

HUMAN RIGHTS AND THE CONTEXT PROBLEM

[DIREITOS HUMANOS E O PROBLEMA DO CONTEXTO]

Leilane Serratine Grubba *

Atitus Educação, Brasil

Sérgio Ricardo Fernandes de Aquino **

Faculdade Meridional, Brasil

Abstract: The article aims to analyze human rights in a contextual and complex way. We will question the hegemonic, western, and contemporary conception of human rights, mobilizing the critical theory of the reinvention of human rights, developed by Joaquín Herrera Flores. From the philosophical critique of human rights, it is pointed out that the intended category of human dignity should not be universal but analyzed contextually and materially. In this sense, human rights should not have prior conceptual delimitation but should include people's concrete yearnings for material and immaterial goods that make up a dignified life. Finally, the article understands that people not only need rights - the right to have rights - but the possibility of a dignified life in which the satisfaction of material and immaterial goods can occur, as well as fighting for the satisfaction of their desires and needs.

Keywords: Human rights; Criticism; Human dignity

Resumo: O artigo tem como objetivo analisar os direitos humanos de uma forma contextual e complexa. Questionaremos a concepção hegemônica, ocidental e contemporânea dos direitos humanos, mobilizando a teoria crítica da reinvenção dos direitos humanos, desenvolvida por Joaquín Herrera Flores. A partir da crítica filosófica dos direitos humanos, aponta-se que a categoria pretendida de dignidade humana não deve ser universal, mas analisada contextualmente e materialmente. Nesse sentido, os direitos humanos não devem ter uma delimitação conceitual prévia, mas devem incluir os anseios concretos das pessoas por bens materiais e imateriais que constituem uma vida digna. Por fim, o artigo entende que as pessoas não precisam apenas de direitos - o direito a ter direitos - mas da possibilidade de uma vida digna em que possa ocorrer a satisfação dos bens materiais e imateriais, além de lutar pela satisfação de seus desejos e necessidades.

Palavras-chave: Direitos Humanos; Crítica; Dignidade Humana

1 INTRODUCTION

Since their origin and as they are conceived modernly by universalized Western culture, human rights present an ambiguity. The hope of reaching a minimum legal and ethical standard to equally guarantee human dignity coexists,

* J.S.D Law. M.Phil Law. M.phil Humanities. Associate Professor of Law, Dept. Law, ATITUS Educação, Brazil. Teaches in Law Graduation and Masters. Associate Professor of Psychology, Dept. Psychology, ATITUS Educação (2020-2023). E-mail: lsgrubba@hotmail.com. ** Doutor em Ciência Jurídica pela Universidade do Vale do Itajaí - UNIVALI (2013). Professor Permanente do Programa de Pós-Graduação em Direito (PPGD) - Mestrado - da Faculdade Meridional - IMED. E-mail: lsgrubba@hotmail.com

contradictorily, with the violation of such guarantees, with the consequent production of genocides, imperialism, and concealments. The universality of rights disregards the human relationship's praxis in different cultural contexts, mainly in the reality of non-Western and non-European countries.

Although relevant, international human rights laws do not necessarily guarantee their effectiveness. According to the United Nations human development reports, violations of human rights and dignity, still in the middle of the 21st century, reach millions of people. There are several ways of excluding and marginalizing humans, denying them the possibilities of living a dignified life. Despite the crucial international effort that legally formulated the minimum base of rights, provided for in international texts, such as the Universal Declaration of Human Rights of 1948, to cover all forms of human life, as well as the constitutionalizing of fundamental rights within the scope of a significant part of the States, human rights constitute the main theoretical and practical challenge of the 21st century.

We must recover the theoretical dualities to make it clear that, in the time frame that goes from the signing of the Universal Declaration of Human Rights to the Charter Earth Initiative, more than six decades have passed in which human rights, paradoxically, served to promote the struggle for human dignity and to justify neoliberal and materially unequal social and economic policies. That is why theoretical, philosophical, ethical reflections and social practices for the defense of human rights functioned, in the West, within the conceptual and ideological scheme established by *Preamble* and *Article 1. 1* of the Universal Declaration of 1948, located in the purest naturalist paradigm.

