



Mario Alfredo Hernández Sánchez*

The Right to Non-discrimination And the Urban Night

The right to non-discrimination was originally recognized in the Universal Declaration of Human Rights of 1948, which laid the foundation for the United Nations System. Since then it has been the backbone of international human rights law. On the one hand, this right forbids establishing arbitrary distinctions in treatment on the basis of gender, ethnic identity, appearance, nationality, religion, migratory status, socioeconomic status, disability, or sexual orientation, among other traits that have been used to restrict rights and opportunities. On the other, it creates the obligation to ensure equal conditions to guarantee all people effective participation in society to pursue their plans for a good life, even if, under the legal framework, they are contrary to the ethical values of the majority. Thus, non-discrimination

has been considered a *key right* that “makes it possible for entire groups to gain access to the exercise of a system of fundamental rights.”¹

Due to its critical position in the established order, the right to non-discrimination has hermeneutic potential that helps to examine routines of exclusion and disparagement that for a long time have been accepted as natural, invisible, and even legitimate. Furthermore, this right allows us to affirm that discrimination is structural, in other words, that it is independent of individual effort and intent, that it arbitrarily distributes privileges and subordinations, and, therefore, that it transcends generations, inflicting disadvantages on entire populations. This structural nature makes us aware that the spaces and times some people inhabit may reproduce preexisting inequalities or create new ones. This is precisely what Edward Soja has called *spatial justice*, a perspective to evaluate the conditions that allow or deny people access to physical spaces, understood as the sum of infrastruc-

* Professor and researcher at the Interinstitutional Post Graduate Program in Human Rights at the Autonomous University of Tlaxcala; marioalfredo.hernandez.s@uatx.mx.

ture, ideas, and judgments about the value of those who inhabit them. Spatial justice materializes “in the specific conditions of urban life and in collective struggles to gain more equitable access for all residents to social resources and to the advantages the city provides.”²

In recent years, studies on the urban night have intersected with the perspective of spatial justice to analyze how it does or does not remain open to an egalitarian dynamic of integration. My intuition is that, for that task, the right to non-discrimination may play a central role. In particular, as David Caralt has remarked, the night in the city can be interpreted “as a map based on a system articulated by points of light forming bright lines that branch off and interconnect in the darkness.”³ Such a map would allow us to trace the city’s evolution in the modern age as a cosmopolitan and privileged space for experimenting with subjectivity and social cohesion outside the boundaries of tradition and atavistic prejudice. Consequently, the purpose of this article is to briefly describe some of the consequences of an examination of the urban night, as an interdisciplinary object of study, from the perspective of the right to non-discrimination.

In Mexico, starting with the inclusion of a non-discrimination clause in the Constitution in 2001, we have made great strides in reforming the normative frameworks that are directly or indirectly discriminatory, in the design and operation of egalitarian public policy, and in constructing a civic culture that positively values our differences. We have also constructed forms of knowledge and methodologies to raise awareness about and measure the structural nature of discrimination. Such efforts include the National Survey on Discrimination (Enadis) developed, in its 2017 edition, by the National Council to Prevent and Eliminate Discrimination (Conapred).⁴ What does the Enadis 2017 reveal about the differentiated ways people inhabit the night in the city and are able to gain access to it safely and without discrimination? Below I present some relevant results and inferences:

- Mexico’s population is predominantly urban (62.8 percent), with low mobility (80 percent reside in their birthplace) and low- and middle-income levels (71.2 percent combined). As a result, the majority of inhabitants are exposed to the discriminatory practices seen in cities, especially those related to socioeconomic levels, which are important for rights like recreation

and culture, which have been transformed into services accessible or not depending on purchasing power.

- Mexico has an aging population: although 67.3 percent of the population are young adults, low rates of mortality and fertility make the elderly the fastest growing segment. The economy of the urban night depends fundamentally on young people and adults because they are a majority of users of its recreational spaces and employees in activities that never stop.
- While illiteracy nationwide is only 3 percent, it spikes to 20.9 percent among people with disability and 13.3 percent for the indigenous. Although the night in the city has become a space for dissemination and socialization of artistic and cultural expressions, they may not be in reach for those who lack the means of accessibility and cultural pertinence.
- The lowest paying and most insecure jobs, in other words, personal services, support activities, and agriculture, concentrate speakers of indigenous languages (59.8 percent), people with disabilities (41.9 percent), and religious minorities (38.4 percent). Many people work at night in the city and, due to widespread precariousness, may be the farthest from working in accordance with what the International Labor Organization (ILO) considers *decent work*, meaning with fair wages, respect for their dignity, and safe working conditions.⁵
- The people who use private health services the most are Afro-descendants (23.9 percent), religious minorities (23.6 percent), and those living with disability (19.8 percent). The urban night can be risky, especially in contexts of widespread violence due to organized crime; also, people who work nights and are subject to altered sleep cycles may experience stress. If such people need health services, the likelihood of their having to pay for them is relatively high.

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Based on this statistical background, it seems to me that we can identify at least three relevant dimensions of the right to non-discrimination for equal access to the urban night.

