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PRINCIPLE OF DIGNITY OF THE HUMAN PERSON AND FRATERNITY – THE EFFECTIVENESS AND INTERPRETATION OF THE PRINCIPLE OF FRATERNITY AND FROM THE HUMAN DIGNITY AS A LIMITATION TO HATE SPEECH

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THANKS

I dedicate this research to my parents Carlos and Maria Fruet, who inspire and motivate me to always seek new challenges; to my professor-supervisor, who helped and guided me during the research period; and PUC, the university that allowed me this opportunity.

> "What is written without effort is often read without pleasure."
>
> (Samuel Johnson)

Abstract: The research project aims to carry out an in-depth analysis of the principle of fraternity and human dignity, fundamental foundations for the harmony of interpersonal relationships present in Society. Its objective is to analyze and understand its origins, its developments and transformations to the present day, exposing its challenges in today's society, mainly in the legal sphere.

The research included a study of the origin of the concept of human dignity and its influence, initially concluding that, mainly after the 4th century, after Christ, the conception of human dignity influenced Western culture in different ways. Furthermore, an analysis was carried out on the process of conceptualizing human dignity, which, coined for the first time by Saint Thomas Aquinas, in the reading of Melina Girardi FACHIN, and later discussed by several other philosophers such as Giovanni Pico Della Mirandola, before and during the French Revolution (an extremely important time for the conception of human dignity). After analyzing these historical moments that influenced the definition of this concept, we concluded that dignity went through several transformations until reaching its current meaning, and, furthermore, it was not just Brazil that presented transformations resulting from the wave of liberalism and pro-democracy movements. Several Constitutions were changed after the War period: Ecuador, Haiti, Panama, Dominican Republic, Peru, Venezuela, Nicaragua and Mexico were some of the several countries that underwent these transformations. However, it was not just South American countries that underwent these transformations: their constitutional regimes were also renewed, for example, France in 1946, Italy in 1947, Bulgaria in 1948 and Germany in 1949.

Its reach was worldwide, and the constitutionalism present at the time was essential for the formalization of current ideals and Constitutions, especially the Brazilian Constitution.

Precisely for this reason, the research sought to delve deeper into constitutionalism, seeking to understand its origins and transformations until its current conception, mainly its humanitarian and fraternal aspects.

Finally, we conclude that the research helped us reflect and understand the need for the principle of fraternity and human dignity, its influence and its effects on Brazilian society. Furthermore, we conclude that the principle of fraternity sustains in society a search for ethics and global harmony. It is extremely necessary that the principle of fraternity, present in the Brazilian Constitution, be recognized effectively and taken more seriously, in order to achieve a fraternal and harmonious society. To achieve this, the collaboration of the Public Power and society is required to form a fair, fraternal community, which has the capacity to dialogue and act, with fraternity as an instrument of human development.

Keywords: HUMAN DIGNITY -BROTHERHOOD - DEVELOPMENTS -HUMAN RIGHTS - HUMANIST PHILOSOPHY

INTRODUCTION

The research project aims to carry out an in-depth analysis of the principle of fraternity and human dignity, fundamental foundations for the harmony of interpersonal relationships present in Society. Its objective is to analyze and understand its origins, its developments and transformations to the present day, exposing its challenges in today's society, mainly in the legal sphere.

The research navigates between past Constitutions, which influenced the current development of the mentioned principles. Several reflections were made about the historical moments that influenced social changes and their effects, carrying out reflections and seeking to understand their effectiveness in the Brazilian Legal system.

HUMAN DIGNITY AND ITS HISTORICAL SETTING

HUMAN DIGNITY AND THE RATIONALIST CONCEPT

Much of the credit for the formation of the concept of human dignity must be given to the Judeo-Christian monotheistic belief, since it believes in and encourages equality, by stating that all human beings would descend from the same father with their common essence in all men. "... You are worthy to take the book and to open its seals, because You were killed and with Your blood You purchased people for God from every tribe, language, people and nation and made them a kingdom and priests to our God; and they will reign over the earth" (Revelation 5:9-10). Furthermore, we cite as another example, Saint Paul, who established equality as a component of the concept of human dignity, when he states that, given the common divine filiation, "there is no longer either Jew or Greek, neither slave nor free, neither male nor female" (Epistle to the Galatians 3, 28).

Thus, mainly after the fourth century, after Christ, the conception of human dignity influenced Western culture in different ways. It is worth mentioning that the previously predominant notion in Western society was that of Hellenic thought.