According to Arendt (1973), the naturalist conception embodied in the French Declaration of 1789 was incorporated into the Universal Declaration of Human Rights of 1948. To exemplify the statement, let us look at the first article that allows *all humans to be born free and equal in dignity and rights*. However, for Arendt, we are not born equal, but we can become equal as community members. Equality, therefore, is a conventional construct for human action, that is, a historical construct. Therefore, it is necessary to think about whether this conceptual framework can leverage or hinder social practices, new theories, and the like, which seek to achieve human dignity in the context of post-Cold War modernity - capital's third transition intrinsically linked to the economic legitimacy of national and global public policies (Herrera Flores, 2009, p. 143).

First, as Herrera Flores (2009, p. 29) said, the context of the Cold War, a process of decolonization and public policy intervening in the market, in which *human rights* started to be formulated legally in contemporary times, it differs from the neoliberal paradigm in which we live, both in social, economic and political terms. Politically, the fall of the Berlin wall started the process of paralyzing state measures that intervene in the economy, so that the market itself *self-regulated* started to control public policies, through global institutions, such as the International Monetary Fund (IMF), World Bank (BM) and, above all, the World Trade Organization (WTO). In this sense, acquired rights came to be perceived as social costs that must be suppressed due to competitiveness, also must be replaced by the notion of freedom as autonomy. Dignity is neither feasible nor desirable because it demands economic efforts beyond those provided by national borders.

The context of reality has changed. Consequently, the theory must also be modified to contextualize emancipatory and critical practices of the deterioration of the environment, commercial injustices, unequal consumption, social deficiencies, health, and coexistence, aiming to transform them into fairer, egalitarian, and balanced social practice. In this sense, the article aims at human rights and aims to analyze human

rights contextually and complexly. The article questions the hegemonic conception of human rights and analyzes the theory of the reinvention of human rights, through which human dignity is analyzed contextually and materially. For the theory of reinvention, rights do not have a prior conceptual delimitation but consider people's concrete yearnings for material and immaterial goods that make up a dignified life.

2 THE CONTEXT OF RIGHTS

More than ever, it has become necessary to contextualize human rights within the framework of its grounds. Herrera Flores (2009, p. 143) tells us, for example, of the apparent dichotomy between human rights and fundamental rights, also between the metaphor of generations of rights and the description of generations of problems/paradoxes between human rights and duties. This scenario manifests itself because we get used to working with a conception of human rights elaborated in the 17th and 18th centuries, in which, first, natural rights came to be seen as rational (produced by human reason).

The natural right natural is rationally produced by human reason and ultimately emanated from the internal principles of "man" - white and civilized. Therefore, they are immutable principles, and what changes is the concrete society that progressively embodies those principles.

We forget that rights functioned as an ideology within society that was fully imposed at the end of the 18th century, precisely when political ideology was reproduced in legal language, to express the conditions of existence and demands of the new capitalist order that was imposed in France, when the bourgeoisie became the ruling class. At the time of the Enlightenment, rational law fulfilled its concealment function by hiding the transition from one type of economy and from political and social relations to another (Miaille, 1979, p. 263).

Therefore, we must contextualize the category of human rights within the framework of society (politics, economics, culture, among others) that allowed its creation and emergence and think about the current context of the 21st century.

Overcoming the dichotomies listed above is linked to the contextualization of phenomena, that is, inserting these dichotomies in the conditions of reality - social, political, economic, and cultural -, in which knowledge and social practice occur. Only in this way can we expand the semantic field of what we mean by human rights (Herrera Flores, 2009, p. 143-144).

Conversely, for Bobbio (2004, p. 62), we must be concerned with getting rid of its *theory* and *practice* since they belong to different spheres that must be kept distinct, although, paradoxically, this thinker considers that rights are a phenomenon of a social nature.

However, if we do not expand this investigation, we will have, as a consequence, a separation of the conditions of knowledge production from the context that made them possible. By separating justification and legitimizing a theory from its context, the theory seems to be born naturally from a process of reflection located outside the real circumstances that are, ultimately, those that condition, even if they do not determine at all, the intellectual approaches.

In other words: this view would lead to the belief that the *right is taken from social facts extracted from social phenomena*, which is incorrect since the law is a social fact that maintains a close relationship with all other social phenomena (Miaille, 1979, p. 63).

Under the same argument, it is not enough to be content with the understanding

that law is linked to the existence of society because it is, in itself, a social fact, because a critical reflection (or inflection) presupposes identifying that the law influences the development of a specific model of society and that this right corresponds to that society (Miaille, 1979, p. 281). Law is, above all, a cultural phenomenon created by beings and for human beings. Its metaphysical deification stimulates much more violence and forms of colonization of the Other to the detriment of peace and emancipation.

