

Reframing citizenship and migratory cycles *Reencuadrando la ciudadanía y los ciclos migratorios*

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Summary: 1. Introduction. 2. Citizenship: historical aspects and current context. 3. Citizenship: a new signification. 4. Global citizenship as a legal alternative for political and territorial limits. 5. Conclusion. References

Abstract: The complexity of human relations is a concern of those who theorize socio-juridical contemporaneity. Historically, humanity presents the characteristic of the struggle for human powers and access to the spaces of coexistence. The phenomenon of migrations, ancient and contemporary, is no different. With this, the theme of this research is the complexity of human relations, with emphasis on the re-signification of the citizenship concept. Therefore, it aims to present some alternatives so that humanity can face this phenomenon with a fraternity spirit and solidarity actions, aiming at a more tolerant posture of acceptance of the characteristics of the other as being worthy of respect. Thus, the problem to be answered is: how can citizenship be an alternative to relativizing physical and cultural boundaries in favor of free migratory phenomena? The research is developed through the deductive method and the bibliographic research.

Keywords: Human Rights; Migration; Citizenship; Tolerance; Humanity.

1. Introduction

In recent decades, the phenomena of globalization and transnationality have impacted human life in its most diverse aspects. In the legal sphere, especially in matters of environmental and socio-environmental law, the effects of these transformations can be summarized as follows: the benefits are for few; the losses, for many. This statement reflects the idea that environmental damage and damage are socialized by everyone, but greed and the pursuit of profit, in the exploration of the natural world, are attitudes that exclusively benefit the business sectors in Brazil and the world.

The positive perspective of these phenomena corresponds to large corporations, favoring greater commercial and economic integration between different countries. World capitalism brought a mistaken idea of development, linked

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to the notion of economic growth, leading to excessive consumerism and generating a great demand for natural resources. With globalization, consumption and pressure on renewable and non-renewable natural resources, such as soil, forests, ores, and water resources, have increased.

Thus, capitalist society starts to make relations between human beings and the natural world complex, in the face of the devastation that occurred at world levels. The result of this panorama is the struggle for socio-environmental justice, which leads to countless movements in the face of the globalized world. In transit around the world, citizens seek the protection of fundamental rights that cannot be sacrificed in the name of economic progress, which results in constant struggles and social movements to guarantee rights.

Faced with new realities, the Democratic Rule of Law is in permanent construction, adapting to the historical moment lived and legitimizing demands regarding the conquests and the realization of human and fundamental rights. In short, the idea that society must be on the margins of the constitutional process is overcome. Based on this scenario, the proposed study has as its theme the link between citizenship and international migration. It aims to present alternatives so that humanity can face this phenomenon with a spirit of fraternity and solidarity actions, aiming at a more tolerant posture of acceptance of the characteristics of the other as being worthy of respect.

Considering that the receptivity of the States generates a situation of population contingent, with the need for the market to absorb human capital, in addition to issues of intrinsic law, such as housing, health, work, food, and transport. Faced with such a complex current panorama, the problem of this research is: how citizenship can be an alternative for relativizing physical and cultural boundaries in favor of a free migratory phenomenon? It seeks, in the course of this work, to answer this question, mobilizing deductive methodological reasoning, with qualitative bibliographic research.

2. Citizenship: historical aspects and current context

The classic origins of the term Citizenship are found in the Latin expression *civitas*³ and have a direct connection with polis as a nucleus or grouping of people in certain social spaces in antiquity. In this historical period, political participation was restricted to men: women, children, foreigners, or slaves were not considered citizens.

The Romans, in the classical era, considered the citizen who had rights and who was potentially able to exercise these rights freely. This conception reveals, in Rome, the limiting character of the citizen's performance, as one who belonged to a more privileged social class⁴. Historically, yet another form of social organization has been structured based on the hierarchy between social classes. The political participation of individuals was suppressed, because "[...] issues related to politics, gave way and space to concern with other issues, such as the religious plan"⁵. In the sense exposed by Arendt, the exercise of Citizenship was suppressed as it was not compatible with the social, economic, religious, and cultural configuration of the

³ For Pérez-Luño, Citizenship stems from this term. The category gives the individual the status of citizen, holder of rights and duties, as long as they are considered free in the Republic. PÉREZ-LUÑO, AE. *Ciudadanía y deficiencias*. In: *Doxa. Cuadernos de Filosofía del Derecho*. Alicante, n. 25, 2002. p. 183.

⁴ For Dallari, "[...] the free Romans had citizenship; they were, therefore, citizens, but not everyone could occupy political positions, such as senator or magistrate, nor the highest administrative positions. A distinction was made between citizenship and active citizenship. Only active citizens were entitled to participate in political activities and to occupy the highest positions in Public Administration. DALLARI, DA. *Direitos Humanos e cidadania*. São Paulo: Moderna, 2004. n/p.

⁵ ARENDT, H. *A Condição Humana*. 7. ed. Rio de Janeiro: Forense Universitária, 1995. p. 43.

period. There was inequality, poverty, misery, disease, and the division of society into classes intensified these differences. Religious conceptions were considered more important, regardless of human rationality or ancient philosophical precepts that guarantee human freedom and autonomy.

During the medieval period, the institution of the Church as a legitimate authority rejected the possibility of exercising rights, insofar as being a citizen implied being a Christian, provided that the person still had power and wealth. The citizen, during the Middle Ages, belonged to the clergy and the nobility, and the rest of the community submitted to divine designs. Although the human, according to religious precepts of the time, was created in the image and likeness of God, there was a political difference in what was related to the earthly condition. In this sense, dividing humans into different social classes, political privileges, and, among them, the exercise of citizenship, were specific to some social classes.

