

Democracy and Human Rights: Democratic inclusion



<https://doi.org/10.56238/uniknowindevolp-028>

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ABSTRACT

This article aims to discuss the relationship between Democracy and Human Rights, focusing on democratic inclusion. It exposes, initially, a rapid historical reconstruction on Democracy and, later, on Human Rights, working on its concepts, in order to, in the end, establish a relationship between them. After working on the concepts, the study intends to discuss democratic inclusion, questioning about the situation of the will of the "minorities" excluded in the current Democratic State of Law. This discourse is of paramount importance and has been gaining greater visibility with the process of "democratization" in which Brazil has been traveling.

Keywords: Democracy, Human rights, Democratic inclusion, General will, Social exclusion.

1 INTRODUCTION

1.1 INITIAL CONSIDERATIONS - A BRIEF HISTORICAL OVERVIEW OF DEMOCRACY

When studying about the origin of the term democracy, one has that the emergence took place in Greek antiquity, in Athens (in the fifth century BC). For the Greeks, "*demos*" meant people and "*kratos*" power, being then conceived in the ideal of the power or will of the people, which manifested itself in the way the government characterized the administration of its political interests, opening space for popular participation in these decisions of the communities that, initially, were made without the need to choose representatives.¹²

It is worth mentioning that in Greek antiquity only male people were considered citizens and free, women, slaves or foreigners were excluded. After 612 BC, Athens became a democracy governed

¹ Such a model of government is called direct democracy, there were no representatives and language, rational and argumentative, was the means by which citizens established mutual commitments that reflected in plurality and would overcome violence.

² ABBAGNANO, Nicola. Dictionary of Philosophy. São Paulo: Martins Fontes, 2007, pp. 486-487.



by all citizens, grouped in demos, by domicile, ³developing over time, the dispute for possession and power in party discussions.

In the Middle Ages the democratic discourse fell into disuse, which "led to the narrowing of medieval man, who only had the church as a universalizing element", leading to the ⁴predominance of a mystical vision. From the eleventh to the thirteenth century there was the influence of a philosophical-juridical current⁵ that opened the horizons, causing the "expansion of the economic, social, territorial and cultural universes of medieval man".⁶

Already in the scope of political thought there was a great change in contesting the divine origin basing the real power, with the proposition of another way of legitimizing the political power, concentrating it in the human being as an individual possessing imprescriptible natural rights. From then on, humanity was no longer regarded as a member of a body politic, but as an individual isolated from the other who possessed natural rights aimed at the protection of himself.

At the beginning of the modern period, the dissolution of the feudal order, the contestation of the temporal power of the Church and the fight against absolute monarchy and the centralized state, emerged mainly in France of the century. XVII, create the need for search and discussion and a new model of social order, of political organization, of legitimation of the exercise of power, represented by the theses of the theorists of liberalism and the social contract. This discussion ultimately leads to the emergence of representative democracy and the parliamentary system, the establishment of constitutions and civil rights charters. The first step is taken with the Glorious Revolution in England in 1688, after the deposition of James II, soon followed by the American Revolution (1776) and the French Revolution (1789). (MARCONDES, 2010, p. 202)

In the eighteenth century, there was an opposition in the concerns, here, the problem was to define limits for absolutist regimes. In this century there was the beginning of an intellectual movement (in Europe), called the Enlightenment⁷. He discussed the idea of freedom that would mark all the rest

³ All citizens were elected for a year, as Cicco points out: "But over time, the "Demagogues" (primitive sense: demagogues = leader), or orators, led the people to the decisions that suited them." (History of Legal Thought and the Philosophy of Law. 3. ed. São Paulo: Saraiva, 2006, p.20-21).

⁴ CHALITA, Gabriel. Living Philosophy. ed. Attica: São Paulo, 2012, p. 166.

⁵ Called the Renaissance. Chalita (2012, pg. 187-188) characterizes the Renaissance as a time when "humanism thematizes man as the center of philosophical concerns and religion ceases to be the focus of intellectual activity. Linked to the rediscovery of classical texts, especially those of Plato, humanistic studies emphasize the responsibility of man over the general order of things and over the capacity that each one has to intervene in his destiny", still, when talking about the utopianism of the time, Chalita (2012, pg. 188) informs that the reality was different, and that "Europe lived under the domination of famine, of the plague, of wars, of intolerance, of religion, of the Inquisition" and, it was in this context that several works on utopian societies were produced, becoming (the expression) popular thanks to the book Utopia, written in 1516 by the Englishman Thomas Morus.

