

HUMAN RIGHTS AS A SOCIAL PROGRAM TO REDUCE  
VULNERABILITIES

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**ABSTRACT**

The concept of vulnerability is treated in a philosophical and strategic perspective. Vulnerability is shown to formally focus on a relationship which is called relation of belonging. The relation of belonging is defined and formalized, so that its properties are shown at their broadest and most abstract level. Then, the concepts necessary for the discussion of vulnerability are examined, namely: risk, danger, attack, threat, protection, offense, and damage. Vulnerability is then analyzed in its manifestation according to three orders: trivial vulnerability, or first-order; consolidated vulnerability, or second-order; and situational vulnerability, or third-order. Within the scope of this latter, the three degrees of victimization are defined: victimization by attack (1<sup>st</sup> degree); victimization by offense (2<sup>nd</sup> degree); and victimization by damage (3<sup>rd</sup> degree). These concepts are explained as different forms of harm to a relation of belonging, the most serious being those that cause its suppression or deactivation. On top of this, there is a social stigma that arises when the victimization of groups brought about by situational vulnerabilities deemed as consolidated ones, throws these groups in a discriminated social situation, tending to reproduce their victimization by the perpetuation of their vulnerability. It is then discussed the social injustice resulting from the assumption, intentional or not, that situational vulnerabilities are consolidated, which is the source of the different types of victimization. Finally, the concept of 'social program' as conceived by Niklas Luhmann is examined, and it is shown that human rights are a social program in the sense of Luhmann. This social program, that aims to vulnerabilities, rather than victimizations, can reduce inevitable vulnerabilities and extinguish avoidable ones.

**Keywords:** Human rights; vulnerabilities; belonging; victimization; risk and danger.

## RESUMO

O conceito de vulnerabilidade é tratado em uma perspectiva filosófica e estratégica. Mostra-se que a vulnerabilidade, formalmente, incide sobre uma relação de pertencimento. A relação de pertencimento é definida e formalizada, para que suas propriedades sejam evidenciadas em seu nível mais amplo e abstrato. Em seguida, examinam-se os conceitos necessários à discussão da vulnerabilidade, a saber: risco, perigo, ataque, ameaça, proteção, ofensa e dano. A partir deles analisa-se a vulnerabilidade como podendo manifestar-se em três ordens: a vulnerabilidade trivial, ou de primeira ordem; a vulnerabilidade consolidada, ou de segunda ordem; e a vulnerabilidade situacional, ou de terceira ordem. É no âmbito dessa última que se definem os três graus de vitimização: a vitimização pelo ataque (1º grau); a vitimização pela ofensa (segundo grau); e a vitimização pelo dano (3º grau). Explicam-se esses conceitos como formas variadas de prejuízo a uma relação de pertencimento, sendo as mais graves as que provocam sua supressão ou desativação. Adicionalmente, observa-se o estigma social que surge quando a vitimização de grupos oriunda de vulnerabilidades situacionais consolidadas acarreta a esses grupos uma situação social discriminada, tendente a reproduzir sua vitimização pela perenização de sua vulnerabilidade. Discute-se, então, a injustiça social que decorre da suposição, intencional ou não, de que sejam consolidadas as vulnerabilidades situacionais, que é fonte dos diferentes tipos de vitimização. Finalmente, examina-se o conceito de 'programa social' como concebido por Niklas Luhmann, e mostra-se que os direitos humanos são um programa social no sentido de Luhmann – o programa social que voltando-se para as vulnerabilidades, antes que para as vitimizações, tem a capacidade de reduzir a vulnerabilidades inevitáveis e extinguir as evitáveis.

**Palavras-chaves:** Direitos humanos; vulnerabilidades; pertencimento; vitimização; risco e perigo.

## I THE KINDS OF VULNERABILITY

For the Portuguese-speaking readers, the article by Maria do Céu Patrão Neves published in the *Revista Brasileira de Bioética* (Brazilian Journal of Bioethics) became a mandatory reference. In this article, three concepts of vulnerability are proposed: a characteristic, a condition, and an ethical principle.