If we hid that the theories of knowledge stem from the immanence of the world, whether it is based on materiality, even if they are theoretical abstractions of that reality, we would have a consequence that they would not be responsible for the practical results they caused. In fact, according to the 2010 United Nations discourse:

There is a need to take the context seriously when reflecting on the policies and programs most likely to accelerate human development. The context is fundamental. There is a growing consensus that the same policies can have different effects in different contexts. What worked in one place may not work in another. For example, Mauritius and Haiti are island economies that have created Exhortation Processing Zones; these were highly successful in Mauritius but failed in Haiti. (United Nations, 2010, p. 107).

A theory results from cultural products that originated in the framework of reality, but it can influence the modification or maintenance of that reality. In short, we want to affirm that social theory is not born out of emptiness, of a boring monologue in the ego domains, but in the analysis that arises from movement culture as various companies. Precisely for this reason, it is a cultural product. After its practical implementation, it also generates effects in that same society, where the theory originated.

This consideration was the assumption of Marx's significant criticism (2008) of German idealism, mainly of the Hegelian and neo-Hegelian matrix: the vision of a world ideally dominated by abstract ideas and concepts, as well as the interpretation of the world from those same assumptions. Conversely, just as we say that *the whole text has its context* for Marx (2008), the human and society's analysis must be guided by *concrete life* people and material living conditions.

As much as theories can be considered abstractions, they are abstractions (reflections) of the world's materiality in society. They are abstractions because they are located in human ideas, but they are immanent because they are social. Law is a social fact and, therefore, it is a human fact. The human condition is, in the foreground, a matter of material life (of concrete and bodily survival), and the law is born as a regulator of human coexistence. Consequently, the law assumptions are justified only when they are contextual when they have real material life as a parameter.

To be contextualized, the theory must assume the commitment to constructing emancipatory criticisms of the real (Herrera Flores, 2009, p. 144). In short, it needs to be concerned with the social function of knowledge and must be aware of the context in which and to which it points, under penalty of falling into an ideological justification of the hegemonic and abstract system of human rights. Knowledge is a social good that cannot be put into privatization, nor can it be used for utilitarian valuation.

Per *the social function of knowledge*, we understand the work of committed and critical thinking, which takes a stand against the trivialization of global inequalities and injustices. A knowledge that does not make invisible or hide the conditions by which it emerges, nor the contexts it intends to transform. In short, it is a theoretical knowledge closely linked to the practice of the concrete world, in its effects and causes, as well as in its reason of existence (Herrera Flores, 2009, p. 146).

What is meant by the social function of knowledge? First, critical knowledge presupposes the criticism of knowledge itself (Sousa Santos, 2002, p. 29). In human rights, it is a critique of colonialist and imperialist knowledge itself, so that democratic-emancipator knowledge is adopted.

From the normative text of human rights, it is not possible to enshrine an abstract statement capable of solving world ills. Hunger, wars, illiteracy, and exaggerated consumerism need an answer capable of modifying human attitudes based on what each cultural context enunciates as a possibility of peace and solidarity. It is the daily knowledge in which it fosters this *be-together-with-the-other-in-the-world*. For this reason, there is an emphasis on an Ecology of Knowledge¹ as a foundation for the effectiveness and efficiency of human rights.

From this argument, we refer to a knowledge that seeks the implantation of solidarity relations in human intersubjectivity, in which the subjects recognize each other, in substantial equality, as subjects of knowledge. The solidarity we refer to is also not related to charitable assistance but the shared commitment to building social emancipation projects. From this last expression, solidarity is stimulated in its horizontal sense, close to (and always animated by) Fraternity².

Human rights normatively express the presence of that category mentioned, but this must never occur due to its imposing force or chameleonic colonization (vertical solidarity). Therefore, it is necessary to recognize human persons as concrete subjects, with material and immaterial needs and needs, not only as essentialist and abstract beings.

This scenario requires the inversion of the Cartesian formula (Descartes, 2006). Instead of saying *I think, therefore, I exist*, maybe we must say *existence precedes the essence* (Sartre, 1978, 2001). In short, it means that the human does not have an immutable essence but exists only from his choices and concrete actions in the world. Humans do not exist only because of their thinking, but because they act, which must seek to satisfy material and immaterial needs. No care about our humanity is in our "interior" but in the infinite unknown inhabiting the Other from that *weird* who presents himself before the "I" who, little by little, (re) knows humanity itself. To exist is, therefore, to coexist. This is the primary sign of human rights.

