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The Human Rights Regime Political Framework

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Summary

This text aims to identify the political framework of the human rights regime and compare the regime's historical and current political framework. This question is essential and deserves research as it explains how the regime has developed its policies and advocacy over its history and elucidates the reasons behind several of the most damaging and contentious challenges the human rights advocacy has faced over the last few years.

Ultimately, it identifies that the regime began its history as a libertarian and anti-statist movement based on respect for individual liberties and freedoms and protecting those rights from third parties violations. While it also finds that currently, the regime has had a less libertarian approach and is more willing to negotiate previously imperative freedoms for the achievement of a common good, even if it means the cession of more power to the State entity.

Additionally, it highlights essential facts about the consequences of the political shift of the human rights regime over the last seven decades while concluding the reasons for the political transition to happen and the real-life impacts of such a shift. The three main consequences of the human rights regime political shift were identified as the loss of power and the possible end of civil societies, the higher economic, social and moral costs to be paid to have fundamental human rights fulfilled by the State entity and the issues of privilege and patronage in the delivery of human rights by a public entity.

The thesis was developed mainly by conducting theoretical research in the fields of law, political science and economics and analyzing empirical indicators on the international level about human rights, democracy, authoritarianism and more. Finally, I conclude by summoning the human rights regime to become aware of this serious issue and increase the debate over a solution that maintains human rights as a movement for human autonomy, liberty and freedoms against State abuses and rights violations.

Keywords: human rights regime, political framework, libertarianism, authoritarianism, State, power, control, freedom, liberty.

Preface

I could not have done this thesis without the help and support of some extraordinary people that guided me and helped me all along the way. My wife Carlyne had always supported my adventures across the globe and fully backed me up when I planned to get into this master's program. I want to thank my parents for empowering me with sound judgment, resourcefulness skills and a balanced moral compass, the most valuable tools one can have.

On my academic journey during this course, I would like to thank all professors and lecturers that provided me with the knowledge I needed to come this far, and I could only have reached this point with all of them. There should be a special thanks to my thesis supervisor Karol Nowak that has, throughout the several encounters we have had during the course, supported me and made my learning journey more enjoyable and smooth. I also thank Professor Valentin Jeutner for the help in developing an academic essay in English, which I needed to familiarize myself with.

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1. Introduction

This thesis develops theoretical research into the political framework of the human rights regime since its inception to the current day, analyses how it has evolved over the years and explores the consequences of its political framework in various fields of knowledge. The text navigates into economic viability, social policymaking, moral and philosophical reasoning and public management while still developing a historical analysis of the human rights field.

As an imperative disclaimer, it is necessary to inform that all the examples and reasoning presented are part of the writer's view and findings, which evidently, do not constitute the ultimate truth or a final point in the argumentation. If anything, the hopes with this text are to raise a debate and inspire colleagues in the regimen to think, reflect and take some of the presented insights as worthy of consideration in their advocacy.

1.1. Issue

Throughout my entire human rights (HR) master's program, there has been one issue I have identified within most lectures, texts and debates and as much as the legal arguments presented on these were very well developed, they all do miss the point whenever they are faced with the significant dilemma currently present on the HR field.

The dilemma that should come up in all human rights debates has three facets that could be expressed through the questions of how those proposed endeavours will be implemented, who will make it happen and, most importantly, what it will cost.

We can take a straightforward fact to exemplify how this problem develops. When the Universal Declaration of Human Rights was written, it contained 30 fundamental rights¹. With the additions of the International Covenants on Civil and Political Rights (ICCPR)² and Economic, Social and Cultural Rights (ICESCR),³ the list of protected rights contained in the International

¹ UN General Assembly. (1948). *Universal declaration of human rights*.
https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf

² UN General Assembly. (1966a). *International covenant on civil and political rights*.
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

³ UN General Assembly. (1966b). *International covenant on economic, social and cultural rights*.
<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

Bill of Human Rights had developed to roughly 40 rights⁴ by the year 1966, while nowadays there are different claims and lists of around 58 to 64 current Human Rights⁵. Logically and as this text shows⁶, a more significant number of treaties and rights does not imply better protection, but surely the more obligations and the higher the duties, the more challenging and costly to fulfil all of them.

Not only the list of human rights does not seem to be completed if it is ever going to be, as we can see by the addition in 2022 of the right to a clean, healthy, and sustainable environment by the United Nations⁷, but also the currently existent rights do have their scope broadened daily as we can see, for example, on the value provided to the access of internet by the report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue⁸. The same happens throughout court decisions⁹, International Bodies' texts and resolutions¹⁰ and scholars' writings¹¹.

In addition, it is undeniable that the current human rights regime has a mainstream theory that focuses on pursuing a better implementation of those legally recognized rights, which has been powered by the respect, protect and fulfil framework¹². The focus on the fulfilment task creates a logical requisite itself. For those rights to be adequately implemented, there should be someone or something capable of realizing those rights, as per the regime's desires. The human rights regime has chosen the entity of the State for this task. Just see the example of the right to health or

⁴ United Nations. (n.d.). *International bill of human rights*. <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

⁵ Landman, T. (2005, July). The scope of Human Rights: from background concepts to indicators. In *Background paper for the UN Expert Meeting on Human Rights Indicators, Turku*.

⁶ Chilton, A. S., & Posner, E. A. (2018). Treaties and Human Rights: The Role of Long-Term Trends. *Law & Contemp. Probs.*, 81, 1. <http://dx.doi.org/10.2139/ssrn.2815272>

⁷ UN Digital Library. (2022). *The human right to a clean, healthy and sustainable environment : resolution / adopted by the General Assembly*. <https://digitallibrary.un.org/record/3983329?ln=en>

⁸ La Rue, F. (2011). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. Human Rights Council. https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf

⁹ European Court of Human Rights. (n.d.). *Environment and the european convention on human rights* (pp. 1–35). EctHR. https://www.echr.coe.int/documents/fs_environment_eng.pdf

¹⁰ United Nations Human Rights. (2022). *Committee on the protection of the rights of all migrant workers and members of their families*. <https://www.ohchr.org/en/treaty-bodies/cmwf#:~:text=The%20Committee%20on%20the%20Protection,migrant%20workers%20around%20the%20world.>

¹¹ McEachrane, M., & L. Lundstedt. (2022). Anti-discrimination Law and Systemic Racism: Challenges for the EU and Nordic Countries. In L. Carlson (Ed.), *Scandinavian Studies in Law* (Vol. 68, pp. 119–147). Stockholm Institute of Law.

¹² United Nations. (n.d.). *The foundation of international human rights law*. <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law>

education; it is almost a unanimous consensus in the Human rights field that there should be a State effort to fulfil these rights properly.

The use of the State to fulfil human rights is part of the dilemma within the field for two reasons. Firstly, the State has been the primary violator of human rights at any time in human history. Virtually all genocides¹³, war crimes¹⁴, tortures¹⁵, killing and maiming of children¹⁶, arbitrary arrests¹⁷ and the vast majority of discrimination¹⁸ have happened by or due to the use of the State apparatus. Those violations were indeed perpetrated by individuals vested in State power, but it is also true that only the State power could provide them with enough control to do it. And secondly, to fulfil all actual and future rights, the State needs to increase in size and power, making it capable of committing more violations. To explain the meaning of power that is used here, for the State to grow in power, it means that the State will exert more pressure on society developments, it will exercise more control on the economy and companies, it will itself be the leading actor into the economy, it will direct how and why things should or should not happen, it will have to define what is or not acceptable as speech and, the most dangerous one, it will need to have more direction and control over individuals behaviours.

The HR regime is pursuing a reality with a more empowered State entity. This is all happening while only 8% of the world's population lived in fully functional democracies in 2022¹⁹. Additionally, only 268 years have had peace in the last 3400 years of human recorded history,

¹³ UN General Assembly. (1948). *Convention on the prevention and punishment of the crime of Genocide*. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

¹⁴ United Nations office on Genocide Prevention and the responsibility to protect. (n.d.). *War crimes: Background*. <https://www.un.org/en/genocideprevention/war-crimes.shtml>

¹⁵ UN General Assembly. (1984). *Convention against torture and other cruel, inhuman or degrading treatment or punishment*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

¹⁶ United Nations Security Council. (2009). *Resolution 1882 (2009) Adopted by the Security Council at its 6176th meeting, on 4 August 2009*. https://digitallibrary.un.org/record/661765/files/S_RES_1882%282009%29-EN.pdf?ln=en

¹⁷ Working Group on Arbitrary Detention. (2015). *Report on basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court*. United Nations. <https://www.ohchr.org/en/calls-for-input/report-basic-principles-and-guidelines-remedies-and-procedures-right-anyone>

¹⁸ United Nations Department of Public Information. (2002). *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Declaration and Programme of Action*. https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf

¹⁹ Economist Intelligence Unit. (2023). *Democracy index 2022*. Frontline Democracy and the Battle for Ukraine, 1–86. <https://www.eiu.com/n/campaigns/democracy-index-2022/>

according to Chris Hedges²⁰, which translates into 8% peaceful years. Yet, the regime has been taking democracy and peace for granted and providing a blank check for the State. It only takes a deep breath for everything we value to be broken into pieces, and the consequences could be nefarious. I have realized then that if there is a constantly growing list of human rights, those having an increasingly broader scope each, and all of those are going to be implemented by a State that is rising in power, this may present a danger for our safety and freedoms.

1.2. Research Question

Once I have identified the main issue to be addressed by this thesis, the increasing reliance on the State to respect, protect and fulfil human rights, it needs to be narrower of a topic. At this point, the thesis could choose one of several paths with different perspectives and focus, but the most critical connection lies in the political analysis.

I believe there may be a connection between the tendency of the HR regime to rely on the public sphere to solve current and future human rights issues and the political view of the regime itself, either by the personal opinions of its members or by applying the emergence principle²¹. Although it could become a proper research question in itself, this thesis does not attempt to identify if the human rights regime has chosen to rely on the State due to the personal preferences of its members, due to the emergence principle or any other reason.

Instead, the research question relies on whether it is possible to identify that the human rights regime has a clear political perspective in its activities, if it has shifted over the years and what its consequences would be. The importance of this question resides in the fact that if the regime has adopted a specific political framework, it would be comparable to a political movement, which would have several implications for the development of human rights.

Finally, it is controversial to argue if the human rights regime has been, should be or ever will be a politically neutral movement. This thesis does not touch these questions, so it does not

²⁰ Hedges, C. (2003, July 6). "What Every Person Should Know About War." *The New York Times*.

<https://www.nytimes.com/2003/07/06/books/chapters/what-every-person-should-know-about-war.html>

²¹ Jayaratna, N. (2000). *Systems thinking, systems practice*. By Peter B. Checkland. Published by John Wiley, Chichester, UK, 1981, 330 pp., ISBN 0 471 27911 0 (republished 1999 in paperback, with a 30-year retrospective). From an academic perspective. *Systems Research and Behavioral Science*, 17(S1).

enter into the debate of whether human rights are, should or should not be dissociated from real politics since it would entirely change the scope of the writing.

1.3. Methodology, Concepts and Delimitations

Since the proposed topic is very theoretical, the present text is expected to have a broader scope and complex outset. However, I am adding suitable examples to explain my assertions and reasoning. The text has been produced utilizing a realistic and pragmatic approach, meaning that facts and data, basically how things are, are of greater importance for the argument than desires and wishes, which usually tend to prevail when we write about how society should be. For this matter, a theory of law based on coherence, as the one advanced by Aleksander Peczenik in the book *On Law and Reason*,²² will be of paramount use since the arguments presented here are discussed per logical reason, systemic context and feasibility. Additionally, a weighing analysis of factors and ideas is made at several moments on human rights policymaking and advocacy, while it is also the case here that the main finds of the thesis are complex facts that require an extensive reasoning exercise for the underlying connections to be made.

The thesis shows a bigger picture of the current human rights regime problem. Therefore, it focuses only on the most important of the highlighted issues presented throughout the text, which could each be the subject of complete and comprehensive research. This absence of deepening at some points may need to be clarified for the reader. Still, it is made by design, as the main objective of the thesis is to show how all of these highlighted problems are, in reality, connected with the political paradox we are facing.

