

Historical Bases of Human and Fundamental Rights and the Need for a Multicultural Conception

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ABSTRACT

The present study focuses on human rights theory and multiculturalism. The general objective is to understand how the conception of multiculturalism has repercussions on an effective universalization of human rights that respects cultural differences between peoples. As a methodology, the proposal is to conduct a literature and documental review through legislative documents and selected theoretical framework. The approach will be hypothetical-deductive. The hypothesis that will be tested is that the conception of multiculturalism is fundamental for a universalization of human rights that respects cultural differences between peoples. Finally, it is concluded that the adoption of human rights as multicultural is a necessary means to make them effective and egalitarian in application worldwide, however, it is important to recognize that we are still far from this ideal.

Keywords: social rights; right to education; higher education; remote teaching; multiculturalism.

Bases históricas de los derechos humanos y fundamentales y la necesidad de una concepción multicultural

RESUMEN

El presente estudio se centra en la teoría de los derechos humanos y el multiculturalismo. El objetivo general es comprender cómo la concepción del multiculturalismo repercute en una efectiva universalización de los derechos humanos que respete las diferencias culturales entre los pueblos. Como metodología, se propone realizar una revisión bibliográfica y documental a través de documentos legislativos y del marco teórico seleccionado. El enfoque será hipotético-deductivo. La hipótesis que se pondrá a prueba es que la concepción del multiculturalismo es fundamental para una universalización de los derechos humanos que respete las diferencias culturales entre los pueblos. Finalmente, se concluye que la adopción de los derechos humanos como multiculturales es un medio necesario para hacerlos efectivos e igualitarios en su aplicación en todo el mundo, sin embargo, es importante reconocer que aún estamos lejos de este ideal.

Palabras clave: derechos sociales; derecho a la educación; enseñanza superior; enseñanza a distancia; multiculturalismo.

Bases históricas dos direitos humanos e fundamentais e a necessidade de uma concepção multicultural

RESUMO

Este artigo centra-se na teoria dos direitos humanos e o multiculturalismo. O objetivo geral é compreender como a concepção do multiculturalismo repercute em uma efetiva universalização dos direitos humanos que respeite as diferenças culturais entre os povos. Como metodologia, propõe-se realizar uma revisão bibliográfica e documental através de documentos legislativos e do marco teórico selecionado. A abordagem será hipotético-dedutiva. A hipótese que se colocará à prova é que a concepção do multiculturalismo é fundamental para uma universalização dos direitos humanos que respeite as diferenças culturais entre os povos. Finalmente, se conclui que a adoção dos direitos humanos como multiculturais é um meio necessário para fazê-los efetivos e igualitários na sua aplicação em todo o mundo, porém, é importante reconhecer que ainda estamos longe desse ideal.

Palavra-chave: direitos sociais; direito a educação; ensino superior; ensino à distância; multiculturalismo.

Introduction

The article received financial support from the Graduate Support Program (PROAP/CAPES). It is a project that arises from the academic activity carried out in the discipline of Fundamental Rights, together with the Master's Degree in Law from the Universidade Federal de Pelotas, without trying to exhaust the subject, but to bring an explanation about what the authors studied and their perspective about multiculturalism.

In the book *I am Malala*, in one of her last passages, Malala reports that "Sitting on a chair, reading my books surrounded by my friends is my right" (Lamb, 2013, p. 201). In this work, it is presented through a metaphor, someone who stood up in defense of the social right to education in a social context considered authoritarian and little understood by the West.

From that, this article aims at a historical analysis of human rights and its current position in the context of multiculturalism (Santos, 1997). The proposal is to carry out an analysis of the effectiveness of these rights proclaimed as having a universal character, but which, however, do not meet the intended isonomy, given the difficulty of a universal sense of rights in different cultures and social contexts.

In this way, the teachings of the authors Boaventura de Sousa Santos and Joaquim Herrera Flores affirm that although the Declaration of Human Rights having been proclaimed in 1948 and the proclaimed rights considered universal, its application does not efficiently reach the global sphere, especially the "South", in which countries in the context of late modernity have not been able to fully implement human and fundamental rights. In view of this, human rights in order to have greater applicability should take on a multicultural character, assuming an intercultural dialogue in order to allow all cultures to interact in a more egalitarian manner.

