

Human Rights for Righteous Humans: The Challenges of Contemporary Justice.

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Abstract. "Human Rights for Righteous Humans", a phrase widely used by conservative groups, carries a connotation of exclusion and prejudice, suggesting that only "moral" individuals are worthy of having their rights guaranteed, reflecting a view that ignores the diversity of social values and privileges the dominant group, marginalizing those who do not fit the imposed parameters. This view dialogues with the disconnection between human rights and their application, approaching the concept of "Banality of Evil", developed by Hannah Arendt, in which the distancing and dehumanization of certain social groups are embraced by institutions, distancing the norm from reality and ignoring the ethical and humanitarian implications. In the legal context, the transition from Hans Kelsen's juspositivism to post-positivism sought to incorporate moral values and social customs in the interpretation and application of the law, in order to prevent injustices aiming at the best subsumption of the norm with the concrete fact. However, instead of ensuring fairer decisions, what is observed is the predominance of personal perspectives and social influences of those who apply the law, resulting in a biased system, distant from social reality. This failure is even more evident in the treatment of ex-prisoners, who face stigmas and prejudices rooted in society and the legal system, creating barriers to social reintegration and preventing them from accessing basic opportunities such as employment, education and housing, undermining fundamental rights.

Keywords. social egoism, prejudice, human rights, Banality of Evil, norm, ethics, justice system, rights of prisoners.

1. Introduction

The conception and execution of law, whether in its legislative creation or judicial application, were designed to reflect daily social life and ensure justice for citizens. However, they often lead to depersonalization and distancing from the concrete experiences of the population. This fact manifests itself from the creation of the norm to its application, demonstrating the abstract bias and outside the real need in social practice. "Human Rights for Human Rights" perfectly illustrates the thesis, by exposing the distance and a selective and discriminatory perception about whether or not to deserve the protection of the law, feeding the false dichotomy between "good citizens" and "offenders". In contexts such as the prison system, the exclusionary logic is shown through the neglect of the rights of the incarcerated, often seen as unworthy of the minimum guaranteed by law. It happens that anyone can commit crimes and find themselves in this vulnerable situation, regardless

of their social position, and only at that moment they begin to demand rights that were previously irrelevant to them.

Intense individualization attenuates the social fabric and collective empathy, which makes the injustices suffered by others invisible or tolerable, contributing to the normalization of evil. In this context, Hannah Arendt's banality of evil is born, launching a new relevance: inhuman acts, when bureaucratically legitimized, become routine and morally unquestionable. Too often, law enforcement ends up ignoring the ethical and humanitarian implications, making room for mechanical and impersonal justice. For a better understanding of the mishap, it is necessary to understand the context behind the selfish and distant application of the law, since Kelsenian Legal Positivism was discarded after the emergence of Post-Positivism. In both currents, monocratic decisions disassociated from reality can be made, even if in the first the judge applies only what the norm provides and, in

the second, that moral and social values can be used for the best subsumption of the norm to the reality of the judgment.

Faced with these challenges, contemporary justice finds it difficult to deal with crimes that arise from the naturalization of cruelty. When acts of abuse and neglect are veiled under the guise of legality or bureaucratic routine, personal responsibility is undone, and legal systems need a reassessment of their concepts of punishment and responsibility. The one-sided application of the law not only fails in its function of repairing injustices, it also fails to perpetuate a selfish and alienated culture, making the defense of human rights a privilege of the few and a condemnation of the many.

2. Methodology

The methodology will follow a qualitative approach, focusing on the critical analysis of legal, doctrinal and philosophical texts that examine the processes for the creation and application of law and how it can be impacted by issues such as dehumanization, selfishness and the banality of evil.

Preliminarily, an in-depth review of the main concepts addressed in the study will be carried out, using works by classical and contemporary theorists on human rights, justice and political philosophy, with a focus on authors such as Hannah Arendt and Hans Kelsen. Legislative texts and judicial decisions that exemplify the distance between the application of the law and social reality will also be reviewed.

There will also be a comparative analysis of the laws and judicial interpretations studied, confronting them with the principle of social justice, along with statistical data.