Additionally, some concepts utilized throughout the text may need an explanation to be more precisely understood since they may be of little familiarity by the human rights academic context. The first one is the individual. The best meaning for this word can be drawn from a quote by Ayn Rand when she said that “the smallest minority on earth is the individual. Those who deny individual rights cannot claim to be defenders of minorities”. Humanity is one, and we make a personal choice when dividing it into groups. This choice uses some characteristics of humans to segregate them into groups, and it usually stops the segregation where it is suitable for the argument. In reality, the individual is the *de facto* ultimate group.

²² Peczenik, A. (2009). *On law and reason*. Lund University, Sweden: Springer Dordrecht.

For example, in a fictitious society, there are 50% men and 50% women; among these 50% men, 25% are perceived as white and 75% not. Within these 25% white men, 66% are heterosexual, and 33% are not; among these 66% heterosexuals, 10% are considered wealthy, and 90% are not. I cannot then take these 0.825% wealthy members of a society and create a justification for some human rights violation that is happening somewhere. The issue is that inside this group, there are infinite other characteristics that may set them entirely apart and break my entire argument, such as political opinion, human rights compliance, means of acquiring their wealth, family relations, religion, origin, height, weight, values, money spent on charity, and so on.

Thus, whenever this text uses the term individual, it uses it with the meaning of a human being, a person. On purpose, there are no primary mentions of groups since they would not bring any positive development for this work and are composed of single individuals. The reader, however, is free to interpret the individual's mentions as they prefer.

Secondly, whenever this text uses the term human rights regime (HRR), it refers to the entire human rights apparatus, which includes international, regional and national laws, treaties, courts and regulations, international bodies and organisations, State and non-state actors, scholars and their writings, activism in general and any other human rights actor.

Thirdly, emphasizing this text's realistic and pragmatic nature, the reader must dissociate intentions and speeches from actual policies and results. The famous words of Milton Friedman saying, "One of the great mistakes is to judge policies and programs by their intentions rather than their results, " are well precise. There comes the moment where instead of proposing an unrealistic, utopian and sometimes dangerous measure for a real problem, one should present a grounded partial or long-term fix. Therefore, the issues raised in this text should be examined with a broader and more objective lens, even if the solution differs from those a reformist human rights mind desires.

1.4. Theory

The theoretical background may be this thesis's most complex and intricate part. It sits at the intersection of some well-developed theories in political science, economics and philosophical morality. The theoretical basis for the development of the argument against the State as the leading human rights actor has been drawn from the work of John Stuart Mill in the book Principles of

Political Economy when he proposed that "as a general rule, the business of life is better performed when those who have an immediate interest in it are left to take their own course, uncontrolled either by the mandate of the law or by the meddling of any public functionary. The persons, or some of the persons, who do the work, are likely to be better judges than the government, of the means of attaining the particular end at which they aim". It emphasizes a position at the core of this thesis, which consists of the view that individuals are more willing to care and have more at stake in their personal affairs, human rights included, than the State.

More than a century and a half later, another core work was developed by F. A. Hayek on the economic field, and it was based on the same principle elucidated by Mill. Hayek made a compendium of 12 articles in his book *Individualism and Economic Order*²³, and in one of these articles, named "The Use of Knowledge in Society", he complements Mill's inception by affirming that individuals, State Officials included, can only know a small fraction of a society's full knowledge. This, therefore, means that a decentralized economy, thus a decentralized decision process, is beneficial for societal development and efficiency since it harnesses the dispersed information spread into society. Although these ideas were developed as part of an economic argument, it suits perfectly the logical reasoning presented in this thesis that the centralization of human rights fulfilment by the State entity goes against optimal societal development.

The second central pillar of theory is encrusted into the Kantian theory of individual agency and independency, as explained by James R. Otteson here²⁴. The Kantian individual agency requires a State behaviour look that is congruent with Mills and Hayek's developments, in the sense that the agency of the individual is an explanation for the role of the State as an enabler of individual autonomy and nothing more. Thus, it corroborates an essential theoretical basis used here, arguing that individual self-agency and the State's role in the individual's life are mutually repulsive. A society chooses to provide agency and empower its individuals on their personal life and rights' autonomy, or it decides to allow the State to control those instead. The centralization of the development of human rights activities by the State also goes against the human rights mainspring as it was intended during the preparatory works of the UDHR in 1947²⁵. The way to

²³ Hayek, F. A. (1980). *Individualism and economic order*. University of Chicago Press.

²⁴ Otteson, J. R. (2009). Kantian Individualism and Political Libertarianism. *The Independent Review*, 13(3), 389–409. <http://www.jstor.org/stable/24562123>

²⁵ United Nations. Dag Hammarskjöld Library. (n.d.). *Research Guides: Universal Declaration of Human Rights (1948), Drafting History: Drafting Committee*. <https://research.un.org/en/undhr/draftingcommittee#s-lg-box-wrapper-3385246>

provide enough power for the State to deal with a human rights matter is by removing a portion of rights from the concerned individuals or the entire society. Take the example of anti-fake news measures; the advocacy for fake news control revolves around the creation of conditions for the State to control information movement by controlling freedom of speech, and as much as some uses of this right are indeed hurtful, false or discriminatory, history suggests that the State will not stop at those, take the Brazilian example performed by a Supreme Court judge²⁶.

A third theoretical base that guides this text is based on Ayn Rand's objectivism and theory of self-interest as it happens to be explained in Atlas Shrugged's book²⁷. On rational self-interest, it states that individuals are the ultimate beneficiary of their actions, and those actions are done considering what is best for themselves. This definition of selfishness uses the pure definition of the term and does not imply a zero-sum game among individuals' interactions.

Additionally, when discussing political perceptions and which regime, policy or view would benefit the human rights project, we ought to look at the results of those perceptions, thoughts or proposed policies instead of the intended aims. There is significant confusion on the human rights regime between what is a human rights ideal proposal for tackling a problem, what would be the realistic results of this same proposal and if it would indeed solve the problem or aggravate it, and even so, what would this solution cost in reality. A great example of such measures is the wealthy taxation that was implemented in Argentina in 1991²⁸; despite the Argentinian government's intentions to bridge the wealth inequality and shift the tax burden towards the "haves", the poverty in Argentina in 1986 was 4,8% and has raised to 14,1% in 2020²⁹; thus recent local reports estimate a value even more prominent for 2022³⁰.

Therefore, for the sake of clarity and honesty, this thesis looks at the human rights regime proposals and perspectives with the same analytical lens to point out what are the actual results of

²⁶ Nicas, J. (2022, October 22). Brazilian Official Granted Power to Order Removal of Misinformation Online. *The New York Times*. <https://www.nytimes.com/2022/10/21/world/americas/brazil-online-content-misinformation.html>

²⁷ Rand, A. (2007). *Atlas shrugged*. London: Penguin Books.

²⁸ Canosa, J. (2021, April 21). *The era of wealth taxation in latin America*. IFC Media. <https://www.ifcreview.com/articles/2021/april/the-era-of-wealth-taxation-in-latin-america/>

²⁹ Macrotrends. (n.d.). *Argentina poverty rate 1980-2023*. <https://www.macrotrends.net/countries/ARG/argentina/poverty-rate>

³⁰ Rey, D. (2023, March 31). High inflation pushes poverty rate even higher in Argentina. *AP NEWS*. <https://apnews.com/article/argentina-inflation-poverty-676bb33e19ef11944fde696a24aabd29#:~:text=Poverty%20increased%20to%2039.2%25%20of,three%20percentag e%20points%20to%2054.2%25>

some of the proposed directions that the regime is taking and which consequences can be expected out of it, regardless of the idealistically intended outcome.

Finally, this thesis advances the utterly important statement that advocating for more State participation in human rights, be it protection and especially fulfilment of individual rights, will ultimately lead to authoritarianism and a lower human rights standard overall. Even though there are surprisingly very few writing on this and although this argument is still being developed throughout the thesis, credit should be made to the works of Magdalena Hirsch³¹ on the use of authoritarian attitudes for the greater good during the covid-19 pandemic and on the climate crisis and the brilliant text of Dan Slater and Sofia Fenner³² on the inner plays of authoritarian regimes, especially the creation of dependence among its members and the society. As from above, in the best-case scenario, the State is a less efficient alternative to tackle a societal issue due to its imperfect knowledge, while any other possible outcome would necessarily imply a human rights degradation situation that could, as it is shown, spiral over to an authoritarian regime.

1.5. Motivation

To write this thesis, I have connected two facts I have experienced in my previous academic and professional life. The first one relies on the fact that, differently from most of my class colleagues, I have witnessed too much of State atrocities and abuses during my professional life. By having a career in developing countries, I have created a sense of scepticism towards the idea that the individuals of a society can rely on their government to do what would be best for themselves. My particular readings on economics and philosophy also increased my reluctance to believe that the State will ever perform as we wish it to since it does not even in highly developed countries.

The second motivation concerns individuals' political perspectives on the human rights field and why they cannot acknowledge their political views. A question was raised on my first on-site day at the university as a colleague asked whether I was politically leftist or rightist. The question was motivated by my previous online participation in the course, as I had a few different

³¹ Hirsch, M. (2022). Becoming authoritarian for the greater good? Authoritarian attitudes in context of the societal crises of COVID-19 and climate change. *Frontiers in Political Science*, 4(Article No.): 929991). doi: 10.3389/fpos.2022.929991

³² Slater, D., & Fenner, S. (2011). State power and staying power: infrastructural mechanisms and authoritarian durability. *Journal of International Affairs*, 65(1), 15–29.

opinions from most of my colleagues on some topics. Since then, I have thought that the mainstream political dichotomy presented to us has serious flaws, which have reverberated into the human rights regime itself, producing very harmful effects in the long term.

In addition to those, I see the recent increase in authoritarianism and the downturns in democratic regimes³³ not as a consequence of the Covid-19 pandemic or any other differently fabricated justification but rather a direct result of the increasingly more extensive social and economic control conferred to States, part of which has been a direct consequence of the advocacy that the human rights regime has produced.

By connecting these facts, putting the State in the position as the leading promoter of human rights, and empowering it to do so, is likely the same as setting the fox to take care of the hen house. Thus, the current focus on the fulfilling part of the respect, protect and fulfil framework only creates the perfect opportunity for the advocacy to suggest that the State needs to have more significant funds, greater control over the economy, more surveillance mechanisms and that more law and regulations should be passed conferring more power to the State.

As much as I want to believe that this issue has been an unintended consequence³⁴ of the human rights regime agenda due to the already mentioned emergence principle, it is plausible to question the implications of this political process.

1.6. Outline

This thesis shows that the human rights regime has changed its political framework since its inception in 1948 towards a collectivist economic policymaking and a social view that has become less libertarian and even authoritarian at some points. The first chapter explains the motivation for writing this thesis, the methodology and theories used, and provides a basic outline of the whole text.

The second chapter explains what would be a political framework and which political classification method has been used in the thesis, The Political Compass in this case. For clarity, it also explains a leftist and a rightist economic view and an authoritarian and libertarian social

³³ Herre, B. (2022). *The world has recently become less democratic*. Our World in Data. <https://ourworldindata.org/less-democratic>

³⁴ Merton, R. K. (1936). The Unanticipated Consequences of Purposive Social Action. *American Sociological Review*, 1(6), 894–904. <https://doi.org/10.2307/2084615>

view. It finishes by explaining the political term collectivism and its connection with Socialism, Nazism, Fascism and Communism.

The third chapter focuses exclusively on the political view of the human rights regime in its historical inception and the current day. The chapter explains that the human rights regime was initially a libertarian movement focused on protecting and respecting fundamental rights and constraining the State's power and abuses. It also shows that the current human rights regime is a collectivist and less libertarian movement more inclined toward providing the State with the necessary power to comply with all the demands and obligations regarding human rights fulfilment. The finds can also make a strong and vital connection between the current human rights regime aspirations and previous collectivist regimens, which helped strengthen the findings on its horizontal inclination.