Finally, it appears that human rights must be made adaptable to different cultural contexts, unlike the model currently used, where they are considered universal and end up disregarding the specificities of each socioeconomic, political, and cultural situation. In this sense, it appears that multiculturalism is an adequate concept to envision possibilities for a dialogue between cultures in order to overcome the challenges that impede the implementation and effectiveness of rights, opening space for their struggle and claim.

Moreover, it appears that although multiculturalism contains traces of idealism, the recognition of this multicultural perception already puts us a step forward in the search for the emancipation of human rights and even though we are far from a model with effective applicability worldwide, we are charting a path to propagate social inclusion among peoples and dialogue.

It is noteworthy that this research is structured in two chapters to support the proposed discussion: an analysis of the historical foundations of human rights and an understanding of the importance of a multicultural conception of human rights.

2. The Historical Process of Human and Fundamental Rights: Developments

In order to understand the emergence of fundamental rights, it is necessary to study their origin by making a historical analysis, aiming to elucidate the path taken for the formulation of the concept of human rights in contemporary times and its reflections in society, which expose the current structure of Fundamental Rights linked to the solution of the social conflicts of modernity and that imply, to a large extent, a dichotomy between theory and social reality.

The compression of the genesis and development of the General Theory of Human and Fundamental Rights initially passes through a conceptual construction. The former are linked to an innate and contemporary conception of universality of rights in national Constitutions and Conventions and Treaties of International Rights, especially in the post-World War II period. The latter, on the other hand, are associated with an idea of territoriality, of positivation within the scope of national constitutionalisms. In this sense, it is important to emphasise that not every fundamental right is a human right, an example of which is the 13th salary in Brazil considered a fundamental right by the Constitution of the Federative Republic of Brazil (1988), but not a human right that escapes the barriers of territoriality.

Terminological limitations have always existed in the context of human and fundamental rights, as several terms have been used over time to affirm these rights. Among these terms we can mention: natural rights, human rights, rights of the human gender, humanities rights, rights of the citizens or rights of our being. Each nomenclature has its limitations of interpretation, and the term human rights itself is considered one of the most modern ways to referring to fundamental rights with a small distinction that the latter are also linked to a explicit provision in a written document (Hunt, 2012, p. 21). For Sarlet:

Despite both terms (human rights and fundamental rights) commonly used as synonyms, the common explanation and, by the way, valid for the distinction is that the term "fundamental rights" applies to those rights of the human being recognized and affirmed in the sphere of the positive constitutional law of a given State, while the expression "human rights" would be related to documents of international law as it refers to those legal positions that recognize the human being as such, regardless of his connection with a particular constitutional order, and which, therefore, aspire to universal validity for all peoples and times in such a way that they reveal an unmistakable supranational (international) character. (Sarlet, 2009, p. 28)

In line with this understanding, Canotilho complements the vision on the distinction between fundamental rights and human rights stating that:

The expressions of human rights and fundamental rights are often used as synonymous. According to their origin and meaning, we could distinguish them as follows: human rights are valid rights for all peoples and at all times; fundamental rights are human rights, legally-institutionally guaranteed and limited in space-time. Human rights would tear from human nature itself and hence their inviolable, intertemporal and universal character; fundamental rights would be the rights objectively in force in a concrete legal order. (Canotilho,1998, p. 393).

However, the conception of universal values to individuals is not recent, it has its germ at the birth of the Democratic Rule of Law, as Dallari (2011, p. 145) points out: "The modern idea of a democratic state has its roots in the 18th century, implying the affirmation of certain fundamental values of the human person", above all, initially in the values of freedom. From this, in the Cassic Constitutionalism, the first written Constitutions are understood as paradigmatic documents for the understanding of the phenomenon of Constitutionalisms. They are: the Constitution of the State of Virginia (1776); the Constitution of the United States of America (1789) and the French Bill of Rights (1791). These documents were mainly concerned with the first dimension Rights or civil, political, and economic Rights.

