

## ESSENTIALISM AS THE PHILOSOPHICAL FOUNDATION OF AMERICAN CONVENTION OF HUMAN RIGHTS (1969)

### *O ESSENCIALISMO COMO FUNDAMENTO FILOSÓFICO DA CONVENÇÃO AMERICANA DE DIREITOS HUMANOS (1969)*

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#### **Abstract:**

The article focuses on the American Convention on Human Rights (ACHR), known as the *San José Pact of Costa Rica*, because of its political and legal importance for protecting and promoting the Americas' rights. The objective is to analyze the consistency of the theoretical foundation of that human rights document. Therefore, we will first analyze the Convention's text and point out essentialism as the philosophical foundation. Then, we will discuss the essentialist assumption philosophically. Finally, the theoretical problem of essentialism as the foundation of the Convention will be analyzed in light of Sartre's existentialism. From the considerations presented, the philosophical foundation of the rights in the 1969 Convention, essentialism, is not theoretically consistent, despite being an indispensable rhetorical argument.

#### **Keywords:**

Human rights; Philosophy of law; Essentialism; Existentialism.

#### **Resumo:**

O artigo tem por objeto a Convenção Americana de Direitos Humanos (CADH), conhecida como Pacto de San José da Costa Rica, por sua importância política e jurídica para a proteção e promoção dos direitos nas Américas. O objetivo é analisar a consistência da fundamentação teórica desse documento de direitos humanos. Para tanto, analisaremos primeiramente o texto da Convenção e apontaremos o essencialismo como fundamento filosófico. Em seguida, discutiremos o pressuposto essencialista filosoficamente. Por fim, o problema teórico do essencialismo como fundamento da Convenção será analisado à luz do existencialismo de Sartre. Pelas considerações apresentadas, o fundamento filosófico dos direitos na Convenção de 1969, o essencialismo, não é teoricamente consistente, apesar de ser um argumento retórico indispensável.

#### **Palavras-chave:**

Direitos Humanos; Filosofia do Direito; Essencialismo; Existencialismo.

## 1. INTRODUCTION

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The American Convention on Human Rights (ACHR), known as *the San José Pact of Costa Rica*, is an international treaty among the member countries of the Organization of American States (OAS), signed on November 22, 1969, on the occasion of the Inter-American Specialized Conference on Human Rights, held in the city of San José (Costa Rica). The treaty entered into force on July 18, 1978, and is considered one of the foundations of the Inter-American System for the protection of Human Rights.

The inter-American system for the protection of human rights is one of the most consolidated regional systems in the world, formed by several international documents. The most important document in this system is the American Convention on Human Rights, signed in San José, in 1969, which only came into force in 1978. It is relevant because it represents a catalog of civil and political rights, among other rights, the right to judicial guarantees, the preservation of honor and dignity, freedom of conscience and religion, thought and expression, as well as the obligation of States to respect the rights provided therein (GRUBBA; NISTLER, 2018, p. 258).

The American Convention is made up of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the first of which aims at the observance and effective protection of human rights in America and the second means the jurisdictional body of the respective regional system, comprising seven national judges of OAS member states, elected in a personal capacity by the states parties to the Convention (PIOVESAN, 2015, p. 150).

The Convention of 1969, based on the ideal of the Universal Declaration of Human Rights (UN, 1948), consists of eighty-one articles, which establish the essential rights of the human person as the right to life, liberty, dignity, health, education, among others, and prohibits slavery and the human servitude. Given the political and legal importance of the American Convention on Human Rights for promoting and protecting rights, this article aims at its philosophical foundation. We intend to analyze the theoretical foundation of this international human rights document in the light of existentialist philosophy by Jean-Paul Sartre. Also, we aim to ascertain whether this foundation is theoretically consistent. The scope of research in this article is limited to the express text of the Convention. Therefore, there will be no analysis of the international human rights documents on which the Convention may have been inspired.

The research problem is: Is it possible to suggest an essentialist foundation in the American Convention on Human Rights? Based on Sartre's existentialist philosophy, it is understood that the hypothesis is positive. The work will develop from the deductive method.