To the extent that these rights make justice possible in each place of the terrestrial territory, it must be realized based on their socio-political-historical conditions *places of meaning*. The experience of different local adversities and their overcoming avoids global barbarism. From this understanding, people can be involved to act in favor of more peaceful human scenarios from different local contexts in the world.

The triumph of human rights as a form of civilizing emancipation lies in habitually identifying *all* which prevents or neglects ways of people be freer, more just, dignified, equal and supportive and mitigate them for *all* have access to goods and rights capable of taking them to other levels of a more qualitative life and proximity in cross-border human relations. More and more, we need to develop our *agent condition*³ to unravel the *mysteries* of this sign called human rights over time.

Only if we consider that all humans exist from their free actions in the world and that they need to satisfy concrete material and immaterial needs can we build the bases to arrive at an idea of a generalized human being - humanity - and endowed with abstract capacities to fight for his particular conception of human dignity (Herrera Flores, 2009, p. 147).

We think about the world, but we think and act in the world: we must theorize *at the*, and *for* the world, we live. We live as beings who live with other beings, and we must all exercise our freedom and create the world, that is, think and act on it from

immanence.

The critical theory of human rights perceives its complexity in the effort to analyze the philosophical, theoretical, political, ideological, economic and social foundations linked to the abstract and transcendental position that sees human rights as entities alien to the real world in which people of flesh live and bone, of joy and suffering, which must satisfy their needs for material and immaterial goods to guarantee the possibility of living a dignified life, and which, as a result, do not perceive the violations that occur in the concrete contexts. Critically, the traditional theory of human rights is analyzed, which is utterly unrelated to the facts, as if the facts were autonomous and separate entities, in which the concrete of the real does not contaminate the abstract idea.

We consider that *freedom of one always begins and when the other begins*. Freedom always denotes responsibility. It is a substantive moral value capable of dissolving our (frosty) indifference and allow us to act - and live *together with the Other*: It follows from this that the necessary task of a theory committed to human rights is to create the theoretical and practical conditions so that we can affirm our freedom as a creative activity that is not limited to giving its law, but that is erected in constitutive of its object: of creating the real world. There is no significant experience of *being free* without the presence of otherness.

Hence, a theory that assumes the social function of knowledge must always result from a creative reflection of the world insofar as it requires human freedom (Herrera Flores, 2009, p. 149). Theorize *in* and *for* the social function of knowledge is to enhance dialogical encounters between human beings and intensities in training attitudes and libertarian empowerment skills.

In the context of cultural products, putting human rights in place implies not only denouncing ambiguities arising from traditional human rights theories, daughters of individualistic thought that marks modern and postmodern Western society, and their essentialisms and naturalisms but also proposing an alternative. This new one, undefined philosophy-practice, is neither ethnocentric nor Eurocentric. In short, a philosophy of immanence in which ideas and facts are in constant encounter and exchange of energy is concerned with the real-life worthy of the human being and the consolidation of the possibility of fighting for dignity.

At this point, the importance of considering the United Nations Human Development Report (2010, p. 9) highlights the impotence of theoretical and political universality in guaranteeing human wealth. According to this conception, in addition to the universality of the premises, contextual and immanent consideration of the regions is necessary based on dignity principles. We must first think about the principles since universalized general considerations do not guarantee that a particular policy is generally suitable for all regions.

Second, we must take contexts seriously; ultimately, each state has its political capabilities and limitations. Finally, it is necessary to change global policies since interregional challenges must be considered, such as trade rules and migration. (United Nations, 2010, p. 9).

Ultimately, human development does not require abstract solutions of a universal character since policies must be adequate to what is strategically appropriate in a given location, depending on human interaction's concrete context (Walton, 2010).

Each geographical context has a history, a particular type of institution - political, social, and economic -, its own culture, a specific way of life. As much as in the contemporary world, there is an increasing link between distant locations and a transnationalization of customs, and we cannot deny the specific character of each person who maintains their own identity.

In addition to the concrete contexts directly affecting the forms of institutions that are appropriate to them, we can say that universalizing a particular mode of developmental conception is not the best option. Imperialism of a specific value does not necessarily, moreover, have the ability to bring about the best results (when it does not conform to the modes of existence⁴).

