

# INFRINGEMENT, DIGNITY AND HUMAN RIGHTS



Luis González Placencia

Senior Researcher, Legal and Political Studies Center, University of Tlaxcala (Mexico).

## ABSTRACT

In order to establish the relationship between affirmative actions and human rights as problematic, this article is aimed to discuss how the construction of vulnerability as a natural fatality was a resource to justify individual differences and, for that reason, the dominance of some identities over others. Under the context of scientific positivism and social welfarism, any discussion about human dignity were displaced because of the certainty of a natural inequality. Nevertheless, the emergence of the concept of human dignity in the Universal Declaration of Human Rights and the subsequent Covenants on political and civil rights and social economic and cultural rights and later in many of worlds countries constitutions allows to think of human dignity as the hard core of human rights and thus as a solid legal tool for the emancipation of subjugated identities. This makes it possible to abandon the idea of vulnerability in order to focus attention on the contexts and the violating agents and to give a strong character to the violation of rights. Under these arguments, it is proposed in this article that the only way to justify affirmative action is to consider it as an obligation and not, as some authors claim, as a right.

## Keywords

Affirmative action; human rights; vulnerability; human dignity

## 1. INTRODUCTION

For about a couple of decades, it has been common to talk about vulnerable people, groups and populations or, in the best of cases, situations of vulnerability. This discourse has been useful to describe a series of personal characteristics, as well as material situations associated with a kind of weakness – constitutive

in the case of people and structural in the case of situations – that appears given and that although not considered unchangeable, in any case this is due to the *ex post* intervention of social agents, including therapists, *coaches*, social workers, foundations and other instances of public and private assistance. My interest in this text is to discuss the natural existence of this *vulnerability*, as well as to critically review the mechanisms that produce it. In particular, I would like to emphasize that, precisely from the perspective of rights, affirmative action – which has been placed in the collective imagination and in public policies as a mechanism for compensating those groups whose identities have historically been constructed as deserving of inequality – it is visualized and conceptualized as a reparatory act – historical and current – of the damage caused to the dignity of the identities violated, accumulated through generations.

This discussion becomes topical in the context of a kind of reaction against a series of movements to make this vulnerability visible which, having redressed the status of various and potentially all identities subjected to discourses and practices of historical dominance, affirms that said movements generated “imbalances” in relations of equality by favoring emancipated identities to the detriment of their former dominators.

I begin by making a brief recount of the way in which the construction of the concept of vulnerability favored an underestimating view of individual differences in favor of the justification of the historical dominance of some identities over others, to later raise the relevance of the concept of human dignity as criterion of claim against said undervaluation. Finally, I argue that in the context of the Constitutional State Guaranteed of Rights, the traditional concept of affirmative action can be interpreted as a way of complying with the obligations to guarantee fundamental rights, as well as with the duties of















instruments, establishes that dignity is inherent to the human person and that it precedes the rights, and that the subjects of rights are those who possess at least the constitutive attributes of each of the three dimensions that are in turn constitutive of the human person, then it is possible to identify the indissoluble set of these dimensions as constitutive also of human dignity.

Thus, the first category of identity attributes included in the UDHR and subsequently in various constitutions would contain what I will call the individual dimension of human dignity, which abstractly represents human diversity and identifies, through the identity attributes contained therein, people as unique and unrepeatable individuals and in that sense, as diverse from each other.<sup>6</sup> This dimension gives value to the human person as an individual for what he or she is, as a manifestation in itself of a sex, a sexual orientation, an age, a skin color, a physiognomy that are, in all cases, unique and unrepeatable and belong only to that person as an individual. The second category would contain what I will call the *collective dimension of human dignity*, relating to a set of identity attributes shared by groups or communities, be they *original* attributes - such as those that constitute a nation, for example - or *artificial* attributes - such as those that identify a group as citizens of a country or someone as a practitioner of a religion or a lifestyle.<sup>7</sup> In this case, the value of each person as an individual is enriched by his or her position at the crossroads of various individual identities that are then constituted as also equivalent collective identities. These two dimensions of dignity, the individual and the collective, have in common that they are constituted by identity attributes on which, under penalty of impairment or discrimination, no one should pronounce or judge - certainly not the State, but neither should other people, except for the person who is the bearer of such identity attributes, who even, only if it is his or her will, can accept to modify them. This is a demand for respect and protection that contributes to overcoming difference through the recognition that humanity and its ways of being and manifesting are diverse, both in the individual and in the collective dimension. From this perspective, there is no model of human being, morality, culture or of lifestyle, against which to construct the other as different, but in

any case, diversity - physical, moral, cultural or of lifestyles - is polycentric and makes all these manifestations and ways of being equivalent.

The third category would contain identity attributes of what I will call the *class or positional dimension of human dignity*, and refers to characteristics that are external to people and that nevertheless form part of their identity because they determine their social or economic position, their state of health, legal or political situation, their immigration status and others that, on the one hand, mark the here and now of the individual and collective dimensions of human dignity, and on the other, make visible the material conditions that are at the basis of social inequality. For this ulterior reason, unlike what happens with the individual and collective dimensions of human dignity on which no one, except the person who is the bearer of the identity attributes contained therein, must pronounce, on this dimension of class or position, it is mandatory to take charge and act, under penalty of impairment or discrimination. This is also a requirement of guarantee that overcomes the idea of *accidental* structural weakness of the material situations in which the three identity dimensions of dignity develop.

