Human rights and the right to health in Latin America: the two faces of one powerful idea

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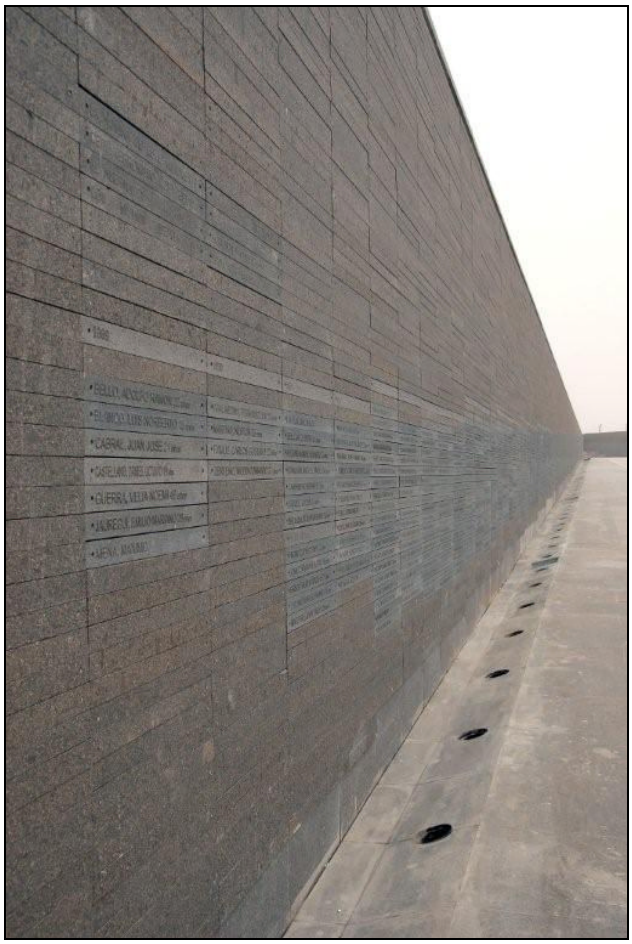
Human beings always stand either before or beyond that central threshold which defines the human and through which pass incessantly the human and inhuman, the subjective and the objectified. Giorgio Agamben[1]

... The central question of this practice, of this object of modernity and of this peculiarity of our times, lies in this: when we talk of human rights it's all about life and how we live it, about how we think about life and how it is produced and reproduced..... Marcelo Raffin[2]

Introduction

During the past decade the discussion of human rights has reappeared in the field of health, replacing the technocratic approaches of the previous period which had centered on cost-effectiveness. The focus on rights in public policies, with its emphasis on international norms for social rights, has influenced primary health care (PHC) strategy and fostered the return of PHC to its original role as guarantor of the right to health.[3] As human rights became increasingly global, they once again occupied a central place in World Health Organization (WHO) documents and in government attitudes.

The revival of human rights discourse occurred at a time when neoliberalism was being discredited intellectually. It coincided with the appearance of governments critical of the hegemonic model of the 1990s, the restructuring of geopolitical alliances, and a crisis of world capitalism affecting its central core. Various trends have co-existed within this process; the attempt to establish more just societies runs parallel to the search for a new way to legitimize power, given the loss of consensus over the neoliberal model. This dual aspect of the inclusion of human rights in the political arena demands a careful analysis of the various discourses and the proposals with which they are associated.



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The right to health has been one of the premises of Latin American social medicine. It has played a key role in the theoretical and political deconstruction of the dominant discourse in the field of health. Nonetheless, I believe that a critical analysis of the current situation is necessary. The

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"human rights" construct contains within its origin and its possibilities a contradiction; it can be used for both transformative policies and for those associated with oppression.

Let me begin by setting out some of the questions and objectives guiding this presentation. My concerns are the following: Within which frame of reference and with which potential projects is the focus on human rights aligned today? What role – or potential role – can human rights play as an organizing principle in social and popular movements? How do human rights relate to the debate on the right to health?

In attempting to provide some answers to these questions, I shall review the concept of "human rights" and place the "right to health" within that larger concept. This presentation will also briefly contextualize and discuss the evolution of human rights practices in Latin America. I shall review the obstacles to – and possibilities of – a guaranteed right to health in Latin America during this first decade of the 21st century.

The full exercise of human rights is a powerful idea. It can provide support to efforts countering the universal objectification inherent in capitalism in its current phase, an objectification which is also apparent in the field of health. But the discourse on human rights also resurfaces in certain proposals that legitimize power. This is the contradiction we must bear in mind as we address this issue.