The fourth chapter discusses the consequences of the regime's political shift. It starts with the diminishing value and possible collapse of civil society, and it is based on the simple premise that if the State has all the necessary power to fulfil rights, civil society tends to become powerless. It goes into the cost of rights' fulfilment, not only in its economic facet, and analyzes the price paid for the increasing list of rights and its broader fulfilments. It finishes with the risk posed by a state-centric human rights view regarding privilege creation and patronage of rights fulfilment according to the ruler's interests. Finally, the final words are drawn with remarks about the research and its future developments.

2. Political terminology

Human Rights advocacy may, on its ethos, seem an apolitical and universal endeavour, where humanity is pressing itself to adopt higher moral and legal standards for the good of all humankind in its race to end human suffering and promote a better and equal reality for everyone. Yet, within the academic texts, scholars' research, legal practice and daily advocacy, a human rights practitioner finds itself immersed in political terms and definitions, many of which may sound confusing and imprecise. In addition, there are cases where a scholar may use political terminologies branded on mainstream view as unfavourable to strengthen its text without explaining what the term signifies and why it is harmful. One example of that could be the use of neoliberalism, which is not an entirely agreeable term, in this Gillian MacNaughton article³⁵. This may be done by the presumption that the word is fully well understood and known by its readers or simply by bad faith; in both cases, it creates a conundrum of confusion in the readers' minds as it resonates and propagates disinformation on the field.

Perhaps the worst of these confusions lies within the question of whether an individual, an entity, a text or a theory stands on the right or the left side of the political spectrum, one which can not be appropriately answered without a very long explanation and yet at risk of ostracism. This question has many deeply rooted layers of definitions and many more prejudices. The very existence of the term "far-right" in the present political debate proves that there is an insufficient political understanding within the human rights regime or in the mainstream political conversation about the political spectrum and where each policy stands.

The attempt of this thesis to reshape the theoretical debate by providing a more complete and precise definition of the political and policymaking alternatives feels to me, sometimes, like a lost cause because the overwhelming strength of the mainstream effort leans into the opposite way. Nevertheless, the human rights debate and the regime could improve by understanding its political position, diverging opinions and especially by better comprehending the impact of the changes and policies they may be proposing.

³⁵ MacNaughton, G. (2020). Economic inequality and human rights impact assessments of economic reforms. *The International Journal of Human Rights*, 24(9), 1311-1332. DOI: 10.1080/13642987.2020.1811696

2.1. Historical background

After the French Revolution of 1789, a proposition was made to the National Constituent Assembly on the question of how extensive the veto powers of King Louis XVI over the parliament should be. During the voting of such a proposition and primarily because there were 1500 deputies to vote at the time, the president of the Assembly decided that whoever wanted to keep extensive veto powers with the king should sit on the right³⁶, a group that would later be known as the conservatives, and the ones that wanted to reduce the powers of the king should sit on the left, opposingly known as progressives.

The French monarchy ended just two years after the division between left and right. Nevertheless, the parliament kept the previous standards of conservatives on the right and progressists on the left. This division that was made due to the necessity of organization into a chaotic moment lasted in the following months and years.

Yet, it took a century to spread and become the overall standard of political division in Western societies. While it was an instrumental task to organize the Assembly vote at the time it was used, it only encompassed some of the assembly members' nuances and points of view. For example, on the left, among the group that wanted to reduce the king's power, coexisted socialists and the new republican bourgeoisie, two groups with very different and contrasting set ideas. Nevertheless, the leftist ethos was kept as the group that wanted change, willing to try other concepts and ideas. While the rightist was seen as the group that was more resistant to changes but could accept it provided it happened in small amounts at a time and with due consideration to previous standards and traditions.

From the outlook of this division, it becomes evident that it cannot fulfil the requirements of a political categorization of any modern society. Firstly it lacks enough criteria to split large social groups that pursue opposite social and economic views. Secondly, this categorization started as a moral, political and sometimes religious criterion, but it has been wrongly used nowadays as a social and economic classification. An individual that self-nominates itself nowadays as left or right does not take into consideration its view towards monarchy, religion or even authoritarianism; it simply takes into consideration the social and economic aspects of it.

³⁶ Carlisle, M. (2019, September 15). What to Know About the Origins of “Left” and “Right” in Politics, From the French Revolution to the 2020 Presidential Race. *Time*. <https://time.com/5673239/left-right-politics-origins/>

2.2. The Left versus Right in the Present

The current division between left and right has a very different outlook from its inception since, nowadays, it is based on the two main characteristics of economic and social policymaking. It is also essential to understand that each side has a different and non-coincidental point-of-view over what the other side aims and fights for. From the right point of view, the left wants to introduce shifts into society that are negative in general while spending a large sum on social programs, and the extreme left wants to destroy a society's traditions and history, the family concept, its beliefs and symbols and to control the entire economy. From the left point of view, the right wants the economy to have too greater importance over social issues and to reduce the protection and spending of social programs, and the extreme right wants to destroy social advances, minorities and their rights, to impose a set of cultural and religious norms and to remain in power by force.

In a simplistic and synthetic summary, the left prefers to focus on better social protection, usually through the State, and a more controlled and regulated economy. In comparison, the right focuses on a more unregulated economy with positive economic progress, a less participative state and fewer social programs. From a human rights perspective, it would be possible to say debate revolves around the fulfilment by the State of Human Rights, adding that social, economic and cultural rights are at the eye of the storm, where the left highlights the importance of its fulfilment and the right argues that the state should not do some or most of these activities.

There are still several issues over the left versus right political division since its inception, the far-right concept being one of the main ones. The currently labelled far-right ideologists indeed advocate for imposing traditional and religious outsets, thus extreme authoritarian. Part of them aims at reducing economic regulations and diminishing State participation in economic development. However, and oppositely, a few also advocate for a more extensive and participative state with more economic regulations and more restrictive markets, thus leftist. In addition, there is a virtual inexistence in the current debates over a far-left position since the far-right definition has become an all-catching encompassing several different types of authoritarian groups.

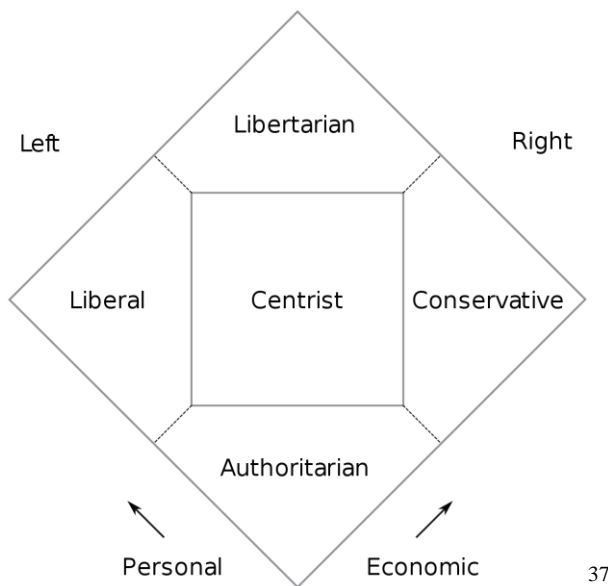
Finally, there is also the situation of classic liberals or libertarians. The question remains where an individual stands in this division if they stand for individuals and economic freedom, aiming at a State that respects and protects all human rights but does not engage in fulfilling them.

With time it became clear that a better categorization was necessary, and two of them had stood out as particularly well suited to categorize those economic and social aspects.

2.3. The Nolan Chart and the Political Compass

Throughout the XX century, there have been several attempts to produce a better categorization of political positions. However, most of them failed to understand precisely the root causes behind the debate and to point out the fundamental criteria that lay within.

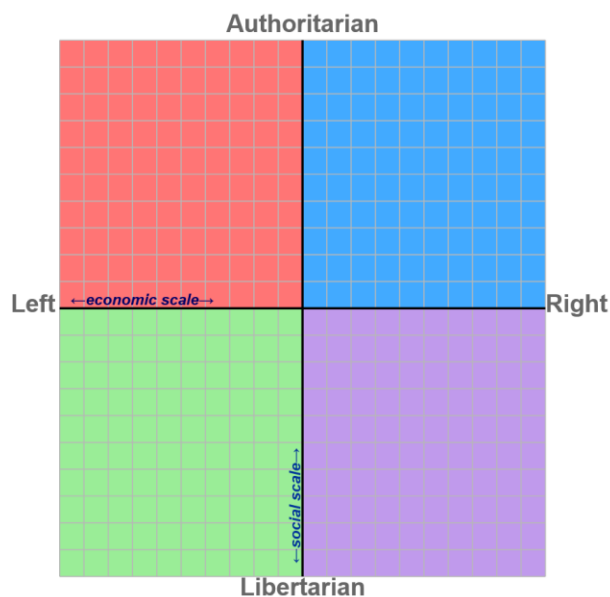
In 1969, David Nolan, a United States activist and politician, created what would be known as the Nolan Chart to categorize the political debate on what he would consider the only two forms of political expression for any individual, the economic and social aspects. Nolan Chart has become a successful tool because it dives into the political debate's root question, which is how much freedom a society should have, a question that could be answered from the economic and social (named personal) points of view. The chart is mainly self-explanatory, as it is possible to see below:



³⁷ Nolan, D. (1971). Classifying and analyzing politico-economic systems. *The Individualist*, 1, 5-11.

The chart shows that the left versus right division is a division between the left side, which aims for more personal freedoms but less economic freedom and the right, which struggles for more economic freedom but less personal freedoms. It adds to the debate the positions of Authoritarianism, where neither freedoms are present nor desired, and Libertarianism for individuals who wish to have a society where personal and economic freedoms coexist.

As you can see below, the Political Compass is a newer political framework. It was produced by Wayne Brittenden, a New-Zeland journalist, whose theoretical development was based on the work of Theodor Adorno's book *The Authoritarian Personality*³⁸. The Compass website also credits the works of Wilhelm Reich³⁹ and Hans Eysenck⁴⁰ on the field.



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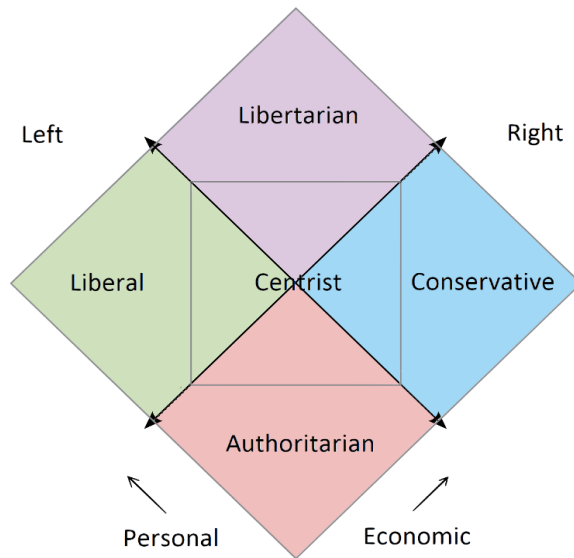
There is no fundamental theoretical difference between the Nolan Chart and the Political Compass since the Compass is the reedition of the Chart in what would be a more understandable graphic. There are even attempts to mix both graphics, which could be quickly done by flipping the Compass 45° and inverting it, as the image shows below.

³⁸ Adorno, T. W., Frenkel-Brunswik, E., Levinson, D. J., & Sanford, R. N. (1950). *The authoritarian personality*. Harpers.

³⁹ Reich, W. (1946). *The mass psychology of Fascism*. Orgone Institute Press.

⁴⁰ Eysenck, H. J. (1956). The psychology of politics: a reply. *Psychological Bulletin*, 53(2), 177–182. <https://doi.org/10.1037/h0039843>

⁴¹ Brittenden, W. (2001). *Crowd chart*. The political Compass. <https://www.politicalcompass.org/crowdchart2>



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By comparing both frameworks, the slight advantage favouring the Political Compass is that the Chart somehow attempts to show libertarianism as the ultimate end goal of all political spectrum. This probably was intentional since Nolan was a Libertarian, but by doing so, he lessens the acceptability of his chart on individuals of different political views.