Revisiting the thoughts of Emmanuel Lévinas and Hans Jonas, she notes that “Lévinas and Jonas converge in the affirmation of vulnerability as a universal con-

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1 Even though this paper appears in English, many of its readers are Portuguese-speaking people.

dition of man to which only responsibility – as a nonviolent response to the other, as a proportionate response to the pending threat on the perishable, respectively – responds effectively and fully.” (NEVES, 2006: 165)

She clarifies, moreover, that “in 1998, in the Barcelona Declaration [...] the formulation of vulnerability as a principle arises for the first time, alongside autonomy, dignity and integrity, considered jointly as the ‘basic ethical principles’ in European bioethics and biolaw”. (NEVES, 2006: 168)

This very brief reference does not explore in depth the article by Patrão Neves but lends itself to indicate the importance and timeliness of vulnerability as a theme.

In this article, the concept of vulnerability will be addressed from a strategic perspective. Vulnerable is what or who is subject to harm, whether through intentional actions or through the natural course of events. Thus, it is because of the vulnerability’s existence in principle that it makes any sense to engage in intentional actions aimed at harming others. On the other hand, these actions, once practiced, create additional vulnerabilities, or expand existing ones.

Being harmed is contrary to the interests of the vulnerable. Thus, vulnerability and its exploitation necessarily engender a conflict. The potentially vulnerable will seek to diminish or extinguish his or her own vulnerability by protecting oneself, that is, by the creation of conditions for blocking of the offensive actions of the opponent.

All these concepts, however, although easily understandable as utterances, need to be carefully defined if we want – as we wish – to analyze the issue of vulnerability in detail.

For this, it will be necessary to define exactly the relationship of belonging, whose impermanence is put as the conceptual core of vulnerability. Such a relation when threatened manifests itself as vulnerability. Ideas such as risk, danger and damage are understandable only in connection to the belonging relation.

Most of this article deals with these notions. Eventually, Niklas Luhmann’s concept of social program is presented, and we indicate how and why human rights are a social program (in the luhmannian way) for vulnerabilities reduction.

It may be necessary to formulate a disclaimer here. This article is written from a standpoint that is not the most usual in the Western philosophical tradition. Therefore, particular attention needs to be paid to the definitions that are herein introduced. They start from a radically constructivist perspective of knowledge. This makes what is spoken of a primary element of knowledge, not a subsidiary one. In other words, knowledge is not constructed as something about something else, to which it refers; it is in reverse: the other thing to which it refers is the one that can only be conceived when one intends to give knowledge a referent.

Knowledge is a rational human production, and human rationality usually operates according to a certain logic, which brings about the repudiation of paradoxes as symptoms of impossibility. Nevertheless, the construction usually referred to as

human knowledge is not a sole, integral development; it is an overlap of constructions, each with its specific logic, in such a way that depending on the context, depending on the point of view, depending on the interest that directs the attention, one or another segment of this complex of constructions predominates. Erving Goffman (1974) talked about these subjects.

Then, the reality that is supposed to be the referent of knowledge becomes rich in paradoxes, although the logic of reasoning repudiates them. Therefore, two paths are open: one is an abusive simplification; the other is an attempt to find a language in which these paradoxical aspects can be told about in a minimally understandable way. This article adopts this second point of view.

These observations are relevant especially in the part of this article that presents a formalization of ideas through an algebra of sets. It should be clarified that this formalization adopts a naive set theory, practically representing an almost metaphorical way of describing ideas whose expression in words would be much more complicated and long. So, although care has been taken to verify the formal correctness of what is written, a substantial number of well-known logical problems in the literature that the various versions of set theory present have been left out. This was done due to the merely instrumental use with which the use of a formalized language was made. Thus, it is necessary to understand what is written within the strict definitions presented, given that, in this case, other extrapolations may not prove adequate