Therefore, an investigation will be made of the failures and limitations of the contemporary legal system in dealing with the complexity of social reality.

3. The banality of the evil

"The Banality of Evil" is a concept developed by philosopher Hannah Arendt when she analyzed the trial of Adolf Eichmann, a Nazi officer who served in World War II. The term refers to the idea that deeply evil acts can be committed by ordinary people who simply comply with the laws, without morally reflecting on their actions or consequences, always submitting to the dominant thought. These actions, even if cruel, are routine, bureaucratized, carried out in an impersonal way (that is, by the entire collectivity), which allows the dissociation between the action and the suffering it causes.

The concept introduced by the philosopher is related to selfishness because it dialogues directly with the idea of indifference, of pushing away the "other". People who put their own interests above

the common good or the rights of others can easily carry out unfair and inhumane practices. This distancing from moral values creates a society that, as in the case of Eichmann, makes injustice mechanical and indifferent, legitimizing structures that hurt human rights and human dignity, but which are presumed natural because they are morally accepted by society and allowed by law. As it is elucidated in Eichmann in Jerusalem:

"Evil only becomes possible, not only because of those who consciously want it... but also because of those who BANALIZE it" (Arendt, 1963) [1]

In line with the philosopher herself, "The best way to determine whether a person has been expelled from the scope of the law is to ask whether it would be better for them to commit a crime. If a petty theft can improve its legal position, at least temporarily, we can be sure that it has been stripped of human rights." (ARENDR, 1951)[2]

The phrase expresses a criticism that, for society and for the law, as soon as an individual commits a crime, he loses his "right to have human rights", being animalized and isolated.

4. The Selfishness and The Society

4.1. The Prejudice and the Egoism

Prejudice and selfishness are intrinsically linked, affecting how we interact with each other and structure our society. Prejudice, which is the negative and stereotyped judgment made against a person or a group of people, based on superficial or preconceived characteristics, is, as a rule, rooted in selfishness, which is the tendency to prioritize one's own interests, needs and desires, even at the expense of others.

Prejudice is a form of social selfishness, in which the needs and interests of privileged groups are favored at the expense of marginalized groups. This behavior creates barriers and divisions that sustain power and oppression, in which the well-being of others is disregarded so that the interests of a privileged group are maintained. The exclusion of certain individuals on the basis of race, gender, class, sexual orientation and others not only perpetuates inequalities but also reinforces a view in which empathy and solidarity are suppressed.

4.2 About the Prejudice Against Ex-prisoners

Prejudice against ex-prisoners is a clear example of how social selfishness can create barriers to the reintegration of individuals who have already paid their debt to society.

Ex-convicts are seen as hopelessly corrupt or dangerous, even if they have already served their sentences and are looking to start their lives over.

Society seeks to remove these individuals out of fear, aiming at their own safety and well-being, by understanding the non-occurrence of resocialization, without considering the impact of this exclusion.

In this vein, society often refuses to offer second chances to ex-convicts, denying them access to jobs, education and housing, which, ironically, increases the chances of criminal recidivism. Such behavior is rooted in fear and distrust, however, it is in the selfish and prejudiced view that the presence of these individuals represents a constant threat. By labeling ex-prisoners as "undesirable" or "irretrievable," society perpetuates a cycle of oppression that makes it impossible for these people to reintegrate in a healthy and constructive way.

According to data from the São Paulo Penitentiary Department (SAP), the recidivism rate is alarming, reaching around 70% (SAP, 2021). This statistic highlights the difficulties that many ex-inmates face when trying to reintegrate into the labor market and society. [3]

5. The Impacts of Selfishness on Modern Law

Selfishness, which is understood as the excessive prioritization of private interests over the collective good, has a great influence on contemporary law, externalizing itself in various spheres, such as the Legislative, the Judiciary and the Prison System. This individualistic tendency not only weakens the concept of social justice, but also reinforces dynamics of indifference and such deprivation of humanity, undermining equity in laws and their enforcement.