⁶ *Ibid*, p. 166.

⁷ According to ABBAGNANO (2007, pg. 532-535), the Enlightenment is a "philosophical line characterized by the effort to extend reason as a criticism and guide to all fields of human experience. In this sense, Kant wrote: "The I. is the exit of men from the state of minority due to themselves. Minority is the inability to use one's own intellect without the guidance of another. This minority will be due to themselves if it is not caused by intellectual disability, but by lack of decision and courage to use the intellect as a guide. 'Sapere aude! Have the courage to use your intellect!' is the motto of the I." (Was ist Aufklärung!, in Op., ed. Cassirer, IV, p. 169)- The I. comprises three different and related aspects: 1 extension of criticism to any and all beliefs and knowledge, without exception; 2 realization of a knowledge that, because it is open to criticism, includes and organizes and the instruments for its own correction; 3 effective use, in all fields, of the knowledge thus attained, for the purpose of improving the private and social life of men. These three aspects, or rather fundamental



of humanity, for "to renounce freedom is to renounce the quality of man, the rights of humanity and even one's own duties."⁸

All this Enlightenment construction will influence the founding elements for the concept of contemporary Democracy and also of Human Rights.

2 HUMAN RIGHTS

By conceiving the individual as a being prior to the collectivity, with intrinsic values, there was an opening for a possible understanding that nothing justifies the violation of the individual. As Hunt⁹ quotes, "sometimes great texts arise from rewriting under pressure," and it was in this way that Thomas Jefferson "transformed a typical eighteenth-century document on political injustice into an enduring proclamation of human rights."¹⁰

In the eighteenth century, the term "human rights" was not often used, during that century, "in English and in French, the terms 'human rights', 'human rights' and 'rights of humanity' all proved too general to serve direct political employment." Thus, the term "human right" appeared in 1763 referring to something that resembles "natural law."¹¹

In 1762, with *Jean-Jacques-Rousseau's The Social Contract*, the term "man's right" began to circulate:

Even if he didn't give the term any definition, and even if – or perhaps because – he used it alongside "right of humanity", "rights of the citizen" and "rights of sovereignty". Whatever the reason, by June 1763, "rights of man" had become a common term. (...) Although the play does not in fact employ the precise expression "the rights of man," but rather the related "rights of our being," it is directly associated with Rousseau's works. (HUNT, 2009, p.22)

Jusnaturalism¹² was of paramount importance for the birth of Human Rights. The theorists Grotius, Pufendorf, Burlamaqui, Locke, and Hobbes had great influence on the United States

commitments, constitute one of the recurrent ways of understanding and practicing philosophy, the expression of which is already found in the classical period of ancient Greece."

⁸ KINGS, Helena Esser dos. Democracy and Human Rights: An Analysis of Popular Sovereignty According to Rousseau. *Argumentos Magazine*, year 4, n. 8, 2012, p. 48.

⁹ HUNT, Lynn. *The Invention of Human Rights – A History*. Companhia das Letras, São Paulo, 2009, p. 13.

¹⁰ Hunt (2009, p. 13) refers to the first draft of the Declaration of Independence that was prepared by Thomas Jefferson (in mid-June 1776), for her, Jefferson's sentences eventually became clearer as the revisions passed: "We consider these self-evident truths: that all men are created equal, endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

¹¹ *Ibid*, p. 21.

¹² According to Nicola ABBAGNANO (2007, pg. 593), Jusnaturalism is a "Theory of natural law configured in the centuries. XVII and XVIII from Hugo Grocio (1583-1645), also represented by Hobbes (1588-1679) and by Pufendorf (1632-94). This doctrine, whose advocates form a large contingent of authors dedicated to the political sciences, served as the basis for the claim of the two fundamental achievements of the modern world in the political field: the principle of religious tolerance and the limitation of the powers of the listed. From these principles was born in fact the modern liberal list. Jusnaturalism is distinguished from the traditional theory of natural law in that it does not consider natural law to represent human participation in a perfect universal order, which would be God (as the ancients thought, e.g., the Stoics) or come from God (as the medieval writers judged), but that it is the necessary regulation of human relations, which is arrived at through reason, being, then, independent of God's will. Thus, Jusnaturalism represents, in the moral and political field, a claim to the autonomy of reason that Cartesianism affirmed in the philosophical and scientific field."



Declaration of Independence (1776) and the Declaration of the Rights of Man and of the Citizen (1789).

