Discrimination and Politics In Mexico

María José Morales García* Jesús Rodríguez Zepeda**

Sandra Perdomo/Cuartoscuro

Physically challenged students take a junior high school admittance exam.

Discrimination is fundamentally a structural mechanism of social exclusion. It is reiterative behavior of social contempt or disdain for a person or group of persons because he, she or they belong to a group that has been stigmatized. It implies a component of contempt which, because of its subjectiveness, seems to come under the heading of the right to freedom of expression or the freedom of beliefs. However, it is a specific kind of contempt, manifested through limiting access to opportunities or denying rights.

When systematic contempt for a stigmatized group is acted out, it feeds and reproduces a form of specific inequality. That is why the struggle against discrimination is a particular form of the struggle for social equality since it implies the restitution of the ideal conditions of equality that have been undermined. For that reason, it must be articulated politically and in discourse as part of the struggle for the rights of the individual.

In this fashion, effective strategies for reducing discrimination should not be posed in the language of philanthropy or charity, but must be posed in the language of rights.[1]

In effect, all acts of discrimination imply contempt, although not all acts of contempt are discriminatory. Only the contempt that is a regular social practice which excludes, marginalizes and limits rights and opportunities can be considered —rigorously speaking— discriminatory.

For that reason, the right not to be discriminated against has been formulated as a fundamental right of the individual. In the main instruments of international law on human rights, non-discrimination against women, children and other

* Editor of the magazine *Diálogo y Debate* (Dialogue and Debate) and a member of the National Council for the Prevention of Discrimination.

** Professor and researcher in the Philosophy Department of the Metropolitan Autonomous University, Iztapalapa campus.

vulnerable groups like the indigenous is the direct result of the international community's commitment to human rights.[2]

In our country, the third paragraph of Article 1 of the Mexican Constitution includes non-discrimination as an "individual guarantee," that is, a right of the individual that the state is specifically obligated to ensure, even, according to our own interpretation, through the right to appeal. This anti-discrimination clause states:

> All forms of discrimination based on ethnic or national origin, gender, age, different capabilities, social condition, health, religion, opinions, preferences, marital status or any other condition which attacks human dignity or has as its aim to annul or impair the rights and freedoms of the individual are prohibited.

Constitutional guarantees, as jurist Luigi Ferrajoli says, are protections for all, but especially express the rights of the weakest.[3] Guarantees such as non-discrimination are, in effect, "the law of the weakest" (the opposite of the "law of the jungle") because they force the state to not trample on or back anyone else trampling on any individual. In the particular case of discrimination, they force the state to protect negative rights (of protection) and positive rights (of promotion and stimuli) to stop and reverse unequal treatment of persons based on social stigma.

The president signed the Federal Law to Prevent and Eliminate Discrimination June 9, 2003 after it was passed unanimously by both chambers of Congress. It regulates the constitutional provisions against discrimination and attempts to advance the most progressive interpretation possible, that is, understanding it as a lever for equal opportunities and for the protection and promotion of groups that have suffered from secular segregation.[4]

If the law is reviewed in detail, it is clear that it includes some of the international instruments' substantive content with regard to the fight against discrimination and the protection of vulnerable groups that our country has accepted but that have never been implemented. It is no secret for anyone that, despite the Supreme Court judgement that these international instruments are second only to the Constitution itself in legal weight, in Mexico's legal and institutional practice they are barely visible as mechanisms regulating our society's life and the solution of its conflicts.[5]

> The struggle against discrimination must be articulated politically and in discourse as part of the struggle for the rights of the individual.

In that sense, the new federal law against discrimination not only regulates the Constitution's anti-discrimination clause, but also brings into the national legal system principles of international law that, though they should be effective norms in Mexico, are to date only aspirations and unfulfilled demands. And even though their legal nature is clear, we must emphasize their existence as political instruments to transform unequal social relations.