That being said, this text uses the Political Compass as the leading guide to explain what would be a more accurate general political categorization of view and position and show such perspective and impact on the human rights regime. However, two critical observations of the Political Compass must be made. Firstly, this compass is part of a test provided on the creators' website, where it classifies individuals' political views based on a set of questions. There may be disagreements on the accuracy and necessity of some questions, which are irrelevant to this work since it does not change the value of the Compass itself. Secondly, it is not this thesis's objective to dive into the political views on the extreme outer borders of the Compass, as it would deal with very theoretical and unrealistic viewpoints irrelevant to the current text.

⁴² Levy, A. (2018). *Which is more accurate: the Nolan diagram or the Political Compass?*
<https://www.quora.com/Which-is-more-accurate-the-Nolan-diagram-or-the-Political-Compass>

2.4. The vertical axis

On the vertical axis, the Compass is divided into two different perspectives of libertarianism and authoritarianism, a division that should be read and primarily applies to aspects of social life, personal freedoms and human protection. Therefore, the vertical axis focuses on what could be called civil liberties and the power a State should have on interfering with or suppressing such liberties. In addition, it is possible to add that the democratic level of a society has a direct impact on the level of social control of the respective State⁴³.

In summary, the vertical axis itself is based on the powers and extent of those a State may have at its disposal to regulate social life and personal freedoms. It shows oppositely the positions of a State that abstains from interfering in society's civil liberties and protects all its possible expressions with the State that regulates how it wants society to behave. The more extensively an individual advocate for social conduct to be suppressed or prohibited by the State, the more it leans towards an authoritarian position, with the reverse leaning towards a libertarian position.

The most valuable data collection report on this matter is produced by The Economist Intelligence Unit (EIU). This unit was created in 1946 and has served as the Economist Group's research unit since then. Since 2006 the EIU has produced a yearly report called The Global Democracy Index⁴⁴ that classifies authoritarianism levels among 167 nations in all regions. The United Nations Educational, Scientific and Cultural Organization (UNESCO) even reproduced this report on its website⁴⁵. This index uses a set of 60 indicators divided into five groups: the electoral process and its pluralism, the functioning of the government, the population's political participation, the political culture and civil liberties. Although most of the criteria for the report focus on the political process, popular participation and the roles of the government, the civil liberties criteria do encompass questions of non-discrimination, gender, religious and minority rights.

⁴³ Kirchsclaeger, P. G. (2014). The relation between democracy and human rights. In *Globalistics and Globalization Studies: Aspects & Dimensions of Global Views/Edited by Leonid E. Grinin, Ilya V. Ilyin, and Andrey V. Korotayev* (pp. 112-125).

⁴⁴ Economist Intelligence Unit. (2023). *Democracy index 2022*. Frontline Democracy and the Battle for Ukraine, 1–86. <https://www.eiu.com/n/campaigns/democracy-index-2022/>

⁴⁵ Unesco. (n.d.). *The global democracy index*. <https://www.unesco.org/en/world-media-trends/global-democracy-index>

An authoritarian perspective would be a position where the State has enough power over the social life of its citizens to regulate what would be acceptable social conduct and the capacity to curb individual liberties whenever it wants if it has not already constrained it. The authoritarian set of tools could include judicial dependence⁴⁶, democracy suppression⁴⁷, gender, racial and minority discrimination⁴⁸, religious-biased legislation⁴⁹ and several possible norms constraining an individual's private life. In contrast, a libertarian position would stand for respecting and protecting personal and social freedoms, maintaining public order, non-discriminatory legislation, overall individual rights protection and judiciary independence.

From a human rights perspective, and considering the three dimensions of respect, protect and fulfil framework, there is on this axis, as compared with the horizontal axis, a much greater focus on the respect and protection of individual rights, especially by the State. The debate here revolves around whether the State should have the power to constrain individuals' rights and social freedoms and to what extent.

2.5. The horizontal axis

Although the compass uses on its horizontal axis the Left and Right terminology, it is better to understand the range of this scale considering that it deals with the economic freedom of a society. According to the Heritage Foundation⁵⁰, there are four main factors when considering a society's economic freedom: the rule of law and integrity, government size, regulatory efficiency and openness of its market.

The rule of law factor can be further divided into property rights, judicial effectiveness and government integrity, and generally deals with the legal guarantees that enable economic activity

⁴⁶ Solomon, P. H. (2007). Courts and Judges in Authoritarian Regimes [Review of Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile; The Struggle for Constitutional Power: Law, Politics, and Economic Development in Egypt; Political (In)Justice: Authoritarianism and the Rule of Law in Brazil, Chile, and Argentina, by L. Hilbink, T. Moustafa, & A. W. Pereira]. *World Politics*, 60(1), 122–145.

⁴⁷ Ninet, A. A. i. (2013). Democracy. In *Constitutional Violence: Legitimacy, Democracy and Human Rights* (pp. 40–89). Edinburgh University Press. <http://www.jstor.org/stable/10.3366/j.ctt3fgrp6.6>

⁴⁸ Belge, C., & Karakoç, E. (2015). Minorities in the Middle East: Ethnicity, Religion, and Support for Authoritarianism. *Political Research Quarterly*, 68(2), 280–292.

⁴⁹ Sahoo, N. (2020). Mounting majoritarianism and political polarization in India. In T. Carothers & A. O'Donohue (Eds.), *Political Polarization in South and Southeast Asia: Old Divisions, New Dangers* (pp. 9–24). Carnegie Endowment for International Peace. <http://www.jstor.org/stable/resrep26920.7>

⁵⁰ Kim, A. B., Tyrrell, P., & Roberts, K. D. (n.d.). *2023 index of economic freedom*. <https://www.heritage.org/index/about>

to flourish in a society. The government size considers the tax burden, government spending and fiscal health, adding that the more the government participates in the economy, the less space remains for entrepreneurs. Regulatory efficiency covers business, labour and monetary freedom, which could translate to the necessity, efficacy and efficiency of the regulations created into the three subareas. And the openness of a market accounts for trade, investment and financial freedom, which deals mainly with the easiness of making a transaction and moving capital.

The basic summary would be that the freer the economy and the less participative the State is in the economy, the more to the right on the horizontal axis. In contrast, a more regulated and controlled economy and a more participative State would shift it to the left.

Accounting for a rightist human rights perspective on the horizontal axis, the previous assertive remains that the State has a fundamental role in respecting and protecting fundamental rights, in this case, mainly economic rights. There are many examples of anti-fraud regulations, prompt and predictable judicial decisions, effective law enforcement on financial crimes, and many more. However, on the horizontal axis, the centre of the debate between divergent opinions remains on the fulfilment, by the State or by government taxes, of some human rights, with particular emphasis on Economic, Social and Cultural rights. Individuals and groups that lean to the left maintain the position that it is beneficial to have those rights fulfilled and, most commonly, with the total or partial involvement of the State. In contrast, those on the right believe this fulfilment by or with the State is mainly detrimental and should only happen in certain circumstances and only partially.

2.6. Defining collectivism

Jean Meeks-Koch explains collectivism⁵¹ as the practice or principle of prioritizing a group over each individual. It is, therefore, an umbrella definition for all types of beliefs and practices that share the view that the needs of the community or groups prevail over the needs of the individuals, it is often connected with the aspiration for common good and selflessness, and it disregards and deconstructs selfness and individualism. In addition, collective States value safety and stability

⁵¹ Meeks-Koch, J. (2021). *Individualism vs. Collectivism: "All for one, and one for all," or should it be?* <https://www.thefbcg.com/resource/individualism-vs-collectivism-all-for-one-and-one-for-all-or-should-it-be/>

over innovation and risk-taking, and it also embodies principles such as state ownership, the government as protagonist and social engineering.

In the same direction, Ayn Rand defines collectivism as “the subjugation of the individual to a group—whether to a race, class or state does not matter. Collectivism holds that man must be chained to collective action and collective thought for the sake of what is called “the common good””. Collectivism has been a core concept in many theories and government regimes over human history, such as Socialism, Nazism, Fascism, and Marxism. Many religious fundamentalist regimes, such as the Iranian Republic government, have also used it as a method of public coercion.

The aim of the common good pursued by collective regimes itself is a pure lie. First, the definition of the common good can only attain a meaning if defined by an individual, and each individual that defines it does it differently from the others due to their previous life experiences, ethics and religion and so on. Therefore, the common good is the desires or wishes of a person, or persons, over others. Even if we accept that such desires, if congruent with the majority of the members of the society, are, to a certain extent, a community agreement, they may still be good only for the portion of the community that correlates with such desire. The National Socialist German Workers' Party regime is a prominent example since Hitler advocated for the common good of the Aryan race but killed millions of non-Aryans and induced a world war. That is why results are essential.

An interesting point about collectivism is that Igor Shafarevich, a Russian mathematician, wrote an article on collectivism in the book written by Alexander Solzhenitsyn *From Under the Rubble*⁵². In this article, which has a physiological tone, he relates, among other things, the intellectual pursuit of collectivism in its various forms with a subconscious death drive as pertained in Freudian theory. In summary, Shafarevich connects the advocacy for and the pursuit of collectivism with a subconscious death wish.

The definition of collectivism matters for many reasons in human rights studies, as it goes against the core of the moral ideology of human rights. In collectivist societies, fundamental individual human rights should be ignored or even violated if they are not suitable for the ideals of the community. Privacy, freedom of speech, religion, movement, expression, sexuality and

⁵² Solzhenitsyn, A. I. (1975). *From under the rubble*. Translated from the Russian) by A.M. Brock. Boston: Little, Brown.

many more keystone rights are conditional to the individual's suitability with the State agenda and what is perceived as beneficial to the society by the ruling individuals.

Collectivism significantly harms minorities and individuals with less or non-participation or lobbying within government ranks. Since they cannot influence State officials in their policy decision-making, they are to bear the inevitable nefarious results of whatever aims they set as positive for society's common good. To exemplify, the various pieces of research conducted on mentally-ill individuals in the previous century, where those individuals were submitted to different methods of torture, have been done for the benefit of society. Another example is the still-existent bans on same-sex marriage, adoption or gender transition in certain cultures, as the central argument among those who advocate against it relies on the common good of the existent society.

Collectivism also has a strong connection with authoritarianism for the simple reason that collectivist regimes have a crucial feature of standardization of individuals, with an emphasis on the most deviant ones. A collective society can be ruled by a single individual, a group of individuals that share the same view or a set of fundamental dogmas and, independently of which is the case, the ruling power necessarily must exercise coercion on the non-conformable individuals to force them to comply with the aimed common good. The red terror⁵³ of Soviet Russia can exemplify this, or the Hundred Flowers Campaign of the Chinese regime⁵⁴ or the Nazi early day's concentration camps of 1933-34 focused on political oppositionists⁵⁵.

The final and main point about collectivism is that it requires a State of considerable size. This conclusion derives logically from the fact that to exert authority on the individuals of a society; the ruler needs the means to do so. Maintaining a collective society requires various regulations over behaviours and the economy, broad police state apparatus and more significant funds to back such activities. A Laissez-faire State with a free market economy has little to no chance of being ruled for long periods by a collective regime, meaning that over time either the government will shift this State to get a more decisive part into society functioning and increase in power or the ruling power will be removed for the maintenance of the Laissez-faire State.

⁵³ Gregory, P. R. (2009). *Terror by Quota: State Security from Lenin to Stalin (an Archival Study)*. Yale University Press.

⁵⁴ Goldman, M. (1983). Human Rights in the People's Republic of China. *Daedalus*, 112(4), 111–138.

⁵⁵ Holocaust Encyclopedia. (n.d.). *Political prisoners*. <https://encyclopedia.ushmm.org/content/en/article/political-prisoners>

Here is an important conclusion to be reached, the pursuit of a State that has more control over society and its economy and more power to implement its policies is a goal that has been pursued not only by collectivism but also by the human rights regime in its current outset of fulfilment focus. In the best-case scenario, the human rights regime may not be aiming to implement a collectivist society. Still, by looking at the results and the injunction of policies, decisions and literature of the HRR, we can safely argue that the regime is contributing to the increase of State power, capacities and control, which then can be used by the collectivist ruler as soon as it is in office.

