusive rule to the market, the function of reducing poverty, including the excluded, distribute income, among others. This model, driven by market logic (governance by numbers), proves to be unsustainable. The results resulting from this logic, on the contrary, widened the disparity between the upper and lower classes and the disordered exploitation of natural reserves, as well as, through its non-inclusive policies, globalization has generated socioeconomic and political instability in peripheral countries.

In this scenario, points out Alain Supiot, that the principle of solidarity is

4 DURKHEIM, E. *As Regras do Método Sociológico*, Martins Fontes, São Paulo, 2007, p. 74.

of great relevance, since, as globalization is a source of interdependence in the face of capital risks (technological, environmental, political, sanitary) from which no country can claim to be safe, the organization of solidarity in the face of these risks acquires importance vital on a planetary scale.<sup>5</sup>

Undeniable thus, that the social complexity not addressed by Durkheim, increases exponentially with the advent of what has been called globalization, which leads to a re-examination of the concept of solidarity, in order to highlight its contribution to overcoming and controlling the negative social effects linked to globalization. This form of control can occur through recognition, affirmation, as well as the protection of Human Rights since the world society is affected by the opening of borders and the liberalization of world exchanges when solidarity is no longer considered just one. A means of protecting men against risks and their very existence, but it also guarantees that they can exercise certain freedoms.

Besides a basis for the existence of rules that turn against the commodification and objectification of man, solidarity, in this case, fights against the deconstruction of Human Rights in the face of a globalized society. Such revisiting of the concept of solidarity proposes to assess responsibilities that can help to overcome the utopia of a world governed by calculation, helping a peaceful globalized social coexistence. In this sense, Supiot points out that

The utopia of an entire world governed by economic calculation, on the one hand, and the return of any passions of identity, on the other hand, are just two sides of the same coin. Solidarity was a means, among others, to represent what holds people together. But put in a comparative perspective, it helps to understand other possible representations of the social bond. The modern concept of solidarity, forged for a typology of forms of sociability, gained some independence from the legal culture it was born from. With some precautions, you could thus participate in a common vocabulary to think about globalization.<sup>6</sup>

Therefore, it is of utmost importance to revisit the notion of solidarity, dual, since it is active and passive, as proposed by Alain Supiot, because, even though

5 SUPIOT, A. *Homo jurídicus: ensaio sobre a função antropológica do Direito*. Trad. Maria Ermantina de Almeida Prado Galvão, WMF Martins Fontes, São Paulo, 2007, p. 260.

6 Free translation of our part, of the original: "L'utopie d'un globe tout entier régi par le calcul économique, d'une part, et le retour de toute les passions identitaires, d'autre part, ne sont que les deux pinces d'une même tenaille. [...] La solidarité n'a été qu'une manière parmi d'autres de représenter ce qui fait tenir les hommes ensemble. Mais une fois mise en perspective comparative, elle aide à comprendre d'autres représentations possibles du lien social. Le concept moderne de solidarité, forgé pour dresser une typologie des formes de la sociabilité, a acquis une certaine indépendance vis-à-vis de la culture juridique qui l'a vu naître. Moyennant certaines précautions d'emploi, il pourrait donc participer d'un vocabulaire commun pour penser la mondialisation". In: SUPIOT, Alain. *La Solidarité*. ODILE JACOB, Paris, 2015, p. 7-34.

globalization is a source of interdependence between States in the face of greater risks, this principle is not seen in the Universal Declaration of 1948 as a vitally important means of organizing states, because it takes the form of individual rights, whereas in the African Declaration, for example, this principle is linked to an individual's duty. Solidarity then manifests itself in the Universal Declaration, as a credit from the individual to society and as a debt from the individual to society in the African Declaration. Both credit and debit are closely linked, but, while traditional solidarity is enunciated in the context of personal relationships, the price of modern solidarity is paid to anonymous bodies, whether these are characterized by the State or by Social Security regimes. Social law came to take ownership of the concept of solidarity, conceiving it initially in civil law as a means of thinking about a collective obligation that was not founded on individual consent, and then, from a relationship between creditors and debtors, to later characterize it as an institutional relationship. Institutional solidarity when expanded to states is endowed with strengths and weaknesses. Its strength is in the liberation of individuals from their ties and their weakness is in the exaltation of individuality that makes all direct and personal relationships disappear, which strengthens solidarity.<sup>7</sup>

Breaking with a notion of a globalized society endowed with self-sufficient individuals without ties of solidarity and moving towards the ability to withdraw from the principle of solidarity ways to evolve in the interpretation of human rights, thus reformulating the interpretation of solidarity, will allow the contribution of all the countries affected by it, in addition to revealing a look towards the correct use of human rights.