The development of human wealth or, in other words, human rights (human dignity), is related to the concrete context of interactions in which each one is situated. For this reason, it is not possible to admit the exclusively rationalist-deductive face of human rights without any minimally, a sensitive approach to the excluded, the forgotten, the one who goes hungry, the one who does not have guaranteed rights and duties capable of providing a dignified life.

3 THE CRITICAL THEORY OF HUMAN RIGHTS REINVENTION

The critical theory of human rights called the theory of *reinvention* emerged from a collective work carried out at the Pablo de Olavide University, in Seville, in the Official Graduate Program in *Human Rights and Development*. The conception of *criticism* that we mean when we talk about a *critical human rights theory* affirms an ontology of human rights with a materialistic charge. It means that the value of human rights does not correspond with the values considered themselves, but with the modes of human existence: immanent, relational, and dialogical, which enable human empowerment to transform reality (Herrera Flores, 2009, p. 186).

This theory was born from the thoughts and actions of people who needed to find a realistic and critical theoretical basis that supported the various human manifestations, be they social, legal, pedagogical, cultural, or other; to build a more just, egalitarian, and libertarian world, in which the material basis of human dignity was the instituting development of people and different cultures (Herrera Flores, 2009).

This desire to build a more human world has caused the emergence and development of *the Institute of Human Rights, Interculturality and Development*, through a collective effort under professor and philosopher Joaquín Herrera Flores, who was the one who developed the *theory of reinvention*. We live in an open and plural world, which is always in constant movement and reconstruction. It is precisely in this new, provisional and transitory order of the 21st century, in which nothing is ontologically, but it may turn out to be something different, which Herrera Flores (2009) perceived Human Rights as the main theoretical and practical challenge to be faced. In fact:

Concerning a global scale, we have, in the context of globalization, evident multiculturalism. It is obvious and clear that there are different types of multicultural societies. It is also a factuality of life or a plurality of cultures globally and our geographical area. It has negative consequences (problems and conflicts of identity and coexistence based on the distinction between us/them or others) and positive ones. Furthermore, it is in this space that the legal culture has to know how to move. The multicultural fact must take this as an intercultural challenge, that is, as a task or program, as a legal requirement that flows from the reality of our historical situation and focuses on humanity that must walk together to conquer and recognize fully human rights all without exception. (Rubio, 2014, p. 44).

Herrera Flores plunged, reflexively and inflexibly, in the concern to understand what human rights are, their need, and their purpose to propose a critical and realistic theory, which would understand them in their complexity and imperfect, impure, and

hybrid nature. More than that, he sought philosophically and politically the bases to understand, in a critical way, the unequal hierarchical distribution of human rights and the material satisfaction of goods able to promote a dignified life for all. In the opposite sense of seeing human rights as an essential and static hierarchy of values with the appearance of immutability and naturalness, he perceived them as life itself and the daily struggle for dignity.

If human rights have any meaning of preserving a more peaceful (global) coexistence, it is because their place of production, interpretation, and application is to be human in the silent relations of an underground gallery in constant effervescence called daily life. These rights are intended for human beings and are produced, interpreted, and applied by human beings. The deification of human rights by their metaphysical nature is radically opposed to the fragility, provisionally, finitude, and precariousness of being human with the Other in the world. The daily adversities need (strongly) to sensitize us to constitute more inclusive scenarios because, in acting in favor of the Other as absolutely Other, the multidimensional dignified life becomes "flesh and blood" in the globe's entire territory.

Consequently, human rights have come to understand a double scope—first, a sphere of human need (the satisfaction of needs). Sequentially, although not subordinately, an area of freedom, that is, the individual freedom to think and act, but also the social freedom of all to undertake a position as political subjects. As everyone has (equal) opportunities to have a more qualitative life, there is a complete distribution of freedom.

It was reinventing theories; renewing knowledge is a collective task. As much as it is frequent, in the context of the creation of philosophical essays, the use of the pronoun we and language in the first-person plural, either due to a rhetorical sense or due to the awareness of the philosophical task as a collective endeavor, it comes down to a lonely self; for Herrera Flores (1989) and all other members of the Budapest School, the meaning of the term is more substantial. We think it implies recognizing all arguments, epistemological foundations, and ideas on a coherent and precise theoretical framework. Like all realities, it is a landmark full of marks, always open to the new, reconstruction, and reinvention.

