

Human rights, justice and health: reflections and possibilities

Direitos humanos, justiça e saúde: reflexões e possibilidades

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THE RIGHT TO HEALTH, PROVIDED FOR IN ARTICLES 6, 196 and subsequent articles of the Federal Constitution¹, is part of the fundamental social rights². Consequently, it finds its origin in contemporary constitutionalism and is considered to be a primordial human right³. Safeguarding human rights, in turn, is a fundamental condition for the exercise of other social rights⁴, and its implementation reveals difficulties for the consolidation of new forms of political power sharing and direction of political decisions to the public interest resulting in the strengthening of the democratic values of popular sovereignty and the respect for fundamental rights, as is the right to health⁵.

We live the great

impasse that human rights currently go through as a language capable of articulating struggles for dignity is, to a large extent, a mirror of epistemological and political exhaustion that haunts the Global North⁶⁽⁹⁾.

Thus, one comes to a narrow understanding that human rights have simply become a minimum common denominator of rights, which very little faces its true essence of the great struggle against oppression and injustices that affect humanity at a global level, oppression and injustices created by capitalism, colonialism and patriarchy.

There is no reason to disagree that the language of human rights has become global hegemonic. However, the great challenge is to know if this language can be used in a counter-hegemonic way, enabling the great struggles against oppression and injustices to be, actually, effective; and that human pain, which is a natural part of vulnerable populations, can be eradicated, creating a world in which values such as justice, dignity and equity prevail.

Imagining human rights as a counter-hegemonic language implies to understand why so much unjust suffering and so many violations of human dignity are not recognized as violations of human rights⁶⁽¹⁴⁾.

Expressions of hatred against identity and sexual orientation take on unimaginable proportions, reaching the absurdity of composing, in some countries, public policies. Racism, the main

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element that encourages violence against young black people from the peripheries, continues to build a cruel number of deaths, which, beyond the finitude of life, write a story of lost hopes, of futures that have dissolved like dust in the air. To be a woman in the present world is to fight daily for not being a commodity, for having autonomy and voice, for defining your destiny and seeking your priorities.

Although the process of affirming declarations of rights does not play a stabilizing role, the protection of the right to health is one of the many challenges that are set before humanity today⁷. Its effectiveness is not only a formal requirement affirmed on constitutional or international legal texts. Respect for the human being as the source-value of the whole juridical order is a humanistic postulate. Moreover, beyond this, health is essential for a dignified life and reflects a human ethical demand.

The right to health in Brazil has been transforming from a right linked to social security, to its autonomous existence as a fundamental constitutional right from the advent of the Federal Constitution¹, then valued as one of the most important social rights, emphatically reaffirmed in article 196:

health is the right of everyone and the duty of the State, guaranteed by social and economic policies aimed at reducing the risk of disease and other grievances and equal access to actions and services for its promotion, protection and recovery¹.

This understanding of the right to health from a broader conception of health, based on the social determination of health, is a more advanced understanding of the health-disease process, moving from the ailing body, and moving towards evidence of multiple determinants, with a strong focus on the notion of risk factors, thus blurring the boundaries between sick and supposedly healthy. It is a confrontation with the biomedicalization of life, which

tries to encourage people to think that health depends on a range/diversity of determinants, that its implementation is a challenge. Biomedicalization is conceptualized as:

[...] a power that is exercised, positively, over life, that undertakes its management, its increase, its multiplication, the exercise, over it, of precise controls and joint regulations⁸⁽¹⁴⁹⁾.

That is, ways of controlling people's lives by determining what and how they should live. However, in everyday life, people, even without the knowledge of the expanded concept of health, have as a custom to understand this. Overweight people blame the lack of money to buy healthier foods, the lack of time to exercise and/or cook, the exhaustion of working life. Stressed people say they are nervous about situations at work, financial conditions, housing, violence, lack of security in a future of well-being for themselves and their children. Health experience is largely related to other conditions of their existences.