We have said that the struggle against discrimination should not be thought of as a series of acts of philanthropy or charity, but as a legal and political strategy to guarantee constitutional rights of the first water. What should be emphasized now is that the task can also not be reduced to a voluntarist program that puts "edifying" or well-meaning exhortations before legal change and institutional action. When the "edifying" strategy prevails, the structural nature of discrimination is disregarded and therefore, the government's obligation to punish discriminatory acts, to empower excluded groups and to compensate victims for the existence of historical, undeserved disadvantages is minimized or eliminated.[6]

The state task of non-discrimination consists of guaranteeing real access to rights and opportunities that a society normally makes available to the citizenry. In that sense, the task is to eliminate social exclusion through non-assimilating integration, integration which respects differences but that at the same time seeks to recognize the person as the legitimate source of rights.[7] Thus, the right to non-discrimination becomes a form of access to rights and opportunities that are often denied to entire groups that have been stigmatized.

However, the right to not be discriminated against cannot be seen as a law of minorities or a statute promoting self-segregation. For example, in the main international instruments against discrimination, the established aim is access by the discriminated group to the mainstream of society's life and the elimination of its subordination and marginality. In that sense, it is a generalized consensus that non-discrimination is a form of social inclusion rather than the affirmation of separate routes for social groups. For that reason, in the case of ethno-cultural differences, anti-

discrimination policies must seek a fair balance between the ethnic affirmation of difference and the harmonizing aims of conceptions blind to differences. That is, they have to offer an alternative to the current debate between the politics of difference, which aspire to deepen differences, and liberal universalist visions, which seek an affirmation of rights over and above ethnic-cultural, sexual and other types of differences.

Precisely because in a national community rights and opportunities exist that are judged socially valuable, the aim is that the law eliminate barriers to their enjoyment. Thus, the logical framework for non-discrimination continues to be the national state, although, of course, what is in doubt is whether this state can be conceived of as homogeneous in its ethnic composition, its ideas of what a good life and happiness are, its religious doctrines, etc.

The federal law recently approved in Mexico is a kind of "new civil rights act," that is, a norm that is a framework for defending the dignity of persons that can stimulate and be a context for more specific legal and institutional projects. However, because it is a law to defend the rights of the individual, it also has profound social meaning.

Something that is frequently forgotten about non-discrimination policies is their capacity to perfect so-called social rights. In the particular case of Mexico, given that the approval of this law will lead to important transformations in the exercise of social rights such as the right to health, education or work, we can speak of a political process that seeks to perfect access to well-being. Because, in the last analysis, social rights without respect for individuals' freedom, safety and differences turn into practices typical of a patronage system or corporatism, while protection of the individual without attention to the context of well-being that he or she requires tends to become nothing but a new form of non-solidarity.

But also, perfecting political rights depends on the appropriate exercise of the new civil right of non-discrimination. Political rights, the rights by definition of a democratic system, are frequently limited by practices of discrimination and social exclusion. For that reason, non-discrimination is crucial for exercising them fully. To conclude, let us look at the case of indigenous communities.

It is a generalized consensus that non-discrimination is a form of social inclusion rather than the affirmation of separate routes for social groups.

Although in Mexico, access to political rights has been normalized for practically the entire citizenry in the last decade, it is clear that the conventional use of these rights does not provide social groups such as the indigenous the possibility to articulate the collective decisions they consider important. The conflict between some traditional decision-making practices and the practices laid out by electoral legislation poses certain dilemmas which must be resolved politically.

In this specific case, it is clear that discrimination limits the democratic right to representation. Although specific studies still remain to be made about each vulnerable group, it can be said that political participation is limited when an abstract norm of political participation is established that disregards community forms of social life in which that right must be practiced.

In our opinion, access to democratic political representation cannot be replaced by traditional forms of decision making in ethno-cultural groups. However, a combination should be sought which would allow for the establishment of general norms of political representation in the framework of the practices and customs considered of value by the members of these groups.

The philosopher Jürgen Habermas, in his book *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*,[8] has pointed out that, in the framework of a plural political community characterized by a variety of cultural traditions (he is thinking of the European case), the same principles and rights can be affirmed on the basis of different interpretations according to each cultural context. This idea implies that it is possible to have different interpretations of those political rights and principles or, more simply put, that there is no single interpretation of democratic principles.

In principle, each cultural community, with its own political culture, could sustain the same democratic principles that other communities sustain, albeit with their own interpretations. Perhaps this model is appropriate for guaranteeing real access to democratic principles in the case of ethno-cultural groups.

We should not forget, however, that the traditional form of political discrimination against ethno-cultural groups in Mexico consisted of the authoritarian state fostering certain phenomena that already existed in their cultural struc-

ture, like *cacicazgo*, or a power system based on local strongmen. We want to say that the very cultural structure of these communities includes elements that facilitate authoritarian acts; vis-à-vis these phenomena, the formal rules of representative democracy are a superior alternative.