Although there is some divergence in position, these authors share a cultural, political, and social context, making it impossible to disentangle their ideas. Furthermore, neither can we separate phylogenesis and ontogenesis from the movement as a whole. Therefore, around the conception of we, an atmosphere of communication without domination was created: a horizontal communication, in which ideas were no longer the property of a separate self but constituted a common heritage (Herrera Flores, 1989, p. 22-23).

In this sense, human rights came to be understood as processes that enable the opening and consolidation of spaces for the struggle for human dignity, always in their hybrid and impure nature *Indignation, at that moment, becomes a vector of materialization for a creative and non-violent Justice which welcomes the Other in its difference and produces conditions to make life more worthy.*

For this reason, the words of Hessel (2011, p. 16) need to be remembered.

I wish everyone, each one of you, to have their cause for indignation. This is precious. When something indignant to us, as I was indignant with Nazism, we become militants; strong and engaged, we join the chain of history, and the great chain of history continues thanks to each of us. This current goes in the direction of more justice, more freedom, but not the fox's uncontrolled freedom in the chicken coop. [...]. If you find someone who is not benefited by them, sympathize, help them win them over.

In this line of thought, human rights are inconclusive. Of course, there is no absolute delimitation of its final design since human beings have no need for rights in themselves, normatively. What human beings need, above all, is dignity: a dignified life in which they can ignite the satisfaction of material and immaterial goods, as well as fight for the satisfaction of their desires and needs. In the dialog and coming between cultures, it is perceived that these rights identify new opportunities to make life ever more dignified and claim a response, an attitude of indignation against human barbarism. Historically, new needs arise, increasing the chance of clarifying how we can act to mitigate the miseries and inequalities that perpetuate themselves as a "way of life." The (semiological) challenge of human rights is to recognize how each place, each culture, contributes, through its difference, in overcoming the violence (physical, symbolic, institutional, psychological) that prevent this proximity to the tin in which it appears before the "Me." "It is acting in the world that we make ourselves. That is why it is in insertion in the world and not adapting to it that we become historical and ethical beings, capable of choosing, deciding, and breaking up." (Freire, 2000, p. 90).

From this conception, the notion of human rights took the form of an ethical and multifaceted diamond in the hands of Herrera Flores, in which rights were revisited as a pedagogical and action framework. Therefore, the great search is for the dialogical creation of a universalism that one wants to achieve, that is, *a posteriori*, pluralist, full of contrasts and intersections, constitutively antagonistic to universalism that presents itself as a homogenizing starting point for people, cultures, and different ways of maintaining and reproducing life.

There is, therefore, an ethics of the self-other, before which everyone deserves equal consideration and respect, endowed with the need to develop human potentialities in emancipatory actions and creative capacities to transform reality.

In this sense, the United Nations Human Development Report (1990), since 1990, had already positioned itself. There is a new approach to development, based on creating an environment that enables long, healthy, and creative lives. That is why, for the Report, in the first place, the notion of development has little to do with the economic scope of human life. It refers, in essence, to the development of human wealth. According to the United Nations RDH2011 (2011, p. 19-20), human development is the "extension of the freedoms and capacities that people have to live lives that they value and that they have reasons to value".

It is about living a meaningful life beyond meeting the most basic needs. Despite the importance of legal norms, rights are not reduced to norms. Within the scope of the theory of the reinvention of human rights, it has become urgent to reformulate the limits of human rights imposed throughout history by the proposals of political and economic liberalism (individualism, competitiveness, and exploitation, with formalistic and abstract legal legitimacy), so that meet human desires and needs, through a legal, ethical and social agenda. Distinguishing the guarantee systems from what should be guaranteed, the right should be seen only as a means, among others, to guarantee the struggles of social interests. The use of this right must be driven by people's needs to move towards the emancipation of values and the processes of dividing hegemonic human activity from a contextual, critical, and relational perspective.

Therefore, we seek, in a definitive way, to understand why a specific normative (legal) form, originating from a determined geographic and temporally located location, became universal as if it were the only way of understanding the human sphere, just as we seek to understand the most apparent consequences generated within this process. The importance of this analysis, even if brief and restricted to a small number of pages and little discussion, lies precisely in what was called by Miaille (1979, p. 17) university liberalism.

With this, we want to emphasize the importance of making visible what was ideologically hidden: university liberalism favors a situation in which, if the criticism is possible, the critical spirit is saved due to the guarantee of freedom of thought. However, the entire building remains hidden, just like the base of an iceberg. In short, we discuss several philosophical and political currents, which are but variants of a single melody, the idealistic and a-historical philosophy of western industrialized countries (Miaille, 1979, p. 17).