Little by little, medieval communities became towns and social clusters originated modern cities. The commercialization of products became more intense, the great navigations boosted the economy and the population contingent grew after the "Black Death". The discoveries in the areas of science, such as Chemistry, Physics, Biology, and Medicine also contributed to the quality of life of human beings and education started to be disseminated especially in the historical periods that followed the Renaissance and the Enlightenment. At the end of the Middle Ages, the overthrow of the Church's power caused a definitive social transformation. In the context of ruptures, the idea of Citizenship, at least on the European continent, was structured in a reconfigured society. The individual called for ideals of freedom, equality, and autonomy, while Democracy and freedom were necessary conditions to contain the abuse of monarchs. Movements such as Liberalism, the Enlightenment, and Capitalism, as a new model of production, stimulated a new worldview. This moment made possible the struggle for the recognition of rights and not only of duties of the individual.

In the 17th and 18th centuries, in Europe, among the bourgeois and liberal revolutions initiated by the economic power of the bourgeoisie, the French Revolution was the most important. The Freedom, Equality, and Fraternity triad enabled the rise of rights through the Declaration of Human and Citizen Rights (1798). Despite being exclusive to a certain section of the population, such as women and non-owners, the Declaration started a new legal framework in Europe⁶. From that moment⁷ on, the man was not only an individual but a possible subject of rights positive in the Declaration.

[...] this movement was very important because it influenced a large part of the world to adopt the new model of society, created as a result of the Revolution. It was at this moment and in this environment that the modern conception of citizenship was born, which emerged to affirm the elimination of privileges, but which, shortly afterward, was used exactly to guarantee the superiority of privileged new ones.⁸

Not for any other reason that arises "[...] a growing interest in equality as a principle of social justice and an awareness of the fact that the formal recognition of an equal capacity concerning rights"⁹.

The drastic political, social, and cultural transformations of the time culminated in the French Declaration, which resized the concept of citizen, who was able to act in the public space, in Democracy, participating in political directions through representativeness, eligibility, and other political rights. It is clear that Citizenship, in this historical context, was formally admitted, but materially it was not supported, due to the treatment given to women,

⁶ GRUBBA, LS. *Direitos Humanos e Desenvolvimento Humano*. Curitiba: Prismas, 2017. P. 10-30.

⁷ A way of life was desired that sprouted from within each individual and not as something imposed on them from outside. MARSHALL, T. *Cidadania, classe social e status*. Rio de Janeiro: Zahar, 1967. p. 62.

⁸ DALLARI, DA. *Direitos Humanos e cidadania*. São Paulo: Moderna, 2004. p. 19.

⁹ MARSHALL, T. *Cidadania, classe social e status*. Rio de Janeiro: Zahar, 1967. p. 83.

foreigners, the poor, and slaves. It was, in fact, a status that guaranteed political rights for determined individuals, and was linked to nationality to enjoy these conditions.

It is noteworthy that, in 1793, Article 4 of the Jacobin Constitution instituted that every adult foreigner, residing in France for a year, has the right to remain there and enjoy active citizenship, in an article considered to be “[..] first demonstration that defined foreigners and native population with equal rights and duties”¹⁰.

Another historical landmark was the advent of the Industrial Revolution and capitalism, a time when the category of citizen acquired a new perspective, liberal and egalitarian, and the participation of the “man” in political directions was only one facet of the condition of being a citizen. At this point, it should be noted that:

From the French Constitution of 1791, a differentiation was introduced between “citizenship” and “active citizenship”, also of Roman origin, which ended up giving citizenship a class content, clearly discriminatory. A very expressive data, sufficient to prove the possibility of manipulating citizenship, is the realization that the right to participate in political life, choosing and being elected, was reserved only for citizens. And citizen conditions, in turn, were reserved for male people who had a minimum annual income.¹¹

From the Enlightenment, on the other side of the ocean, still in 1776, the American Revolution, in independent America, translated the idea of Citizenship linked to a list of individual rights, such as life, freedom, equality, among others; although still excluding women and enslaved people.

So, it seems possible to affirm that it was only with the advent of the Modern Constitutions that Citizenship acquired a new condition. A new model of social organization as possible, with the Industrial Revolution and the economic rise of citizens through work. This process, led by the bourgeoisie, resulted in their claim to participate actively in the political decisions of that place. The consequences of these historical facts were the emergence of Modern Constitutions, already at the end of the 19th century, aimed at protecting citizens' rights. The National States promulgates Constitutions that protect civil political and social rights, such as the Mexican and German Constitutions, for example. Vieira points out that:

The Modern Republic did not invent the concept of citizenship, which originates in the Ancient Republic. Citizenship in Rome, for example, is a unitary statute by which all citizens are equal in rights. Rights of marital status, residence, suffrage, marriage, inheritance, access to justice, in short, all individual rights that allow access to civil law. Being a citizen is therefore a full member of the city, your civil rights are fully individual. But to be a citizen is also to have access to a political decision, to be a possible ruler, a political man. This is entitled not only to elect representatives but to participate directly in the conduct of the city's business.¹²

Like this, civil citizenship corresponds to all individual freedoms, in terms of legal equality, and understands the right to freedom since the bourgeois revolutions in the 18th century. Political citizenship represents the exercise of power and the right to participate in the exercise of political power, translated by the expression “vote and be voted”. Social citizenship is linked to Fundamental Rights, as it corresponds to the set of minimum guarantees of economic and social well-being, reflecting the new requirements and new values instituted in the 20th century. For this reason, being a citizen leads to the realization of the most varied dimensions of law. The modern concept of Citizenship originated from bourgeois struggles and conquests, with the fall of absolutism and the advent of the rule of law. Civil rights have also emerged in this context of rupture and, over time, have acquired Fundamental Human Rights status.