## 2 PREDICATION AND BELONGING

The Sapir-Whorf conjecture posits that human rationality is exercised according to the language that presides to thoughts organization. In 1929, Edward Sapir (1958:69) proposed, the notion that "human beings do not live in the objective world alone, nor alone in the world of social activity as ordinarily understood, but are very much at the mercy of the particular language which has become the medium of expression for their society. Some years later, Benjamin Lee Whorf (1940) would develop these ideas saying: "We dissect nature along lines laid down by our native languages. The categories and types that we isolate from the world of phenomena we do not find there because they stare every observer in the face; on the contrary, the world is presented in a kaleidoscopic flux of impressions which has to be organized by our minds — and this means largely by the linguistic systems in our minds. We cut nature up, organize it into concepts, and ascribe significances as we do, largely because we are parties to an agreement to organize it in this way — an agreement that holds throughout our speech community and is codified in the patterns of our language. The agreement is, of course, an implicit and unstated one, but its terms are absolutely obligatory; we cannot talk

at all except by subscribing to the organization and classification of data which the agreement decrees”.

If we take for granted the Sapir-Whorf conjecture it can be understood how the ability or reasoning both in English and in Portuguese brought about the approach to the theme of vulnerabilities and human rights expressed below.

Among the syntactic functions in the Portuguese language grammar there is that of the subject complement (*predicativo do sujeito*). The subject complement is the term that answers two questions. Both, in English, are written the same way: what something is? In Portuguese, however, the order of words is important for understanding the phrase. For example, *um homem grande* is a man whose size is large (a big man); *um grande homem* is someone whose human qualities (regardless of their physical size) are meaningful (a great man). A great man (*grande homem*) may or may not be a big man (*homem grande*), and vice versa. So, if literally translated into English, the two different questions would be: what something is and what is something.

When one asks what something is, ‘something’ (*o que alguma coisa é*), the grammatical subject, it is what is spoken of. The answer is given by a sentence in which the designation of that thing appears as subject, and the answer to the question comes as the subject complement (*predicativo do sujeito*) – its properties or characteristics relevant in the context. When the question is about what a thing is (*o que é uma coisa*) however, although the answer also comes as a subject complement, what is asked – and therefore, what one needs to answer – is something else. It must be what such a thing is in all contexts – what it is by its nature. If I ask a geologist what granite is in the first way, he might answer me by talking about the color or hardness of that kind of rock called granite. But if I ask him what granite is in the second way, the answer will be a definition, that is, the enunciation of essential attributes of granite that hold in any context – the explanation of what makes a piece granite granite.

Regarding relational considerations, there is a remarkable thing to be noted. In the case of link verbs, the predication establishes a relationship of order – a reflexive, antisymmetric and transitive relation. The, antisymmetry is shown when one considers that the subject complements represent attributes of what is spoken of. So, what one talks about has certain attributes, not conversely. However, if the attributes listed are all the essential attributes (or at least those that are relevant to the subject under consideration) as is the case of the definition, this relationship is no longer of order; it is a relation of equivalence.

Equivalence relations, such as those of order, are reflective and transitive, but, unlike them, they are symmetrical. This means that if the constructed sentence is a true definition, it remains valid when its terms change conversely: the subject complement becomes the new subject, and the old subject becomes the new subject complement.

Therefore, the predication of linking verbs is, in general, a relation of order, but, in the case of definitions, it becomes a relation of equivalence. Such duplicity is not trivial. It is a characteristic of a particular kind of relationship that in its most generic form is the belonging relation. Intuitively, this appears with the use of the verb to have made before. Something that is spoken of **has** attributes; there will even be those who would say that these attributes are **possessed** by the thing which is spoken of. So, it is not difficult to conceive the attribute as something that belongs to the object of which it is an attribute. Nevertheless, to give this subject a rigorous treatment it is necessary to formalize this type of reasoning as an algebra of sets.

However, when making use of abstract instruments, it is essential to establish a mode, or modes, by which the formalism employed connects to the reality to be described. So, it leads us to consider three levels of discourse: the first level is that of the items; the second of the basic sociocultural constructs, and the third of the applied sociocultural constructs.