I shall base my exposition on the team research work I have led over the past 15 years. Access, the right to health, and subjectivity have been key concepts throughout this research.[*4]

The Lights and Shadows of a Paradoxical Object: Human Rights

The concept of human rights developed in a particular historical context – that of the modern West – and reflects the power structure of that context. Having evolved at different times in history, human rights include potentially conflicting conceptions. It is unlikely that the development of first, second, and third generation human rights was a seamless process since theses generations imply conceptual discontinuities.

The modern world was constructed on the basis of individual, negative civil rights.[†] Despite a discourse based on universality, this created the possibility of excluding certain "human types." Human rights were created by Western, male, adult, middle-class property owners and those who were "different", those who did not fit this mold, oftentimes found themselves excluded.[5] In addition, the emphasis on individual rights created an obstacle to the development of collective or community rights. Clearly, human rights arose with the establishment of capitalism

The concept of human rights contains two central elements: freedom and human dignity. Liberal thinking is based on the idea that freedom is individual autonomy with regard to the community and the state. Liberal thinking is centered on the individual and on an essentialist conception of freedom. A different approach looks on human rights as the legal expression of a collective will. On this point, Foucault states, "We have therefore two absolutely heterogeneous conceptions of freedom, one based in the rights of man, and the other starting from the independence of the governed. ... they have different historical origins and I think they are essentially heterogeneous or disparate. […] With regard to the problem of what are currently called human rights, we would only need to look at where, in what countries, how, and in what form these rights are claimed to see that at times the question is actually the juridical question of rights, and at others it is a question of this assertion or claim of the independence of the governed vis-à-vis governmentality."[6]

The concept of human dignity can also lead in divergent directions. The essentialist view is based on a universal concept of what is human. The alternative approach questions the idea of universality, holds that there are diverse conceptions of human dignity, and sees human rights as praxis, a powerful idea which can be spread in an

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[†] Editor's Note: Negative rights are those that allow inaction on the part of the holder; freedom of speech is an example. These rights are considered by some to be part of the first generation of human rights.

emancipatory, cosmopolitan manner. There is an ongoing debate in bioethics over whether the concept of human dignity is necessary at all and whether it cannot be subsumed under individual autonomy. We will be returning to these questions and seeing how they relate to decisions on health.

Boaventura de Sousa Campos is one of those who question the very idea of universality. He considers it a Western cultural construct and suggests that human rights can be thought of either as the globalization of one particular local viewpoint or – from the complete opposite viewpoint – as a form of cosmopolitanism. However, to become cosmopolitan and to function as a counter-hegemonic force against globalization, he argues that human rights must be reconceptualized using a multicultural approach. They must also transcend relativism. In questioning the idea of universality, he notes that there are different systems of human rights[7] and proposes cross-cultural dialogues on similar problems. He challenges the idea of relativism by proposing the development of cross-cultural procedures and criteria to distinguish oppressive policies from emancipatory ones. All cultures have a concept of human dignity yet each are incomplete and problematic in some respect; in this situation, he sees a need for a human rights built on multi-culturalism.

However, if we do away with the universalist essentialism of the concept of human dignity, we are left with the problem of finding a basis for egalitarian rights. In approaching this problem I would like to pick up on a central theme of Marx's theory: the process of fetishism. In previous articles[8,9] I have addressed this as the central conflict of our times: the tension between "objectification" and "subjectification."

Objectification results from the fetishism of commodities, a structural feature of the market system described by Marx in *Capital*. It is a manifestation of that curious process by which social relationships *appear* as "material relations between people and social relations between things."[10] What is exchanged is always and inevitably *labor, i.e. human life*. Arjun Appadurai[11] notes that the "*socially relevant feature in the life of any particular comodified 'thing' is defined by its exchangeability (past, present or future) for some other thing.*" He clarifies that there are objects whose "nature" is to be commodities and others (objects or beings) which become so despite not having been produced for exchange on the market. We could place human life itself into this latter category. In the current context of extreme commodification, anything that has significance for human life – including human beings or their organs – can acquire "commodity status." This means it becomes a "thing" and objectified in the interests of making a profit. This process lies at the heart of the phenomena of objectification.

Objectification goes beyond the exchangeability of objects; it extends to objectifying processes which effectively negate the existence of the holder of rights. The nullification of the individual at the hands of state terrorism, as manifested in concentration camps, becomes the paradigm for objectification, a metaphor for total objectification. This demonstrates the continuity between terror and commodification. Thus, the effective enforcement of human rights is antagonistic to objectification.