The active political performance and participation of the citizen in the political decisions of the State are related to Fundamental Human Rights because the categories go hand in hand, that is, they have as their assumption the condition of being human. For this reason, Citizenship and Fundamental Human Rights need a joint appreciation for the unveiling of their meanings.

¹⁰ HABERMAS, J. “Cidadania e identidade nacional (1990)”. en *Direito e Democracia: entre facticidade e validade*. Rio de Janeiro: Tempo Brasileiro, 1997. p. 298.

¹¹ DALLARI, DA. “Estado de Direito e cidadania”. en GRAU, ER; GUERRA FILHO, WS. *Direito Constitucional: estudos em homenagem a Paulo Bonavides*. São Paulo: Malheiros, 2001. p. 198.

¹² VIEIRA, L. *Cidadania e globalização*. 6. ed. Rio de Janeiro: Record, 2002. p. 27.

The human being, for having rights inherent to its nature, irrevocable in character, imprescriptible, inalienable and universal, needs an "existential minimum" that is linked to Citizenship, when "released from the yoke of the Public Power, now calls for a new way of protecting his dignities, as it is, the satisfaction of minimum needs to have dignity"¹³. In this way, the Democratic Rule of Law is responsible for guaranteeing a dignified life for all citizens, playing a fundamental role about the realization of rights such as education, work, housing, health, among others.

The conquests of the bourgeois struggles that originated the Declaration of Human Rights in France, England, and the United States, established the concept of Citizenship in modern times. If previously, the principle of legitimacy was based on the duties of the subjects, from these events, it started to be based on the rights of the citizen¹⁴. Still, in the present moment, the exercise of Citizenship is a concept of permanent construction, because it represents one of the achievements of the human civilizing process e, that is why, it changes its conceptualization¹⁵ and scope with the passage of time and the development of History, to quote World War II, the Universal Declaration of Human Rights (1948) and the emergence of the Social Welfare State, as a maximum expression of social rights and more collective and egalitarian principiological parameters. Like this,

According to general guidelines since the beginning of the 19th century, only those who fulfill the requirements established by law to guarantee such a category are citizens, and citizenship rights themselves are strictly indicated in law [...] One must keep talking about citizenship because it is a useful concept, linked to the ideas of freedom and equality of human beings and fullness in the acquisition and enjoyment of rights, especially those of interest to the community; but without losing sight of the fact that as long as people are excluded from citizenship, democratic society cannot exist. Defend the human person, and the citizen will be defended.¹⁶

The Citizenship category is not articulated in the field of personality, as it can only have its meanings unveiled if it is experienced in society, daily, because Citizenship presupposes genuinely close and human relationships. It is not a question of considering Citizenship as an immutable category, as it represents the result of transformations, the evolution of rights and duties in each era. It is evident, therefore, that the concept of Citizenship, initially, had a character of state linkage. However, with social changes, Globalization, and Transnationality, Citizenship is now seen with broader characteristics. In this sense, Braga explains that Citizenship:

[...] it can be defined as a set of rights that can be grouped into three elements: the civil, the political, and the social, which did not appear simultaneously, but yes, successively, from the 18th century to the 20th century. The civil element is composed of those rights related to individual freedom: the right to come and go, freedom of the press and thought, the discussed right to property, in short, the right to justice (that must be the same for everyone). The political element understands the right to exercise political power, even indirectly as a voter. The social element comprises both the right to a minimum standard of economic well-being and security, as well as the right of access to cultural goods and the so-called "civilized life", that is, it is the right not only to material well-being but to the cultural.¹⁷

Citizenship is the condition of an individual who lives in society. For it to be carried out, it is necessary to have a democratic political order, capable of guaranteeing the

¹³ ARAÚJO, LAD; NUNES, VS. *Curso de direito constitucional*. 9 ed. São Paulo, Saraiva, 2005. p. 115.

¹⁴ BOBBIO, N. *A Era dos direitos*. Rio de Janeiro: Campus, 1992. p. 3.

¹⁵ In this regard, Bolognino points out that "*La cittadinanza, e la tenzone al suo acquisto, non può, dunque, risolversi in una mera rivendicazione di diritti. La cittadinanza deve, invece, portare all'integrazione e alle responsabilità comuni. Questo obbietto più esse perseguito com l'amazione di um processo continuo di integrazione, ache attraverso esperienze partecipative, che consenta di sviluppare sai la dimensione personale dei diretti, sai la dimensione solidale e responsabile dei doveri*". BOLOGNINO, Daniel. "Le nuove frontiere della cittadinanza sociale". en MARTIN, G. *Democrazia Partecipativa e Nuove Prospettive della Cittadinanza*. CEDAM: Milano, 2010. p. 95.

¹⁶ DALLARI, DA. "Estado de Direito e cidadania". en GRAU, ER; GUERRA FILHO, WS. *Direito Constitucional: estudos em homenagem a Paulo Bonavides*. São Paulo: Malheiros, 2001. p. 198-199.

¹⁷ BRAGA, R. *Qualidade de vida urbana e cidadania*. Território e cidadania, UNESP, Rio Claro, n.2, julho/dezembro, 2002. p. 2.

exercise of freedoms¹⁸. It turns out that, currently, a new scenario is faced with the exercise of Citizenship. The characteristics of today's Citizenship represent a possibility for a more comprehensive exercise. It is the social status that is expressed in the human capacity to participate fully in political, economic, and cultural life. However, in the face of a transnational and globalized society, the scope of the category must be global and no longer restricted to the old nation-states or sovereign-states.