We should also mention the impotence of philosophical work, like this one, concerning praxis, as warned by Herrera Flores (1989, p. 147). Except for concepts, philosophy, by itself, leaves everything as it is, in its own procedural and dynamic reality. Philosophy is, in the last instance, an argumentative and conceptual task. That is why there is a need to seek the bases to understand this reality in its movement, instead of studying only an ideally beautiful photograph of reality, a petrified scheme of the real, however coherent and rational.

4 FINAL CONSIDERATIONS

The article aimed to analyze human rights in a contextual and complex way. The article problematized a hegemonic conception of human rights and analyzed the theory of the reinvention of human rights, through which human dignity must be analyzed contextually and materially.

According to what was addressed, despite the international laws of human rights and the crucial international effort that legally formulated the minimum base of rights, there are several current forms of exclusion from the marginalization of human beings, who are denied the possibility of living a dignified life.

The different voices that live hunger, misery, indifference, illiteracy, social, economic, and political inequalities never reach the ears of those in which more qualitative levels of life have already been reached. Deafness becomes unbearable; in this case, it is known that this achievement possibly occurred at the Other's expense.

The big problem verified is that the theoretical, philosophical, ethical formulations and also the social practices for the defense of human rights worked, in the West, within the conceptual scheme established by *Preamble* and at *Article 1. 1* of the 1948 Universal Declaration, located in the purest naturalist paradigm.

This problem is a context problem, which states that everyone has rights essentially because they were born human. However, the normative reality does not always coincide with the empirical reality. When human rights are not recognized by everyday praxis in different cultures, it becomes only an empty, reified name, which institutionalizes an existential lie.

In this sense, the theory must change to contextualize emancipatory and critical practices of the deterioration of the environment, commercial injustices, unequal consumption, social deficiencies, health, and coexistence, aiming to transform them into social practice more just, egalitarian and balanced. To be contextualized, the theory must commit to building emancipatory criticisms of the real.

Only when human rights as a proposal to renew knowledge in its different contexts become a manifestation of everyday life will that sensible hope capable of making peace more lasting in human relations become. At that moment, the reasons in which despair intensifies and the culture of "colonizing the Other" under the pretext of imposing rights or other cultural routes without any meaning for the stability of that socio-historical-political context in the world fade away.

The theory of reinvention appears as a contextualized alternative to human

rights, which sought philosophically and politically the basis to critically understand the unequal hierarchical distribution of human rights and the material satisfaction of goods capable of promoting a dignified life for all. In the opposite direction, to see human rights as an essential hierarchy ecstatic of values with the appearance of immutability and naturalness, he perceived them as his own life and the daily struggle for dignity.

In this sense, human rights do not have a conclusive definition or a delimitation of their final design. However, they have come to be understood as processes that enable the dialogical opening between cultural differences and the consolidation of spaces for the struggle for human dignity, always in its hybrid and impure nature. Justice disseminated by these rights is not considered, at that moment, as an abstract and deductive expression in knowing *which is better for everyone but* to identify, in each location, how human rights are manifested by peaceful praxis in everyday life.

Finally, it was understood that the human being has no need for rights considered in him, normatively, but that he needs, above all, is dignity: a dignified life in which he can ignite the satisfaction of material and immaterial goods, as well as fight for the satisfaction of desires and needs. Only at the moment that this meaning is revealed, when the adversities of everyone in the world are experienced, is the action aimed at those who suffer daily, with our blindness and deafness in the face of human miseries.

