

# GENERAL REVIEW ON CIVIL SOCIETY AND ENFORCEMENT OF THE CONSTITUTION

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**Abstract.** The enforcement of the constitution always has been a problem in countries for different facts. One of the facts is the absence of commitment by civil society. The populism, authoritarianism, and anti-democratic aspects of who arrive at institutions nowadays are dangerous to the life and enforcement of constitutional law. For these problems, the present paper will try to answer the question: Why does civil society need to know about the constitution? The answer will be through authority arguments and self-reflections that point the important place that plays a constitution in our lives. The structure of this work will be in this way: Firstly, the rights that a person has as a human and why the politicians must respect them. Secondly, to have rights is necessary also, have duties. Thirdly, the value that a constitution has to the civil society, but why? Finally, the place of a civil society in the enforcement of constitutional law. We conclude that the Constitution is an instrument to build a civil society free and equal. The Constitution has the basic rights and duties to live in order, in peace and safe. The Constitution is a problem of everybody, for that reason, the preambles of the constitutions refer to “the people” and everybody should know the Constitution.

**Keywords:** *constitution, rights, duties, civil society*

## Introduction

Each country needs an order to be safe, live in peace and enforcement the agreements of the people. Generally, the ways of order and agreements of the people, in each State, are presents in the Constitution. The Constitution, is the supremacy law of the country, where can be seen the essential rights of the people, the institutions about the institutional structure of the Nation, the duties of the society and specially the people who represent them in the institutions. The enforcement of the Constitution always has been a problem in the countries for different facts. One of the facts, is the absence of commitment by civil society. The populism, authoritarianism and anti-democratic aspects of who arrive to the institutions nowadays are dangerous to the life and enforcement of the Constitution too. For these problems, the present paper will try to answer the next question: Why does civil society need to know about the constitution? With the question and its consequent answer will indicate the place of civil society in the enforcement of the Constitution and how it could be a protection against populism, authoritarianism and anti-democratic dangerous that faces the countries around the world now.

The goal of the paper will be achieved in the next pages by self-reflections, point of views of professionals in the social sciences and some information that the Constitutions give in their reading. Those tools will help to answer the question and the problem of this work.

## Discussions

### *Civil society*

There is an idea that was valid from Thomas Aquinas to Locke. For Kant, Hume, Rousseau, Hobbes, and other important modern philosophers, the concepts "State," "civil society," and "political society" were used interchangeably. For such thinkers, the significant division was not between state and society, but between society and the state of nature (Van Rooy, 2020). Recent interest in the concept of civil society appears to have been generated in part by interesting concern that individuals acting directly in politics are unable to control the growth of their government or the policies it adopts (Tushnett, 2000). According to some authors this concept "has grown in the 1990s because of concerns with globalization, political change in the post-Cold War era and a sense of dismay about the quality of society, particularly in industrialized countries" (Von Rooy, 2020). Also, "has gained special relevance in the field of the political theory of democracy due to its analytical potential for the study of transitions from dictatorial regimes to other democratic ones, as well as for identifying new spheres susceptible to deepening democracy within really existing democracies" (Arato, 1996).

The main thematic difficulties of civil society is that its conceptual invocation becomes the declaration of a "moral objective", not a description of a thing. Civil society is thought of as synonymous with "good society", which can generate criticism from those who advocate conceptual relativism (Von Rooy, 2020). The language used to treat the concept of civil society, at least in one of its multiple versions, "has been at the service of some new populisms, and this despite the fact that the social premises of a democratic civil society are incompatible with the populist politics" (Arato, 1996). A paradox lies at the heart of this interest in revitalizing the institutions that make up the concept of civil society: those institutions are constituted by the government, not in the sense that they are called into existence by the government, but in the sense that its boundaries are defined by the government. In addition, the State provides institutional guarantees so that civil society institutions such as NGOs are viable (Tushnet, 2000). From a methodological point of view of conceptual analysis, "the concept of civil society remains plagued with ambiguities. Even after distinguishing civil society from political and economic (a step itself controversial), the implications of civil society remain unclear" (Arato, 1996). This demonstrates the difficulties that exist in communicating the essential properties of civil society.