As Citizenship has extrapolated the bond of the old nation-state and is not restricted to the rights of the personality, a new configuration can be visualized, as it is not only considered the individuality of being, but a social set that gives rise to the bond of belonging and recognition, with each other. The category went from a vertical relationship (individual and nation-state) to a horizontal transnational perspective, which comprises the individual's relationship with the environment in which he lives. For this reason, the legal content of Citizenship is resized and in constant construction.

In the past, Citizenship corresponded only to the bond of belonging between individual and nation-state, today this condition is extended, in the face of everyday challenges and new contemporary lifestyles. The historical resumption is important to understand the paths that have been climbed so that citizenship status can be resized today. From a postmodern perspective of law, as a social phenomenon, it is highlighted that one cannot conceive of a "right with eyes closed"¹⁹. In this way, new scenarios give rise to new legal and legal approaches regarding Citizenship. In this configuration of the world, the citizen is fundamental in the construction of a more just and egalitarian society. He is the social actor responsible for his development, for his evolution, for the direction, for the fate of his species.

The broad scope of the concept of Citizenship guarantees its ownership and exercise, but not only in a determined geographical space, but in a planetary dimension. Supporting a universal Citizenship, at this point, is not a utopia, but a reality already experienced by the formation of political, social, and economic blocs around the world. In integration, cohesion and unity are perspectives that enable an expanded Citizenship bias, with an ecological focus, which is not limited to the nation-state, but to the set of countries that unite for the same objectives. The Citizenship dimension, focused on the environmental issue, is a political-legal category that encompasses rights and duties directed at all citizens, in a global condition

3. Citizenship: a new signification

The legal definitions of the Citizenship category are relevant concerning the effectiveness and normativity of constitutional precepts in the face of the new world reality. Nowadays, Citizenship is a multifaceted category, which concerns rights and duties before the State, other citizens, and the environment in which they live. Besides, the phenomenon of Globalization and Transnationality contributed to this redefinition.

When considering the concept of Citizenship from the Brazilian reality, it is clear that it is a political element present in the Federal Constitution of 1988, which suffered, during the civilizing process, changes regarding its conceptualization. The category is linked to freedom, the conquest of the vote, participation in the democratic process, and the political game of the State, in addition to the recognition of one human being in the other, to the dignified experience of the subjects in the same time and space. The meaning of the concept of Citizenship, as well as its

¹⁸ PÉREZ-LUÑO, AE. *Ciudadanía y deficiencias*. In: *Doxa. Cuadernos de Filosofía del Derecho*. Alicante, n. 25, 2002. p. 162.

¹⁹ CUNHA, PF. *Constituição viva: cidadania e direitos humanos*. Porto Alegre: Livraria do Advogado, 2007. p. 61.

exercise, involves a broad context that needs to be considered for its understanding, clarification, and effectiveness.

Currently, the meaning of Citizenship goes beyond the maxim "the right to have rights" - as Arendt has already warned²⁰ -, as citizens have not only rights but also duties. The exercise of Citizenship entails responsibility, effective participation, awareness of voting, compliance with legal provisions, control of government activity, interest in social directions, and the exercise of Democracy²¹. In this line of thought, Citizenship also "[...] refers to civic virtue, which civil society can foster in the public sphere, to prevent state and market abuses and to exercise the role of an individual in this sphere"²².

Based on these reflections, being a citizen does not constitute only the individual's belonging to the nation-state actively and passively, but especially establishes obligations and rights concerning the relationship between citizens and the State. From this perspective, "Citizenship rights and obligations exist, therefore, when the State validates Citizenship rules and adopts measures to implement them"²³.

The nation-state tends to decline its classic delimitation, passing through a new space of Citizenship. It is a global space in which "[...] the universal consecration of human rights underlines the transition from Citizenship linked to individual rights to Citizenship due to the universal person"²⁴. The new concept of Citizenship is linked to these changes, as well as to the rights acquired historically, which appear as vectors for the exercise of Citizenship.

Since the emergence of its universal conception in the 20th century, new values have been radiated, and in this way, the legal content of the Citizen condition has acquired a new characteristic. For this reason, Citizenship, today, has many wider ranges. The category needs to follow the evolution of the world so that its legal content is not emptied and outdated.

For Comparato²⁵, an important measure for the constitution of a universal Citizenship would be the recognition of the active legitimacy of private persons, in the defense of human rights of the third generation, this is, those whose object is assets or interests of a transnational nature, how to maintain ecological balance. Over time, social reality gives rise to new legal protections that concern human rights. In this bias,

²⁰ In addition to Arendt, Bolognino clarifies that the "[...] *concetto di cittadinanza tradizionalmente è "diritto ad avere diritti", ha subito delle trasformazioni*". BOLOGNINO, Daniel. "Le nuove frontiere della cittadinanza sociale". en MARTIN, G. *Democrazia Partecipativa e Nuove Prospettive della Cittadinanza*. CEDAM: Milano, 2010. p. 75.

¹³ "Democracy is an expression from the Greek demos," people ", and Kratos," authority ". It means, quite clearly, the government of the people, for the people, for the people. Since its emergence in Athens, Democracy has gone through three great historical moments of political thought, concerning Classical, Medieval and Modern Theories. According to Bobbio, "according to Classical Theory, democracy is the form of government by which power is exercised by all citizens legally considered to be so, in contrast to the monarchy and the aristocracy, regimes in which the government is responsible, respectively, for one and a few. Medieval Theory, of Roman origin, adds the element of sovereignty to the power of the people, which becomes representative or is derived from the power of the prince. Finally, Modern Theory, or Machiavelli's Theory, distinguishes the basic forms of government: the monarchy and the republic, equating the latter with democracy". BOBBIO, N. *O futuro da democracia: uma defesa das regras do jogo*. São Paulo: Paz e Terra, 1986. p. 319.