First, we will analyze the American Convention on Human Rights to ascertain its possible philosophical foundations. Considering that the Convention's philosophical foundation seems to be the metaphysical assumption of essentialism, some considerations will be shown to understand what that assumption is. Finally, the theoretical problem of essentialism as the foundation of the 1969 Convention will be analyzed in light of Jean-Paul Sartre's existentialism. It is also important to mention that the article does not seek to make a legal- political criticism of the Convention or the OAS but to analyze the theoretical problem of the rationale chosen for the 1969 Convention.

## 2. THE AMERICAN CONVENTION OF HUMAN RIGHTS (1969)

The purpose of this section is to analyze the text of the American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights, in San José, Costa Rica (November 22, 1969) to extract its philosophical foundation. In its Preamble, the American States signatory to the Convention reaffirms the purpose of “consolidating, on this continent, within the framework of democratic institutions, a regime of personal freedom and social justice, founded on respect for the *essential* rights of man” (OAS, 1969). Sequentially, the Member States recognized the existence of "*essential*" human rights, which stem from the attribute of being human (of the human essence) (OAS, 1969).

Also, member states consider that its principles have also been enshrined in other international instruments, such as the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, and the Universal Declaration of Human Rights (UN). The Member States have agreed on rights, duties, and obligations:

- the obligation to respect rights (Article 1)
- the duty to adopt provisions of domestic law (article 2)
- the right to legal personality (Article 3)
- the right to life (article 4)
- the right to personal, physical, or psychological integrity (article 5)

According to the Convention's text, Article 5 deals with the right to integrity: "Every person deprived of their liberty must be treated with respect due to the *inherent dignity* of human beings" (OAS, 1969). In this sense, one can extract the thesis that there is a dignity inherent to

the human, *a priori*, or a human essence. Besides, "Human rights are universal, without rejecting any culture. Any form of life can be compatible with the goods protected by these rights." (SOUZA; PINHEIRO, 2020, p. 408)

The analysis made the express text of the Convention of 1969, specifically about the content of the rights, duties, and freedoms, enables at least three theses based on the proclaimed human rights, which are expressed in the Preamble:

- a) there is an inherent dignity to human beings;
- b) there are essential rights of human; and
- c) rights stem from the attribute of *being human*.

The assertion that there is an inherent dignity seems to imply the recognition of the existence *a priori* (inherent or innate) human, that is, of an essence of the human (of what it is to be human), which causes *a priori* familiar to all people, regardless of possible differences.

In the history of philosophy, the debate on innatism (inherent) mainly deals with the following question: the inherent nature encompasses ideas, concepts, categories, knowledge, and principles or is born as a blank slate (white paper) and acquires information and knowledge from perception (Samet, 2008). In summary, inherent means that which is structurally linked or, still, that which, by nature, is inseparable from something (MICHAELIS DICTIONARY, 2015). It means that dignity belongs to the human being because it is structurally connected to them; that is, it is innate: every human being must be born with dignity because everyone is essentially human. In this sense, the inherent thesis connects to the essentialist thesis. More than that, the essence is the *intimate nature of things* or *what makes a thing what it is* or, still, *what constitutes the nature of an object* (MICHAELIS DICTIONARY, 2015).

The essence is a central theme in many philosophical and scientific debates. For Locke, for example, the real essence is what makes something is. According to him, a nominal essence is an abstract idea that identifies similar qualities present in a group of objects, making it possible to distinguish this group from others (JONES, 2012). In human rights, the statement that there are "essential" human rights implies recognizing that there is a human essence (with inherent dignity) from which "essential" rights arise: if human essence is a universal *a priori*, there is no need to think about different and cultural conceptions of dignified life and rights. Furthermore, given the idea that rights derive from the attribute of being human (of the essence), it seems that rights are essentialist. In this sense, the American Convention on Human Rights

(1969) is theoretically founded on the metaphysical postulate of essentialism: rights are based on a human essence, which has attributes, such as the inherent (inherent) dignity.

### 3. HOW TO UNDERSTAND ESSENTIALISM

In this section, we will argue how the essentialist thesis is justified to understand what essentialism is. The legitimacy of Philosophy seems to have been asserted, for centuries, with questions and answers inherited from the Socratic and Pre-Socratic legacy on how to distinguish real from unreal, true from false, and good from evil. Kolakowski (1990) states that the emergence of Philosophy was based on the metaphysical idea that there is an essence, and that essence can be known; the distinction between appearance and reality.