It was in the French Revolution (18th century), the triumph of rationalism, the rule of law and the "rights of man and the citizen", that the "Declaration of the Rights of Man and the Citizen" was presented to the world, a letter that brings with him the first ideals that would form the principle of the dignity of the human person.

The principle of human dignity is the ideal that defends that the human condition, of living with dignity and being treated before society and one's peers as a full human being, needs to be preserved and defended over all other situations, placing the human being human being as the main agent of transformation of his environment and, therefore, of the world.

THE HISTORY OF THE CONSTRUCTION OF THE CONCEPT OF DIGNITY

The expression human dignity was coined, for the first time, by Saint Thomas Aquinas, in the reading of Melina Girardi FACHIN, stating that "dignity is inherent to man, as a species; and it exists in actu only in man as an individual" (FACHIN, 2009, p. 34). Defending this way, the concept that the person is an individual substance of rational nature, the center of creation due to the fact that they are the image and likeness of God. Therefore, intellect and similarity to God generate the dignity that is inherent to man, as a species.

The theologian states, in his Summa Theologiae, that "dignity is something absolute and belongs to the essence" (of the soul), and that "the human body has the maximum dignity, since the form that perfects it, the rational soul, is the worthiest."

Saint Augustine, one of the most important theologians and philosophers in the first centuries of Christianity, whose works were very influential in the development of Christianity and Western philosophy, deals with free will and justice in his work: "Free Will", stating I: "If man lacked free will, how could this good exist, which consists of manifesting justice, condemning sins and rewarding good deeds?

Since this man's conduct would neither be a sin nor a good deed if it were not voluntary. Likewise, punishment, like reward, would be unfair if man were not endowed with free will. Now, justice needed to be present in punishment and reward, because that is one of the goods whose source is God. Conclusion, it was necessary for God to give man free will"

In 1486, Giovanni Pico Della Mirandola, an Italian philosopher, presented a speech regarding human dignity, thus becoming a symbol of the Italian Renaissance. In one of his speeches, Giovanni states that he read ancient Arabic books and that a certain Abdala (servant of God) was asked what the most remarkable things were, to which he replied "there is nothing more admirable than man himself" (Giovanni, page 37).

It was in the French Revolution, in 1789, that the dignity of the human person in its legal form was declared, providing for the equality of all human beings before the Law. During this period, Enlightenment philosophers highlighted the need for a society based on three fundamental ideals: freedom, fraternity and equality.

Although this historical moment was extremely important for the formation of the fraternal ideal, it was only the beginning of a long period, which still contains several imperfections. This idea is reinforced by the fact that, Marie Gouze, French playwright, political activist, feminist and abolitionist known as Olympe de Gouges (1748-1793), author of the work: ``*Déclaration des Droits de La Femme et de la Citoyenne*" (Declaration of the rights of women and citizens), was guillotined in Paris.

Among the rights presented in the declaration are:

> *"Article I - A woman is born free and has the same rights as a man. Social distinctions can only be based on common interest.*
>
> *Article II - The object of every political association is the conservation of the imprescriptible rights of women and men: These rights are freedom, property, security and above all, resistance to oppression.*
>
> *Article III - The principle of all sovereignty resides essentially in the nation, which is the union of woman and man: no organism, no individual, can exercise authority that does not expressly come from them.*
>
> *Article IV - Freedom and justice consist in restoring everything that belongs to others, thus, the only limit to the exercise of women's natural rights, that is, the perpetual tyranny of man, must be reformed by the laws of nature and of reason."*

SECOND WORLD WAR

The author Carmem Lúcia Antunes Rocha, in her work "The Right to a Dignified Life", states that the human disasters of war, especially that which the world witnessed during the Second World War, brought, first, the dignity of the human person to the world of law as a contingency that marked the essence of the political partner itself to be translated into the legal system" (ROCHA, 2004. p. 22/34).

Reaching the milestone of more than 60 million deaths, and the attempt to exterminate an entire people, in a way never seen before, it presented human dignity as the "maximum value of legal systems and the guiding principle of state action and international organizations". With the immeasurable

barbarity caused by Nazi and fascist acts, the interest in protecting human and fundamental rights grew even more, mainly within the legal world, giving rise to the creation of various defense instruments, such as International Pacts, as well as the creation of the UN, in order to protect human beings.