Biomedicalization in recent times has been strongly associated with incriminating the individual, as if the responsibility for the illness process rested solely with each person. Do not smoke, do not use drugs, do not be sedentary, do not expose yourself to the sun, do screening tests, control your cholesterol, do not eat this or that, and so on, mainly due to your life choices. It is as if the choices we make are not influenced by other social and cultural conditions. Perhaps more comprehensive and effective was the blaming of individuals if they incorporated broader values. Do not be poor, do not be unemployed, do not live in violent or polluted places. Today there is an exaggeration in directing individuals to self-responsibility for their health. The attempt in this political stance, for Castiel⁹, is to reduce costs in health care.

Health depends on so many determinants that no one can guarantee it, therefore, as a right, it must be interpreted as a human

right, which requires the guarantee not only of timely and effective health care but also of the supply of the necessary water in a safe, sanitation, safe and healthy food, protected and healthy housing, knowledge, culture, addressing climate and environmental change, addressing issues of racism and homophobia, among others.

This mismatch between the constitutional provision of formal and widespread access to health as a fundamental right, and the material inequality arising from the structural inequalities of the neoliberal capitalist system provocatively reveals the citizenship deficits of the poorest majorities, as well as incarcerated persons, devoid of the minimum health or environmental conditions or the consolidation of fundamental rights.

Violations or lack of attention to human rights not only contribute to and exacerbate health problems in the population, but can have serious health consequences for persons with disabilities, indigenous populations, transgender people, leading to a risk scenario of increased exposure to violations of human rights, which sometimes includes coercive or forced treatment and procedures¹⁰.

We all have the right to the highest possible standard of physical and mental health, without discrimination, wherever we may be, and whatever our circumstances. However, there is an important gap between the recognition of the right to the highest attainable standard of health and its implementation. Legislators and politicians should be convinced of their responsibilities to protect economic, social and cultural rights just as they are required to protect civil and political rights.

The global economic crisis violates the right to health. As social and economic inequalities increase, the problems associated with access and quality in the single health system become increasingly risky. It is not an easy task, but if we do not rethink actions in support of health facing conflicts of this magnitude, the human right to health will continue to be violated. An enormous challenge in the

field of health is to identify it as a multi-dimensional phenomenon, which does not depend exclusively or mainly on access to health services and the use of medicines.

Although the solution to social problems cannot be reduced to the Judiciary's action being dependent on the achievement of a less unequal society, one cannot disregard the fact that laws and processes can be seen as pressure instruments for the effective performance of other state functions in the implementation of public policies.

The effective action of the Judiciary Branch, in the case of the defense of human rights, goes beyond the individual sphere – among them, health – and will only be possible when the ideals of social justice are assimilated by society. Thus, the realization of the right to health depends not only on the Judiciary, but, mainly, on political will. Only with a development model that privileges human well-being over profit will it be possible to realize the fundamental rights respecting the 1998 Constitution's¹. The struggle for access to a fairer society by broadening access to court justice is a significant means of democratic pressure for the necessary policies to be implemented.

Knowledge of the theoretical foundations of current justice theories and their implications for health can help guide decisions. Adding competencies with health, based on a theory of justice, can offer a great help in the identification of injustices, as a rule, with an unequal character in terms of health. Judicial intervention should be a favorable environment for judges to collaborate in the decision-making process of other powers, expanding democratic participation or creating spaces for debate and interinstitutional dialogue. The Judiciary would thus have a provocative role, promoting the validity of rights and instigating the identification of system failures and definition of mechanisms to guarantee the right to health. An action by the Judiciary mirrored on commitments to a democratic process.

Today, there are major discussions about the conservative justice system and the possibility of Restorative Justice:

In the dawn of the questionings of the conventional Justice system, it is possible to foresee that any justice system has to be structured with strict observance of fundamental rights, that is, limits that are insurmountable to the performance of the State in the exercise of its sovereignty¹¹.

The author concludes that:

The system of Restorative Justice emerges, therefore, not inexorably from the rescue of ancestral human practices, but especially from the bankruptcy of the counterfeiting of the state justice system in the criminal field, and from the exhaustion of its universalizing claim in the other fields, in a frictional movement, of popular resistance¹¹.

The argument proposed herewith seeks to emphasize and bring to discussion the relationship between health, the legal field and human rights. It aims to be a means by which knowledge and practice discuss health as a fundamental right of the human person, whose “realization requires the action of many other social and economic sectors, besides the sector”¹².