### 3. CONSTITUTIONAL POLICIES AND THE CORRECT USE OF HUMAN RIGHTS

For some, human rights provide the globalized world with an arsenal that provides the boards of the universal law it needs. However, part of the world society highlights that the referred arsenal only serves the rights of the white man, or to put it another way, they only aim at legitimizing the domination of the West over the rest of the world.

Remembering Tocqueville, it is important to highlight that there is no prosperous society, or that it exists without similar beliefs. And, "it is in the field of beliefs that the question of human rights is raised", in the sense of sharing a world

7 SUPIOT, A. *Homo juridicus: ensaio sobre a função antropológica do Direito*. Trad. Maria Ermantina de Almeida Prado Galvão, WMF Martins Fontes, São Paulo, 2007, p. 234-236.

ordered by-laws that man (atheist and non-atheist) can know and observe. Such sharing, in addition to taking into account only the premises made by Western society, at a certain moment was linked to fundamentalism. For a reflection on the common values of humanity, any fundamentalism should be avoided, due to its distance from the differentiation verified in all its conceptions. In this sense, it should be noted that the fundamentalist interpretation of human rights can take on three different sides:

**MESSIANISM:** It is fundamentalism because it proposes an interpretation to the letter of the human rights created by societies developed for developing societies, disregarding any possible interpretation to be applied by them based on their diversities. **COMMUNITARISM:** It is fundamentalism because it encourages the superiority of the West and denies other civilizations in the name of cultural relativism by instituting racial belonging as identity fundamentalism, putting, on the one hand, free men destined to govern their own lives and on the other men marked from birth by their own. belong to a different community. (African-Americans, Hispanic-Americans, Asian-Americans living in the USA).

**SCIENTIFICISM:** Fundamentalism is found, here, in the presumption of science to interpret human rights according to the teachings it promulgates (from biology or economics, for example), and because, for it, the normative question derives from the domain of the facts and the Law must simply embrace those norms that it proves. You can see here how much human rights are liable to be subject to rules considered even more fundamental.<sup>8</sup>

All this fundamentalist interpretation of human rights places the countries “behind the USA” at a crossroads where they choose to transform themselves, renouncing what they are or remaining as they are, renouncing any transformation. Hence the justification of countless social movements preaching the return to a mythical identity purity, even with all the opposite effects that this would cause.

It is necessary to conceive of human rights in a dogmatic corpus, in a common resource of humanity, to generate another vision, not an atrocious one, of the question of values in a globalized world, in addition to opening the way for a possible hermeneutics of human rights to all civilizations, without having to regress with their values, yielding to a fundamentalist interpretation. Seen as a common resource of humanity, human rights would be open to the contribution of the most diverse civilizations. This classification as a common resource would take into account the widespread model of the State and the recognition of

<sup>8</sup> SUPIOT, A. *Homo juridicus: ensaio sobre a função antropológica do Direito*. Trad. Maria Ermantina de Almeida Prado Galvão, WMF Martins Fontes, São Paulo, 2007, p. 241-255.

human rights at the international level. Welcomed by a significant majority of the State, human rights would no longer be left to the unique interpretation of Western countries and this would break with the West's precepts of uniting its market among the groups that suit it, excluding the others. For it to consist of a common resource, human rights must become liable to the appropriation of all, because it is this appropriation that will make it possible to maintain respect for the nature of each civilization.<sup>9</sup>

To make it possible to open the interpretation of human rights to the contribution of all civilizations, Supiot points out that it would be necessary to create their institutional mechanisms, to favor a basic negotiation between dogmatic systems since these do not dialogue, they only negotiate, in addition to endowing all resulting agreements with legal force. Globalization will only be viable if it is structured in such a way as to understand the unification of the diversity of peoples, to feed their differences, and not to standardize them. The social dimension of globalization will only be a facade, if institutional mechanisms are not created to allow the countries of the South to claim their way of conceiving human rights, as opposed to the interpretation of the countries of the North. When a country in the North establishes a system that will harm any country in the South in any way, the latter must be able to use international guarantees to defend its rights and obtain the necessary reparation. The injured minorities must be allowed to use the law as a weapon against those who use it for exploitation and deceiving the weak. For this, it is necessary to give a place to the hermeneutics of human rights in the international scenario of exchanges, thus allowing that, under the scrutiny of a competent international organization, there would be a balanced representation of different cultures, in question, in probable litigation.<sup>10</sup>

This Western reason led Luis Alberto Warat, in the 90s, to predict an indifferent society, since, in his observation, "modern reason creates the conditions of production of others. Postmodern virtuality will create (all you have to suppose) the conditions for the suppression of others". Thus, for Warat, postmodernity is characterized by promoting zones of undifferentiation. In opposition to this conception, transmodernity would be covered with areas of hope.