The act of declaring rights is of paramount importance, as it generates a formal and public affirmation, confirming changes that occurred¹³ at the time. Regarding the Declaration of 1789, Douzinas¹⁴ comments:

The public and political nature of the French Revolution is evident at all levels. Rights belong to "man" and "citizen", emphasizing a very close relationship between humanity and politics. (...) The Declaration is the act of the representatives of the people acting as the spokesman of Rousseau's *volonté générale*. Finally, the rights proclaimed were not an end in themselves, but the means used by the Assembly to rebuild the state. (*emphasis added*). (DOUZINAS, 2009, p.103)

For Hunt¹⁵, the disputes stemming from American rights discussions (inspired by the French Revolution) "helped spread the language of human rights throughout the Western world."

From that moment on, the idea of Human Rights was more or less consistently present in the political-legal institutions of several nations.

Despite all this bill of rights, still, the world was collapsing, and there were two great World Wars (in the twentieth century). With the barbarities and the immense damage resulting from them that marked the death of thousands of civilians, we saw the need for the creation of a new international body: the United Nations¹⁶.

In 1945, fifty-one countries signed the United Nations Charter which emphasized international security issues and devoted only a few lines to human rights issues,¹⁷ but provided for the creation of a Commission on Human Rights, the drafting of a Universal Declaration and the establishment of forms of implementation.

Soon the most important document in the history of Human Rights would be promulgated: the Universal Declaration of Human Rights (1948).

The Universal Declaration of Human Rights brings in its 30 articles a fundamental point for the conceptualization of Human Rights, it classifies them as being indivisible, interdependent and interrelated.

¹³ For Hunt (2009, p. 113-116) the bills of rights in 1776 and 1789 went even further than a "mere" bill of rights, "they helped to make effective a transfer of sovereignty from George III and the British Parliament to a new republic in the American case and from a monarchy that would claim supreme authority for a nation and its representatives in the French case." These statements opened up new political landscapes, as "the act of declaring was linked to sovereignty." At the same time, they confirmed rights that already existed and were unquestionable, and effected a revolution in sovereignty by creating an entirely new basis for government: "governments justified by their guarantee of universal rights."

¹⁴ DOUZINAS, back. The end of human rights. São Leopoldo : Unisinos, 2009, p. 103.

¹⁵ HUNT, Lynn. The Invention of Human Rights – A History. Companhia das Letras, São Paulo, 2009, p. 136.

¹⁶ Or United Nations (UN): "is an international organization formed by countries that have come together voluntarily to work for world peace and development." Available in: <<https://nacoesunidas.org/conheca/>>.

¹⁷ Such as: "respect and universal fulfillment of human rights and fundamental freedoms for all, without distinction of race, sex, language or religion." (HUNT, Lynn. The Invention of Human Rights – A History. Companhia das Letras, São Paulo, 2009, p. 204)



The United Nations (UN), defines human rights as being inherent to every human being, "regardless of race, sex, nationality, ethnicity, language, religion or any other condition", which include the rights to liberty, life, freedom of opinion and expression, work, education. It also sets out obligations for governments to "act in certain ways or to refrain from certain acts in order to promote and protect the human rights and freedoms of groups or individuals."¹⁸

In an attempt to seek to define "human rights," Hunt¹⁹ clarifies:

Human rights are not just a doctrine formulated in documents: they are based on a disposition towards other people, a set of convictions about what people are like and how they distinguish right and wrong in the secular world. Philosophical ideas, legal traditions, and revolutionary politics needed to have this kind of inner emotional reference point for human rights to be truly "self-evident." (...) For human rights, people should be seen as separate individuals who were capable of exercising independent moral judgment; as Blackstone put it, the rights of man accompanied the individual "*regarded as a free agent, endowed with discernment to distinguish good from evil.*" But in order to become members of a political community based on those independent moral judgments, these autonomous individuals had to be able to feel empathy for others. Everyone would have rights only if everyone could be seen, in an essential way, as similar. Equality was not just an abstract concept or a political slogan. It had to be internalized somehow. (HUNT, 2009, p. 25-26)

Human rights are legal and international guarantees, being universal and based on the common value system. They focus on the dignity of the human person and protect individuals and groups by forcing the state to provide protection. They are unavailable and non-transferable, equal and interdependent, having no degree of importance and no comparison between them.