Together with Art. 16, of the Universal Declaration of Human Rights of 1789, which provided for the separation of powers by establishing that "A society in which the guarantee of rights is neither guaranteed nor the separation of powers established has no Constitution", the initial conditions were created for the emergence of the Democratic Rule of Law. Associated with the influences of juspositivism, parallel to the democratic state, the Democratic Rule of Law has emerged, which is characterized by the presence of a fundamental normative system. We move from jus naturalism to jus positivism, that is, to the rule of law.

In the sequence of the historical development of the declarations of rights, according to Bobbio (2004), three fundamental historical stages can be listed: a) the philosophical theories with individualistic biases in the protection of freedom and equality –it is considered that it was the philosophical theories such as the jusnaturalist, based on the ideas of Locke and Rousseau, that laid the foundations for the declarations of rights; b) the positivation of the rights, that is, the written record at the national level– the theories are known by a legislator, in the words of Bobbio (2004, p. 19): "(...) the rights of man is no longer the expression of a noble demand, but the starting point for the institution of an authentic system of rights in the strict sense of the word, that is, as positive or effective rights" and; c) an association between the two previous phases with the junction between the positivation of rights considered universal in the national and international spheres. In this last phase, there is an understanding that some social values transcend the need for recognition of national authorities, and must be protected in a transnational manner, even against possible violations of national states. As the author understands:

The Universal Declaration contains in its germ the synthesis of a dialectical movement, which begins with the abstract universality of natural rights, transfigures itself into the concrete particularity of positive rights, and ends in the no longer abstract, but also concrete, universality of universal positive rights. (Bobbio, 2004, p. 19)

With regard to the international scenario, the Universal Declaration of Human Rights - UDHR (1948) brought, to the global scenario, the recognition of fundamental rights. At that time, the debate and the importance of the subject gained strength in the last century, and the importance of isonomy, individual freedom, and the limitation of state power is highlighted. In this sense, Piovesan also points out:

It was the Universal Declaration of Human Rights of 1948 that introduced, for the first time, a renewed language to Human Rights. For the first time, the catalogue of civil and political rights is combined with the list of social, economic and cultural rights. The Declaration states that without freedom there is no equality possible and, in turn, without equality, there is no effective freedom. It consolidates the contemporary conception of Human Rights, which establishes the indivisible, interrelated and interdependent nature of these rights. (Piovesan, 2013, p.197)

Regarding the post-war constitutions, Piovesan (2018) states that the urgent need for the international protection of rights takes place in opposition to the horrors that occurred in World War II. According to the author, in the new contemporary view of human rights, two main characteristics can be considered: on the one hand, globally and regionally, there are human rights declarations and instruments in common with several signatory states parties. On the other hand, most national Constitutions tried to positivise norms and values often inspired or influenced by documents of international protection of rights.

After the scenario of World War II and the Universal Declaration of Human Rights (UDHR), there was the ideal of universalization and multiplication of rights, ideas of minimum rights granted to all people began to be constructed. Notwithstanding, the importance of the aforementioned document, it is necessary to criticise the conjuncture of elaboration of the Universal Declaration of Human Rights carried out mainly by the winners of the World War II and their economic conceptions, mainly of neoliberal biases.

Piovesan (2018) points out some challenges for the exercise of human rights, on a global level, as was the initial proposal of the Universal Declaration of Human Rights: secularity *versus* religious rights; and solidarity globalization are some examples of these challenges. Santos (1997) proposes to overcome the false dichotomy between universalism and cultural relativism through diatopic hermeneutics, that is, through the dialogue between cultures. It is proposed that the topoi/values of each culture be considered to enable dialogue, aiming at a less abstract conception of universalism. However, it is a more theoretical hypothesis than a practical one. It should be noted

that the criticism of the author is important in dealing with the relativization of the abstract notion of rights, which to a large extent does not correspond to reality. It is noteworthy that, despite the Universal Declaration of Human Rights, having a universal nature and aiming to encompass and protect all peoples, the internationalization of these rights has shown itself to be incompatible with encompassing cultures that are more distant from Western ones, given the cultural aspects and different philosophical aspects of the countries, as well as the differentiation regarding moral and religious values. From the diatopic hermeneutics, there is the possibility of both human rights and the dignity of the human person being universalized on a large scale through the understanding of the main values of each culture.