It should be emphasized that, from this perspective, none of these dimensions of human dignity makes sense without the others; In fact, it is this three-dimensionality that allows a definition in the abstract of what, from this point of view, would then have to be considered as a human person - in a generic sense, as humanity - and also, in the concrete, each one and each of the historicized human beings who are part of it. In a way, this idea, insofar as it resorts to universal attributes that no one under any circumstances can detach or alienate, allows us to affirm, in line with Waldron that... *dignity now conveys the idea that all human persons belong to the same rank, and that the rank is a very high rank indeed.*<sup>8</sup>

To this end, it is necessary to make a new distinction, this time to separate the formal or abstract level of the identity attributes that I have referred to the three dimensions of human dignity, and another level, contingent or concrete, referring to the denominators that these identity attributes can assume in the particular.<sup>9</sup> Paraphrasing Habermas, it is about the areas separated by the wall of mist that











the concept of dignity could be constituted as the nourishing soil from which arises a sense of self-respect – in the Rawlsian sense, that is, as a primary good with social bases – that makes each person aware of the value of his good life project and observe society as a fair scheme of cooperation in the context of which such a project can materialize in time.<sup>14</sup>

Surely it would be necessary to see, case by case, to what extent this framework, which is that of the Constitutional State Guarantee of Rights, is sufficient for affirmative actions to be considered as reparative acts of human dignity and if, in effect, conflicts occur in the ones that can be seriously argued why not repair them.

Surely it would be necessary to see, case by case, to what extent this framework, which is that of the Constitutional State Guarantee of Rights, is sufficient for affirmative actions to be considered as restorative acts of human dignity and if, in effect, conflicts arise in the ones that can be seriously argued why not to repair them.

## 5. RECAPITULATION

Contemporary societies are diverse and unequal. Therefore, awareness of the violation of identities subjected in the past and in the present is a condition for the vindication of their quality as diverse and equivalent persons and collectives. In this process, the legal recovery of the concept of dignity, stripped of its biological, religious or moral correlates, makes it possible to build a common basis to understanding the human person not as a body or as a spirit, but as the historical product of their fundamental rights. In the context of the Guaranteed Constitutional State, which does not protect people but rights; this idea of human dignity as a constructor is the basis for finding in fundamental rights an axis of unity in diversity, and in affirmative actions, acts of reparation of the violated dignity. This is, in conclusion, the thesis of this collaboration.



## NOTES

1. As a natural fact, in the sense of John Rawls' opinion quoted by Rodríguez Zepeda (2010: 181) according to which, natural distribution is neither fair nor unfair, but only a natural fact. For her part, Valeria López Vela (2016) states that other authors agree with Rawls in that ...the inequalities of birth, -being the child of an economically solvent family- and natural talents -being healthy and having a high IQ- are due to luck...The author explicitly refers to Cohen and Arneson, authors of the "egalitarianism of luck" but also, according to her article, this idea of natural lottery is shared by Thomas Nagel.
2. On the one hand, Habermas (1993) has described this process as the colonization of the world of life through the development of an end-oriented rationality consisting of the expropriation of everyday knowledge, built on the empirical experience of ordinary people, and its transformation into technical-scientific explanations of vital phenomena by experts. On the other hand, in previous works, Habermas himself (1981) has analyzed how the demand for equality, together with those of freedom and property, were the result of bourgeois emancipation from absolutist powers and the right of blood, which, however, began to face problems as the proletariat became aware of its oppression; in this context, majority rule became relevant as a mechanism for controlling the opposition in parliaments.
3. A similar position is that of Jeremy Waldron (2009) in the first of the Tanner Lectures, entitled Dignity and Rank.
4. I refer mainly to the covenants because of their binding nature, which reinforces the signatories' agreement with their respective contents. Both covenants recognize in their preambles, textually ...that these rights derive from the inherent dignity of the human person...
5. In fact, the 2001 reform to the first article of the Constitution identifies, with great legal wisdom although with little conceptual precision, all of these characteristics with human dignity.
6. These are the characteristics that allow us to immediately recognize someone as a man among the diversity of men or a woman among the diversity of women; a girl among the diversity of girls or an elderly person among the diversity of elderly people, and of course all of them among themselves.
7. These characteristics allow for a mediated identification, as more information is required to know if the person is, for example, Catholic if we are talking about a religious community, leftist if we are talking about a political community, or if he or she is Euzkaldun or Tzotzil if we are talking about a native community.
8. In Habermas (2010).
9. This distinction is of the utmost relevance because from it follows the possibility of inoculating the differentiators between concrete human beings that have been used to justify the discourses of supremacy and inferiority that blur through prejudice what makes us equivalent -which is contained in the first two dimensions of human dignity- and on the other hand, that affirm and consolidate what makes us unequal -contained in the third dimension of human dignity, as I will discuss later on.
10. A dog or a plant may have an identity because we give them a name, because they are male or female, because they belong to a race or species, and even because they develop behaviors as members of collectivities; however, it could hardly be said that their name, their race or any other attribute has meaning for them.
11. There is currently a discussion about the doctrine that informs this Constitutional State of Rights, between Neo-Constitutionalism, Principlist Constitutionalism and Constitutionalist Guarantorism. I will not enter into this discussion at this point, but I prefer the last of these doctrines and henceforth I will refer to this type of state as a Constitutional Guarantee State. On the contents of this discussion, see Ferrajoli, 2011.
12. For Ferrajoli (2002) there would be a fourth condition that consists in the verticality of these rights, which makes them necessary only in conflicts between the citizenry and the State. Ferrajoli clearly conceives these rights as limits to the power of the State and therefore distinguishes them from the rights that apply in relations between individuals. In general, I agree with this view insofar as it is the State itself that must protect rights - as has been said: prevent others from violating them. However, while Article 1 of the Political