²² LEMOS, A; LÉVY, P. *O futuro da internet: em direção a uma ciberdemocracia planetária*. São Paulo: Paulus, 2010. p. 38.

²³ VIEIRA, L. *Cidadania e globalização*. 6. ed. Rio de Janeiro: Record, 2002. p. 36.

²⁴ VIEIRA, L. *Cidadania e globalização*. 6. ed. Rio de Janeiro: Record, 2002. p. 47.

²⁵ COMPARATO, Fábio Konder. "A nova cidadania." *Lua Nova: Revista de Cultura e Política*, 28-29, 1993, p. 199.

[...] human rights, however fundamental they may be, are historical rights, that is, born in certain circumstances, characterized by struggles in defense of new freedoms against old powers, and born gradually, not all at once and not at all. once and for all²⁶.

This condition allows the emergence of new rights due to the historical moment experienced by society, whose Fundamental Rights are not a taxing and closed catalog, but, rather, subject to change and expansion according to the needs of the new times²⁷.

New resignifications of social characteristics and the State itself give rise to a readaptation of the concept that, like the human rights themselves, can also be renewed.

Despite new resignifications, Arnaud²⁸ explains that society is composed of citizens who distinguish themselves from one group to another, from one culture to another, transcend the borders of countries and foster a "global neighborhood". In the same sense, Cassese²⁹ defends the idea of global legal order, based on a transnational condition. Garcia, in the same terms, uses Habermas to explain that, according to this author, it is necessary:

[...] the construction of new spaces from the perspective of expanding the sphere of influence of the experience of democratic societies beyond national borders. [...] along the paths of an internal policy aimed at the world in general, that is, open to a cosmopolitan legal order, capable of functioning without the structure of a world government.³⁰

It is for this reason that the reframing of Citizenship today gives rise to a global and planetary bias, based on the idea of human rights in all its dimensions. During these phenomena, it is demanded to revisit some legal, political, and social concepts, such as Citizenship³¹. In this line of thought Pérez-Luño, teaches that:

Las nuevas condiciones de ejercicio de los derechos humanos han determinados una nueva forma de ser ciudadano em el Estado de Derecho de las sociedades tecnológicas, del mismo modo que el tránsito desde el Estado liberal al Estado social de Derecho configuro también formas diferentes de ejercitar la ciudadanía.³²

The author supports the emergence of a new rule of law, with new ways of exercising Citizenship and which will characterize the relations between State and citizen in the 21st century, which, little by little, is already taking shape. Citizenship rights must be universal, guaranteed by law, and extended to all who affirm equality and balance rights and duties, within certain limits.

The renewal of the concept of Citizenship occurs, as today citizens around the world are closer. The idea of Citizenship is still restricted to exercising rights and duties within territorial limits, but this certainty tends, more and more, to be relativized,

²⁶ BOBBIO, N. *A Era dos direitos*. Rio de Janeiro: Campus, 1992. p. 25.

²⁷ For Locchi, this phenomenon is evidenced by the promulgation of post-war Democratic Constitutions, which began to contemplate new themes, including the environmental one, in the face of the new social reality. For the author, "the movement "State towards society" has been deeply marked by two extraordinary events occurred in the 20th century. The first one is the adoption of democratic Constitutions after the Second World War. While liberal constitutions (in particular, the part dedicated to the Bill of Rights) were inspired by an individualistic conception, with an abstract individual as the unitary subject in the state of nature, the new constitutions reflect the (economic, social, cultural, religious) pluralism of states in the second half of the 20th century. Therefore, in addition to the protection of citizens against arbitrary power, democratic constitutions now deal with both persons and "intermediate communities" and recognize principles and rules on education, religion, economics, health, environment, work and property". (LOCCHI, 2014, p. 81).

²⁸ ARNAUD, AJ. *Governar Sem Fronteiras*. Entre globalização e pós globalização. Crítica da Razão Jurídica. V. 2. Rio de Janeiro: Editora Lumen Júris, 2007. p. 235.

²⁹ CASSESE, S. *Oltre lo Stato*. Bari/Roma: Laterza, 2006.

³⁰ GARCIA, ML. "Direitos fundamentais e transnacionalidade: um estudo preliminar." en CRUZ, PM; STELZER, J. *Direito e transnacionalidade*. Curitiba: Juruá, 2011. p. 173.

³¹ In fact, for Aquino, it is also necessary "[...] reorganize the fundamental precepts of State, Law and Politics to understand the new links - theoretical and practical - which allow a greater cultural approach" (2010, p. 124-125).

³² PÉREZ-LUÑO, AE. *La tercera generación de los Derechos Humanos*. Cizur Menor: Aranzadi, 2006. p. 35.

both by contemporary transnational phenomena and by the characteristic of the category to be a process in constant construction.

Citizenship needs to be understood as a way of incorporating individuals and groups into the social context and no longer just as a set of formal rights, in which its exercise is limited to the old nation-state. For this reason, Citizenship is resized, as its characteristics have changed. With the advent of Globalization and Transnationality, the very concept of the State and its functioning demand a redefinition. In the same sense, the integration factor, in this challenge, raises the level of commitment of those involved, affecting an intercommunity character, that is, a new world order³³. Therefore, it is a concept that concerns access to rights guaranteed by local, national, or transnational institutions.³⁴

Faced with this scenario, Citizenship is a foundation that needs to be searched, considering its transnational character and that goes beyond border limits. Citizens are insisted on space so that it enables the democratic game and can continue to participate in the direction of its nation-state, but, beyond a right and a duty, the Citizenship category must, in its transnational perspective, foster bonds of responsibility with their peers, whether they are considered citizens or not.