Among the main international documents for the protection of rights that Brazil is a signatory, we highlight the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights (UN General Assembly, 1966). In the regional system of protection, we highlight the American Convention on Human Rights (Inter-American Commission on Human Rights, 1969).

In addition, Bobbio (2004) already pointed out that the mere positivation is not a condition for the accomplishment or realization of Rights, thus asserting that: "The important thing is not to base human rights, but to protect them. I do not need to add here that, to protect them, it is not enough to proclaim them" (Bobbio, 2004, p. 24).

After a brief historical analysis of human rights and fundamental rights, it is worth studying the capacity that may have the right to be understood in a multicultural way, mainly addressing the issue through the understanding of the authors Boaventura de Sousa Santos and Joaquim Herrera Flores.

3. Human Rights and their Applicability. Would a Multicultural Conception be Possible?

Before going deeper into the discussion, it is convenient to present an overview of the evolution of the universality of human rights and the encounter with other cultures, in which modernity presents itself as a problem for the recognition and exercise of these rights and, postmodernity as a possibility of enjoyment of human rights, with observance of multiculturalism, inseparable from the exercise of these rights.

For Santos (2009) human rights policy goes through dialectical tensions of Western Modernity, with three dialectical tensions: the first occurs in the tension between social regulation and social emancipation, on which the paradigm of modernity is based, because:

The crises of social regulation and emancipation are simultaneous and feed off each other. Human Rights policy, which can be both a regulatory policy and an emancipatory policy, is trapped in this double crisis, at the same time that it is a sign of the desire to overcome it. (Santos, 2009 p. 11)

Regulation and social emancipation feed each other, inseparably, so that there is damage to human rights that ends up being immersed in this crisis, even if there is the purpose of escaping it.

The second dialectical tension occurs between the State and civil society because, even being the dualism that forms Western modernity, it points to the distinction between both as a problem.

The tension, therefore, is no longer between the State and civil society, but between interests and social groups that reproduce themselves in the form of the State and interests and social groups that reproduce themselves better in the form of civil society, making the effective scope of Rights Humans inherently problematic. (Santos, 2009, p. 11)

This tension makes the recognition of human rights problematic, as the tension is no longer between State and Society and becomes between interests and social groups.

The third tension occurs between the Nation State and globalization, with the State weakening in the face of the intensification of Globalization before it, questioning whether regulation and social emancipation should abandon the local context and give way to the global context.

It is in this sense that we begin to talk about global civil society, global governance, global equity and post-national citizenship. The effectiveness of Human Rights has been conquered in political processes of national scope, and therefore the weakening of the Nation State can bring with it the weakening of Human Rights. On the other hand, Human Rights today aspire to worldwide recognition and can even be considered as one of the fundamental pillars of an emerging post-national policy. The reemergence of Human Rights is now understood as a sign of the return of the cultural and even the religious. (Santos, 2009, p. 11)

The achievement of human rights has gone through internal processes of recognition, even if there is a need for recognition, too, on a global scale. This refers to a global civil society, with the cultural being among the signs of the urgency of human rights.