In an exercise of historical synthesis Bobbio²⁰, in his book *The Age of Rights*, discussed the theory of Human Rights and periodized it in 4 (four) generations: the first generation refers to fundamental rights, the ²¹second generation is marked by rights arising from the struggles of working classes (in the nineteenth century), are those rights related to a ²²dignified life, Social, Cultural and Economic Rights (for Bobbio: Political Rights) and, alongside this, are the rights of the third generation, which can exist within the rights of the fourth generation.

What about third- and fourth-generation rights? The only thing that can so far be said is that they are expressions of ideal aspirations, to which the name of "rights" serves only to assign a title of nobility. Proclaiming the right of individuals, no matter where in the world they are (human rights are themselves universal), to live in an unpolluted world means nothing more than expressing the aspiration to obtain future legislation that imposes limits on the use of polluting substances. But it is one thing to proclaim this right, it is another to enjoy it effectively. The language of rights undoubtedly has a great practical function, which is to lend a particular force to the demands of movements that demand for themselves and for others the satisfaction of new material and moral needs; But it becomes misleading if it obscures or conceals the difference between the right claimed and the right recognized and protected. One could not explain the contradiction between the literature that makes the apology of the age of

¹⁸ Available at: <<https://nacoesunidas.org/direitoshumanos/>>.

¹⁹ HUNT, Lynn. *The Invention of Human Rights – A History*. Companhia das Letras, São Paulo, 2009, p. 25-26.

²⁰ BOBBIO, Norberto. *The age of rights*. Translation by Carlos Nelson Coutinho. 3. Reimp. Rio de Janeiro: Elsevier, 2004, p. 9.

²¹ Right to life, liberty and equality.

²² Right to work, education, health, housing, etc.



rights and that which denounces the mass of the "disenfranchised". But the rights of which the former speaks are only those proclaimed in international institutions and congresses, while the rights of which the latter speaks are those which the overwhelming majority of humanity does not in fact possess (even if they are solemnly and repeatedly proclaimed). (BOBBIO, 2004, p. 11)

Bonavides brings a fifth generation, related to the Right to Peace (which are stemming from the third generation. According to the author, these deserve greater visibility, because it is at a higher level, by characterizing it as superior to other fundamental rights, he also states that: "The juridical dignity of peace derives from the universal recognition that is due to it as a qualitative presupposition of human coexistence, an element of conservation of the species, a kingdom of security of rights."²³

After exposing the original concept of democracy and visualizing that the democratic discourse resumed strength after the French Revolution, in the context of the Enlightenment, and how this influenced Human Rights, it is now appropriate to analyze the concept of modern Democracy to finally relate to Human Rights and Democratic Inclusion.

3 MODERN DEMOCRACY

The debate around democracy would have already been anticipated by Rousseau, when he stated in *The Social Contract* that a society could only be democratic when there was no one so poor as to sell himself and no one rich enough to buy anyone²⁴.

Commenting on Democracy and Human Rights (according to Rousseau), Reis ²⁵points out that "Democracy is nothing more than one form of government among other possible ones."

In this sense, on the forms of governments, Azambuja conceptualizes Democracy as follows:

Democracy is the government of the people and for the people, a regime in which the rulers must reflect the conscience, the soul of the society they govern. When society is disturbed, it is transmitted to the supreme organs of leadership, which, I am aware, inquire into its causes for assistance. But if the disturbance is the consequence of a serious disease, if the causes are very general and profound, the remedies available to the government—order, justice, assistance—are not sufficient to restore health to the sick. Governments, then, feel, suffer the crisis, but cannot cure it, even knowing its causes. (AZAMBUJA, 1993, p. 261)

Still, Bobbio²⁶ understands that democracy is characterized by a "set of rules (primary or

²³ BONAVIDES, Paul. *The Fifth Generation of Fundamental Rights*, pp. 83-85. Available in: < http://www.ufjf.br/siddharta_legale/files/2014/07/Paulo-Bonavides-A-quinta-geração-de-direitos-fundamentais.pdf >. Access at sea. 2016. 2008.

²⁴ Sentence in the text: "As for wealth, let no citizen be opulent enough to be able to buy another, and let there be none so poor that he is constrained to sell himself." It could be considered the trafficking of human freedom. (ROUSSEAU, Jean-Jacques. *The social contract*; translation by Lourdes Santos Machado; introduction and notes by Paulo Arbousse-Bastide and Lourival Gomes Machado. – São Paulo: Nova Cultural, 1999. (The Thinkers), p. 127.

²⁵ Helena REIS comments on Democracy and Human Rights, analyzing popular sovereignty, according to Rousseau. (KINGS, Helena Esser dos. *Democracy and Human Rights: An Analysis of Popular Sovereignty According to Rousseau*. Argumentos Magazine, year 4, n. 8, 2012, p. 46.