Civil and political rights, as guarantees of participation in the democratic process, are the premises that characterize the classic liberal notion of Citizenship. What is called attention in this research is the need for a reflection on models of Citizenship that go beyond the traditional concept and that denote a configuration based on Globalization and Transnationality.

It is observed how the Citizenship of a transnational character adds new possibilities and appears as the most coherent model today, facing the challenges of the 21st century. This is the focal point of this research, as the concept of Citizenship is resized to a broader perspective. Human Rights are respected, whatever the subject's origin, as the criteria become the condition of human beings, and not exclusively the political link to the nation-state of origin.

Currently, new outlines are acquired, and revisiting the liberal concept of Citizenship is not to weaken its meaning, but rather to recognize the need for bonds that expand, beyond the borders between countries and beyond the provisions of classic concepts. At the moment, this category does not go back only to political rights. It continues to guarantee the participation of the popular in the designs of the State, concretizing Democracy in a plural³⁵ and multicultural environment, but it also appears as a criterion of union between human beings regardless of their nationality.

If the social dynamics currently encompasses all countries, the phenomenon of transnationality requires new experiences and new concepts, in the sense of integration and the exercise of Citizenship. So, "[...] only a democratic citizenship that does not close in a particularist sense, can pave the way for a status of citizen of the world"³⁶ and with multilateral characteristics.

³³ The civilizing process allowed women and illiterates, for example, to start exercising Citizenship, expanding their concept, with the possibility of voting and being voted as elected representatives. This transformation of the democratic process and the importance given to the sovereign power of the people, covering all citizens, was not observed in the Greek polis and the French Revolution, for example.

³⁴ VIEIRA, L. *Cidadania e globalização*. 6. ed. Rio de Janeiro: Record, 2002. p. 48.

³⁵ In a pluralistic society, the constitution expresses a formal consensus. "Citizens want to regulate their coexistence according to the principles that can find everyone's reasoned assent [... Each man and woman must be subject to triple recognition, that is, they must find equal protection and equal respect in their integrity: as irreplaceable individuals, as members of an ethnic or cultural group, and as citizens, or members of a political community." HABERMAS, J. "Cidadania e identidade nacional (1990)". en *Direito e Democracia: entre facticidade e validade*. Rio de Janeiro: Tempo Brasileiro, 1997. p. 284-285.

³⁶ HABERMAS, J. "Cidadania e identidade nacional (1990)". en *Direito e Democracia: entre facticidade e validade*. Rio de Janeiro: Tempo Brasileiro, 1997. p. 304.

If for a long time the linguistic use of the term citizenship referred to a unique and exclusive link between the individual and the State, in the current circumstances it is possible to admit a plurality of citizenship. In other words, replace unilateral citizenship with multilateral citizenship³⁷.

Thus, civic values are expanded and converge to common minimum levels for coexistence, to enable political and legal strategies at the global level, and not only in the contours of the nation-state.

This new role to be played by the citizen of the world expands the civic values to be realized and provides opportunities for participation in the plural scenario, as it contributes to the formation of the individual's identity. The right to participate in the destinies of society, in what Bobbio³⁸ calls the right to democracy is maintained, but when it comes to a global perspective, the ability to tolerate, respect, and integrate different cultures is necessary, providing the inclusion of members of society and not an element that intensifies what is differentiated.

4. Global citizenship as a legal alternative for political and territorial limits

Faced with a globalized society, the concept of Citizenship expands, to accompany social evolution. Citizenship, par excellence, refers to the rights³⁹ and duties of each human being before the nation-state. An individual's active political participation unveils his ability to transform public space beyond the limits of the nation-state and constitutional norms.

In this sense, Bauman's⁴⁰ reflections regarding the migratory phenomenon are important. For this author, the new patterns of global migration are divided into three migratory waves. The first followed the tripartite logic (TRJ): territoriality of sovereignty, the identity of roots, and gardening posture. It emigrated from a "modernized" center (a place of intense construction of order and progress) to empty lands (lands whose native populations could be crossed out from modernized calculations). The second migratory wave is a case of "empire migrates to the metropolis" and can be seen in the dismantling of colonial empires and the consequent displacement of indigenous peoples in various phases of cultural advance towards the metropolises following their superiors.

Bauman points out that the drama of the "empire migrates to the metropolis" tried to act within the framework of the now outdated TRJ syndrome, but with little success. The third wave of modern migration, which is underway, leads to diasporas. They are archipelagos of ethnic, religious, linguistic settlements intertwining the world. The difference in today's migration from the previous phases is the fact that it occurs in a double direction since almost all countries are simultaneously immigration and emigration hubs. The other difference lies in exploding the TRJ syndrome and replacing it with the EAC triad - extraterritoriality, anchors, and hunting.⁴¹

This scenario signals a question mark in the link between identity and citizenship, individual and place, neighborhood and belonging, as well as the exercise of the "art of living with differences". Still, the idea of "human rights", launched in the scenario of the EAC triad to replace or complement the institution of the TRJ triad, of the

³⁷ CADERMATORI, DML. "Limites e Possibilidades de uma Cidadania Transnacional: uma apreensão histórico-conceitual". en CRUZ, MP; STELZER, J. *Direito e Transnacionalidade*. Curitiba: Juruá, 2011. p. 143.