REFERENCES

- ARENDET, H. *Crises da república*. São Paulo: perspectiva, 1973.
- BOBBIO, N. *A era dos direitos*. Rio de Janeiro: Elsevier, 2004.
- DESCARTES, R. *Discurso del método*. Buenos Aires: Centro Editor de Cultura, 2006.
- DIAS, M. Justiça: referente ético do direito. In: DIAS, M; MELO, O; SILVA, M. *Política jurídica e pós-modernidade*. Florianópolis: Conceito Editorial, 2009.
- FREIRE, P. *Pedagogia da Indignação: cartas pedagógicas e outros escritos*. São Paulo: Unesp, 2000.
- HERRERA FLORES, J. *Los derechos humanos desde la escuela de Budapest*. Madrid: Tecnos, 1989.
- HERRERA FLORES, J. *A reinvenção dos direitos humanos*. Florianópolis: Fundação Boiteux, 2009.
- HERRERA FLORES, J. *Teoria crítica dos direitos humanos: os direitos humanos como produtos culturais*. Rio de Janeiro: Lumen Juris, 2009.
- HESSEL, S. *Indignai-vos!*. São Paulo: Leya, 2011.
- LÉVINAS, E. *Totalidade e infinito*. Lisboa: Edições 70, 2000.
- MAFFESOLI, M. *Homo eroticus: comunhões emocionais*. Rio de Janeiro: Forense, 2014.
- MARX, K. *A ideologia alemã*. São Paulo: Martin Claret, 2008.
- MIAILLE, M. *Uma introdução crítica ao direito*. Lisboa: Moraes, 1979.
- UNITED NATIONS. *Human Development Report- Concept and Measurement of human development*, 1990.
- UNITED NATIONS. *Human Development Report*, 2010.
- UNITED NATIONS. *Human Development Report*, 2011.
- PIZOLATTO, F. A fraternidade no ordenamento jurídico italiano. In: BAGGIO, A. *O princípio esquecido: a fraternidade na reflexão atual da ciência política*. Vargem Grande Paulista, (SP): Cidade Nova, 2008.
- RUBIO, D. *Encantos e desencantos dos direitos humanos: de emancipações, libertações e dominações*. Porto Alegre: Livraria do Advogado, 2014.
- SARTRE, JP. *O existencialismo é um humanismo*. São Paulo: Abril Cultural, 1978.
- SARTRE, JP. *O ser e o nada: ensaio de ontologia fenomenológica*. Petrópolis: Vozes, 2001.

SEM, A. *Desenvolvimento como liberdade*. São Paulo: Companhia das Letras, 2000.

SOUSA SANTOS, B. *A gramática do tempo: para uma nova cultura política*. São Paulo: Cortez, 2006.

SOUSA SANTOS, B. *Para um novo senso comum: a ciência, o direito e a política na transição paradigmática*. V1. A crítica da razão indolente: contra o desperdício da experiência. 4. ed. São Paulo: Cortez, 20002.

WALTON, M. *Capitalism, the state, and the underlying drivers of human development*. Human development research paper 9. New York: PNUD-GRDH, 2010.

NOTAS

- 1 The Ecology of Knowledge is a set of epistemologies that start from the possibility of counter-hegemonic diversity and globalization and intend to contribute to making them credible and strengthening. They are based on two assumptions: 1) there are no neutral epistemologies, and those that claim to be so are the least neutral; 2) epistemological reflection should focus not on knowledge in the abstract but knowledge practices and their impacts on other social practices. When we speak of knowledge ecology, we understand them as an ecology of knowledge practices. (Sousa Santos, 2006, p. 154).
- 2 That arises from the mutual help provided between people, which is placed alongside that other form of solidarity, linked to fraternity through a bond of subsidiarity, which we will call vertical based on the State's direct intervention (and public authorities) to help needs. In turn, horizontal solidarity concerns a principle that can be deduced from the Constitution, that of a necessary 'mutual help' among the citizens themselves, limiting the State to offering itself as an external guarantor. It does not mean that it is necessary to catalog among the forms of horizontal solidarity only those that people provide spontaneously, without being obliged or encouraged to do so *ex lege*. This form of help would have only moral relevance, as an example of philanthropy, or merely factual. However, from a legal point of view, it would be irrelevant, until it was recognized as a protected form of solidarity, or, in any case, impossible (at least by its strength) to transform human relations profoundly. Among the expressions of horizontal solidarity. therefore, the tasks or duties of help provided for by the legislation may be included once again, whether this is only of a rewarding nature (incentive) or also mandatory, in charge directly of private subjects. (Pizzolato, 2008, p. 113-114).
- 3 "Therefore, understanding the role of agent status is essential to recognizing individuals as responsible people: we are not only healthy or sick, but we also act or refuse to act, and we can choose to act in one way or another." (Sen, 2000, p. 221)
- 4 With the articulation between human beings, actions, means, and mediations, it is necessary to pay attention when human productions about human beings themselves are reified or when human beings are the referent of any emancipation and liberation. From the law, one can and must fight against the expression of people's sub integration or undervaluation (for example, in terms of sub-citizenship or migration in precarious situations. As lawyers, we must know for what and for whom legal systems are interpreted and used and what standard protects or faces inequalities. (Rubio, 2014, p. 37).