5.1 Impacts on the Legislative

Selfishness has a direct impact on the legislative process of creating norms that, instead of promoting the common good, regularly reflect the interests of specific economic and political groups. This phenomenon leads to the elaboration of laws that benefits the privileged classes, while ignoring or underestimating the most vulnerable layers. The inequality of representation, added to the influence of lobbying and political pressure, favors the consolidation of norms that disregard the principle of material equality, prioritizing strictly ideological agendas while laws on health, education and fundamental rights are placed as secondary. This hierarchy of values weakens the ideal of social justice, giving shape to a normative skeleton that perpetuates inequalities. The result is a flawed legislative system, which fails to provide legal mechanisms that address structural issues, such as poverty and social exclusion.

An example of this crumbling structure was article

128 of the Brazilian Penal Code of 1890, which had as its caput: "Art. 128. Physical offenses inferred by the husband on the adulterous wife are not punished as homicide or bodily injury, being done immediately after the fact." [4]

This provision was a form of justification of violence based on honor, which placed the blame on women in cases of adultery, showing that, in the end, the vision of the creator of the norms and the need to please certain portions of society legitimize unjust laws.

5.2 Impacts on the Judiciary

Selfishness also has a great impact on the judiciary, especially in the way judicial decisions are often disconnected from social reality. Law enforcement, if carried out in a technical manner, can ignore the human and ethical aspects underlying concrete cases, which results in a mechanical and impersonal justice. Judicial decisions, when focused on maintaining the established social order, often tend to prioritize the protection of the assets and interests of elites, while relegating the rights of marginalized individuals.

An example of this is the case of *Shelby County v. Holder* (2013), in which the U.S. Supreme Court invalidated essential parts of the Voting Rights Act of 1965, which aimed to protect the right of minorities to vote, raising concerns about backsliding on civil rights and the ability of states and locations to implement practices that could discriminate against voters, reflecting racial prejudice and ignoring the need for protection of fundamental rights. [5]

"The preclearance provision of the Voting Rights Act was originally constructed to prevent state and local election officials from using discriminatory practices to limit voting and representation. Advocates feared that without preclearance, 6 officials would rush to implement laws and policies that would make it more difficult to vote, and the only way to prevent those changes would be costly and long-running litigation." (KOMISARCHIKT; WHITE, 2021, p. 8) [6]

Decisions that favor severe punishment and that undermine rehabilitation or restorative solutions reinforce the perpetuation of a punitive and unjust judicial system, with decisions that justifies social exclusion and the perpetuation of injustices, since the interpreter performs his function based on his own social vision, and not on the reality of the fact "*sub judice*".

5.3 Impacts on the Prison System

One of the environments most affected by indifference and structural selfishness is the prison system. The prison, which should be a space for rehabilitation, becomes an exacerbated reflection of

the brutalization present in the legal system. The selfishness that permeates the formulation of public policies is revealed in the lack of interest in guaranteeing dignified conditions for prisoners, since they are often seen as unworthy of rights.

In addition, the idea "Human Rights are for Righteous Humans" reinforces the contempt for the rights of prisoners. Society, influenced by selfishness and the criminalization of poverty, tends to justify the absence of basic rights for the incarcerated, degrading them to the point of considering the violation of their rights tolerable. However, the reality is that any individual can, at any time, be a victim of the punitive system, which reveals the hypocrisy of this belief.

Consequently, carceral selfishness not only maintains inhumane conditions, but also contributes to the reproduction of a logic of segregation and objectification, which is opposed to the fundamental principles of human rights and social justice. By privileging punishment over reintegration, the prison system becomes a mirror of legislative and judicial indifference, aggravating social inequalities and segregation.

6. From Kelsenian Positivism to Legal Post-Positivism

6.1 Kelsen's theory: law as a pure norm

In the Pure Theory of Law, Hans Kelsen proposed a legal system in which the norm is the absolute center, that is, the role of the legislator is to create the norm, and the judge to apply it strictly, without resorting to external concepts such as morality, subjective values or analogies. For the philosopher, "The norm is a must-be and the act of will of which it constitutes the meaning is a being." (KELSEN, 1934) [7]. That is, law should be an objective and neutral science, free of philosophical or ideological influences, in which the judge is limited to interpreting the norm according to its terms.