On December 10, 1948, the Universal Declaration of Human Rights was adopted and proclaimed by the United Nations General Assembly (Resolution 217 a III), which states in its preamble:

> *"Considering that recognition of the inherent dignity of all members of the human family and of their equal and inalienable rights is the foundation of freedom, justice and peace in the world,*
>
> *Considering that contempt and disrespect for human rights have resulted in barbaric acts that have outraged the conscience of humanity and the advent of a world in which women and men enjoy freedom of speech, belief and freedom.*
>
> *Considering that it is essential that human rights are protected by the rule of law, so that human beings are not compelled, as a last resort, to rebel against tyranny and oppression.*
>
> *Considering that it is essential to promote the development of friendly relations between nations.*
>
> *Considering that the people of the United Nations reaffirmed, in the Charter, their faith in the fundamental rights of the human being, in the dignity and value of the human person and in the equal rights of men and women and that they decided to promote social progress and better conditions of life in greater freedom.*
>
> *Whereas Member Countries have committed to promoting, in cooperation with the United Nations, universal respect for fundamental human rights and freedoms and the observance of these rights and freedoms.*
>
> *Whereas a common understanding of these rights and freedoms is of the utmost importance for the full fulfillment of this commitment.*
>
> *Now therefore the General Assembly proclaims the present Universal Declaration of Human Rights as the common ideal to be attained by all peoples and all nations, with the aim that every individual and every organ of society, bearing this Declaration always in mind, shall strive to whether, through teaching and education, to promote respect for these rights and freedoms, and, through the adoption of progressive measures of a national and international nature, to ensure their universal and effective recognition and observance, both among peoples of the Member Countries themselves and among the peoples of the territories under their jurisdiction".*

Therefore, it is inevitable to state that this historical moment in the "anti-civilization" panorama of humanity can be considered an irreversible opportunity in the consciousness of people, in the sense of radical transformation in the conception of human dignity.

According to Piovesan (2017), it is possible to verify the advances already made since the Second World War, towards individual and collective respect, but, above all, from constituted States, regarding the intrinsic rights to human dignity.

Using the thoughts of Joaquín Herrera Flores (apud PIOVESAN, 2017, p. 60), the author also highlights the "need to overcome the debate on universalism and cultural relativism, based on the cosmopolitan transformation of human rights". In his view, this would favor the longed-for "intercultural dialogue" from the perspective of safeguarding and guaranteeing the ineluctable protection of human rights that would need to be, increasingly, well internationalized.

According to Piovesan (2017, p. 61-62), this "the internationalization of human rights constitutes an extremely recent movement in history, emerging post-war as a response

to the atrocities and horrors committed during Nazism." She further states that "The barbarity of totalitarianism meant the rupture of the human rights paradigm. human rights, through the denial of the value of the human person as a source-value of Law. If the Second World War meant the rupture with human rights, the Post-war period must mean their reconstruction." This way, the arrival of new times in the context of the international scope of rights relating to human dignity also signaled a sense of new hope.

In his work, in his work "constitutional law", Alexandre de Moraes states that:

> *" A spiritual and moral value inherent to the person, which manifests itself singularly in the conscious and responsible self-determination of one's own life and which brings with it the claim to respect from other people, constituting an invulnerable minimum that every legal statute must ensure so that, only exceptionally, limitations may be made to the exercise of fundamental rights, but always without undermining the necessary esteem that all people deserve as human beings and the search for the Right to Happiness."* **(MORAES, Alexandre, 13° Ed. Page: 41)**

In other words, human beings are holders of rights that must be respected by the State and their fellow human beings, being a supreme value.

It was not just Brazil that presented transformations resulting from the wave of liberalism and pro-democracy movements. Several Constitutions were amended after the period of War: Ecuador, Haiti, Panama, Dominican Republic, Peru, Venezuela, Nicaragua and Mexico were some of the many countries that underwent these transformations. However, it was not just South American countries that underwent these transformations: their constitutional regimes were also renewed, for example, France in 1946, Italy in 1947, Bulgaria in 1948 and Germany in 1949.

The constitutionalism present at the time was essential for the formalization of current ideals and Constitutions, mainly the Brazilian Constitution.

CONSTITUTIONALISM

CONSTITUTIONAL LAW

Constitutionalism is the name attributed by the political-legal-social movement that caused the evolution of the concept of Constitution, its content and the holder of power in the States. In its broadest sense, constitutionalism arises from the moment when social groups, rationally or not, begin to rely on mechanisms to limit the exercise of political power. In this broad sense, it is configured independently of the existence of written standards or theoretical development.