²⁶ BOBBIO, Norberto. *The Future of Democracy*, Translation by Marco Aurélio Nogueira. São Paulo: Paz e Terra, 13th ed. revised and expanded, 2015, p. 35.



fundamental) that establish who is authorized to make collective decisions and with what procedures." This decision needs to be made by the individual and based on rules "that establish which individuals are authorized to make binding decisions for all members of the group, and on the basis of which procedures."

Schumpeter, on the other hand²⁷, understands that "the democratic method is an institutional system for political decision-making, in which the individual acquires the power to decide through a competitive struggle for the voter's votes."

Therefore, democracy should be considered a form of government that seeks the balance between freedom and authority. Authority is based on the popular will and freedom is secured within the limits of the law, with the direct or indirect intervention of the population²⁸. One of the existing assumptions in a Democratic State would be the supremacy of the will of the people, allowing the population freedom of expression and thoughtful assessment of the will of all individuals.

4 RELATIONSHIP BETWEEN DEMOCRACY AND HUMAN RIGHTS

Considering the concepts exposed so far about Democracy and Human Rights, the question is: how could it be possible to visualize a scenario where all these themes are interconnected? After all, how do Democracy and Human Rights relate?

Now, a Democratic Rule of Law is only fully characterized in this way if it considers all its members citizens with active popular participation, making them participants in common decisions and actions. In this way, this model of State is the closest to reaching a just social order, making it possible to ensure the inherent Human Rights of each being, because order and justice can only be ensured by the State.

According to Azambuja,²⁹ "without order and justice, society cannot possess any of the other goods which, with these, constitute its happiness; are indispensable conditions for the enjoyment of all others", without order human justice would be reduced to the society of animals and, without justice, would be reduced to the abolition of the minimum rights already conquered (such as slavery, tyranny, etc.).

The conquests of Rights obtained by the struggles of social movements marked the concept of what we now call Democracy, forcing the incorporation of Rights in the Laws of the States. It is worth considering that there is much to be recognized still, and modified, for Azambuja (1993, p. 258) and Dallari (1998, p. 110) the Democratic form of government must be flexible, always seeking to grow with the objective of maintaining internal order and providing social assistance. Many rights still have

²⁷ SHUMPETER, Joseph A.. *Capitalism, Socialism and Democracy*. Rio de Janeiro: Culture Fund, 1961. 487 p. Edited by George Allen and Unwin Ltd. Translation by Ruy Jungmann, p. 231.

²⁸ AZAMBUJA, Darcy. *General Theory of the State*. 44. ed. São Paulo: Globo, 1993, p. 258.

²⁹ *Ibid*, p. 259.



to be recognized and upheld to ensure the recognition of the human being in other situations (such as the cases of refugees).

Thus, the historical events expanded the conception of Democracy beyond a mere political regime guaranteeing Human Rights, enabled freedom, equality and a voice for citizens.

4.1 DEMOCRATIC INCLUSION

Considering that the will of the majority in a Democratic State of Law is the one that prevails, how would the excluded "minorities" (repressed, who suffer prejudice) be? The answer to this question must be observed from the perspective of Human Rights, the reality is totally out of step for some minorities, so democratic inclusion is a topic that deserves attention.

Santos,³⁰ commenting on the counter-hegemonic conceptions of democracy, understands that for certain social groups³¹ "democratic inclusion presupposes the questioning of the identity that was attributed to them externally by a colonial State or by an authoritarian and discriminatory State", considering as the limits of representation the reciprocal interaction between representative and participatory democracy, he also understands that:

Democracy is not reduced to proceduralism, formal equalities, and political civil rights, for through them it has never been possible to extend the distributive potentialities, both symbolic and material, of democracy to the popular classes that could benefit most from them. (SAINTS, 2016, p. 18)

In Dallari's words,³² a democratic regime must be based on the following assumptions: Elimination of formal rigidity, supremacy of the will of the people, preservation of liberty and preservation of equality. By the supremacy of the will of the people, we have the idea of its prevalence over any will of another individual or group, however, Dallari recognizes the heterogeneous unity of the people and concludes that "exclusions must be reduced to the minimum possible and must be a consequence of unequivocal decisions of the people themselves", in this way equality would be assured, because "the conception of equality as equality of possibilities corrects these distortions, for it admits the existence of relative inequalities, arising from the difference of individual merit, assessing this through the contribution of each one to society".³³

When analyzing the reality of the social context in Brazil, one comes to a first conclusion that there is so much excluded minority that one can even say that the "minority ends up being the majority".