In this scenario, for the cultural to present itself as an integral part of human rights, it is necessary that these rights are part of an emancipatory script. Therefore, human rights should not operate in a hegemonic way (modern perspective), but counter-hegemonic (post-modern perspective), because as universal human rights, they operate in a localized globalization and, therefore, as a form of hegemonic globalization. For Santos (2009), when there is a recognition of human rights associated with multiculturalism, a counter-hegemonic, cosmopolitan globalization will be possible, with the principle of equality and the principle of difference:

Although in practice the two principles often overlap, an emancipatory human rights policy must be able to distinguish between the struggle for equality and the struggle for the egalitarian recognition of differences, in order to be able to fight both struggles effectively. These are the premises of an intercultural dialogue on human

dignity that can eventually lead to a mixed-race conception of Human Rights, a conception that, instead of resorting to false universalisms, organizes itself as a constellation of local meanings, mutually intelligible, and that constitutes a network of enabling normative references. (Santos, 2009, p. 15)

With regard to the realization of human rights, it is appropriate to look at how they can be applied in an emancipatory way. First, at authors such as Antônio Augusto Cançado Trindade (2007) who defend the overlap of the universality of Human Rights and then at those authors who defend the multiculturalism and the relativization of Human Rights, such as Boaventura de Souza Santos (1997), as well as Joaquim Herrera Flores (2009), adherents of the intercultural dialogue.

In order to answer the questioning about the possibility of using a multicultural conception, we will analyze the teachings of Santos and Flores, In this sense, it is highlighted that the first understands that the best application of human rights can only occur from the moment they become multicultural, while the second understands the application through an intercultural dialogue.

The multicultural expression implies that human rights must be adaptable to the various environments, differently from the way they are seen by the current model where they are considered universal and end up disregarding the specificities of each location. Therefore, in order to begin to understand what the multiculturalism of human rights proposed by Santos is, it is worth bringing up a concept attributed by him:

Multiculturalism, as I understand it, is a precondition of a balanced and mutually enhancing relationship between global competence and local legitimacy, which constitute the two attributes of a counter-hegemonic policy of rights in our time. (Santos, 1997, p. 19)

From this, the author understands the need to weigh their local customs and laws between cultures in order to carry out an intercultural dialogue on human dignity to create a mixed conception of human rights. (Santos, 1997, p. 22). It is observed that many rights provided for in international documents bring a conception of human rights that do not apply to certain cultures and peoples, and the proposal of multiculturalism of rights, among other issues, is an attempt to prevent the domination of the West over the East.

Still, with regard to multiculturalism, Herrera Flores points out that we are experiencing a clash of civilizations:

The political and theoretical debate on multiculturalism that takes place in countries enriched by the global order, as opposed to focus on the numbers of misery and on the effects that "globalization" is having on class struggle, is dedicated to shouting against the cultural dangers that represent the different, especially those who are forced to immigrate to improve, as far as possible, their precarious conditions of life. In this reality, Huntington claims that there is no class struggle, but "clash of civilizations". These "prophecies" are welcomed and amplified by the

media network committed to maintaining a genocidal and, it seems, immutable *status quo*. (Herrera Flores, 2009, p. 146)

On intercultural dialogue (Santos, 1997), he presents the dialectical tensions that have occurred in Western modernity, international human rights regimes and the premises necessary to face this transformation. Regarding the dialectical tensions presented; he indicates three, namely: a) social regulation x social emancipation; b) state x civil society; c) nation state x globalization.

In relation to social regulation and social emancipation, it appears that social regulation has already played the role of strengthening emancipatory policies: today there is nothing to talk about emancipation in the sense of creating new rights, but rather, it is perceived that there is a crisis between regulatory policy and emancipatory policy, feeding on each other.

The second dialectical tension represents the clash between the state and civil society, while the former is potentially maximalist, the second if self-regulating through the former, creating its laws and managing itself through what is emanating by the State so that apparently there are no limits to curb state determinations.

On the other hand, the last dialectical tension presents itself as the divergences between the Nation-State and what we know today as globalization. It is noteworthy that the state model is sovereign, has privileged unity and scale, in the sense that the Nation-State ends up being "responsible" for trimming human rights violations at the national level, while human rights attitudes are still based on specific cultural aspects, which causes a confrontation with this cultural policy.

Santos also understands globalization as being "the process by which a certain condition or local entity extends its influence to the entire globe and, in doing so, develops the ability to designate as a local another social condition or rival entity". (Santos, 1997, p. 14).