³⁸ BOBBIO, N. *O futuro da democracia: uma defesa das regras do jogo*. São Paulo: Paz e Terra, 1986. p. 18.

³⁹ Regarding rights, Leff points out that the environmental issue contributed to expanding the framework of civil, political, economic and cultural rights. Legal systems have been incorporating several aspects related to the management of "common goods". Thus, within the new rights of solidarity, the right of all men to benefit from the common heritage of humanity was included. LEFF, E. *Ecologia, Capital e Cultura: a territorialização da racionalidade ambiental*. Petrópolis, (RJ): Vozes, 2009. p. 173.

⁴⁰ BAUMAN, Z. *44 cartas do mundo líquido moderno*. Rio de Janeiro: Zahar, 2011.

⁴¹ BAUMAN, Z. *44 cartas do mundo líquido moderno*. Rio de Janeiro: Zahar, 2011. p. 181-183.

identity determined by territoriality, today translates into "right to be different". The new notion of human rights sediments tolerance, but still leaves something to be desired about the solidarity that, therefore, needs to be consolidated. The new translation of the idea of human rights dismantles hierarchies and destroys the image of "progressive cultural evolution".⁴²

For these situations to be faced in everyday life, civilizing values - which directly reflect the democratic ideals present in modern societies - need to be rescued. For this reason, the Aesthetics of Alterity is insisted on as a way to configure a new social dynamic, under penalty of Humanity succumbing to the excessive elimination of the Other.

Concerning Citizenship, it was highlighted in this research that the constitutional normative force determines its conceptualization, however, its deontological scope is determined by the values⁴³ that are dear to citizens in a given social context. In this sense, for Aquino⁴⁴, Citizenship assumes a community aspect, that is, the category does not have only an individualistic quality. This conception enables social unity through Citizenship, to the detriment of the limiting and exclusive link with the nation-state, strengthening human relations from a dialogical perspective, between the local and planetary dimensions. This perspective is the unveiling of the current historical panorama, which, in contemporary times, demands a meaning of global citizenship⁴⁵.

It is important to highlight that in each type of state regime, the concept of Citizenship can advocate rights and obligations in a different way. For liberalism, "[...] the relationship between rights and obligations is essentially contractual, with a strong load of reciprocity: each right corresponds in general to an obligation."⁴⁶ Citizenship, in this way, is not related to characteristics that determine their identity, but rather, how the individual should have support for the exercise of their freedoms. For this reason, he is also responsible for the realization of his rights.

In a line of communitarian (and solidary) thinking, about Citizenship, obligations are prioritized given the exercise of rights, that is: rights are conferred as a series of obligations are fulfilled. In both liberalism and communitarianism, citizenship has a normative role, but with different characteristics. It is explained: in the liberal view, Citizenship is an accessory, not a value in itself. In the communitarian view, individuals are members of units larger than themselves, and one of them is the political community⁴⁷.

Participation is very important in this perspective. It strives to balance collective, individual rights and obligations. But these three theories presented by Vieira generate a conflict regarding the rights and obligations related to Citizenship because in liberal theory, rights have priority over duties; in communitarian theory, obligations are prioritized over rights, while for social democracy, rights and obligations must strike a balance.

On the other hand, from a nationalist perspective, Citizenship is related to the formation of a national conscience, providing a link to a nation-state. At this point, the reflection brought in this research proposes a remodeled Citizenship, given the

⁴² BAUMAN, Z. *44 cartas do mundo líquido moderno*. Rio de Janeiro: Zahar, 2011. p. 184.

⁴³ For Ferrer, from a global citizenship perspective, the values are: *Responsabilidad - Compromiso - Solidaridad - Equidad - Honestidad*. (FERRER, 2012, p. 324).

⁴⁴ AQUINO, SR. *Rumo à Cidadania Sul Americana: reflexões sobre a sua viabilidade no contexto da UNASUL, a partir da Ética, Fraternidade e Sustentabilidade*. Tese de Doutorado. Itajaí-SC, 01 de março de 2013. p. 282.

⁴⁵ Thus, our commitment, as a citizen in this globalized society, it is a clearer and broader view with environmental quality for a present and near future, where the man will have the opportunity his turn and voice, in view of not the space close to the action, but also the planetary horizon. (FREIRE, P. *Pedagogia da indignação*. São Paulo: Editora UNESP, 2000. p. 66.

⁴⁶ VIEIRA, L. *Cidadania e globalização*. 6. ed. Rio de Janeiro: Record, 2002. p. 37-38.

⁴⁷ VIEIRA, L. *Cidadania e globalização*. 6. ed. Rio de Janeiro: Record, 2002. p. 39-40.

global reality, which has accelerated the erosion of the homogeneity of a Citizenship characterized within the limits of the nation-state. Citizenship preserves the identity of each individual with their own culture, respecting differences and seeking to include minority groups in the social body.