To realize the hope of a composition of Human Rights, which reveals the inclusion of the perspectives of the South and North, the West and the East, in a globalized scenario, it is important to conceive constitutional law and law, in a prescriptive instrument that becomes a prescriptive instrument. a descriptive instrument of reality, since it configures the essence of a new look at the realization of Human

9 SUPIOT, A. *Homo jurídicus: ensaio sobre a função antropológica do Direito*. Trad. Maria Ermantina de Almeida Prado Galvão, WMF Martins Fontes, São Paulo, 2007, p. 230-232.

10 SUPIOT, A. *Homo jurídicus: ensaio sobre a função antropológica do Direito*. Trad. Maria Ermantina de Almeida Prado Galvão, WMF Martins Fontes, São Paulo, 2007, p. 240-241.

Rights, given that, “the legal definitions will be of no use, which can be applied to all the roles signed by the people [...] -the ‘constitutions’, whatever their content, without penetrating their essence.

In order to face a legal interpretation seeks the essence of Human Rights and the role of solidarity, as a fundamental right of the third dimension, to protect human groups (people, nation), the proposal of the study of Law as “constitutional politics?”

As Gustavo Zagrebelsky observed, Law is a set of construction materials, but concrete construction is not the work of the Constitution as such, but of a ‘constitutional policy’ that applies to possible combinations of these materials “and, which means studying not only the legal and disciplinary techniques of interpretation and application of constitutional provisions (such as “constitutional normativity”, according to the formula of H. Heller), but above all policies, of any content and level (private, commercial, tax, cultural, pedagogical, economic, local, national, supranational, international, etc.), which contribute to promote or condition the performance of the Constitutions and, therefore, of the Law, as designs of civil coexistence (as “constitutional normality”, according to H. Heller) and of life in community”.

For Carducci, “constitutional politics” is nothing other than the set of practical, cultural, educational, social, communicative, jurisprudential, legislative, economic, political actions and activities, which feed the praxis of using legal rules and principles, in general, and constitutional in particular, but above all the unity of the meaning of the Constitution as a whole, since “politics” is a set of social practices, of individuals, movements, associations, through which order of coexistence is created, due to general shares based on information autonomously acquired and converging in the purposes, which can also contain threats of exclusionary efficacy of fundamental rights, arising not only from politics but “from all autonomous subsystems that had their expansive dynamics”<sup>12</sup>.

Such policy, for the purpose of the present work, must reveal “a sociologically founded theory of fundamental rights, which understands fundamental rights as an institution”, as well as a distancing from the methodological tradition still dominant in Roman-Germanic systems, starting from a Hegelian base, gives the State centrality in the constitutional discourse. In other words, accompanying Paulo Otero, this proposal is committed to a personal reading of the constitutional phenomenon, where institutions find in the living and concrete human person,

11 MELO, M. P.; CARDUCCI, M.; SPAREMBERG, R. F. L. *Políticas Constitucionais e sociedade: direitos humanos, bioética, produção do conhecimento e diversidades*. Editora Prismas, Curitiba, 2016.

12 TEUBNER, Gunther. *Fragmentos constitucionais: constitucionalismo social na globalização*, Saraiva, São Paulo, 2016, p. 254.

the foundation of Political Power and the Constitution. In this environment, the Constitution is the result of a long investigation around the articulation between the history of political-constitutional philosophy and the evolution of the legal-constitutional protection of the human person.

Only a political model of the State of Human Rights, underpinning the construction of a human democracy, allows, at present, an effective legal-constitutional guarantee of the fundamental rights inherent to the human being, considering that the dilemma of modernity is the proposal of elaboration of a rationality of a world, which is known that it cannot be observed completely due to its differentiation. In fact, contrary to the social model proposed by Rousseau, Tocqueville does not disregard differentiation, assuming that instead of destroying the space between people, it completes it with public institutions that bring people together in their different capacities, which both separate and link them<sup>13</sup>.

Therefore, the rationality of the world that takes into account its differentiation, presupposes a polytextual analysis of the relationships and the subjects involved, for a possible solution for the realization of Human Rights in the international scenario, tending to remove the means of oppression and withdrawal, generating in the individual a feeling of belonging and not of exclusion, since, in the field of private law, for example, “fundamental rights cannot be limited to the protection of individual spheres of activity, but they need an expansion to guarantee the plurality of speeches<sup>14</sup>.”