European constitutionalism began with the bourgeois revolt, holders of economic power, against absolute monarchical states, where all political power was concentrated in the hands of the monarch. Influenced by the theoretical framework of contractualist thinkers (Locke, Hobbes and Rousseau) and Montesquieu's state ideals, the bourgeoisie began to put pressure on the monarchy, which culminated in the libertarian French revolution and soon after, with the proclamation of the new French Constitution. This constitution, founded in its entirety on the dogma of liberal idealism, brought only norms of State organization and first-generation rights and guarantees (individual freedoms), a model that lasted until the middle of the 20th century, when after the Second World War, the constitutions began to follow the models of the constitutions of Mexico in 1917 and Germany (Weimar) in 1919, guaranteeing second generation rights (social, economic and cultural).

In the United States, the movement occurred in a different way, due to the fact that its independence from England and the

adoption of a Republican Federated State were early, constitutionalism evolved to guarantee already conquered rights (civil and political) and to implement economic and social rights and equality rights.

Furthermore, it is necessary to emphasize that, despite the varied current national constitutionalist movements, the existence of global or globalized constitutionalism is defended, which aims to unify and legally enshrine human ideals according to the following objectives: (a) strengthening the system international legal-political based not only on horizontal relations between national States, but also on State/people relations; (b) the primacy, in the face of national law, of international law based on universal values and norms; and (c) the elevation of the dignity of human person to the non-limitable presupposition of all constitutionalisms. And in fact, a new modality of supranational constitutionalism seems to be necessary as a viable counterpart to eliminating the impotence of national States in the face of asymmetric power relations and the other harmful effects of "globalization".

Defining Constitutional Law is a complex and great challenge, since to delve deeper into the topic a great analysis of the philosophy of Law is necessary.

Brazilian Constitutional Law had its origins in the Imperial Charter of 1824, granted by the then Emperor D. Pedro I. It is extremely important to remember that the charter established the separation of the three powers, in addition to creating a fourth power, the Moderating Power. The Emperor himself granted himself control over the other powers, through the Moderating Power, in addition to being head of the Executive Power.

Although the Constitution helps the concentration of power in the moderating power, it presented first generation Rights (Civil and political Rights): in its article 179, the Constitution brings a declaration of individual rights and guarantees that, in its foundations, remained in subsequent constitutions:

> *"Article 179.* ***The inviolability of the civil and political rights of Brazilian citizens****, which is based on freedom, individual security, and property, is guaranteed by the Constitution of the Empire, in the following way:*
>
> *1. No Citizen can be forced to do, or not do anything, except by virtue of the Law;*
>
> *2. No Law will be established without public utility;*
>
> *3. No law will have retroactive effect;*
>
> *4. Everyone can communicate their thoughts, in words, in writing, and publish them in the press without censorship, as long as they respond for abuses committed in the exercise of this right;*
>
> *5. No one can be persecuted for reasons of religion, as long as it respects that of the State, and does not offend public morals;*
>
> *6. Every citizen has an inviolable asylum in his home;*
>
> *7. No one will be arrested without charge, except in cases provided for by law;*
>
> *8. With the exception of a flagrant crime, arrest cannot be carried out except by written order from the legitimate authority;*
>
> *9. The law will be the same for everyone;*
>
> *10. From now on, floggings, torture, branding, and all other cruel punishments are abolished;*
>
> *11. The right to property is guaranteed in all its fullness;*
>
> *12. Every citizen may present in writing to the Legislative Branch and the*
>
> *Executive, complaints, grievances, or petitions;"*

Following in the footsteps of the Declaration of the Rights of Man and the Citizen, decreed by the French National Assembly in 1789, the Brazilian imperial Constitution stated that the inviolability of civil and political rights was based on freedom, individual security and property. However, he omitted the fourth natural and imprescriptible right, proclaimed, alongside these three, by the second article of the French Declaration: the right to resist oppression.

Inspired by English Constitutionalism, it inherited the ban on the dismissal of magistrates by the king (Act of Settlement, 1701), the right of petition, parliamentary immunities, the prohibition of cruel punishments (Bill of Rights, 1689) and the right of man to trial legal (Constitution, 1215).