It is striking that Kant, operating from an idealist, essentialist philosophical perspective, defines dignity as that which is not subject to commercial exchange. "Things have a price," says Kant, "but man, in contrast, has dignity. Things that have a price are interchangeable, can be sold, and can be used as tools. Human dignity, on the other hand, implies that human life is an end in itself, irreplaceable, and never exchangeable; it cannot be made into an object or thing, and it cannot serve as an instrument or commodity."[12]

If we want to maintain the concept of dignity, while not defining it from an essentialist standpoint, we can accept dignity as the limitation of objectification. Dignity is violated when something associated with life acquires "commodity status" and becomes – either directly or indirectly – an object of profit. Objectification associated with commodification appears indirectly in those processes which subordinate life and nature to the interests of accumulation.

One current in modern bioethics sees the concept of dignity is useless, arguing exclusively for the concept of autonomy understood as the freedom of

the individual to make decisions.[13] Such a position would hold, for instance, that someone could "freely" choose to sell an organ in order to pull their family out of destitution.

I shall now examine the right to health within this framework. We should keep in mind the conflict between objectification and subjectification lies at the heart of health practices. This conflict is relevant to matters stretching from the relationship between professionals and patients to the role of populations in establishing health policies in medicalized or unequal systems.

The debate on the right to health

The discussion over the right to health includes the views of radically liberal authors who deny its existence, of others who reduce it to a "feasible" minimum, and to those who want government regulation to bring a modicum of "justice" within the framework of market freedom; the opposing view advocates for freely accessible universal systems. Nowadays, positions based on a radical neoliberalism – holding that the market is the best distributor and allocator of resources – have been replaced by more moderate views which accept the need to avoid the excesses and "imperfections" of the health market and to incorporate considerations of "justice."[14] This latter position has been adopted in some current health reforms.

Although a full discussion of these positions is beyond the scope of this paper, it is worth examining them briefly. In many cases a limit – a "decent minimum" – is set on irrevocable rights. Boaventura de Sousa Campos calls proposals which limit the extension or conceptualization of human rights as "low intensity human rights." He considers that these are "one manifestation of low intensity democracy" and a "latter-day illustration of how the emancipatory vision of Western modernity has been reduced to the minimum of freedom possible or tolerated by world capitalism."[15]

The recognition of the right to health based on a complex understanding of the health-disease-care process requires a comprehensive approach to human rights. It also presupposes a *right to the non-medicalization of life.* Medicalization is inherent to the commodification of health and is one manifestation of biopolitics.

Foucault dates the origin of the "right to health" to the implementation of the Beveridge Plan in the United Kingdom.[16] He argues that the Beveridge Plan made health into a macroeconomic concern. The right to maintain and restore health thus became the business of the State and a new morality of the human body came into being. To place the origins of a right to health in the UK, while ignoring other contemporaneous experiences, might seem biased, but it does allow us to recognize that the category "right to health" arose with the context of a social welfare state and that – by bringing the body within the sphere of politics – this was somewhat of a two-edged sword. Foucault argues against the dichotomy proposed by Ivan Illich between "medicine" and "anti-medicine." He ends up wondering about the validity of applying the models of Western medicine, developed in the 18th century, to societies or populations which have not followed the same economic and political trajectory as Europe and North America.[17]

Some of the current proposals for health system reform promote universal basic medical services without radically questioning the models and paradigms that inform the delivery of health care. Consequently, these proposals are quite well suited to "unlimited medicalization"[18] and compatible with the pharmaceutical industry's ambition of increasing their markets by having governments, even the governments of poor states, as major clients.

The situation of rights and health in Latin America

The principles of the Universal Declaration of Human Rights (1949) were accepted in the political discourse of the capitalist bloc during the bipolar world of the post-war years. The capitalist bloc nonetheless adopted a double standard with respect to human right; for instance, a certain complicity with allied dictatorships was accepted. Thus human right principles could hardly be incorporated into an emancipatory vision.

Latin American revolutionary movements of the 60s and 70s did not include human rights in their discourse. Nevertheless, the Sandinista Revolution

in Nicaragua judged criminals from the overthrown Somoza dictatorship without invoking a "state of emergency."[19] The existing penal code was applied and the death penalty was not used. This was a novelty in revolutionary regimes: the absence of a reign of terror. At the time (1979), the penalty of death by guillotine still existed in "developed" France, a legacy of the French Revolution.