First, it is a fundamentally festive environment, although it is also true that it has recently become what Jonathan Crary identified as *the permanent possibility of continuity with the day and productive work*.⁶ Nevertheless, because it is still inhabited by those who shun the customary practices of the majority, the urban night may offer a field for experimentation with new forms of inclusion and recognition contradicting structural discrimination. For the urban night not to reproduce preexisting inequalities, its inhabitants need to engage in an exercise of ethical imagination to sensitively assume the needs of populations historically discriminated against. This involves rethinking their physical and symbolic spaces to address demands for accessibility, cultural pertinence, questioning of arbitrary privileges and subordinations, and the universality of human dignity, which, precisely, entails the right to non-discrimination. A disabled person, an indigenous-language speaker, or someone unfamiliar with their surroundings on account of their migratory status or fearful when transiting a space they deem potentially violent due to their gender identity or sexual orientation should feel safe and free in the urban night. This does not yet happen today, but rather is a normative aspiration that requires that we adapt our physical spaces and social imaginaries with an authentically inclusive focus.

Second, the urban night is the natural environment for expressions of culture and recreation, which is why it is the preferred time for mass concerts and religious assemblies, theatrical performances, poetry recitals, exhibits, film screenings, or other, less conventional forms of art, which have variable costs. The risk lies in the fact that the rights to culture and recreation are transformed into services in the city at night. It is crucial to state emphatically that culture and recreation are unadulterated rights,

specifically social rights. Together, they aspire to form a minimum floor of generalized material well-being that protects people from precariousness and allows them to make autonomous decisions about the most important aspects of their lives. For such decisions, and in general in relation to individual and collective autonomy, culture and recreation play a fundamental role. Michael Sandel has observed that cities are distinguished by their wide range of cultural offerings, and if the state subsidizes many such activities, it is to make them available to more people and promote a sense of public ownership as opposed to the privatization of urban spaces.⁷ This is a tendency that, for example, has transformed shopping malls into spaces where, at the same time that they shop and pay for services, people can see a movie or a play or practice sports in indoor gyms. For Sandel, culture and recreation in cities are commodities that, due to their high social and individual value, should not have a price or be sold like other goods.

Third, for many people the urban night is their workplace. Needless to say, we refer here to food, transportation, and entertainment services, which traditionally revolve around city dwellers' leisure consumer habits. Moreover, information and communication technologies have made it possible for many goods and services to be available at all hours and without interruption. Digital apps can be used to order food, medicine, household supplies, or other items around the clock that people are unable to acquire in person during their working hours. This has not only changed urban consumer habits but, as Eva Illouz has remarked, has radically shifted our emotional horizon toward a logic of constant dissatisfaction and reduction of freedom in the broad sense of the freedom to consume.⁸ The result is that we have sent out into the urban night an army of workers who manufacture, package, and distribute goods and services. Most of them experience what has been called the phenomenon of *uberization* of work, by analogy with app-based ride-hailing services that minimize interaction between driver and passenger. Such workers lack contracts, set schedules, and inputs to use in their activities and ensure their safety, and must always be available and near their mobile phone screens in case someone solicits their services, a problem exacerbated by migration to a digital economy during the COVID-19 pandemic. Consequently, we need to rethink the minimum conditions of non-discrimination as they apply to decent work,

to allow those who work nights to fulfill their responsibilities without renouncing their dignity.

Finally, I would conclude that it is possible to conceive spatial justice for the urban night, and in that undertaking, the right to non-discrimination should play a fundamental part. Creating inclusive cities after sundown poses two superlative challenges: first, imagining how to create conditions of freedom, autonomy, and human safety for all people without discrimination; and second, building political and social consensuses that help build the human and material capital to translate that intuition into cities favorable to diversity. We need to acknowledge that it is a privilege—often born of inertia and certainly undeserved—to inhabit the city without the need for specific aids, adaptations, or protections such as those needed by those who suffer from disability; speak an indigenous language; or are women, members of the LGBT+ community, or migrants. Against the logic of privilege, as Luigi Ferrajoli has affirmed, human rights are *the law of the weakest*. In particular, the right to non-discrimination constitutes a le-

gal protection and a challenge to the collective imagination to construct an urban night capable of accommodating many ways of inhabiting and moving about in it. **MM**

Notes

- 1 Jesús Rodríguez Zepeda, *Iguales y diferentes: la discriminación y los retos de la democracia incluyente* (Mexico City: Tribunal Electoral del Poder Judicial de la Federación, 2011), p. 128.
- 2 Edward W. Soja, *En busca de la justicia espacial* (Valencia: Tirant Humanidades, 2014), p. 65.
- 3 David Caratl, "Caracterización de la noche metropolitana. El espectáculo de la luz eléctrica a finales del siglo XIX," *Bitácora Arquitectura* no. 28, 2014, p. 33.
- 4 Conapred, *Encuesta Nacional sobre Discriminación 2017. Prontuario de resultados* (Mexico City: Conapred, 2018).
- 5 ILO, *Trabajo decente*, <http://www.oit.org/global/topics/decent-work/lang-es/index.htm>, June 28, 2020.
- 6 Jonathan Crary, *24/7, Late Capitalism and the Ends of Sleep* (London: Verso, 2013).
- 7 Michael Sandel, *What Money Can't Buy: The Moral Limits of the Market* (New York: Farrar, Strauss & Giroux, 2013).
- 8 Eva Illouz, *Why Love Hurts. A Sociological Explanation* (Cambridge: Polity, 2013).



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