The main achievements ensured by the 1824 Constitution were the following: freedom of expression of thought, including by the press, independent of censorship; freedom of religious conviction and private worship, as long as the State religion was respected; equality of all before the law; abolition of floggings, torture, branding and all other cruel punishments; requirement of previous law and competent authority to sentence someone; right of priority; freedom of work; free primary education; right to petition and complain, including the right to promote accountability for violators of the Constitution.

On November 15, 1889, the republic was proclaimed and, through Decree number: 510, of June 22, 1890, elections for the formation of the National Congress were called and the draft constitutional text began to be prepared by a commission composed of by five leaders: Saldanha Marinho, Rangel Pestana, Antônio Luiz dos Santos Weeneck, Américo Brasiliense de Almeida Mello and José Antônio Pedreira de Magalhães Castro - and reviewed by Rui Barbosa, Minister of Finance It was up to Congress to appreciate and vote on the definitive text of the Constitution of the Republic of the United States of Brazil, promulgated on February 24, 1891.

The 1891 text, according to Pinto Ferreira, was inspired by the style of the North American Constitution, with the guiding ideas of presidentialism, federalism, three-way power, political liberalism, and bourgeois democracy. For a better historical analysis, it is necessary to highlight that the Second Reign (1840-1889) was the period in Brazilian history that began with the coming of age coup, and ended with the Proclamation of the Republic – November 15, 1889. During this period, there was unprecedented political stability in Brazil since independence, and with this, the authoritarian essence of the Empire was covered by a democratic appearance.

In the 1870s, however, this scenario was reversed: new socioeconomic groups, which had interests that are incompatible with the Empire's bureaucratic apparatus, began to gain strength.

This new economic group included coffee growers from São Paulo, an agrarian elite who began to control a large part of the Brazilian economy at the time, and, in search of provincial autonomy that did not exist in Empire Brazil, this social group began to openly nurture a desire for reforms, which made these coffee growers important supporters of republicanism.

Another social sector that was decisive for the fall of the Monarchy was that of the military, who, morally strengthened by the victory of the Paraguayan War (1864-1870), began to seek political representation that they did not have in the Empire.

Thus, in November 1889, after many years of wear and tear on the Empire, Marshal Deodoro da Fonseca accepted to lead the movement that would overthrow the government, without any popular

participation. The subsequent period in the History of Brazil is called the First Republic or Old Republic (1889-1930).

According to José Afonso da Silva: ''the implemented constitutional system weakened the central power and rekindled the regional and local powers, dormant under the control of the unitary and centralizing mechanism of the Empire", it also highlights the emergence of federalism, not only as derivation from the formal organizational structure of the State, but much more as resulting from a real framework of political, economic and social relations characterized by the prevalence of the interests of oligarchic power, a phenomenon known as `` colonelism``.

PREVIOUS CONSTITUTIONS

The Constitution of 1891 established a liberal federative Republic, with a presidential system of government; with the existence of three powers: Executive, Legislative and Judiciary, thus the Moderating Power was extinguished.

Furthermore, census or income voting was abolished, and all citizens became voters. However, illiterates, beggars, soldiers and members of religious orders were still not considered voters and were prevented from voting. There were also changes such as the separation between State and Church, and the autonomy of the states, as desired by the agrarian elite when supporting republicanism.

The institution of direct suffrage for the election of deputies, senators, presidents and vice-president of the Republic was an innovation of the Republican Constitution, and, he added, implicitly, this precept applies to state elective positions. It is possible to affirm that the first republican Constitution expanded Human Rights, in addition to maintaining the franchises already recognized in the Empire: as previously mentioned, full religious freedom was established; freedom of association without weapons was enshrined; the accused were assured of the broadest defense; galley penalties, judicial banishment and death were abolished; habeas corpus was created with the scope to remedy any violence or coercion due to illegality or abuse of power (later restricting the use of this procedural remedy to cases related to freedom of movement); the guarantees of the judiciary were established (lifetime, irremovability and irreducibility of salaries) but, expressly, only in favor of federal judges.

It was from 1934 onwards that there was a greater insertion of social rights (2nd generation rights) in the Brazilian Constitutions. They require greater participation from the State so that they can be implemented, that is, there is a need for positive State action.

On November 15, 1933, at the Tiradentes Palace, in Rio de Janeiro, the National Constituent Assembly took place, receiving a visit from the head of State, who declared that the organization of this Assembly represented a legitimate expression of the sovereign will of the Brazilian people.