This science, based on the convictions and wills of those who create the law, makes the entire community submit to the ideals of those who legislate, creating a "should-be", that is, it is how citizens should behave according to the norm, submitting to it. The "ought to be" refers, therefore, to a normative prescription, indicating an obligation or a prohibition that must be followed, regardless of what actually occurs in practice.

6.2 The transition: from positivism to post-positivism

After World War II, the strict view of Kelsenian positivism began to be questioned. Authoritarian regimes used law in a formalistic way to legitimize atrocities, opening a new debate on the relationship between law and morality, which led to the emergence of legal post-positivism.

Post-positivism maintains the norm as a central point, recognizing that law cannot be completely separated from the morals, ethics and customs of society. The judge, in this context, is no longer just the automatic enforcer of the law, but an active interpreter, with the freedom to use social values, ethical principles and the cultural context when judging the concrete case.

According to the Minister of the Federal Supreme Court of Brazil, Luís Roberto Barroso:

"Post-positivism does not remove the importance of the law, but starts from the assumption that the Law does not fit entirely into the legal norm and, more than that, that justice can be beyond it." (BARROSO, 2006). [8]

Thus, the judge makes a value judgment, applying the norm based on elements that go beyond the literality of the law.

6.3 The impact of selfishness and prejudice on judicial decisions in post-positivism

Although post-positivism allows the judge to have greater freedom to apply the norm considering values and principles, it can also open space for biased decisions, in which the selfishness and personal prejudice of the magistrate influence the result. The flexibility in the application of the law, which should be used to promote justice, through criteria that aim to recognize social thought, customs and values, can be distorted by the judge's vision and his subjective interests.

A case of great repercussion that showed how the view of the rule's enforcer can influence incorrect decisions is that of *Plessy v. Ferguson* (1896), judged by the Supreme Court of the United States. In that decision, the Court validated the idea of "separate but equal," allowing racial segregation in public spaces and reinforcing institutionalized discrimination against African Americans. [9]

"First, the equal protection clause of the fourteenth amendment should be read as saying that the Negro race, as such, is not to be significantly disadvantaged by the laws of the states. Secondly, segregation is a massive intentional disadvantaging of the Negro race, as such, by state law." (CHARLES BLACK, 1960) [10]

A magistrate who acts with prejudice, whether against ex-convicts, minorities or socially vulnerable groups, can make decisions that reflect his own convictions, escaping from the social justice that post-positivism aims to promote, applying the law unfairly.

7. Human Rights for Righteous Humans

The discourse of "Human Rights for Human Rights" has proven to be selfish and harmful to collectivity. This approach reveals a fundamental contradiction in the views of many human rights defenders, who tend to apply these principles selectively. A clear example of this occurred in Brazil, on January 8, 2023, when far-right groups invaded and vandalized government institutions. Those who previously fervently defended that "a good criminal is a dead criminal" found themselves in contradiction when witnessing the incarceration of political allies.

Hannah Arendt highlighted the importance of human rights as fundamental and universal, stating: "The essence of Human Rights is the right to have rights" (ARENDT, 1951). This understanding of universal rights was born after the French Revolution with the Declaration of the Rights of Man and of the Citizen, in 1789, establishing the principles of the new political and social order in France, namely: Right to property, Security and resistance to oppression, Freedom of expression, Equality before the law and others.

In short, the discourse of "Human Rights for Righteous Humans" reveals a limited and contradictory perspective, which distorts the fundamental purpose of human rights: their universality.

8. Discussion

The selective application of human rights exposes profound contradictions in the perception and execution of justice in contemporary societies. The belief that fundamental rights apply only to "human rights" – those who follow the social and moral norms of the dominant group – is problematic, as well as highlighting the banality of evil and selfishness in the modern legal structure and in collective thinking.

8.1 Dehumanization in the Legislative and Judiciary

In the Legislature, selfishness manifests itself in the creation of norms that favour specific groups, neglecting the needs of excluded populations. This is because the one who creates the law is placed in such a position through election, that is, by the vote of a "majority" which he represents. With this, the legislator intends to create laws aimed at his future candidacy, doing his best to reaffirm himself with his electorate and submitting to the ideals of this majority.