In this sense, it is understood that globalization is actually that people, country or culture with greater economic conditions exercising a power over the other with fewer conditions, indicating that the globalization process presupposes a location and space-time compression, emphasizing that the minorities, which today we can identify as being the migrants, refugees, subordinate workers, do not control this process. Corroborating this understanding, Herrera Flores points out:

The country that receives the immigrant commands, while the immigrant because he is the different/unequal, serves; we are before the law of supply and demand that is applied, in this case, to the personal tragedy of millions of people fleeing the impoverishment of their countries because of the indiscriminate prey of globalized capitalism. (...) With this, the phenomenon loses political dimension and makes us see immigration as a problem that arises from the need for labor in certain times, and not as a phenomenon caused by the injustices generated by the savage neoliberal

globalization that has been further deepening the gap between rich and poor countries. (Herrera Flores, 2009, p. 147)

Thus, in the division of the globalization production process, Santos:

It assumes the following pattern: central countries specialize in globalized localisms, while peripheral countries only have the choice of localized globalisms. The world system is the web of localized globalisms and globalized localisms. (Santos, 1997, p. 13)

It means to say that the richest countries are holders of "what worked", such as, for example, multinationals, the English language recognized as the most widely spoken in the world. Poor countries, on the other hand, include only adhering to the imposition of the richest countries to serve them in what they care about. Examples are listed:

The massive destruction of natural resources to pay foreign debt, tourist use of historical treasures, conversion of agriculture as a livelihood to export agriculture, among others. In this sense, Flores states that "The "north" receives with surprise and indignation the demonstrations of anger and cholera from a "south" increasingly marked by the fata of hope" (Herrera Flores, 2009, p. 146).

Santos understands that while human rights were considered universal, there will always be a top-down globalization, when central countries impose norms and behaviors on peripheral countries, thus defending the multicultural conception of human rights. In quoting (Panikkar, 1982, p. 30) he assesses that the concept of human rights is based on Western parameters, as it provides:

The concept of human rights is based on a well-known set of assumptions, all of which are typically Western, namely: there is a universal human nature that can be known rationally; human nature is essentially different and superior to the rest of reality, the individual possesses an absolute and irreducible dignity that must be defended from society or the State; the autonomy of the individual demands that society be organized in a non-hierarchical way as a sum of free individuals. (Santos, 1997, p. 19)

The Western brand is verified in several situations, such as the Universal Declaration of Human Rights, in which several nations were initially excluded, where the right to self-determination of peoples was not recognized, among other cases. Santos points out that in order to overcome this concept of human rights, we must overcome some premises: the solution to the debate on universalism and cultural relativism; the cosmopolitan transformation that all cultures have conceptions of human dignity, but not all of them conceive it in terms of human rights; that all cultures are incomplete and problematic in their conceptions of human dignity with different versions of the concept; and finally, that all of them tend to distribute people and social groups between two competitive principles of hierarchical belonging.

These premises are capable of eventually bringing a mixed conception of human rights, where there is an opening for dialogue and is able to build enabling references, providing exchange between different cultures. From this, Santos proposes a diatopic hermeneutics, understanding that it is capable of guiding the difficulties related to the application of human rights, already anticipating that it does not necessarily mean overcoming them. The diatopic hermeneutics proposes to expand as much as possible the awareness that a culture is not complete, carrying out the dialogue between the differences, an example of which is the understanding of an Islamic notion of human rights.

Herrera Flores, on the other hand, points out as premises, firstly, an abstract vision, in which there is no content and reference about the real conditions of people, centered on a legal-formal rationality and universalistic practices and, secondly, he points to a localist vision, in which the own prevails, centered on the idea of the particular, of a material and cultural rationality and particular practices. Corroborating this understanding, he also points out that:

Recognize that cultural problems are closely interconnected with political and economic problems. Culture is not an entity alien or separate from the strategies of social action, on the contrary, it is a response, a reaction to the way in which social, economic and political relations are constituted and unfolded in a given time and space. (Herrera Flores, 2009, p. 148)