3. Where the human rights regime stands

The starting point of the difficult task of defining where the human rights regimes stand on the political spectrum is further to divide the question into two points in time. It is safe to say that the current human rights regime political framework differs from the one that existed when the regime was formally created in 1948. Beyond the 75 years gap, a fundamental gap exists in objectives and policymaking.

The importance of identifying the regime position is connected to the fact that this thesis develops an argument where the political view of the human rights regime has exerted influence on the regime advocacy and policymaking, specifically on the regime stance for more State power, obligations and fulfilment. This argument considers the regime's political view as a cause for the current regime's fulfil advocacy.

3.1. The Regime's historical position

The objective of the human rights regime, from the preparation of the Universal Declaration of Human Rights up until the massive ratification of the ICCPR and ICESCR in 1966 and the years that followed, was based on the creation of a legally protective standard for all human beings that everyone, including the States, should respect. The final part of the preamble of the UDHR provides valuable insight by stating that it “Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”⁵⁶. The text clearly emphasizes the necessity of recognizing and observing those newly born protections while also showing the need to educate and teach those rights to create a shared understanding among all people.

⁵⁶ UN General Assembly. (1948). *Universal declaration of human rights*. https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf

Although this challenge was always present, this first period in the regime's history focused less on the inner plays of how or by whom those rights were to be implemented. This question was intrinsically answered by the cold war and the polarized world of that time since Western society had a greater focus on civil and political rights, and the Eastern block publicly emphasized their focus on cultural, social and economic rights. Not only this, but the westerners left much more of the human rights responsibilities and advocacy for the civil society to deal with and kept fewer responsibilities with the State. At the same time, the Eastern had concentrated it all on the State figure and did not enable or promote the flourishing of an organized civil society. Additionally, several authoritarian autocracies on the eastern block at the time hindered the effective implementation of any consistent human rights project.

The block that positively implemented a human rights agenda was the Western one, and it did so by focusing on a two-fold perception. The first one is based on the re-edition of John Stuart Mill's principle to do no harm⁵⁷, which Mill wrote as "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." and was simplified as "to respect". While the second one was the perception of the State's primary responsibility as the caretaker of its people, which was summarized as "to protect". The respect aspect of the framework implied an obligation that actors, the State being one of them, restrain from violating those individual rights in all its actions. The protection aspect focus on the State's primary duty as the protector of the individuals under its control from harmful acts of other individuals, entities or States. Thus, since the State counts with the monopoly of the use of force under its jurisdiction, no other entity could be more capable of protecting rights and preventing violations than it. That's also one of the core arguments for the existence of the police and military forces under the State's hood.

About fulfilment, even though there was State fulfilment of many human rights through the development of its activities, such as education, sanitation and housing, those activities had a different aspect from today for a few reasons, firstly they were developed mainly by the State as subsidiary or complementary, leaving the core of the development to the private initiatives. Secondly, others were created by a public-private partnership, where the public actor embodied inputs provided by the private partner. Third, most importantly, most of those state-led and controlled initiatives failed, leaving behind a situation that was usually worse than before. For the

⁵⁷ Mill, J. S. (2016). *On liberty*. Vienna, Austria: Imenand Publishing.

last, the examples of the United States Government National Mortgage Association (GNMA)⁵⁸, also known as Ginnie Mae, and the Brazilian programs of the Popular Housing Foundation and National Habitation Bank⁵⁹ are paramount.

No human rights courts and case law existed at the time except for the European Court of Human Rights (ECtHR). But even the ECtHR's first case law looked significantly different from the court's current view since, in its first case that violations were found; in the decision of the 1968 Case of Neumeister v Austria⁶⁰, the court's approach was, as the approach of the time, much more concerned with the situation of failure to respect or to protect rights. The decision of the case itself found breaches in the length of an arrest and its proceedings and in the failure of the State to observe the principle of the equality of arms.

On the economic side, however, the standard of the time was based on less intrusive interference in economic activity⁶¹, fewer taxations than we currently have^{62,63}, the still existent self-regulation in many sectors and a more open capital market. Additionally, the regime's position at the time was against any authoritarian kind of governmental ruling, with very few constraints on individual rights and leaving a wide range of discretion for individuals to exercise their activities as they see fit. Therefore, the historical agenda for the human rights regime was substantively focused on the two first parts of the respect, protect and fulfil framework and profoundly libertarian in the Nolan sense.

As a consequence and considering the previously explained Political Compass, as shown again below, it would be possible to affirm that the human rights regime from its inception until the ratification of the Bill of Rights would fit somewhere in the purple quadrant of the Compass, possibly in the bottom left of the such quadrant. Thus, it could be considered a Rightist-Libertarian movement for its strong anti-authoritarian and less Statist approach. The position of a specific group, organization or State would depend on its inherent internal specificities.

⁵⁸ Gerth, J. (1989, July 17). Cause of Ginnie Mae Losses Said to Be Lax Supervision. *The New York Times*. <https://www.nytimes.com/1989/07/17/business/cause-of-ginnie-mae-losses-said-to-be-lax-supervision.html>

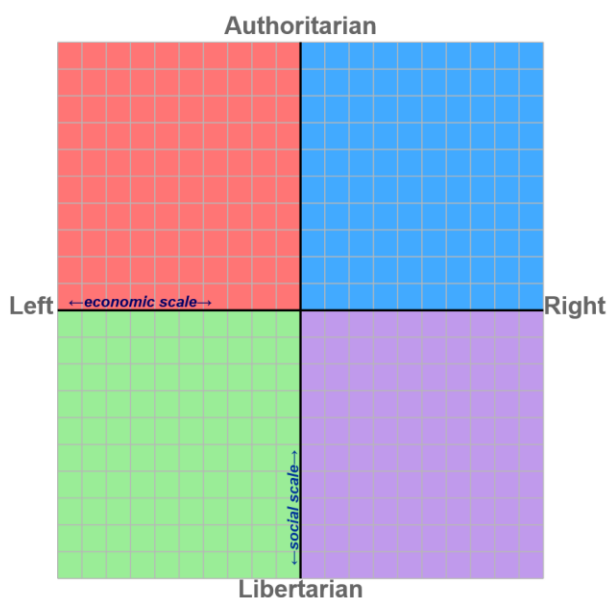
⁵⁹ Rossatto Rubin, G., & Bolfe, S. A. (2014, May 2). *O desenvolvimento da habitação social no Brasil*. *Ciência e Natura*. <https://periodicos.ufsm.br/cienciaenatura/article/viewFile/11637/pdf>

⁶⁰ Neumeister v Austria, Judgment on Merits, App no 1936/63 (A/8). (1968). ECHR 1, IHRL 2 (ECHR 1968), 27th June 1968, European Court of Human Rights.

⁶¹ Sugár, A. (2011). Brief history of market regulation primarily from the point of view of price regulation. *Society and Economy*, 33(2), 321–345. <http://www.jstor.org/stable/41472161>

⁶² Wallis, J. J. (2000). American government finance in the Long Run: 1790 to 1990. *Journal of Economic Perspectives*, 14(1), 61–82. doi:10.1257/jep.14.1.61

⁶³ Piketty T. (2014). *Capital in the twenty-first century*. Belknap Press of Harvard University Press.



3.2. The Regime's current position

Unlike the previous one, writing about the current human rights regime position is challenging for several reasons. The human rights scholar and legal apparatus are much more globally spread than it was at their inception, and text production in its various forms has multiplied many folds since then. In addition, the regime has evolved entirely to the point that several branches exist within the field, each pursuing its objectives and trying to implement its agenda.

The legislation on the topic is enormous to make this part even harder. The international treaty law counts with seven treaties that deal specifically with human rights: International Convention on the Elimination of All Forms of Racial Discrimination⁶⁴ (ICERD), ICCPR, ICESCR, Convention on the Elimination of All Forms of Discrimination against Women⁶⁵ (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁶⁴ UN General Assembly. (1965). *International convention on the elimination of all forms of racial discrimination*. Retrieved from <https://www.ohchr.org/sites/default/files/cerd.pdf>

⁶⁵ UN General Assembly. (1979). *Convention on the elimination of all forms of discrimination against women*. <https://www.ohchr.org/sites/default/files/cedaw.pdf>

Punishment⁶⁶ (CAT), Convention on the Rights of the Child⁶⁷ (CRC) and the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families⁶⁸ (ICMRW), thus many others that deal indirectly with the topic. In addition to that, there are several soft law instruments and authoritative opinions that include, for example, 37 General comments written by the United Nations (UN) Human Rights Committee⁶⁹; as of October 2022, 45 thematic and 14 country special procedures mandates by the UN Human rights Council⁷⁰; 77 UN General Assembly session⁷¹, each with several human rights resolutions adopted.

Furthermore, countless scholarly articles, texts and books are published annually. International organizations and organs publish recommendations and interpretations, here an example⁷², on the hard and soft law. Also, many forums, lectures and panels are organized in every country, providing the necessary education and clarification as written in the UDHR preamble. The currently ongoing 12 UN peacekeeping missions use this legal framework to develop their mandate, procedural documents and best practices, as any other international organization. Indeed the issue of the current regime lies in something other than the need for more regulations or knowledge production.

Notwithstanding, it is safe to state that the regime has a concurring opinion on its major points. Firstly it agrees on the necessity of more fulfilment of the protected rights. This has happened because there is already a no less than robust legal provision for rights and obligations, for which the regime needs to guarantee only its effective implementation. It means that, and there is a great danger here, it has somehow taken, or partially taken, for granted the respect and protect aspects of the tripartite framework while concentrating efforts to increase fulfilment. Additionally,

⁶⁶ UN General Assembly. (1984). *Convention against torture and other cruel, inhuman or degrading treatment or punishment*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

⁶⁷ UN General Assembly. (1989). *Convention on the rights of the child*. <https://www.ohchr.org/sites/default/files/crc.pdf>

⁶⁸ UN General Assembly. (1990). *International convention on the protection of the rights of all migrant workers and members of their families*. <https://www.ohchr.org/sites/default/files/cmw.pdf>

⁶⁹ Human Rights Committee. (2021). *General comments*. <https://www.ohchr.org/en/treaty-bodies/ccpr/general-comments/>

⁷⁰ Human Rights Council. (2022). *Special procedures of the Human Rights Council*. <https://www.ohchr.org/en/special-procedures-human-rights-council>

⁷¹ United Nations. Dag Hammarskjöld Library. (n.d.-a). *Research Guides: UN General Assembly Resolutions Tables: 77th Session (2022-2023)*. <https://research.un.org/en/docs/ga/quick/regular/77>

⁷² Department of Economic and Social Affairs for Indigenous Peoples. (2017). *Recommendations on Human Rights*. <https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/human-rights/recommendations-on-human-rights.html>

the taking for granted of some core fundamental rights, such as the right to vote and freedom of movement, can also be the reason for the purse of some newly conceived but less fundamental rights, such as the right to the internet, as I have already written before.

Another safe generalization lies in the implementation methods for some rights, such as public education, hospitals and security services, as there is almost no resistance to the opinion that the State should provide those rights. It is also the case for the organization, control and development of economic activity, as there has been more and more literature on the need for the State to supervise⁷³ or even lead the economic field⁷⁴. The human rights and international investment law field is one example, while the various writings about corporate social responsibility⁷⁵ and its guiding principles⁷⁶ are another.

A newly general feature of the current human rights regime, although questionable, resides in the more tolerable approach towards rights constraints for the fulfilment of the societal greater good. In the field, it used to be inconceivable, for example, to accept any restrictions on the freedom of speech as acceptable since the struggle was for it to exist and be respected. The same could be said for personal liberties and governmental surveillance methods, where the regime concentrated its efforts to maintain State surveillance and interference in people's private life under control and at a minimal margin.

This is not the case anymore, and there is an increasingly high number of constraints on the freedom of speech everywhere, to the point that some universities in the United States have specific places where speech is uncontrolled, called Campus Free Speech Zone⁷⁷, and other spaces where the speech is much more restricted, called Campus Safe Space Zone⁷⁸. This means that individuals have to control their speech since free speech has become the exception. The same has

⁷³ Dommen, C. (2022). *Human rights economics an enquiry*. Bonn, Germany: Friedrich-Ebert-Stiftung. <https://library.fes.de/pdf-files/bueros/genf/19387-20220725.pdf>

⁷⁴ The New School's Institute on Race, Power and Political Economy. (2023, April). *Economics reimaged: A discussion on building a human rights economy*. New York: The Aspen Institute.