Although this new model encounters barriers to implementation, it is necessary to make this new way of thinking viable, with the perspective of including and recognizing pluralities and minorities, as the maximum expression of non-discrimination and Democracy. However, the modification of the bond of the citizen and the State from unilateral to multilateral, lead to the participation of "citizens of the world"⁴⁸, if there are conditions such as freedom and equality for such an aspiration. In addition to this argument, it is verified how the formation of international blocs are elements that add up in the sense of expanding and enabling the engagement of these citizens to face the present challenges. For Ferrer:

En su concepción tradicional, la ciudadanía está ligada a la nacionalidad y consiste en el conjunto de competencias, derechos y obligaciones que permiten a un sujeto la participación activa en la vida político-social de una comunidad. Sin embargo, "las exigencias cívicas y sociales que caracterizan el mundo actual hacen que el concepto tradicional de "ciudadanía", ligado básicamente al de "nacionalidad", resulte claramente restrictivo e insuficiente. El fenómeno de la globalización, la progresiva multiculturalidad y las desigualdades entre Norte y Sur, entre otros factores, nos obligan a avanzar hacia un concepto de ciudadanía más amplio y global. Un concepto que favorezca la integración e inclusión de las personas en la sociedad actual y que estimule la participación ciudadana desde los principios de democracia y corresponsabilidad. En definitiva, una ciudadanía "global", crítica e intercultural, activa y responsable" [...] La ciudadanía "nacional" normalmente no se escoge, sino que viene dada, la global es fruto de una opción. Es fruto de la decisión consciente de convertirse en sujeto activo y protagonista de este proceso civilizatorio. De la determinación de compartir solidariamente esfuerzos y esperanzas con millones de personas que, a lo largo y ancho del mundo, se van sumando a la tarea, olvidando las diferencias que interesadamente nos decían nos separaban y destacando nuestra absoluta y esencial identidad."⁴⁹

It is from the understanding of citizenship as a situation capable of bringing all citizens closer together as citizens of the world that it proves to be important to reflect on citizenship as a means of strengthening and humanizing relations between human beings, regardless of nationality, culture, religion or political opinion.

The migratory phenomenon, especially today, is observed daily. However, many lives are lost in the quest to enter countries capable of offering better working conditions. What happens is that, due to state borders, circulation is not free and this situation further aggravates the ills of these people who are already weakened in some way or another, that is: beyond border barriers, there are discriminatory limits that make these humans, when they manage to enter the physical space, cannot feel part of that place, because they are considered as human beings worthy of legal or / and political protection. This is what Bauman explains:

For the inhabitants of the First World, the borders of States were broken down, as they were for goods, capital, and finance. For the inhabitants of the Second World, the walls constituted by immigration controls, residence laws, the "clean streets" and "zero tolerance" policy became higher; the ditches that separate them from places of desire and dreamed redemption have become deeper, while all bridges, as soon as you try to cross them, drawbridges are revealed. The former travel at will, have a lot of fun traveling (particularly if they go first-class or on a private plane), are flattered and seduced to travel, always being welcomed with smiles and open arms. The seconds travel on the sly, often illegally, sometimes paying for an overcrowded third class, on top of that they are looked at with disapproval when not arrested and deported when they arrive.⁵⁰

It turns out that the immigrant is seen as a bastard. He is considered neither a citizen nor a foreigner. He feels uncomfortable everywhere, both in his original society and in his "receiving" society. In this way, it obliges to completely rethink the question of

⁴⁸ CORTINA, A. *Cidadãos do mundo: para uma teoria da cidadania*. São Paulo: Loyola, 2005. p. 19.

⁴⁹ FERRER, GR. "Calidad de vida, médio ambiente, sostenibilidad y ciudadanía ¿construimos juntos el futuro?" *Novos Estudos Jurídicos*, 17(3), 2012. p. 324.

⁵⁰ BAUMAN, Z. *O mal-estar da pós modernidade*. Rio de Janeiro: Zahar, 1997. p. 27.

the legitimate foundations of citizenship and the relationship between the State and the Nation or nationality.⁵¹

With this, what is seen is that the migratory phenomenon will not cease to exist, because everyday people feel more free to seek better living conditions, moving to other places. This situation is important, but it is still necessary to overcome prejudices, through tolerance. Every human being deserves to be respected and for that reason, with the action of law to seek the affirmation of global citizenship, such prejudices can no longer be tolerated; every citizen can feel like a citizen of the world, providing, with that, the real sense of humanity present in each being

5. Conclusion

More and more the concepts of Law are rethought and provide new debates due to the transformations that occur in society and the world. Techno-scientific development, the rapprochement between people - be it temporal, geographical, or cultural - and the world wide web were some of the factors that allowed this new world condition.

Human beings are closer; however, they still lack a condition of humanity. This condition can be pursued through solidary and tolerant attitudes. These attitudes are capable of providing a more democratic environment for peaceful coexistence between people who are essentially different and cannot be deprived of this freedom of being.

The democratic environment is capable of providing a structure in which the realization of popular sovereignty is effective. Fundamental Human Rights confront abuses in the relationship between citizen and state. For this reason, it is emphasized that Citizenship is the vector for the exercise of Fundamental Human Rights. On the other hand, Citizenship is a concept that can be expanded due to the passage of time and also to historical events resulting from the civilizing process. From the expansion of the concept of the category and its relationship with Fundamental Human Rights, restrictions do not succeed. The idea of Citizenship is an idea that refers to Human Rights since its history is confused with the history of struggles and the liberation of Man.

Nowadays, with greater instruction from the facilitation of the construction of knowledge, one must be aware of the rapprochement between cultures and peoples. Therefore, tolerance is a measure to understand that global citizenship can be an alternative to solve problems derived from migration. All human beings deserve to be treated with respect. As a result, if they do not find good living conditions in their countries of origin, they must be free to move without being discriminated against as a result, however, this is not the reality. The reality is still that of intolerance and discrimination, However, it is necessary to insist and not give up a possible utopia of all human beings, can, someday be treated with respect for their dignity in equal measure and it is in this sense that the development of the concept of global citizenship can be a potentialize of this process.

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⁵¹ BOURDIEU, P. "A imigração ou os paradoxos da alteridade". en SAYAD, A. *A imigração*. São Paulo: Edusp, 1991. p. 91.

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