Marilena Chauí (2009) suggests that vocabulary change throughout history indicates possible modifications in asking questions and answering them. However, despite the changes, the traditional metaphysical question remained: the question of *what is it?* The question about *what is something*, philosophical investigation proper to metaphysics, is the question about the existence and the essence of reality. This question has two meanings: (a) *there is something* - the question refers to the existence of reality and can be written as follows: *what is there?*; and (b) the *nature* of something (an *entity*), referring to the essence of reality - this question can be transcribed as follows: *what is the essence of what exists?* (CHAUÍ, 2009, 180).

Following Marilena Chauí (2009) classification, the history of metaphysics is divided into three significant periods. The first period comprises the thinking of Plato and Aristotle in the 4th and 3rd centuries BC, and Descartes's thinking, until the thought of David Hume, in the 18th century. During this period, the metaphysical theories investigated *what is* and the *existing* (reality itself). When inquiring about reality itself, metaphysical thinking presupposed the existence of *the essence of reality*. More than that, it assumed that this *essence* could be *known* through rationality. This thought instituted the split between reality and appearance.

Plato (2002) stated that the truth is the essence, immutable, real, and eternal. Platonic ontology divided the world in two. The first was the sensitive world of things, change, and appearance. The second was the intelligible world of ideas or the true essence, the world of identity and truth. This second world can be known by the pure intellect, without any interference from the senses or opinions.

The assumption of the existence of two worlds led Plato to believe that the transformation of man was restricted to “only one sphere of divine creation: the world of sensitive things, this world that does not it was immutable, it was transformed, it was decomposed.” (ANDERY *et al.*, 2007, 70) The task of Platonic philosophy would be to recognize that ideas exist and to know their essence.

Otherwise, it is up to philosophy “to move from imperfect copies to perfect models, abandoning *images* for *essences*, *opinions* for *ideas*, *appearances* for *essences*.” (CHAUÍ, 2009, 186)

The metaphysical Aristotle, in turn, considers that the world of sensitive things is a real and authentic world, the essence of which can be known. In his work, *Metaphysics*, Aristotle (2012, 105) investigates *being as a being* “and the properties that are inherent to it due to its nature.” Essences, suggests Aristotle, are in things and humans, which can be known by Philosophy. To know them, the philosopher must start from sensation and reach intellection since the essence is known by thought. *Metaphysics*, in this sense, becomes the knowledge of the essence that exists in the real world. In his book *Metaphysics*, Aristotle (2012, p. 118) points out that Philosophy (ontology) must study and know *being while being*, that is, studying the *essence* of things, also called the substance of things. In this work, the thinker states that things have an inherent essence and nature.

From the arguments presented, it appears that metaphysics (ontology) was born as *essentialism* (essentialist theory): the study or the knowledge of the *essence* of things, that is, the real and true being of things, despite appearances they may have and changes they may undergo.

The first period ended when Hume (19--., 35-36) argued that the concepts formulated by thought do not correspond to external reality, which exists in itself and independently of the mind. For Hume, the formulated concepts should be considered “mere general names for things, names that come to us due to the mental or psychic habit of associating ideas with sensations, perceptions, and impressions of the senses, when they are constant, frequent and regular” (CHAUÍ, 2009, p. 181). Chauí (2009) points out that, from the end of the 16th century and, especially in the 17th century, modern thought began to change, partly because it broke with the Platonic, Aristotelian and Neoplatonic tradition, and partly because it rejected religious authority.

The second historical period of metaphysics, suggested by Chauí (2009), comprises Kant's thought, in the 18th century, up to Husserl's phenomenology, in the 20th century. During this period, metaphysical thinking started with Kant's (2002) proposal that metaphysics should know the human capacity to know itself: a critique of pure reason. According to this model, the objects studied no longer existed *by themselves* but existed *for the human being*. The third historical period of metaphysics comprises new *ontology*, which began in 1920 and continues today. This *ontology* seeks to recover the old metaphysics and the Kantian conception (2002), considering that metaphysics' object should be the subject-object or man-world connection.