But after all, what does it do to classify a certain class as a minority? Is it an absolutely

³⁰ SANTOS, Boaventura de Sousa. *The Difficult Democracy: Reinventing the Left*. São Paulo: BOITEMPO, 2016, p. 18.

³¹ Group of minorities, such as indigenous, black, women, people with special needs, etc.

³² DALLARI, Dalmo de Abreu. *Elements of the General Theory of the State*. São Paulo: Saraiva, 20th ed., 1998, p. 110.

³³ *Ibid*, p. 110.



numerical question? Logically the answer to the second question is no, otherwise it would not explain the women's social movement (and other Social Movements) that seeks recognition, considering that women (blacks, etc.) are the majority of the population in Brazil³⁴. The idea of minority is linked to empowerment, to the dismissal of the state of power, so it is the disempowered.

The democratic conflict refers to democratic inclusion, there must be civility to establish a Democracy, that is, one cannot speak of a Democratic State of Law, with the inability of dialogue, recognition and visibility of the other. It is necessary that there be the development of affective and moral conditions so that social problems can be shared. In a Democratic Rule of Law there is a need to develop dialogue to "respect those who differ from me", that is, to respect the Other, even more, to exercise the challenge of the Right to have Rights fairly.³⁵

Bobbio³⁶ understands that Democracy has universal and procedural rules, and that, although he considers that the prevailing decisions are those made by the majority, at the same time, he understands that no decision of the majority should limit the rights of the minority.

In this line, Habermas,³⁷ commenting on the internal cohesion between the Rule of Law and Democracy, understands that, by considering (simply) Democracy as the idea of reputeing the decision to the majority, this would be characterized as a tyranny. It is important to recognize the existence of divergent minority situations, and there is a need to integrate minorities in an autonomous way, because when the autonomy of minorities is taken away, they end up gaining the status of "infantilized".

5 FINAL CONSIDERATIONS

Amartya Sen³⁸ understands that the central issue is not to discuss whether or not a country is prepared for democracy, but to understand that democracy is what prepares a country.

With the constant creation of rights and innovation in the social and political sphere, it is understood that modern democracy was born of class struggles, workers' movements, and cannot be defined by the interests of certain individuals (analyzed from the point of view of the majority with particular interests), because the current democracy has the otherness instituted in all its idea, relating the idea of the right to have a right.

Hence the argument that revolves around a phrase of Santos³⁹: "We have the right to be equal

³⁴ Available in: <<https://economia.uol.com.br/noticias/redacao/2015/12/04/negros-representam-54-da-populacao-do-pais-mas-sao-so-17-dos-mais-ricos.htm>> e <<https://nacoesunidas.org/direitoshumanos/>>.

³⁵ LAFER, Celsus. Philosophy and Human Rights. Fortaleza: Ufc, 2006, pp. 13-17.

³⁶ BOBBIO, Nobert. General Theory of Politics: Political Philosophy and the Lessons of the Classics. Translation by Daniela Beccaccia Versiani. 11. ed. Rio de Janeiro: Elsevier, 2000, p. 427.

³⁷ HABERMAS, Jürgen. The inclusion of the other: studies of political theory. São Paulo: Loyola, 2002. 390 p. Translation by: George Sperber and Paulo Astor Soethe (UFPR), p. 285.

³⁸ SEN, Amartya (1999): Democracy as a Universal Value, p.3. Translation available at: <<http://dagobah.com.br/wp-content/uploads/2016/07/SEN-Amartya-1999.-Democracia-como-um-valor-universal.pdf>>.

³⁹ SAINTS. Boaventura de Sousa, Por uma concepção multicultural de direitos humanos: Revista Crítica de Ciências Sociais, n. 48, 1997, p.30.



when difference makes us inferior; we have the right to be different when equality mischaracterizes us", and the need to conceive of a new understanding for democracy as something that breaks with the non-recognition of difference implies a huge investment in economic, social and cultural rights. It is still necessary to work (a lot) in the construction of new Rights and in the equitable application of the Rights that already exist.

However, there is a reality that calls attention to a new vision in the concept of the general will in a Democratic Rule of Law, so that it allows the understanding of ideas that aim at the social sphere (that calls for equality and freedom with the interaction of the excluded majority or minority), stopping privileging isolated cases of an influential population, which aims only at benefit in a selfish way.



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