Therefore, there is no neutral right, and it is important to build a culture in order to embrace the universality of guarantees and respect for what is different. Thus, he proposes a complex vision, with a rationality of resistance and intercultural practice:

With this vision we want to overcome the controversy between the intended universalism of rights and the apparent particularity of cultures. Both statements are the product of distorted and reductionist visions of reality. Both end up ontologizing and dogmatizing their views by not relating their proposals to the real concepts (...) Abstract and localist views of human rights always find themselves at a center from which they interpret everything and everyone. (...) In the end, the excluded is, in a terrifying way, much more important than the included. (Herrera Flores, 2009, pp. 150-151)

Herrera Flores, understands that we must abandon the idea that there is only one center and what is not in it is the marginality, believes that we are all in the periphery, we are all the surroundings, so that we cannot live isolated nor devoid of awareness about the human condition of all people. Seeing that we are part of a whole prevents us from having attitudes of domination and violence. The complex vision assumes the existence of multiple voices, where all have the same value to express themselves, to denounce, to demand and to fight, moving from a representative conception of the world to a democratic conception worth the participation and opinion of all. (Herrera Flores, 2009, p. 152).

Still on multiculturalism, he points out that:

The term "multicultural" either says nothing given the lack of separate cultures, or leads to overstep, in the style of a museum, the different cultures and ways of understanding rights. Multiculturalism respects differences, making identities absolute and attenuating the hierarchical relationships (dominated/dominant) that occur between them. (Herrera Flores, 2009, p. 156)

Finally, Herrera Flores proposes a non-universalist or multicultural practice, but an intercultural one, stating that human rights need a complex vision, a rationality of resistance and intercultural practices in order to overcome the challenges that have impeded their evolution for so long, opening space for the struggle and the claim, also affirming that the only valid universalism is the one that enhances the fight for dignity, being necessary to empower those excluded from the construction processes of hegemony. (Herrera Flores, 2009, pp. 163-164).

Santos affirms the need for intercultural dialogue in order to demonstrate that all cultures have incompleteness, recalling the following:

Incompleteness comes from the very existence of a plurality of cultures, because if each culture were as complete as one thinks, there would be only one culture. The idea of completeness is at the origin of an excess of meaning that all cultures seem to suffer and that is why incompleteness is more easily perceived to the outside from the perspective of another culture. Increasing the awareness of cultural incompleteness is one of the tasks prior to the construction of a multicultural conception of human rights. (Santos, 2003, p. 442)

In this sense, it is observed that this cultural openness is relevant, considering that one must be careful with the tendency to establish a universal ethics emphasizing Western values, because it ends up bringing misunderstanding and intolerance about other cultural specificities that also deserve to be treated with equality and respect. (Santos, 2003, p. 21)

Finally, we understand the importance of a possible adoption of a multicultural vision of human rights in order to respect cultural diversity, the local identities of each society so that, based on these particularities, it is possible to include all the peoples satisfactorily under international law, indicating that the lack of formal adherence by States and public policies committed to the application of rights, reinforces this choice.

Conclusions

It can be seen throughout the theoretical framework brought to the analysis that the adoption of human rights as multicultural is a necessary means to make them effective and egalitarian in application worldwide. Although such a concept may have traces

of idealism, the recognition of this multicultural perception already puts us one step ahead in the search for the emancipation of human rights.

By providing an intercultural dialogue between States, it is considered that no culture is better than another, placing them on an equal footing, making it clear that observance and respect for different cultures does not imply allowing violations of human rights, serving only as an evaluation parameter before making any kind of judgement.

The search for intercultural dialogue meets respect for the principle of human dignity with the elevation of minorities whether by social, racial, cultural or religious class to be holders of the creation and recognition of rights. Notwithstanding, the development of technologies, may, to some extent, have brought nations closer and unified some fundamental rights, there is still a lot to be done in order to have a harmony between States, mainly from different cultures.

Finally, it is understood as possible the adoption of human rights in multicultural character as it is a necessary means to realise a social inclusion and respect the differences between nations, however, it is important to recognize that we are still far from this ideal.

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