Thus, the political dilemma of discrimination for reasons of race or ethnicity in the case of political rights is a question of equilibria. On the one hand, it is a matter of guaranteeing that legal, institutional usage that becomes obligatory in ethno-cultural communities not clash with these groups' cultural and symbolic usages; and on the other hand, it is also necessary to make sure that the political rules do not simply reflect authoritarian traditions that already exist in some of these groups.

In any case, only democratic politics are capable of building these points of equilibrium. If we abandon the idea that all community traditions are valuable for the simple reason that they are traditions but at the same time recognize that democratic principles and rights must have a meaning that makes them significant for ethnic groups where they have always been absent, then we will be able to find desireable commitment solutions.

The proposal made by Will Kymlicka in 1995 may well continue to be the most appropriate for seeking solutions to this matter. In his book *Multicultural Citizenship*, Kymlicka points to the need to achieve a balance between what he calls external protections and internal restrictions for ethno-cultural groups.[9] The former are state actions that seek to protect the integrity of the ethno-cultural groups. These external protections include, for example, the group's special rights such as those that allow for special representation in parliaments for indigenous groups. In this case, it is a question of the state protecting the communities' way of life with a law that recognizes political attributions for them different from those of the majority, which allow them to survive as a group.

These external protections, however, are conditioned to the prohibition of the internal restrictions. The internal restrictions are violations by the group of its members' constitutional rights. Individuals' fundamental rights must be protected against the majority of the group which may be overwhelming and authoritarian.

Naturally, Kymlicka is trying to round things out by combining the right of the groups to maintain their existence and the right of individuals to maintain their legal and moral integrity.

The fight against discrimination and racism in political representation should seek a similar equilibrium. That is the program that theory can give us, but we all know that the arduous task of carrying it out falls to democratic political action. VM

Notes

[1] For a broad understanding of the meaning of the "language of rights" as a specific form of the circulation of political demands in our time, see J.G.A. Pocock, "Languages and Their Implications: the Transformation of the Study of Political Thought," J.G.A. Pocock, *Politics, Language and Time. Studies on Political Thought and History* (New York: Atheneum, 1971).

[2] Article 7 of the UN's Universal Declaration of Human Rights reads, "All are equal before the law and are entitled without discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." Other definitions of international law against discrimination appear in UN instruments like the Convention on the Elimination of All Forms of Discrimination against Women and its 21-article Optional Protocol or the International Convention on All Forms of Racial Discrimination.

[3] Luigi Ferrajoli, *Derechos y garantías. La ley del más débil* (Madrid: Trotta, 1999).

[4] "Ley Federal para Prevenir y Eliminar la Discriminación," *Diario Oficial de la Federación* (Official Gazette), 11 June 2003.

[5] The Supreme Court's November 1999 thesis 77/99 states, "International treaties occupy the second rung on the hierarchy after the Constitution and come before all federal and local legislation."

[6] For a critique of the so-called "edifying strategy" in the fight against discrimination, see Jesús Rodríguez Zepeda, "Un enfoque teórico para la no discriminación," *Memoria del Foro Internacional por la No Discriminación* (Mexico City: Secretaría de Relaciones Exteriores/UNIFEM/UNPD, 2003). This critique does not negate the desirability of "edifying" appeals to individuals to not discriminate, but does emphasize that a strategy limited to only this voluntarist aspect is condemned to failure. By "edifying" we mean actions that may be positive in and of themselves in terms of values, but which do not achieve a change in the structural dimension of discrimination and are therefore in a certain sense useless, even though they satisfy the good conscience of those who carry them out. The hypothesis held by Rodríguez and in this article is that there cannot be a real reduction of discrimination without legal action and institutional reforms, which implies punishment for acts of discrimination and affirmative action both in the public and the private domain.

[7] To say it in Rawlsian language, politically the person must be considered as a "self-authenticating source of valid claims." John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 32.

[8] The author consulted the Spanish version, Jürgen Habermas, *Facticidad y validez. Sobre el derecho y el Estado democrático de derecho en términos de teoría del discurso* (Madrid: Trotta, 1998), pp. 619-643.

[9] Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995), pp. 35-44.