Ontology, points out the Stanford entry written by Hofweber (2004), is the study of what exists. In this sense, many classical philosophical problems would be ontology problems, such as whether there is a God or the existence of universals - the metaphysical question of whether a particular entity exists. Under this standard of analysis, metaphysics was understood as a general study model that encompasses ontology as one of its parts, although the boundaries are not well defined.

Therefore, the new metaphysics seems to affirm the incompatibility between faith and reason and redefine the concept of *being*. The definition of the essence (or substance) continued to be *the being in itself and for itself*, but the substance started to be defined based on its predicates or essential attributes, that is, those attributes without which the substance is not what she is. In this sense, given the brief history presented, essentialism can be defined as the search for understanding the essence, considered what makes an object or being itself the same (its attributes that differentiate it from the others).

#### **4. THE PROBLEM OF ESSENTIALISM IN THE AMERICAN HUMAN RIGHTS CONVENTION (1969) IN THE LIGHT OF SARTRE'S EXISTENTIALISM**

The essentialist thinking has alternatives and has been criticized by thinkers like Kolakowski, Nietzsche, and Sartre. In this section, the problem of essentialism as the foundation of the 1969 Convention will be analyzed in the light of Sartre's existentialist philosophy.

Jean-Paul Sartre (1970) criticizes the essentialist thesis, suggesting that only the notion of a world (or human being) *created by someone* allows *one* to understand the idea of intrinsic nature. For him, only the notion of a human *object*, created by God or by some other deity,



makes it possible to advance the essentialist thesis that the human being has an essence. Considering the human as a being that first exists in the world and, afterward, constitutes itself in that world, Sartre denies the possibility of the existence of human essence.

According to the Stanford entry, produced by Cornwell (2010), the term existentialism belongs to intellectual history and can be adopted as a self-description by Sartre. This term was widely publicized by the postwar literary and philosophical production of Sartre, Simone de Beauvoir, Maurice Merleau-Ponty, and Albert Camus.

Existentialism was also identified with a specific European cultural movement, which flourished in the 1940s and 1950s. Among the prominent existentialist philosophers, Karl Jaspers, Martin Heidegger (who repudiated the label), Martin Buber, Jean Wahl, Gabriel Marcel. In addition to them, 19th-century philosophers Søren Kierkegaard and Friedrich Nietzsche came to be seen as precursors of the movement (CORNWELL, 2010). Existentialism is a literary and philosophical phenomenon. Historically, in the postwar, there was a very diverse circle of writers and artists linked under the term *existentialism*: Dostoyevsky, Ibsen, Kafka Jean Genet, André Gide, Andre Malraux, and artists such as Alberto Giacometti; abstract expressionists, such as Jackson Pollock, Arshile Gorky, and Willem de Kooning, and filmmakers like Jean-Luc Godard and Ingmar Bergman (CORNWELL, 2010).

What characterizes this philosophical tradition is not its concern with *existence* in general. However, its claim that thinking about human existence requires new categories that are not found in the conceptual repertoire of ancient or modern thought since human beings cannot be understood as a substance with fixed properties, nor as a subject that interacts with a world of objects (CORNWELL, 2010). In this sense, existentialism seems to be a movement that denies the human being is *prior* to the essence and affirms that the human first exists in the world and then constitutes itself in the world. Existentialism arises with the collapse of the idea that philosophy can provide substantive norms for those that already exist, which specify particular lifeways. For existentialism, the human being is an authentic being and not an essential being. If this consideration is correct, the human being is free to commit a specific action or a particular way of being in the world. In this sense, existentialism is a theory that aims at criticizing the essentialist thesis.

For Cornwell (2010), Sartre's slogan, *existence precedes essence*, introduces the most characteristic of existentialism: the human being is not essential, but a being that exists. Sartre's thought (2001) criticizes the idea common to metaphysics, which links the concept of existence with that of the essence, in such a way that *essence* designates *what the thing is*, its existence.



Sartre (1970) understands existentialism as what makes human life possible, and that declares that all truth and all action imply human means and subjectivity.