### *The rights matter*

The rights in the history have been a conquest of humanity around the last centuries. Every new time, requires new rights because the people evolve and is necessary to face the demands of the new time. Now, we have more rights than before, because since 18st century (and even nowadays) has existed a process where the majority of the people have accepted that the rights are important to live with dignity. Especially, since the end of the second world war and the creation of the United Nations, Organization of American States, European Union and all the organizations focused in protect the human rights. Indeed, for example: United States of America and France after the American and French Revolution, they were countries where their constitutions started to including in its body an important place to the rights. Venezuela, in Latin America was one of the countries (the first country in the region) that started including in its

Constitution the rights. Later, in general the idea of the rights in the Constitution was copied around the world.

In the same way, the process of human rights had a serious advance after the totalitarianism of Hitler and Mussolini in the Second World War, who rejected the idea of Kant about “human beings should be treated as an end in them and not as a means to something else. The fact that we are human has value in itself” (Kant, 1978). This Kantiana idea, means that all the humans are important themselves and everybody has a value unquantifiable and does not be an instrument of others. As a result of those facts, the world had a reflection and the States had agreements to take seriously the rights. Thus, the idea of human rights was included in international documents for all countries, like the Universal Declaration of Human Rights of 1948 by the United Nations.

On the other hand, in a Constitution you can see different kind of basic rights, for example:

- (1) Civil rights: life, freedom, equality, integrity, free of speech, free press and due process of law;
- (2) Political rights: vote, protest, to be chosen, accountability and asylum; and
- (3) Social welfare rights: healthy, work, education, salary and social security.

The Constitution guarantees “decent conditions for all” (Sunstein, 2002). To say the least, the Constitution has to have rights because the rights are preconditions to live with dignity and to protect the democratic process as Ely said in “Democracy and Distrust” (Ely, 1980). If the people do not have basic rights, probably they will kill themselves or they could be slaves, as happened in the Second World War. The politic has an important role in the protection of rights, but is a true fact that the politicians are who first kills the rights too. The Constitution, where are the basic rights and “structures that will promote freedom” (Sunstein, 2002), needs that the politicians have the duty or obligation of respect it, and it could be possibly with a well-functioning of the institutions and the commitment of the civil society with its enforcement.

### ***The duties are necessary***

A person not only has rights in a civil society where everybody is free and equal. Are enough the rights to live with decent conditions? The answer to this question is clearly: no. To live in order, in peace and safe is a need to the people “the duties” because they allow security and even respect and enforcement of the basic rights. The idea of order in a civil society rejects the idea of anarchy, but this does not mean ban the freedom of speech, the protest or whatever basic right. When a person thinks about civil society, not only should think in rights. In other words, a person who thinks in civil society should consider the duties too. To illustrate, everyone has the right to live in a healthy, ecologically and balanced environment, but everyone has the duty and responsibility to preserve the environment. Clean water, is other right that everyone has, but it is a duty that the people have to preserve water supplies. Likewise, all citizens have the duty to pay taxes under the conditions prescribed by the law of each country. In that way, even the rights depend of the duties.

In support of the idea, in the case of taxes could be seen like the best example where the rights depend on the duties, because some rights cost money. Indeed, according to Sunstein and Holmes “the protection of individual rights is never free” because “always

presupposes of relations of authority” (Sunstein and Holmes, 2000). The government with the taxes, creates conditions to be safe, enjoy the basic public services and rights as clean water or electricity, keep the administration of justice and in general keep the State working. Therefore, if the people avoid paying taxes, how will the State guarantee the rights? They are impossible of guarantee in that case. The rights and duties have a reciprocity relationship where both are the faces of the same coin. Firstly, a person cannot have only rights, because the duties are necessary to achieve the own rights. Secondly, a person cannot have only duties, because the rights are pre-conditions to live with dignity and happiness. Thirdly, the relationship between rights and duties should work together because one depends on the other and, consequent, if a right or duty is absent that means the negation of the present element.