The Assembly was made up of 214 representatives, elected in accordance with the law, including 40 so-called class representatives, representatives of various organized professions, 18 employees, 17 employers, three independent professionals and two public servants. The 1934 Constitution would modify this scheme, considering farming and livestock, industry and commerce, transport, liberal professions and public servants, the first three categories electing an equal number of employees and employers.

Once the Constitutional Commission was sworn in, the amendments to the draft Constitution were received, all of which underwent rigorous examination. Voting began on May 7, 1934, ending in the first days of June. The constitutional text was submitted

to the Assembly for final approval on July 9, being promulgated in the session of July 16, 1934.

The 1934 Constitution is characterized by the movement of constitutions in the post-war Western world, containing what was called a "social sense of law" and very inspired by the German Weimar Constitution of 1919 and the Spanish Constitution of 1931.

The constitutional text expanded the powers of the Union, extending its attributions; the legitimacy of the municipal administration was guaranteed, with specially established exceptions, the revenue of the municipalities was increased and control mechanisms for the municipal administration were established. In relation to the Legislative Power, a form of compromise was adopted with supporters of the unicameral system, the new Charter removed the Senate and its attributions, tasking it with coordinating federal powers among themselves.

Furthermore, the organization of the Electoral Justice was foreseen, which sought to remove the election process from the hands of the dominant groups.

However, for the first time included in a Brazilian constitutional text, it was declared that the economic order must be organized according to the principles of justice and the needs of national life, so as to enable everyone to have a dignified existence. Within these limits, economic freedom was guaranteed.

The Constitution established some basic principles of labor legislation and dealt with the family, granting it special protection based on marriage, and enshrining support for numerous offspring. A chapter on education and culture was included, influenced by the pioneers of the Escola Nova, united in the Brazilian Education Association, and education was proclaimed as a social right, just like work, and must be administered by the family and public authorities.

In relation to individual rights and guarantees, the most important contribution was the introduction of the writ of mandamus, intended to protect certain and indisputable rights threatened or violated by a manifestly illegal act of any authority.

Although the 1934 Constitution contributed in some way to the advancement of Brazilian democracy, little was respected and, as an example of this fact, we have the radicalization of political movements, with the worsening of political conditions as a result of the communist uprising of 1935 and the strong integralist movement.

On December 18, 1935, an amendment was approved by the majority of the Chamber that established the equation of a state of war with "serious intestinal commotion", an obscure legal figure, thus removing the guarantees of civil servants and military personnel, and, with this issue, exceptional measures began that culminated in the coup of November 10, 1937, which established the Estado Novo through a granted Constitution.

I emphasize that the short duration of the 1934 Constitution did not detract from its merits nor invalidate the introduction of principles that were immediately incorporated into applied constitutional law and began to be repeated in subsequent constitutions.

According to the authors: Paulo Bonavides and Paes de Andrade

> *"The 1934 Constitution had the same fate as its European matrix, that of Weimar, the one from which the constituents who took us back to Europe, as in the time of the Empire, drew inspiration."*

THE 1937 CONSTITUTION AND HUMAN RIGHTS

After being elected President of the Republic in 1934, Getúlio Vargas imposed in 1937, through a coup d'état, the Estado Novo, a dictatorial order, thus dissolving the

National Congress, revoking the Constitution and promulgating a new constitution.

This way, influenced by the ideological waves that spread globally in the period before the Second World War, the Estado Novo was configured on a legal and political level as a strong and centralized regime.

The 1937 Constitution was inspired by the Polish Constitution of 1935, and its fundamental objective was to strengthen the federal Executive Power in its relationship with the Legislative and Judiciary Powers and with other spheres of government, and for this reason, it took with it the nickname "Polish", as it presented fascist-inspired laws, just like the Polish Constitution.

Among the various implications of the new charter are: It would be up to the president to nominate interventors (state governors) and they must nominate municipal authorities; the Electoral Court and political parties were extinguished; the right to Writ of Mandamus or Popular Action was suspended; prior censorship of the media was instituted; the media were obliged to publish and/or broadcast government communications; prohibition of the right to strike; provision for the death penalty for political crimes and the Legislative power, at all levels, was extinguished, and thus there were no longer any Chambers of Councilors or State Deputies.