According to Sartre (1970), many thinkers used the word existentialism assumed a dimensional breadth and extension in which it does not mean anything more rigorously. For him, however, existentialism can be easily defined. There are two types of existentialists—first, the Christians, whose exponent is Jaspers. Second, atheists, like Heidegger. In common, both types of existentialists consider that *existence precedes the essence* - the need to start from subjectivity (SARTRE, 1970, p. 3).

As for the systematization of the method, in the chapter reserved for *having, doing and being*, present in work *L'être et le néant* (1943), Sartre (2001, p. 690-670) perceives the human in constant construction. Human existence, suggests Sartre, stems from each one's choices and their whole project. For the thinker, the human is a totality, in which their various choices will point to the whole project of existence. This project can be learned through a comparative method. Because all behaviors reveal the fundamental project, it is necessary to compare them to glimpse the identity in their differences. At the beginning of this section, we stated that Sartre criticizes essentialism because only the notion of a *created* human being could provide the idea of an intrinsic nature or essence. Sartre points out that this thought could be classified under the hypothesis that *the essence precedes existence*. An example of this, for Sartre (1970), is the idea of the book. He says that one must understand that it is an object manufactured by human beings if one takes a book. For its manufacture, the craftsman was inspired by a concept and a specific production technique. In this sense, the book has a definite utility.

For this reason, in the case of a book (or another object), the essence - understood as the set of techniques and qualities that allow its production and definition - precedes existence. In the case of the human being and not of any object, Sartre (1970, p. 4) also states that, if a creative God is conceived as a superior craftsman and whatever doctrine we consider, whether it be Descartes' doctrine or Leibniz, that God knows what he is creating, the concept of the human, in the spirit of God, is assimilable to the concept of a book. If God produces the human based on some techniques and according to a particular conception, then the human materializes the concept in divine intelligence. In that sense, the human essence would precede its existence.

Sartre (1970) states that, in the 18th century, philosophical atheism eliminated God's notion but did not suppress the idea that essence precedes existence. This idea seems to be present in the 1969 American Convention on Human Rights, which presupposes the human essence and its intrinsic dignity as fundamental human rights that are further proclaimed and

recognized legally. For Sartre (1970), the idea that essence precedes existence implies that humans have an *aprioristic* nature. This human nature can be found in all humans, which means that each human being is a particular example of a universal human concept.

If we take Sartre's (1970, p. 4) states into consideration, and one cannot prove God exists or has created human beings, there is at least one being in which existence precedes the essence, a being that exists before a concept - the human being. To say that existence precedes essence means that, in the first instance, "one exists, finds himself, appears in the world and only later defines himself." (SARTRE, 1970) As conceived by existentialism, the human being cannot be defined because, at first, it is nothing. Only later will this human be what they do of themselves. The starting point for existentialist philosophy will be Dostoyevsky's (2008) maxim: *if God did not exist, everything would be allowed*. That is to say, if God cannot be proved, then *existence precedes the essence*, and nothing can be explained by reference to a given and definitive human nature. The human is, therefore, free. From this assumption comes the existentialist maxim: *one is condemned to be free*.

Sartre's existentialist thinking criticizes the fundamentals of essentialism as follows: (a) denies the thesis that there is an essence prior to existence; (b) denies the thesis of the existence of a human essence; and (c) denying the first postulate of essentialism, of that there is no human essence, then is also denied the second postulated that human essence could be known. In short, Sartre (1970, p. 15) points out that, if there is no abstract human nature, that is, an essence of the human independent or prior to its existence, then there is also no human nature in general. If there is no aprioristic essence, then morality, in Sartre's thinking, is not aprioristic. In this sense, it is possible to criticize the foundation of the OAS American Convention on Human Rights of 1969, namely:

- a) that there is an inherent dignity to human beings;
- b) that there are essential human rights; and
- c) that rights derive from the attribute of being human.

If Sartre is correct about the lack of an abstract human nature (human essence), then there is no way to assert the existence of rights that belong to human beings' essence. Given this, the fundamental theses of the 1969 Convention would be denied. Also, even though there is a human essence, according to Sartre's theory, because some superior craftsmen created the human being, there would be no way of knowing which would be this human essence to, which is why she could not support human rights.