In the judiciary, the judge is the one who has the final word and applies the law. With the advent of post-positivism and the flexibility given to the judge for a fairer application of the law, following subjective criteria of society such as customs, morals and ethics, there was the opposite effect, in which the judge has the freedom to decide and sentence according to his own values and interests. In this way, when the applicator moves away from

social reality and applies the norm in a mechanical way, he authorizes the perpetuation of injustice and exclusion.

8.2 Hypocrisy in the Defense of Human Rights

The events of January 8, 2023 in Brazil and the rhetoric used by right-wing political figures exemplify the structural hypocrisy in the way human rights are interpreted, defended, and enforced. The idea perpetuated in recent years that "a good criminal is a dead criminal", widely disseminated in conservative discourses, reveals a punitive and animalized vision, which denies the basic dignity and fundamental rights of individuals who come into conflict with the law. However, when the "bad guys" are ideologically close, as in the case of those involved in January 8, the narrative changes drastically.

When those who have their rights threatened are of the same ideology as individuals and political figures, the need for human rights and dignified treatment in the prison system becomes evident, revealing that the defense of impartial and equitable justice is only activated when there is political or personal convenience, raising the question: are human rights only valid when applied to those who are ideologically aligned with us?

8.3 Selfishness and Indifference in the Creation of Penal Policies

Social indifference has selfishness as one of its engines. It permeates the mentality of society that prisons should be spaces of punishment and not of rehabilitation, putting the dignity of prisoners in check. Such contempt for the rights of the incarcerated is closely linked to the idea that those who are imprisoned deserve to suffer and be punished, disregarding that the prison system is not free of errors and that anyone, regardless of their social or political position, can see themselves in this context.

The claim that prisoners do not deserve human rights until they prove themselves to be "human rights" ignores the social function of the legal system and due process.

8.4 Challenges for Contemporary Justice

In short, it is clear that contemporary justice faces a profound challenge: how to ensure the application of the law in a universal and equitable way in a society that tends to justify exclusion and dehumanization? Selfishness and the banality of evil are at the heart of the failure of the judicial system to fulfill its function.

In this perspective, the prison system has become not a means for the rehabilitation and reintegration of individuals who have committed a criminal offense, but rather to punish, in an increasingly

severe way, becoming a reflection of the contempt for human dignity.

In this way, the debate on "Human Rights for Righteous Humans" exposes the urgent need to reformulate the way in which law and justice are perceived and applied, both in the legislative and judicial spheres. Therefore, the issue is no longer technical, but rather profoundly ethical: as long as structural selfishness and moral indifference continue to shape penal policies, human rights will continue to be seen as privileges, and not as fundamental guarantees.

9. Conclusion

While the legal system should guarantee universal and impartial justice, what is observed in reality is the biased application of the law, in which the legislator and the enforcer of the norm place their own interests and convictions above the concrete case and the facts experienced daily by citizens, also privileging the will of those who sustain and maintain such operators in the system. This perspective not only marginalizes those who do not fit into the molds imposed by the dominant group, but also strengthens the logic of exclusion.

The selfishness and banality of evil, highlighted and conceptualized, reveal themselves as engines of this unjust and unequal application of the norm. Justice, in this bias, becomes a mechanism that legalizes exclusion and disproportionate punishment, when, in reality, it should promote rehabilitation and dignity.

Therefore, the challenge for contemporary justice is precisely to break with this logic of exclusion and be guided by the most correct and fair application of the law, which, in fact, respects social customs, along with the correct creation of the law that seeks to regulate collectivity and social conduct, following equity and equality. It is necessary to reformulate the Brazilian judicial system and the concept of justice in order to ensure that human rights are not treated as privileges that should be ceded to only one ideological group, but rather as universal guarantees applicable to all regardless of their social position or political vision. Otherwise, the current system will perpetuate arbitrariness and inequality, ignoring the principles of dignity and equity.

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