⁷⁵ Ratner, S. R. (2001). Corporations and human rights: A theory of legal responsibility. *The Yale Law Journal*, 111(3), 443–545. <https://doi.org/10.2307/797542>

⁷⁶ UN Human Rights Council. (2011). *Human rights and transnational corporations and other business enterprises*. General Assembly, UN. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>

⁷⁷ Sykes, E., & Eidelman, V. (2019). *Free speech: When colleges confine free speech zone it isn't free*. <https://www.aclu.org/news/free-speech/when-colleges-confine-free-speech-zone-it-isnt-free>

⁷⁸ Nelson, M. (2021, August 11). Black and brown students are in need of safe spaces on campus! *Forbes*. <https://www.forbes.com/sites/civication/2021/08/11/black-and-brown-students-are-in-need-of-safe-spaces-on-campus/?sh=3c6759f46000>

happened to surveillance and interferences on private life; there used to be no acceptable middle ground where the regime would accept to compromise on the “if, when and how” the State would be allowed to watch and record our private lives. Much has changed since then, and there has been less and less pressure from the regime to stop governments despite the continuous warnings about the digital surveillance threat; check this General Assembly resolution on the matter⁷⁹. Currently, the remaining efforts seem to be concentrated towards regulating how the State should do it⁸⁰ and blindly trusting that these entities will respect it differently from centuries past.

There are many other examples, such as immigration and gender and racial quotas, where the regime has shifted from a more rights defender position to a compromised one that accepts a rights reduction for what could be identified as the common good. These compromises may happen by challenging an identifiable threat such as hate speech, terrorism, the “far-right”, etc. However, it is not the objective here to question the existence or importance of the threat, but instead examine the rights compromise itself as the solution for such threat and, more importantly, what it means for the political framework of the regime.

If we are then to position the current regime on the political framework of the Political Compass, and starting with the vertical axis, it is safe to say that the regime has indeed become less libertarian on its agenda by accepting to compromise on its fundamental aim of protecting individual rights and by accepting and proclaiming objectives that go against those rights. The regime becomes less libertarian because the only possible way to enforce such an agenda of greater goods is by using the State force to implement these measures. Take the example of racial quotas in education, and here again, not questioning the necessity and importance of a solution for racial inequality and systemic discrimination, for them to be implemented, it is necessary a two-fold measure, firstly the quota defenders will use coercion to create uneven criteria for admission, be it by law or other means of regulation, an action that will, in itself, need to be enforced. Secondly, as a consequence of this first measure, there will emerge constraints on other individuals’ fundamental right to education created by the first coercive measure; since the number of university seats is fixed, someone will inevitably be left out, and the policy has chosen who.

⁷⁹ UN General Assembly. (2015). *The right to privacy in the digital age*. United Nations.

⁸⁰ Reporters Without Borders & Association for Progressive Communications. (2014). *13 principles for a human rights respecting state surveillance framework*. Electronic Frontier Foundation. https://www.eff.org/files/filenode/joint_statement_on_surveillance_hrc24.pdf

The tolerability of the current regime for the constraints created on some fundamental rights happens due to pursuing these different goals, a measure that has unexpected consequences. As has been made clear, the focus has shifted from protecting individual rights to fulfilling collective goals. The interpretation conferred to the right of property on land, for example, has shifted drastically from its absolute protection of particular property to the social function and value of a property⁸¹, basically stating that a property has value if, and only if, it contributes to societal development and, again, common good.

Similarly, on its horizontal axis, the regime has shifted much from its soft-right position towards a leftist one when positioned on the Compass. This has happened as natural progress for developing the fulfil criteria of the respect, protect and fulfil framework. As the regime has shifted towards a more fulfilling prone and since it has chosen the State to become the entity that is responsible for the fulfilment of all those rights, it has necessarily to accept that the State will need more capital, funds and economic control, which justifies the left yaw itself.

Additionally, it is to be determined if the State entity desired or has been forced to do so. Still, the various human rights courts' decisions punishing the State for the lack of fulfilment of several rights and all the activism demanding the State to embrace this significant role have made the change inevitable. The logical path is clear, as the courts, activists and international bodies do require the State to do more through State Obligations⁸², and since resources are not infinite⁸³ as some wish, the only available path for a State to do more is by collecting more per capita, which in turn means higher economic control and less private capitals. This clearly does not mean that a State that increases its capital earnings and expenditure necessarily will become an authoritarian regime⁸⁴, however in such a situation, it will need to use more or more robust measures of coercion to collect more capital from its population and, as a consequence, there will be less space left out for private endeavours.

⁸¹ Foster, S., & Bonilla, D. (2011, November 15). The Social Function of Property: A Comparative Law Perspective *Fordham Law Review*, 80, 101.

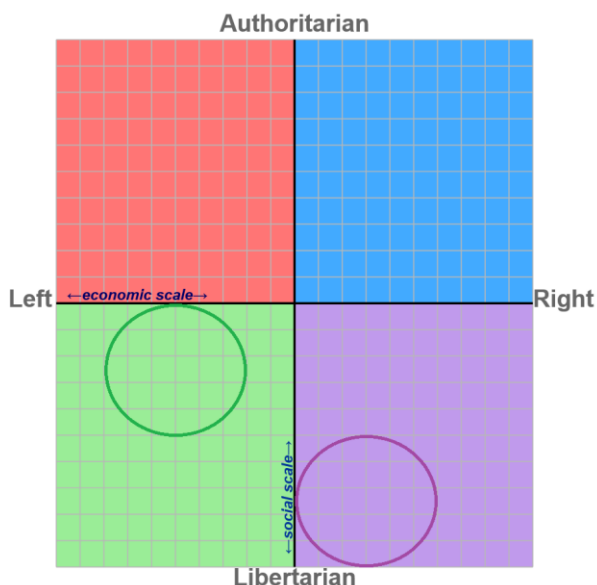
⁸² Ramcharan, B. G. (2011). The Limburg Principles On The Implementation Of The International Covenant On Economic, Social And Cultural Rights. In *The Fundamentals of International Human Rights Treaty Law* (pp. 207-222). Brill Nijhoff.

⁸³ Porter, R. L. (1965). "Scarcity" in economic theory and policy. *Social Science*, 40(1), 22–30.

⁸⁴ Garcia, M. M., & Von Haldenwang, C. (2016). Do democracies tax more? Political regime type and taxation. *Journal of International Development*, 28(4), 485-506.

3.3 The shift from Libertarianism to Collectivism

With both political frameworks set for the human rights regime, there is now sufficient development for a comparison to be drawn, and one could then see that the promoted shift has drastically changed the regime's perspective, objectives and evolution over the years. The Political Compass itself can be used to visualize the regime's change over time, as below:



In summary, the graphical evolution of the Regime over time represents a gradual shift from the purple circle to the green one. Due to its incremental progression, it is impossible to pinpoint precisely when it happened or by which specific measure since it is the sum of all small court decisions, political policymaking, advocacy activism and academic writing. However, by zooming out on the timeframe, it becomes clear that the regime has become less libertarian and more economically leftist. This text does not attempt to predict the future and show where the HRR may be going; in reality, it goes in another direction and focuses on what can be considered the most important consequences of this regime shift.

4. The consequences of an expanded State

4.1 The End of civil society

The first consequence of this regime shift towards the development of a more robust State-centric view of human rights development is the dissolution or obsolescence of the civil society organizations (CSOs) and charity institutions, Lund PhD students Soumi Banerjee and Rishi Jha have written more about this here⁸⁵. This simple topic, however, has many layers to unfold. Firstly, in this text, the institutions that are going to be considered civil society organizations and charitable institutions are the ones that rely entirely or primarily on private funds and efforts to exist and perform their activities. As such, we will call these institutions traditional civil society and depart them from these now ever more common institutions that have their funds drawn primarily from government funds or through State companies, which are going to be called tax-funded civil society.

It is an undeniable truth for anyone who works in the human rights field that private funds are less and less available to be gathered for civil society causes⁸⁶. What needs to be more evident, however, is the reason. While some attribute it to businesses' greed, others attempt to draw a connection between the neo-liberal economy and technological development as the cause. On the contrary, this thesis argues that the absence of funds and interest from the private capital in civil society happens mainly because these funds are already being drawn to the State, which is doing activities that used to belong to the traditional civil society. The logic is simple, if we consider the proportional amount of funds available in the community for charity and CSOs as fixed and the Regime endeavour to increase the State fulfil of rights, then the funds that once belonged to classic CSOs by private funding are now used by the State, which is acquired as a result of higher taxation, to comply with its newer extensive obligations.

But there is more here; even if we consider a situation where the State directs all these new funds to tax-paid CSOs, the result would be different from if the funds were donated privately to classic CSOs. Firstly, when the funds are granted, the donor, whomever it may be, screens the

⁸⁵ Banerjee, S., & Jha, R. (2023). Civil society organisations under pressure in the world's biggest democracy. *The Loop*. <https://theloop.ecpr.eu/civil-society-organisations-under-pressure-in-the-worlds-biggest-democracy/>

⁸⁶ European Union Agency for Fundamental Rights. (2017). *Challenges facing civil society organisations working on human rights in the EU*. Publications Office of the European Union. https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf

CSOs means and methods, project and objectives, as always. The issue is that the donor being a State or a private individual dramatically changes the scope of projects that will receive funds, its methodology, its objectives, and the honesty and efficiency of the funds allocation by the CSO. This is even more evident where the State is not a fully functional democracy with checks and balances systems. Secondly, classic private funding had much less power to influence the CSOs on its objectives, neutrality and even use of capital. In many cases, the State-funded CSOs have to agree on State interest and agenda at best or be part of corruption schemes at worst. Thirdly, the speed at which the funds are allocated or removed from a specific program is very different if it is private or public funding since all the governmental bureaucracy requires a considerable timeframe for the funds' allocation. The same happens to the checks on the CSOs' activities as the private donor will have a higher stake to lose by the incorrect use of funds than the State employees with the State funds that do not belong to them.

However, the main point to be drawn from this thesis when we consider CSOs is that the general decline of interest in CSOs that have been experienced in the last century is a straightforward consequence of the regime advocacy towards the absorption of the classic CSO and charity activities by the State, in the form of legal obligations. The individuals in society have realized that if the State is already attempting to perform such activities, private individuals will have less interest in organizing and pursuing the same goal by competing with the State. This point is also connected to the fact that the remaining CSOs are looking more and more like an arm of the State, a body that executes the activities the State chooses as suitable instead of its master⁸⁷. While it is not the objective here to predict the future, it should be expected that if the current State-centric trend continues, the CSOs will look more and more like governmental organs that perform such activities for the State.

It is only required to look at the CSOs' situation in different States to exemplify the arguments presented here. The practical case of CSOs in China⁸⁸, a State that has more control over its society than its Western peers, is deplorable, there exists almost no civil society effectively there, and the effective framework implemented by Xi Jinping has been to demobilize and

⁸⁷ Snowdon, C. (2014). *Where does the state end and civil society begin?* <https://iea.org.uk/blog/where-does-the-state-end-and-civil-society-begin>

⁸⁸ Teets, J. (2014). *Civil society under authoritarianism: The china model*. Cambridge: Cambridge University Press.

incapacitate the remaining ones, as this report shows⁸⁹. The ones that do exercise their activities do it informally and by the exercise of soft pressure, with the constraints that any action must be State compliant or it may be shut down. Other examples are the Venezuela parliament's law has been approved to regulate how CSOs may be allowed to work⁹⁰, and the situation in Italy, where civil society groups went to trial due to the rescue of migrants at its sea⁹¹.

4.2 The cost of rights' fulfilment

We have roughly doubled the number of human rights since 1948, and humans are now more protected than ever, which sounds like a remarkable statement. But before we make any positive argument on those claims, we have to understand, at least superficially, the economic meaning of this and what it could imply. Thus, it is also essential to consider the economic implications of a State centric human rights agenda.