The capitalist crisis of the mid 70s launched a period of debt and the implementation of neoliberal policies in the region. These policies demanded a demobilized populace; in most Latin American countries this was accomplished by military coups and the imposition of state terrorism. In some countries (Granada, Panama, Nicaragua), there were also direct or indirect military interventions by the US.

State terrorism is not just one more manifestation of political violence. It is the annulment of law in the very space where it should be guaranteed. It is an extreme form of social discipline which is perfected in the concentration camp and in forced disappearances.[20] These are tools aimed at the totality of society.

In response, movements arose which denounced the acts of state terrorism and called for international solidarity with its victims. Later these movements turned their attention to calls for justice and the preservation of historical memory. "These local and international movements resisting dictatorships in the Southern Cone reshaped the praxis of human rights not only in the region, but worldwide."[21]

The application of the premises of the Washington Consensus went hand in hand with health and social security system reforms encouraged by international financial organizations. Their objective – the extreme commodification of health – meant that any idea of social rights – and, by extension, human rights – was to be obliterated. The World Bank document (1993) which guided most neoliberal reforms does not even mention the right to health.

The DALY (Disability-Adjusted Life Years) metric was supposedly created so as that human life would not be assigned a monetary value. Yet in creating this tool to measure cost-effectiveness, the authors admitted that their calculations were based on ethical-evaluative elements. These included a disability weighting which was used to convert life affected by a disability into a measurement that would allow comparison with premature death.[21] In other words, DALY allows the comparison of a disabled person with a dead person. This tool served to legitimize and naturalize the denial of access to services essential for survival to those unable to pay for them (for example, chemotherapy for high fatality cancers, intensive neonatal therapies, or heart surgery in low-income countries[22]). We affirm that underlying this system is a viewpoint reminiscent of the Nazi concept of "lives not worth living" (*Lebensunwertes Leben*).

Faced with the damage and social exclusion resulting from neoliberal policies, various local and global social movements have arisen. While they are rich in their diversity, they are also at risk of being isolated by their specific grievances if they do not establish networks to integrate their political proposals. Nonetheless, the recent history of Brazil offers an example of how events proceed in a non-linear and non-deterministic fashion. Propelled by the collective health movement, health was established in Brazil as a constitutional right and the Unified National System (SUS) was founded to provide universal, free services.

The situation in this first decade of the twenty-first century is highly complex. The logic of an unending war on "terrorism" and drug trafficking has created a permanent state of war in the global area. And yet, the ideas and legal foundations for rights have also spread; this put pressure on various governments to fulfill their obligations. In Latin America innovative governments with a strong popular base have recognized the rights of long-excluded social sectors. These countries coexist with others which adopt economically heterodox or neo-Keynesian governments as well a third group which follow orthodox social policies in line with those of the United States. The result is a high degree of polarization both among countries and within countries. This opens the door to unprecedented possibilities. Finally, there are novel geopolitical alliances which can be seen in economic and political bodies like Mercosur, ALBA, and

UNASUR. Some Latin American countries have seen sustained economic growth.

New constitutions in Bolivia and Ecuador have incorporated the concept of "well being" [translator's note: *buen vivir*] or *sumak kawsay* (in the Quechua language). The concept, derived from a multi-cultural approach, is undeniably rich. Some see this as an innovation in field of rights which will become a new legal paradigm based on a different understanding of the individual. It prioritizes harmony and solidarity over accumulation, competition, and the market. Another novel element is the inclusion of the rights of nature in these constitutions.

Latin America, moreover, can draw from its own original tradition of theory and practice in collective health and social medicine. We should rely upon this tradition as we face the challenge of guaranteeing the right to health while avoiding the commodification and objectification which characterize the process of medicalization. We must also work towards the incorporation of the right to health into a comprehensive system of guaranteed rights.

We face a double challenge. We must work for fundamental political, social, and economic changes. And at the same time we must work on changes in those specific fields where more localized resistance has arisen. The call for a "third generation of reforms", which has proposed a new relationship between the State and the market, is now being applied to health. It supports primary health care (PHC) models which eliminate the restrictions of selective health care and claim to guarantee rights; however, they implicitly preserve the profit-making logic of previous proposals. On the other hand, at the heart of these practices and at the community level, they create the potential to innovate and implement new ways of addressing the processes of health – disease – care in a collective, supportive manner.

Latin American social medicine as a praxis is profoundly linked to the praxis of emancipatory human rights. Health practice should always favor subjectification. This applies just as much to the particular, day-to-day interaction between health professionals, health teams, and individuals as it does to health policy formulation and implementation.

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