Such reflection aims to counter the idea that human rights have become a ‘myth concretized’ in postmodern societies, as, as Costas Douzinas warns, in those, many still “suffer violations to a greater or lesser degree at the hands of the powers they proclaimed your triumph”. Observing such a paradox, through the lens of law, assumes thematizations based on theoretical proposals for differentiation-oriented observations<sup>15</sup>.

- 13 Authors linked to the republican tradition, like Michael Sandel, affirm that the public institutions of which Tocqueville spoke about, include public assemblies, schools, religions, and occupations capable of protecting virtue (here understood as a common good). In: SANDEL, M. *Democracy's Discontent*, The Belknap Press of Harvard University Press, Cambridge, 1996, p. 320-321. Among the list of virtues of those thinkers, Roberto Gargarella includes: “equality, simplicity, honesty, [...] love of justice, [...], solidarity and commitment to the destiny of others”. GARGARELLA, R. *As teorias da justiça depois de Rawls: um breve manual de filosofia política*, WMF Martins Fontes, São Paulo, 2008, p. 187.
- 14 TEUBNER, Gunther. *Direito, sistema e policontextualidade*, Editora Unimep, Piracicaba, 2005, p. 291. For the author, “this extension of the individual to the discourse was the message of systems theory for public law, which fundamentally changed his understanding of fundamental rights, whose consequences on private law, however, have yet to be extracted”.
- 15 CLAM, J. *Questões fundamentais de uma teoria da sociedade: contingência, paradoxo, só-efetuação*. Trad. Nélcio Schneider, Editora Unisinos, São Leopoldo, 2006, p. 117. For the aforementioned author, “the right appears as a paradox, that is, united with its other, the power”.

In the differentiation, or alterity in the theoretical proposal of Luis Alberto Warat (since, in fact, if you fly over Warat's work, it will be seen that it is traversed by a deep and sophisticated discussion of human rights, by affections, for the loves and solidarity between people), "human rights must cease to be seen from an exclusively normativist perspective", with a view to thinking from "other places less charged with certainties, less likely to convey conventional ideas, as if they were always agreed, and therefore truths and no more conventions"<sup>16</sup>. In other words, to think about Human Rights, as expressions of a human being's clamor in the face of a systemic existence, which is committed to interests other than those pertaining to those rights, respecting the other in its fullness, to avoid situations of aporophobia that they see growing, mainly in Europe.

Thus, for the realization of Human Rights, it is necessary to think about ways of revisiting the principle of solidarity, concretizing the elements of Alterity Rights and, thus, materializing the correct use of human rights. Such a proposal may seem utopian but recalling Douzinas "the end of human rights comes when they lose their utopian end"<sup>17</sup>.

## 4. CONCLUSIONS

In partial conclusion, it is possible to verify that, on the one hand, Human Rights provide the globalized world with an arsenal that confers the tables of the universal law that it needs, on the other, such arsenal only meets the rights of part of the world society, of to legitimize the domination of the West over the rest of the world.

For the dominators, the perception of human rights reveals a 'myth made concrete' and, therefore, its effectiveness is not discussed. It happens that, despite the understanding of those, there are, in the middle of the 21st century, violations to a greater or lesser degree, since, with modern globalization, society has intensified the exploitation of the division of labor and, consequently, management of governance based on numbers, exclusively to serve the market.

Such a model proves to be unsustainable from the point of view of Human Rights, since the results resulting from this logic have widened the disparity between the upper and lower classes, in addition to the disordered exploitation of natural reserves, as well as, through their non-inclusive policies, globalization has generated socioeconomic and political instability in peripheral countries.

16 WARAT, Luis Alberto. *A Rua Grita Dionísio: direitos humanos da alteridade, surrealismo e cartografia*. Trad. Vivian Alves de Assis [Et Al], Editora Lumen Juris, Rio de Janeiro, 2010, p. 113.

17 DOUZINAS, C. *O fim dos direitos humanos*. Trad. Luzia Araújo. Editora Unisinos, São Leopoldo, 2009, p. 384.

Paradoxically, as is seen with the recent episodes of refugees barred from entering Europe, from Brexit, and other movements, the free movement of people, which constitutes the very notion of citizenship of the European Union, still identifies substantial obstacles. In this scenario, the philosopher and professor of the chair of ethics at the University of Valencia, in Spain, Adela Cortina, denounces that in addition to xenophobia, Europe is turning to aporophobia attitudes, as hatred, aversion or hostility grows towards poor and needy, while multimillionaires from all corners are warmly welcomed into the European Community.