They focus on the multiple faces of the production of the right to health, with social justice as its basis for discussion and implementation. From different perspectives, there is an attempt to organize ideas and actions that build competences related to health determination processes. We try to collaborate in the creation of a culture of human rights and health, allowing us to come closer to the realization that the

ideal of a human being free and freed from fear and misery cannot be realized unless conditions are created that allow each one to enjoy his or her civil and political rights¹³.

Human dignity, composed of principles and values that aim to guarantee to each citizen that the respect for elementary rights is observed by the State, underlies the relationship highlighted above. It synthesizes, today, the process of rationalization that, over time, promoted changes in its meaning by gradually changing it, settling it until it became a principle and instrument of legitimation. Inseparable, today more than yesterday, from justice and human rights, it is one of the few commonly agreed values, a pragmatic and universally accepted principle.

The aspects highlighted here are not intended to homogenize thinking neither perspectives. On the contrary, they bring a so dear plurality to the democratic process in which diverse ideas have the possibility of dialogue, so that the reader can, by himself/herself, construct a way of seeing, being, interpreting the world, giving meaning to everyday social relations.

This paper aims to point out some elements that are directly and/or indirectly considered relevant when the relationship between health and human rights is brought to the discussion. To aspects, sometimes, disparate regarding this pair, it underlies what one should value or neglect. In fact, it discusses what is sought and what is intended to be obtained from the various spheres of the State and civil society.

The feeling of community anchored in concern for the whole is possible in a society that has canons that underlie some kind of redistribution, insofar as an unequal socioeconomic society compromises democratic solidarity.

A uniform view of societies and lifestyles is not sought, but the ethical validation of human dignity as an end, promoter of instruments connected to means and ways of acting beyond ideological beliefs. An ethical requirement since it is established from a rational exercise and is the objective of equivalence between rights and duties.

Mutual recognition and acceptance of principles of justice are what we want to

do because we are rational, free and equal beings, possessing a careful understanding of the public, of justice, upon which social relations are based¹⁴.

Human rights, with their statements, letters, pacts, form a set of ethical propositions; and its materialization appears in the institutions that make up the United Nations system and in the laws and decrees of societies that ratify these same propositions. The aim is to remove, as much as possible, the needs of predominant socioeconomic groups and hegemonic countries, focusing on what is advantageous to all and possible because it corresponds to a historical moment, the result of which it was politically possible to be agreed upon.

In the Declaration of Alma-Ata¹² it is reiterated, unequivocally, that the health of populations derives from political, social and cultural situations associated with greater or lesser scarcity of resources, poverty and lack of national, regional and international integration. Thus, the Human Rights approach breaks with the usual and circumscribed practice of describing, reprimanding and punishing countries, groups and individuals for abuse and disrespect, and relates them, indelibly, to the daily lives of individuals, as in the case of health, which is understood beyond the medical-biological dimension, that is, the disease itself.

Thus, the promotion and protection of health and human rights are inexorably intertwined once the conception brought here understands health as something that

transcends the biological, in which there are social determinants to be considered and respected. The relationship between health and human rights is based on the indispensable construction of citizenship and, therefore, of a democratic society.

Human rights violations shake the foundations of social justice because they lead to pain, lack of hope, feelings of social abandonment, iniquity. A fair and equitable society presupposes a conception of health that goes beyond the absence of disease. The acceptance of a certain idea of humanity in which the existence of individuals and groups with different needs is recognized has in the dignity of the human person its guiding axis. It is reiterated, thus, the existence of diversity, necessary otherness and solidarity as a possible way of establishing a peaceful society.

Collaborators

Oliveira MHB (0000-0002-1078-4502)*, Vianna MB (0000-0001-9411-2086)* and Teles N (0000-0003-0481-504X)* contributed to the development of the article, design and research. Schütz GE (0000-0002-1980-8558)* contributed to the analysis, interpretation of data and approval of the final version of the manuscript. Ferreira AP (0000-0002-7122-5042)* contributed to the design, planning, analysis; critical review of the content; and approval of the final version of the manuscript. ■

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