It is noticeable that there is more than a rhetorical use of the essence to base rights: assuming for a moment that the human rights proclaimed by the 1969 Convention are rights of the essence of human beings, they become unquestionable due to the impossibility of questioning their absolute metaphysical foundation - the essence. This foundation presents more to a rhetoric use – it allows a universalism of rights that disregard cultural conceptions of what it means to live a dignified life. In this sense, assuming for one moment that human rights are due to the human essence, there is no point in questioning other possible rights according to different conceptions of dignity. Therefore, the essence of human rights presents itself as a universal moral, unquestionable.

The essential rights of the human person are born as a result of struggles in the face of power, against oppression, gradually ascending, when conditions are conducive to them, and when their need is recognized to ensure each individual and society an existence dignified (BOBBIO, 1992, p. 6). In this sense, the need and possibility of problematizing subjectivity in concrete life contexts is affirmed, against the mechanisms of individualization, massification and normalization that produce subjectivities (ARCELO, 2012, p. 204). Regarding their historicity, human rights are not a given, but a human construct, which is always in a constant process of construction and reconstruction (ARENDT, 1979, p. 134).

However, theoretically, the foundation itself is questionable because of the impossibility of knowing whether or not there is, in fact, an essence and, more than that, an essential foundation of human rights. In this sense, the article's objective was not to carry out a legal-political criticism of the 1969 Convention but to show that the foundation on which the rights, duties, and obligations protected there is philosophically questionable. Theoretically, the alternative would be to provide that the foundation of the rights, which are legally important, is a political consensus about important moral values for the general population of America, but not the essence of the human being.

## **V. CONCLUSION**

The research's objective was the philosophical foundation of the American Convention on Human Rights. We analyzed the theoretical foundation of this international human rights document in the light of existentialist philosophy by Jean-Paul Sartre. Besides, ascertained whether this foundation is theoretically consistent. The research problem is: Is it possible to

suggest an essentialist foundation in the American Convention on Human Rights? The positive hypothesis is corroborated.

First, we analyzed the American Convention on Human Rights to ascertain its possible philosophical foundations, which seems to be the metaphysical assumption of essentialism. In the Convention's text, Member States recognized the existence of an "*essential*" human rights, which stem from the attribute of being human (of the human essence) (OAS, 1969).

In human rights, the statement that there are "essential" human rights implies recognizing that there is a human essence (with inherent dignity) from which "essential" rights arise: if human essence is a universal *a priori*, there is no need to think about different and cultural conceptions of dignified life and rights. Given the idea that rights derive from the attribute of being human, it seems that rights are essentialist. In this sense, the American Convention on Human Rights (1969) is theoretically founded on the metaphysical postulate of essentialism: rights are based on a human essence, which has attributes, such as the inherent (inherent) dignity.

Essentialism can be defined as the search for understanding the essence, considered what makes an object or being itself the same (its attributes that differentiate it from the others).

The theoretical problem of essentialism as the foundation of the 1969 Convention was analyzed in light of Jean-Paul Sartre's existentialism. For Sartre (1970), the idea that essence precedes existence implies that humans have an *aprioristic* nature. This human nature can be found in all humans, which means that each human being is a particular example of a universal human concept. If we take Sartre's (1970, 4) states into consideration, and one cannot prove God exists or has created human beings, there is at least one being in which existence precedes the essence, a being that exists before a concept - the human being.

Sartre's existentialist thinking criticizes the fundamentals of essentialism as follows: (a) denies the thesis that there is an essence prior to existence; (b) denies the thesis of the existence of a human essence; and (c) denying the first postulate of essentialism, of that there is no human essence, then is also denied the second postulated that human essence could be known. In short, Sartre (1970, 15) points out that, if there is no abstract human nature, that is, an essence of the human independent or prior to its existence, then there is also no human nature in general. If there is no aprioristic essence, then morality, in Sartre's thinking, is not aprioristic. In this sense, it is possible to criticize the foundation of the OAS American Convention on Human

Rights of 1969, namely: (a) that there is an inherent dignity to human beings; (b) that there are essential human rights; and (c) that rights derive from the attribute of being human.

Theoretically, the foundation theses of the 1969 Convention are questionable because of the impossibility of knowing whether there is an essence and an essential foundation of human rights. In this sense, the alternative would be to provide that the foundation of the rights, which are legally important, is a political consensus about important moral values for the American population.

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