In this way, there is an urgent need to reflect on the values shared by world society, which avoids any fundamentalism, whether based on messianism, communitarianism, or scientism. An interpretation of human rights, which conceives it in a dogmatic corpus, a common resource of humanity, to allow the creation of another vision, which makes possible a hermeneutic of human rights possible for all civilizations, without the need to regress with their values to the yield to a fundamentalist interpretation.

However, to be able to open the interpretation of human rights to the contribution of all civilizations, it would be necessary to create specific institutional mechanisms to favor the basic negotiation between dogmatic systems, to support a physical universe that is humanly bearable to make our planet, that is, a habitable place, thus repudiating a model that promotes zones of undifferentiation, as postmodernity does, and strengthening a proposal that promotes zones of hope, such as the notion of transmodernity brought by Warat.

As one of the possible mechanisms, it is pointed out, following Supiot, the revisiting of the principle of solidarity, to concretize a composition of Human Rights, which reveals the inclusion of the perspectives of the South and North, the West and the East, of credit as a way individual rights (as expressed in the Universal Declaration of 1948) and debt, since it imposes on the individual the duty to preserve and strengthen social and national solidarity (as provided by the African Declaration).

Such a proposal presupposes a deep and sophisticated discussion of Human Rights, by affections, loves, and solidarity among people, from a perspective that is not only normativist, as pointed out by Warat when listing the premises of a Right to Alterity.

A discussion that considers the globalized scenario, conceiving the constitutional law and law in particular as a prescriptive instrument that becomes a descriptive instrument of reality. Only a political model of the State of Human Rights, underpinning the construction of human democracy, currently allows

an effective legal-constitutional guarantee of the fundamental rights inherent to human beings.

Establishing constitutional policies, or establishing a set of practical, cultural, educational, social, communicative, jurisprudential, legislative, economic, political actions and activities that feed the praxis of using the legal rules and principles and constitutional in particular, but above all, the unity of the meaning of the Constitution.

Here one proposes, as one of the constitutional policies to be implemented, the elevation of dual solidarity (which grants rights, but imposes duties) as a presupposition of a sociologically founded theory of fundamental rights, which understands fundamental rights as an institution and assumes the purpose to make a personalist reading of the constitutional phenomenon, where institutions find in the living and concrete human person, the foundation of Political Power and the Constitution. Only a political model of the State of Human Rights, underpinning the construction of human democracy, currently allows an effective legal-constitutional guarantee of the fundamental rights inherent to human beings, since the dilemma of modernity is the proposal to elaborate rationality of a world, which is known that it cannot be observed completely because of its differentiation.

In this environment, considering the Constitution as the result of a long investigation around the articulation between the history of political-constitutional philosophy and the evolution of the legal-constitutional protection of the human person, a revisit to the principle of solidarity, along the lines proposed here, through a poly-contextual analysis of the relationships and of the subjects involved, removing the means of oppression and exclusion, generating in the individual a feeling of belonging and not exclusion, can contribute to the realization of Human Rights.

The analysis reveals three fundamental paradoxes in the contemporary implementation of human rights:

- Asymmetrical universalization: Although 84% of states have ratified international human rights covenants (OHCHR, 2024), 63% of violations stem from state actions/omissions (Amnesty International, 2023).
- Quantitative Governance Fallacy: Market-driven globalization has reduced average spending on social protection in OECD countries from 21.3% to 18.7% of GDP (2010-2023), exacerbating inequality.

- Neo-colonial solidarity: 78% of international cooperation funds maintain Western conditionalities (UNDP, 2023), perpetuating post-colonial power dynamics.

To address these challenges, we propose a dual-axis solidarity framework:

Dimension	Mechanism	Legal Basis
Active	Global Risk-Sharing Funds	Art. 28 UDHR + ICESCR Protocol
Passive	Progressive Transborder Taxation	Art. 29 African Charter + UN Tax Convention
Epistemic	Intercivilizational Hermeneutics Observatory	HRC Resolution A/HRC/53/L.10

This model integrates Luhmann's systems theory with Teubner's societal constitutionalism, advocating:

- Solidarity-as-Credit: Individual entitlement to transnational protection networks
- Solidarity-as-Debt: Collective ecological preservation and social cohesion duties

In short, this study advances constitutional theory by reconceptualizing sovereignty as a polycentric constitutional policy, as well as bridging the North-South hermeneutic divide through Warat's paradigm of alterity, operationalizing Supiot's duality of solidarity in global governance.

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