Before diving into the opportunity cost assessment, it is not contested in here the argument presented by a more significant part of the regime. It argues that the cost analysis ought to be a cost-benefit analysis, as the rights tend to bring a benefit connected with its cost. This thesis, in reality, exposes hidden costs that are not being considered in these analyses, which in fact, shift the balancing of the cost-benefit into the opposite way on the State fulfilment of rights perspective. Therefore the exposure of such costs is the fundamental objective of this topic.

4.2.1 Opportunity cost

The most critical factor to be considered in human rights advocacy, in general, is the opportunity cost⁹². For a lawyer to understand it requires more than a simple explanation since it is a deeply rooted concept that goes beyond just economic calculation and has severe real-life implications.

⁸⁹ CIVICUS. (2022). *State of Civil Society Report*. Civicus. https://www.civicus.org/documents/reports-and-publications/SOCS/2023/state-of-civil-society-report-2023_en.pdf

⁹⁰ Martínez, D. (2023). *Claves del proyecto de Ley que busca "regular" a las ONG en Venezuela*. Efecto-Cocuto. <https://efectococuyo.com/politica/claves-proyecto-ley-regular-ong-venezuela/>

⁹¹ OHCHR. (n.d.). *Italy: Criminalisation of human rights defenders engaged in sea-rescue missions must end, says UN expert*. <https://www.ohchr.org/en/press-releases/2023/02/italy-criminalisation-human-rights-defenders-engaged-sea-rescue-missions>

⁹² Cambridge Dictionary. (n.d.). *Opportunity cost*. <https://dictionary.cambridge.org/us/dictionary/english/opportunity-cost>

There are at least two options whenever a human choice is necessary in any context, and once the choice is made, the losing option is deleted from the world of possibilities, and a price is paid for the winning option. This price can be economic, social, political, moral or the connection of several of those. The following sub-chapter discusses this price, while this focus on the losing option. Opportunity cost is the unseen and forgone benefit of the losing possibility that has not happened due to our previous choice.

To exemplify, assume that State A has a tax of 10% on food items, has plans to increase it to 12% and plans to use this extra revenue to provide health services. This 2% would then be used to provide better human rights protection on the right to health, which should undoubtedly be a serious alternative to be pursued. However, before the policy implementation, other options should be considered, such as keeping the rate as it is, lower or extinguishing it. The tax raise may provide a better healthcare service. Still, it may come at the expense of less food on the plates of the people with fewer conditions to afford it, which in turn may lead to hunger or malnutrition, thus affecting the right to health and resulting in an overall negative result. All of this is considering a situation of 100% State efficiency. However, we all know that most States have a lower efficiency score due to public services nature and corruption⁹³. On the other hand, a tax removal would make food prices more affordable, and the State would need to provide less healthcare resulting in better health service overall, as this article shows⁹⁴.

If a proper opportunity cost assessment is implemented, there will be an understanding of the best or least worse measures to follow by the policymakers and the regime. A human rights lawyer must consider this fundamentally vital factor when advocating for any measure to be implemented or changed. It is a fundamental duty of a writer to provide and analyze all available options before proceeding to support any alternative.

While this all seems feasible and attainable, the point of this whole section is that there has been a forwent factor in the opportunity cost analysis, which is to consider what each available option would mean for State power and control over society and its individuals. Returning to the previous example, among all available options, the prospect of tax-raising would be the one that has the potential to increase the State's power and control over society since the State use of funds

⁹³ Malyniak, B., Martyniuk, O., & Kyrylenko, O. (2019). Corruption and efficiency of public spending in states with various public management types. *Economic Annals-XXI*, 178(7-8), 17-27. doi: <https://doi.org/10.21003/ea.V178-02>

⁹⁴ Zheng, Y., Zhao, J. J., Buck, S., Burney, S., Kaiser, H. M., & Wilson, N. L. (2021). Putting grocery food taxes on the table: Evidence for food security policy-makers. *Food Policy*, 101, 102098. doi:10.1016/j.foodpol.2021.102098

for healthcare is potential, and the funds could be diverted, for example, for surveillance or protests suppression. Even if it is the case that the funds are used for healthcare, it may still become a means of patronage and exclusion of dissidents or minorities; more on this in sub-chapter 4.3.

On the other hand, the alternatives to reduce or extinguish taxation have more potential to reduce State influence and control on individuals. Even though the State may use other means to attain such funds, a general tax reduction necessarily means, over the long term, an overall decrease in the size and apparatus of the State. Being it an Authoritarian State or not, it may be a helpful alternative to reduce its violations and pressure on its citizens.

The conclusion to be reached then is that the human rights regime is missing the point in its opportunity cost analysis, if ever done, by not considering the factor of adding more control and power to the State over individuals' rights and lives. The regime's current political framework points toward advocating for providing more capacities to the State to deal with all its obligations and the newly forged demands. Still, it may result in pursuing an option that provides the worse overall result for human rights development. This option of empowering the primary human rights violator with more resources and strength and hoping it uses those in a human rights-friendly manner seems naive at best.

4.2.2 The cost of a right

Sometimes we need to remember this, but rights have a cost. This cost is not necessarily economic but usually encompasses it as one of its multiple factors. The term cost here addresses all the opportunity and actual costs that a fundamental human right may generate regarding a society's moral, political, social and cultural life. A community where individuals do not understand or ignore the implication of those costs to the existence of their rights is faded to self-destruction, and the advocacy for human rights must address it at all times in its writings or attempts to reshape society.

A great example of a human rights advocacy that has had severe economic costs for the developing world is the possibility of cancellation or modification of an investment contract between a private actor and a State due to situations such as a lack of social acceptability of a proposal or the absence of consultation for local communities. This is also a great example of a State's legitimacy problem, since either the State represents its citizens legally or not. If the State

represents its citizens, then the lack of consultation cannot be an excuse, and the non-fulfilment of the contract by the State demands reparations, or the State does not represent its citizens, and then the State must not sign any contract at all and leave the contract acceptance decision for the affected communities. However, questioning the efficacy of such types of contracts is a sufficient issue that can lead to the withdrawal of multiple present and future investment contracts, via an opportunity cost analysis, for the places that may need it the most. In this case, then, the right to consent after its own State signs the contract on behalf of its members is a right that may have a high economic cost for the entire society.

How the rights are fought or implemented in a society can also be a great opportunity, or issue, for its cultural and social development. Suppose rights are implemented so that individuals bear the cost of their fundamental rights or at least share a part with the public sector. In that case, it will create social responsibility and ownership of those rights while promoting participation and maybe even democracy⁹⁵. On the other side, if the entire task of rights promotion, protection and fulfilment is concentrated into one single body entity that has little to no connection with its subjects like a mighty or authoritarian State, then the expected result is a society where individuals are not interested, aware or responsible for it. The ordinary citizen in the Russian community is an excellent example of indifference to human rights issues⁹⁶.

I feel that in the early days, to have a human right was comparable to owning a coin, in the sense that the responsibility for a right existed on one side of the coin, while an intrinsically connected duty was on the other side, and it was a property of the individual. Therefore the individual owned it and was responsible for its protection and continuity. A coin with only one side does not exist in the material world; thus, it must have two opposite sides to become real. Transporting the metaphor to the human rights language, the right to freedom of movement was one side of the coin, and the duty to restrain from impeding other's movements was on the other side; the right to a fair trial was on one side, and the obligation to accept the court's decision on the other, similarly to the right to education and the duty to seek knowledge and get educated, the right to access to water in one side and the responsibility to care for water sources on the other, the

⁹⁵ Wolfe, J. D. (1985). A Defense of Participatory Democracy. *The Review of Politics*, 47(3), 370–389. <http://www.jstor.org/stable/1406809>

⁹⁶ The Moscow Times. (2023). *Confusion and indifference but no panic as russia tightens draft rules*. <https://www.themoscowtimes.com/2023/04/13/confusion-and-indifference-but-no-panic-as-russia-tightens-draft-rules-a80817>

right to health and the duty to have healthy habits, and so on. I consider this the moral cost of human rights, and all fundamental rights have their intrinsically connected responsibility that necessarily relies on the individual for its fulfilment.

The moral cost is the most serious cost in the current human rights policymaking as the regime seeks to transfer the entire responsibility that comes with the rights and duties to the State. The coin's ownership is being moved entirely to the State, with both right and duty sides. The clearest example of such a problem can be found in the right to education as it was the parents', whoever they are, responsibility to care for their children's education. This right included the duty to care for the children's homework, the transmission of good manners, how to behave in public places, how to eat correctly and so on. They may have used educational services, public or private, to help them acquire the knowledge they may not have on this journey. However, their responsibility was still to make it as best as possible for their offspring. As the State-centric view now claims that both the provision of education services and the formation of the individual as a human being is a task for the State educational services, it then removes the responsibility of the family adults from the equation entirely, creating both an irresponsibility for the family on the outcome of the prole education and a power for the State on the control of how this task is performed.

Other examples include individuals that now want to have tax-paid bariatric surgery because they are not eating healthy and claim that it was a State's responsibility to grant them healthy food and individuals who do not have access to water due to their pollution of water sources by, for example, lousy sanitation and waste disposal. In conclusion, the transference of the rights and duties responsibility ownership from the individuals to the State will inevitably create a society of spoiled and irresponsible individuals who do not know the price to be paid for the existence of their rights and that are going to become more and more reliant on the State figure to sort it all out instead of themselves.

4.2.3 The moral toll - Should all rights be entirely fulfilled at all times to everyone?

Still, on the moral aspect of it, we shall imagine for a while a fictitious society in a distant place where exactly all individuals, citizens or not, of all possible origins, colours and genders, have all their rights, the entire list of 58 to 64 rights already mentioned, wholly fulfilled all the time. Setting

aside the feasibility of this society and the powers of such a fictitious State for a while, we must think about what it would mean to achieve what is supposed to be, in reality, the final goal of the current human rights regime. This society would have everything provided for everyone, food, health, sanitation, housing, water, education, work and its rights, living conditions, access to the internet, safety and security, a sustainable environment and much more.

The first question that comes to mind in imagining a fully human rights-compliant and fulfilling society would be the price to be paid to achieve such a goal. “There ain't no such thing as a free lunch”, as Milton Friedman has already said⁹⁷, and it is only possible to imagine that the price to be paid to have the fulfilment of all those services and utilities must be extremely high. It may come at the expense of our freedom of choice and freedom from fear⁹⁸; since the State would provide it all, it can claim that it should be entitled to ask for it all from the individual. That is somewhat what the Chinese model tries and fails to reproduce in a society guided in depth by a central authority that attempted to control its members’ behaviour and social life. It can come at the cost of our freedom of thought in a futuristic reality where we may all be guided by a general purpose Artificial Intelligence (AI), which would be capable of destroying human individuality and standardizing all behaviours and desires. It may come at the cost of an 80%+ tax rate in a fully economically controlled society where the State decides what the acceptable property for each person is, or maybe it can come at the expense of something else that is impossible to foresee at the present reality and time. In any case, we, as part of the human rights regime, must ask ourselves daily if those are the types of societies we are willing to live in and if this is a price we are ready to pay.

The second question that comes to mind in such a society, being a more philosophical inquiry, is about individuals’ objectives. A straightforward example would be, provided that the State fulfils all my rights, why should I bother to work? If one can forego paying bills and fulfilling contracts without consequences since it is all part of their minimum standard of living, there is no simple reason to do so. Evidently that not all individuals would stop working as a consequence, but it would become more and more tempting to do so as this society continues to exist. In contrast, it would become more and more costly for the remaining workforce to sustain this apparatus. For

⁹⁷ Friedman, M. (1975). *There's no such thing as a free lunch* (pp. 113-15). LaSalle, IL: Open Court.

⁹⁸ Roosevelt, F. D. (1941, January). *The four freedoms*. State of the Union Address, Washington: D.C. <https://www.fdrlibrary.org/four-freedoms>

this, the OECD Education at a Glance Report⁹⁹ already brings a good picture, as it shows on page 49 the percentage of young adults that are not employed, studying or in any training (NEET). The rate for Brazil is 35.9% or 12 million individuals, and the interesting factor is that there are studies, such as this one¹⁰⁰, showing that young adults who receive the Brazilian's equivalent of a Universal Basic Income¹⁰¹ (UBI) are more likely to be in the NEET group. In summary, providing "free" money has increased the likelihood of young adults stopping working and studying.