According to Francisco Campos, considered the main author of the text, in an interview given to *Correio da Manhã*, from Rio de Janeiro, in March 1945, he stated that the constitution was a document that could not "invoke in its favor the test of experience", as it was not "put to the test", remaining "in suspension since the day of its grant". According to him, the Constitution was: "of purely historical value". It became part of the immense material that, having been or could have been legal, ceased to be or did not become legal because it had not acquired or lost its validity".

Thus, it is clear that, after an analysis of the new Constitution of 1937, several Rights and guarantees were reduced, and their situation only changed with the promulgation of the constitution Promulgated on September 18, 1946, after the Second World War, inspired, to a large extent, by the texts of 1891 and 1934 and had as its basic axes the consolidation of a political system based on representative democracy, the institutionalization of the federation and municipal autonomy and the progression in the constitutional treatment of fundamental rights and guarantees and matters economic and social.

THE FOLLOWING FEDERAL CONSTITUTIONS AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

After the fall of Getúlio Vargas, the 1946 Constitution was instituted, restoring individual rights and guarantees, also reestablishing the balance between the three powers. In addition, more guarantees were established for workers, such as medical assistance, mandatory insurance against occupational accidents, the right to strike and freedom of employer or union association. Property became conditioned on its social function; popular action was reintroduced and the writ of mandamus began to be used as a means to defend a liquid and certain right not supported by habeas corpus.

According to João Baptista Herkenhoff, the 1946 Constitution restored individual rights and guarantees, which were once again expanded, compared to the 1934 constitutional text.

Furthermore, the principle of ubiquity of justice was created through article 141, 4, in these terms: ''The law may not exclude from the Judiciary's assessment any infringement of individual rights". Despite the improvements,

the evolution did not last long, as disrespect for fundamental rights reappeared in 1964, with the establishment of the Military Regime.

The military period was, without a doubt, a setback for human rights in Brazil. In 1964, the military took over the Brazilian government, promising that the intervention would last a short time, until the country overcame certain problems. However, the Military Regime lasted 21 years and, marked by centralism and authoritarianism, resulted in serious consequences for fundamental rights.

The political system was one of the most affected areas, with measures such as the revocation of political rights of opponents, closure of Congress, extinction of political parties and the creation of the National Information Service (SNI), a type of political police.

Furthermore, police repression increased on a large scale, the military forces had carte blanche to arrest government opponents without the need for formal accusation or registration, and the death penalty was even instituted, making the period marked above all by torture, kidnappings, murders and disappearance of opponents.

It was only in 1988, with the promulgation of the new Constitution, that man began to take precedence over the State. The guarantees and fundamental rights of citizens appear in the first articles, for example, in the first, which establishes the principle of citizenship, human dignity and the social values of work:

> *" Article 1 The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations:*
>
> *I - sovereignty;*
>
> *II - citizenship;*
>
> *III - the dignity of the human person;*
>
> *IV - the social values of work and free enterprise; (See Law, number: 13,874, of 2019)*
>
> *V - political pluralism.*
>
> *Single paragraph. All power emanates from the people, who exercise it through elected representatives or directly, under the terms of this Constitution"*

Furthermore, civil, political, economic, social and cultural rights of citizens are in the constitutional text, and fundamental rights place Brazil as one of the countries with the most complete legal system in relation to human rights.

In addition to the fundamental guarantees set out in the Constitution, which guarantee citizens' rights, prerogatives are also protected by human rights. Both have the same essence and purpose: to compose a set of laws inherent to the dignity of the human person, and, together, the legislations provide citizens with the right to life, work, education and freedom of opinion and expression.

Considered universal, human rights are valid for all people and are the result of demands generated by situations of injustice or aggression that in some way limited the basic rights of human beings, guaranteed through international treaties even before the 1988 Constitution, while fundamental rights are those enshrined in the Federal Constitution.

THE PRINCIPLE OF FRATERNITY IN THE FEDERAL CONSTITUTION

THE FUNDAMENTAL PRINCIPLES

The fundamental principles are the core commandments of the constitutional system. Their function is to structure the legal system, providing coherence and logic to the system, and guiding normative interpretation and subsidizing legal gaps.

The notion of principle is controversial:

on the one hand, there are those who oppose principles to rules, such as Robert Alexy, who believes that rules would be determinations, that is, they would be fully applied, or fully not applied, in the specific case, according to a all or nothing logic. When one rule prevails, the others do not apply.