### ***The value of the constitution***

The constitutional moment when a Constitution is created by a Constituent Assembly, or in general by the representatives of the people in a democratic environment, the facts of the past, reflexions of the moment, beliefs, values and principles of every society usually are presents in the Constitution as creation of a free and equal society. Clearly, is important to mention that each society is different and the ideas too. To illustrate about the value of the Constitution, we will analyze the “Preamble” of some Constitutions around the world. Nonetheless, what is a Preamble? According to Voermans et al. (2017), a Preamble means “preliminary statements hanging over the body of the constitution explaining the reasons for adopting the constitution, its purpose or its justification” and also the preambles “come in a wide variety of sorts and sizes and most of the time make good reading because the framers of constitutions all over the world tend to invest in the quality of their preambles”.

In that way, the idea about Preamble has been clarified. To explain some examples, we will use the constitutions of the United States, South Africa, France, India and Venezuela.

### ***The American constitution***

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

### ***The South African constitution***

We, the people of South Africa, Recognise the injustices of our past; Honour those who suffered for justice and freedom in our land; Respect those who have worked to build and develop our country; and Believe that South Africa belongs to all who live in it, united in our diversity. We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; Improve the quality of life of all citizens and free the potential of each person; and Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

### ***The French constitution***

The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004. By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories which have expressed the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived for the purpose of their democratic development.

### ***The Indian constitution***

We, The People of India, having solemnly resolved to constitute India into a: (1) [Sovereign Socialist Secular Democratic Republic] and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual, and the (2) [unity and integrity of the Nation]; In our Constituent Assembly this twenty sixth day of November, 1949, do Hereby Adopt, Enact and Give to Ourselves this Constitution.

### ***The Venezuelan constitution***

The people of Venezuela, exercising their powers of creation and invoking the protection of God, the historic example of our Liberator Simon Bolivar and the heroism and sacrifice of our aboriginal ancestors and the forerunners and founders of a free and sovereign nation; to the supreme end of reshaping the Republic to establish a democratic, participatory and self-reliant, multiethnic and multicultural society in a just, federal and decentralized State that embodies the values of freedom, independence, peace, solidarity, the common good, the nation's territorial integrity, comity and the rule of law for this and future generations; guarantees the right to life, work, learning, education, social justice and equality, without discrimination or subordination of any kind; promotes peaceful cooperation among nations and furthers and strengthens Latin American integration in accordance with the principle of nonintervention and national self-determination of the people, the universal and indivisible guarantee of human rights, the democratization of imitational society, nuclear disarmament, ecological balance and environmental resources as the common and inalienable heritage of humanity; exercising their innate power through their representatives comprising the National Constituent Assembly, by their freely cast vote and in a democratic Referendum, hereby ordain the following.

Making a comparison between these preambles, even when the United States, South Africa, France, India and Venezuela are different countries, according to the preambles they refer common aspects that show the value of a Constitution. All of these preambles, say “we the people” showing the role that have the civil society in the creation of a Constitution. Likewise, the texts have ideas regarding justice, equality, freedom and generally basic rights to live with decent conditions. On the other hand, some of them have a meaning more emphatic than the others about the previous events to the creation of the Constitution. For example, the South African Constitution clearly is the most emphatic because the people of that country lived a serious discrimination

by white people during a long time. Thus, the South African Constitution recalls the injustices of the past with a reflection to the new time where all people have to live “united in our diversity”.

Besides, making an interpretation of the texts, they represent their own identification (ID) because, for example the Indian Constitution says “Sovereign Socialist Secular Democratic Republic”. In contrast, the American Constitution says “provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity” where are principles totally different. The same case could happen with this point: The Venezuelan Constitution refers to “the historic example of our Liberator Simon Bolivar” while the French Constitution does not refer a specific person of its past. Those aspects, are tools to show the differences between societies. As a result of these reasons, the Preamble of the Constitution is a demonstrative element of the value of the Constitution. Every society has its own past, beliefs and ideas about how create a better future, but exits common elements in the societies too. Likewise, those ideas are usually in the Constitution as a dream that the people want to achieve.