But this question goes far beyond that simple example; Thomas Jefferson, when writing the draft¹⁰² of the United States Declaration of Independence, wrote that "We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from that equal creation they derive rights inherent & inalienable, among which are the preservation of life, & liberty, & the pursuit of happiness;". In his writing, Jefferson connects a strong pro-human rights assertiveness with something immaterial and subjective as the pursuit of happiness. Nevertheless, it may seem that this final part of this quotation poses an issue for a fully fulfilling human rights society, according to today's standards. Human beings need an objective, we have plans, dreams and wishes, and for a fulfilling life to happen, we need to grow, prosper and archive. The search for meaning has been written as the most fundamental human drive by Viktor E. Frankl,¹⁰³ and when connecting it to the pursuit of happiness, it seems that it should not be the final goal of any human being, thus humanity, to have everything fulfilled in their lives by other being or an entity. Human rights should instead be about creating capabilities to enable individuals to pursue their happiness, whatever it means for each.

⁹⁹ OECD. (2022). *Education at a glance 2022: OECD Indicators*. OECD Publishing. <https://doi.org/10.1787/3197152b-en>.

¹⁰⁰ Dos Santos Jácome, L. (2019). *Programa Bolsa Família: análise sobre o mercado de trabalho secundário e a geração "Nem-Nem" nas áreas urbanas e rurais do Brasil* (Dissertation). Universidade Federal Do Ceará, Fortaleza.

¹⁰¹ Nettle, D. (2018). Getting your head around the universal basic income. In *Hanging on to the edges: essays on science, society and the academic life* (1st ed., pp. 163–180). Open Book Publishers. <http://www.jstor.org/stable/j.ctv8d5sn3.13>

¹⁰² Jefferson, T. (1776). Rough draft of the Declaration of Independence. *Ashbrook Center for Public Affairs*. <http://teachingamericanhistory.org/library/index.asp>.

¹⁰³ Frankl, V. E., Kushner, H. S., & Winslade, W. J. (2006). *Man's search for meaning*. Boston, MA: Beacon Press.

4.3 Rights, Entitlements and Patronage

4.3.1 What is a right

The first Article of the UDHR¹⁰⁴ expressly says, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” In total, the declaration uses the word “right” 55 times, but none of them defines what it would mean. Through its legal institute, Cornell Law School conceptualizes a right, in the meaning used by the UDHR, as “1. A power or privilege held by the general public as the result of a constitution, statute, regulation, judicial precedent, or other types of law”¹⁰⁵. Observe that the term privilege here is used the meaning an advantage that an individual or a group has over others and not the definition of legal privilege as in the case of attorney-client.

After having due consideration to this definition, there is still a missing factor to contribute to the definition of a right that should be added to enhance its comprehension considering that the general public holds this power or privilege, thus anyone; we must still ask ourselves against whom this power should be held.

The development of this question is of utter importance to understand what a right is, the difference between having a right and having a privilege, and the consequence of mixing both. Power cannot be created in a society, it can only be harnessed or directed, and the only way an individual or an entity draws more power to itself is by using coercion or voluntary cooperation. The legal instrument that creates a right does that by the transfer of power from something, or someone, to something or someone else. For example, for private property to exist, thus control over a piece of land, it was necessary to constrain the power of movement from others; for a police force to exist and maintain public order, a diminishing power in an individual’s capability to self-protect needs to happen. For a private company to get filthy rich, it requires the consumer to empower it by purchasing its products; thus, the act of a purchase is a voluntary cession of power from the consumer to the business.

The remaining question to define a right is from whom we have to draw power to make our rights come into existence. The answer to this matter is relatively simple if we look at the most

¹⁰⁴ UN General Assembly. (1948). *Universal declaration of human rights*.
https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf

¹⁰⁵ Legal Information Institute. (n.d.). *right*. Cornell Law School.
<https://www.law.cornell.edu/wex/right#:~:text=1.,of%20specific%20events%20or%20transactions.>

fundamental rights portrayed, for example, in the UDHR. The right to life, liberty and security in Article 3 says, “Everyone has the right to life, liberty and the security of person.” While Article 4 prohibits slavery by saying, “No one shall be held in slavery or servitude,” and Article 5 expressly prohibits torture by arguing that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”. Expressly, those rights only define who are the individuals that can enjoy those rights, thus everyone. Nevertheless, these articles implicitly state that those rights are held against everyone else, including public and private entities.

That being said, we can now define a right as a power or a privilege held by individuals against everyone else as a consequence of a legal provision. This definition is of high importance if we understand that the main factor of a right is really against whom it is held and where its power is drawn from.

4.3.2 A power or a privilege

According to Cornell, a right can be a power or a privilege. Although a superficial reading would understand the use of both words as synonyms, the previous development of the concept of a right would make it much easier to see the difference between both terms and the main point of this chapter. When a right derives from power, as previously stated, it draws its validation from and provides a right to every individual in society, meaning they are universal on both sides of the equation. For example, everyone has a right to get their life respected by everyone, and no one can own anyone.

Nevertheless, a right can also be a privilege. Using the same equation and logical path, we ought to understand that a right is a privilege if it is not exercisable by all individuals in a society, or it is held against some specific individuals in a society, or both. To exemplify, until around the 1950s, some public transportation could only be used by individuals of white skin colour in the United States due to the Supreme Court decision in the Case *H.A. Plessy v. J.H. Ferguson*¹⁰⁶ in 1896. This can be considered a “privilege right” simply because it was a right conferred to some individuals in society against others. It was not a situation where everyone was entitled to this

¹⁰⁶ *Plessy vs. Ferguson*. (1896, May 18). *Records of the Supreme Court of the United States; Record Group 267*; 163, #15248, National Archives.

right, and everyone else had it held against since the right existence itself had its objective to provide a unique position for some individuals.

Looking at privileges through this lens, we conclude that not all rights are equally provided or held. Some are universal on both ends of the equation, whereas others are not and offer a specific privilege to some individuals, classes or groups against others. Here and onwards, the rights that are universal on both ends will be called power rights, and the rights that come at the selection of some individuals, classes or groups against others will be called privilege rights.

The bus segregation ruling by the US Supreme Court is not a single-out example from a different time when human rights did not exist. There are in human history several examples of cases where the privilege of a group has been called a right, such as the more beneficial retirement schemes that public employees enjoy over their private peers, the allowance that exists in some places for free public transportation for students or military personnel on their leisure time, and many more. The human rights regime itself has been creating a set of different privilege-rights within its advocacy by the defence of policies for positive discrimination, such as the right to Free, Prior and Informed Consent (FPIC) for indigenous communities on any project that may affect them, as it is not a right that has been advocated to be equally provided to non-indigenous individuals in the same situation. Not all privilege rights are intrinsically or morally harmful, as the first example, even some of them are morally and socially acceptable, such as separating specific parking lots for individuals with a disability.

The real point is that each privilege provides a right for some members of society at the expense of others. This is a failure point in the whole rights system, as it goes against the fundamental principle of equality and non-discrimination. This is a feature of the current human rights advocacy that a set of bad-intentioned individuals could easily exploit, as has already been the case in a not-distant time.

4.4.3 Patronage - The fulfilment of rights as a political tool and the cultivation of dependence

Different individuals or groups can exploit this failure point in several ways. Firstly and most importantly, a ruling governor or government could use this capacity of privilege-right creation to sustain itself in power or ease the political situation at the expense of some underprivileged members of society. The 90 days yearly holidays for judges in Brazil, compared to 30 regular days

for any other employee, is an example. This privilege for judges helps the government maintain power while the taxpayer bears the cost of financially supporting an extended holiday. Not only the use of the State apparatus can be used to provide privilege for some politically most valuable members of society, but it could also be used to create means of binding the political will of less aware members by the cultivation of dependency methods through welfare measures, see more of this on article from Dan Slater and Sofia Fenner¹⁰⁷. A political leader or party in power that creates a brand new welfare program for some specific members of society that cannot distinguish between the leader and the program is cultivating a dependency method by creating a privilege.

Secondly, a group of well-connected or influential individuals can harness this legal openness to create or pressure representatives to develop a set of specific privileges for their benefit. The European subsidies to its agricultural sector¹⁰⁸ are a great example of such, even though it is evident that the official discourse about the measure is not going to be about the creation of a privilege for private businesses but rather about something positive for society, as supporting local producers and so on.

Thirdly, individuals who share the same political or religious view can use this breach in the equality principle to exploit the lawmaking process to undermine political institutions, attempting a regime change if no resistance is met. The failed example in the case of Refah Partisi (The welfare Party) and others v. Turkey¹⁰⁹ signals a situation where the members of the party, by the exploitation of the multiparty system, attempted to exert pressure to pass laws and decrees that provided privileges for Muslim individuals in the Turkish society. There were questions raised to the court on the party's underlying plan to overthrow the democratic regime, and it ultimately led to the dissolution of the party itself.

Fourthly and finally, a government could use the privilege creation capability to expel individuals out of the societal coexistence, usually minorities or outliers, by a negative measure that makes it exceedingly harder or impossible for those who are not compliant or in acceptance

¹⁰⁷ Slater, D., & Fenner, S. (2011). State power and staying power: infrastructural mechanisms and authoritarian durability. *Journal of International Affairs*, 65(1), 15–29. <http://www.jstor.org/stable/24388179>

¹⁰⁸ European parliament. (2021). *EU agriculture statistics: subsidies, jobs, production (infographic)*. <https://www.europarl.europa.eu/news/en/headlines/society/20211118STO17609/eu-agriculture-statistics-subsidies-jobs-production-infographic>

¹⁰⁹ Refah Partisi (The Welfare Party) and Others v. Turkey, Merits, App no 41340/98, 41342/98, 41343/98, 41344/98, ECHR 2003-II, [2003] ECHR 87, (2003) 37 EHRR 1, IHRL 3348, (2003, February 13). Council of Europe: European Court of Human Rights [ECHR]; Grand Chamber [ECHR]. <https://opil.ouplaw.com/display/10.1093/law:ihrl/3348echr03.case.1/law-ihrl-3348echr03?rskey=GsnC36&result=1&prd=OPIL>

to continue to bear the cost. A situation where religious symbols are imposed in public spaces, such as crosses in Italy schools¹¹⁰, or even into the wearing of individuals, such as the hijab in Iran¹¹¹, is creating a privilege for individuals in society that are compliant with a specific religious view while exerting a negative pressure on non-compliant individuals to adjust or leave.

¹¹⁰ Lautsi and others v Italy, Merits, App no 30814/06, IHRL 3688. (2011, March 18). European Court of Human Rights [ECHR]; Grand Chamber [ECHR]. <https://opil.ouplaw.com/display/10.1093/law:ihrl/3688echr11.case.1/law-ihrl-3688echr11>

¹¹¹ Rehman, J., Working Group on Discrimination Against Women and Girls, Ghanea, N., Xanthaki, A., Khan, I., & Shaheed, F. (2023). *Repressive enforcement Iranian hijab laws symbolises gender based*. <https://www.ohchr.org/en/press-releases/2023/04/repressive-enforcement-iranian-hijab-laws-symbolises-gender-based>

5. Final Words

Human rights are, at its core, about liberty, human self-agency and freedom. These imperatives were the primary drives for the foundation of the entire human rights endeavour in 1948, and it will never be possible to reconcile those core values with a State centric authority's view and a collectivist mindset. Any past attempt to do so has failed, and any present and future ones will have the same fate.

Human rights rose to become a mainstream concern due to the exact situation of State atrocities against powerless individuals during the Second World War, and, hopefully, it is not going to be faded to commit the naive mistake of relying on the same States to control and manage those so long fought and valuable fundamental rights.

It has never been the objective of this text to propose any specific solution for the raised concerns since it had the practical and vital task of showing how deep and serious this problem has become in the human rights regime and opening the eyes of human rights advocates and scholars on this. A public, broad and profound debate on this issue needs to start and ultimately question every member of the regime for a comprehensive and participative solution to be found.

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