On the other hand, the principles followed a different dynamic. Instead of determinations, they would be optimization commandments. In other words, they would be applied as far as possible. Thus, in a single case, several principles could be used, even if conflicting. According to Celso Antônio Bandeira de Mello, the principles would be the nuclear commandments of the legal system, that is, the foundations from which the other normative provisions derive, translating the spirit of the system and serving as criteria for its correct interpretation and harmony.

THE PRINCIPLE OF FRATERNITY

Society, unfortunately, has a poor view of what the Principle of Fraternity is, recognizing it only as a philosophical, religious, social ideal, but it is never remembered as a legal category being inserted explicitly and implicitly in the Constitutional text.

Fraternity is considered a Revolutionary Principle because it was one of the ideals of the French and American Revolutions and from this moment onwards there was a concern with combating social inequalities, protecting the fundamental rights of the human person.

The idea of Fraternity establishes that man, as a political animal, made a conscious choice for life in society and to this end establishes a relationship of equality with his fellow man, since in essence, in his nature, there is nothing that hierarchically differentiates them: They are like (fraternal) brothers.

According to Geralda Magella de Faria Rosetto:

[...] when compared to freedom and equality, to a less political concept (which is not appropriate), and its historians warn of the danger of associating it with an illusion, and equally of the dangers of an identity fraternity or fusional, which represents the denial of individual rights, instead of a republican fraternity, demanding rights and demanding their expansion in the face of everyone."

According to Carlos Augusto Alcântara Machado: "[...] fraternity, as a value, has been proclaimed by some Constitutions, alongside others historically consecrated such as equality and freedom". Thus, the author states that fraternity and law are not exclusive, but notes that it is still a great challenge for jurists to associate the Right with Fraternity, complementing with the following passage:

> *[...] it has been studied as a value (by almost everyone) or even a principle (a few) and, in this sense, recognized with greater or lesser normative density (sometimes classified only in the category of soft law). However, there are no more consistent references to fraternity in the quality or condition of Law, as is the case with equality (right to equality) or even freedom (right to freedom), traditionally classified categories, without noteworthy antagonisms, now such as natural rights, fundamental rights or human rights. This is what can be extracted from the caput of article 5 of the Constitution of the Federative Republic of Brazil"*

Therefore, it is important to highlight that, despite being mentioned in the Federal Constitution, it does not necessarily have legal effectiveness.

The Federal Supreme Court, in the judgment of ADI (Direct Unconstitutionality Action), number: 2.076-5/ACRE, whose Rapporteur was Minister Carlos Velloso, opted for the thesis of legal irrelevance, in agreement with the dominant doctrinal thought, which places the Preamble outside the scope of Law, by stating that it has no normative value, devoid of cogent force, and, for the honorable court, the provisions of the

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preamble have only philosophical, political or historical value.

Despite adopting the thesis of the legal irrelevance of the preamble, the STF (Federal Court of Justice) relativized the aforementioned position in some of its judgments, positioning itself in the sense that the preamble serves as a vector for interpreting the constitutional text, by invoking the constitutional preamble to allude to the need of building a fraternal society, extracting its normative effectiveness from this.

We can mention some judgments that stand out, such as the following:

The judgment of ADI (Direct Unconstitutionality Action), 3.768- 4/DF (Rapporteur Minister Carmem Lúcia): The Supreme Court ensured free urban and semi-urban public transport for the elderly, recognizing the need to guarantee them a life of dignity. In ADI (Direct Unconstitutionality Action) 3.128, the Rapporteur Minister Carlos Ayres Britto, in a declaration of vote, established the understanding that the right in question falls under fraternal law, as it requires the State to "[...] affirmative, compensatory actions of disadvantages historically experienced by social segments such as black people, indigenous people, people with disabilities and the elderly".

This way, we can affirm that the effectiveness of the principle of fraternity is under constant debate, and still needs to go a long way to achieve its role in limiting the hate speech present in Brazilian society, especially in a digital era, where hate speech is Hatred is one of the expressions with the greatest potential for harm, especially when the manifestation of thoughts is inappropriately emphasized. In several cases, users are not cautious and contribute to the spread of comments or publications of a racist, prejudiced nature and even incitement to violence.

Finally, we conclude that the principle of fraternity sustains in society a search for ethics and global harmony. It is extremely necessary that the principle of fraternity, present in the Brazilian Constitution, be recognized effectively and taken more seriously, in order to achieve a fraternal and harmonious society. To achieve this, the collaboration of the Public Power and society is required to form a fair, fraternal community that has the capacity to dialogue and act, with fraternity as an instrument of human development.

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