### ***Civil society and the constitution***

Why everybody should know the Constitution? It was the question at the beginning of this work. The answer to this question will be achieved in this part denominated as “civil society and the Constitution”. Firstly, the Constitution is not an act only to lawyers, politicians and sociologists. Secondly, the civil society has an important role in the enforcement of the Constitution too. Thirdly, the Constitution is a place where everybody has a strong and equal power. According to Arnold (2018), “[t]he Constitution is not so simple that it explains itself, nor so complex that only experts can understand it”. In this way, obviously experts like lawyers, politicians and sociologist have an interest in the Constitution because it is an object to be studied in each one of those sciences. However, the idea referred by Arnold is a route to take seriously the participation of the civil society. Indeed, the Constitution certainly has its own language, but that language is not so complex. It could be understandable by educated civil societies.

In support of the idea, the language of the Constitution is not a problem itself. The civil society, could have a better knowledge about its meaning if exist institutions to promote the value of that text. For example, the high school and even the school are places where can be considered the Constitution as an important element to the life in a civil society. The same role and meaning that governments give to physics, chemistry, mathematics and languages could be given to the Constitution. Why not? If freedom, equality and human rights have been a conquest and their ignorance have produced wars, deaths, environmental damages and puts the world itself at risk. It is reasonable to think in the same role. On the one hand, in a democratic environment the people choose those who will be their representatives in the institutions. If the civil society knows the value of the Constitution, probably they will choose the best leaders committed with the respect of the Constitution, democratic values and principles of rule of law. In other words, the possibilities of chose leaders who promote populism, authoritarianism and anti-democratic aspects, are the least when the civil society has knowledge about why the Constitution matters and why if they do not know it, their rights and happiness will be insecure.

On the other hand, knowing the risk produced by the death of the Constitution with examples that happened in the history of modern society with Nazism in Germany and

Fascism in Italy, the civil society would understand the value of the Constitution and how it is not a problem only of experts. The Constitution, is a problem of everybody. Everybody needs to know it, because the rights to live with dignity, the rational duties that keep the own rights and the human happiness depends on the Constitution. Why the Constitution begins in its preamble with: “we the people”, “we, the people”, “the .... people” or “The people of”. The reason, is because the Constitution is a committed of everybody. Therefore, both alternatives would have as a result the most enforcement of the Constitution. If exists a knowledgeable civil society of the fundamental role that plays the Constitution in the life of each one, probably the respect to the Constitution will be better than before when the civil society were without interest by the Constitution.

## **Conclusion**

Finally, the Constitution is an instrument to build a civil society free and equal. The Constitution has the basic rights and duties to live in order, in peace and safe. When the society makes a Constitution, the facts of the past, reflections of the moment, beliefs, values and principles usually are present there. To say the least, the Constitution represents the agreements of the people and most of the activities that we do every day depends on the enforcement of the Constitution with its freedom and equality. The role of the civil society in the enforcement of the Constitution is essential. If does not exist commitment from the civil society to enforcement the Constitution, late or soon it will be killed. Consequent, the rights and other elements in the Constitution will have the same destiny.

Overall, only promoting in the civil society the value of the Constitution and its important meaning to live with freedom, equality and avoid populism, authoritarianism and anti-democratic aspects could exist most enforcement. The best route or tool to achieve that goal is through education including high school, school and even, places made by the public institutions of the State. Therefore, the Constitution is not only a problem of experts. The Constitution is a problem of everybody, for that reason, the preambles of the constitutions refers to “the people” and everybody should know the Constitution.

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## **Conflict of interest**

The authors confirm that there is no conflict of interest involve with any parties in this research.

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