For these notions' context, it is worth remembering the controversy that developed throughout the 20th century, in logic, metaphysics and philosophy of language about the problem of existence and what are actual objects. This controversy, which will not be exposed in detail here, concerns the relations between grammatical subjects and existence and has a starting point with Alexius Meinong positing that every grammatical subject is implicitly an object (MEINONG, 1904). Such position is followed here in some way. As there are obviously grammatical subjects that designate fictitious entities (cf., for example, KRIPKE, 2003), the question issued referred to the idea of existence as ontological concreteness in face of concepts such as 'possible objects', or 'abstract objects'. An important contribution to this controversy is the idea of 'ontological commitment' introduced by W. V. O Quine (1948). The basis of Quine's argument is the discussion of the existence of mathematical objects, indispensable to the physical description of reality.

When it was said, in the previous paragraph, that we adopt here Meinong's position "in some way", this means that the position is analogous, but the context is different. As the author of this article has shown (ROCHA, 2022a: 78), "the intersubjective agreement [under certain conditions] is a symptom of the objectivity of experience and of the truth of the facts stated as a description of that experience taken as an objective one". This is relevant because the basic element in the construction of a model of reality both from the naive view of everyday life and in the scientific description is not existence, but objectivity. Thus, if objectivity can be construed without a previous ontological hypothesis – and it can! – the controversy about existence is overcome by the question of the (grammatical) subjects' referents regardless of its ontological status.

In the constructivist perspective of the empirical-pragmatic view, defended by the author, the previous metaphysical hypothesis (the objective existence of the natural world) is replaced by a communicational condition as a criterion of objec-

tivity: the intersubjective recognition that what all the speakers say is about ‘the same thing’ (ROCHA, 2022 b). It is in this sense that Meinong’s position is adopted “in some way”. This line of reasoning can be made rigorous from the perspective of Edward Zalta (1983).

Going back to the question of the three levels of discourse mentioned above, the first level is the items level. Item is the term employed by Richard Routley (later Richard Sylvan) in **Exploring Meinong’s Jungle and Beyond: An Investigation of Noneism and the Theory of Items** (ROUTLEY, 1979). The term item is used here as something you can talk about, or alternatively, something you can conceive of.

Of course, when one talk about something, one says something about it. Therefore, although items can be imagined as singular, they will always appear as coupled in some way. Something similar happens to the relationship between ‘things’ and ‘states of affairs’. Things are items; states of affairs are relationships between items.

If this is understood, even at this fundamental level an item is, in fact, a set of items: the set of attributes that belong to the item – expressed grammatically by the subject complements when the item’s designation is the subject. Then, it will be said that each item is a set consisting of elements that are its attributes.

The fundamental nature of the items does not imply, therefore, an absence of complexity, but only the absence of socio-cultural distinctions that may be deem relevant to the discourse. The distinction between sets of elements as subject items and complement items brings about already the second level of discourse – the first sociocultural level.

### 3 THE ALGEBRA OF BELONGING

The sets of items that come together to constitute a special item will be represented by letters: **A**, **B**, **C**... Saying that the items are related by the relation of belonging: **A**ℳ**B** (which will be read as “**A** belongs to **B**”) means that for **A** to be effectively **A**, there must be elements of **A** whose effectiveness – whatever the criterion for attributing this condition – depends on **B**. On the other hand, for **B** to be complete, at this second level of the discourse, it is necessary that the relationship **A**ℳ**B** takes place.

The poles **A** and **B** of the relation **A**ℳ**B** will be said respectively the referred pole and the referent pole. The referred pole **A** appears as the grammatical subject of the sentence that states the belonging relation. The referent pole **B**, is the one that gives meaning to the belonging of **A**.

Both poles are needed to make the relationship meaningful. However, in the higher levels of discourse, it is pole **B** that will be personalized, that is, identified as a person, either in the proper sense of a morally situated human being, or in the figurative sense of attributing personality to a collective actor.

In a formal language,  $\mathbb{A}$  replaces  $\mathbf{A}$  in the second level of discourse, and  $\mathbb{B}$  corresponds to  $\mathbf{B}$  in the same level according to the equations:

$$\mathbb{A} =_{\text{def}} \mathcal{E}(\mathbf{A}) =_{\text{def}} \mathbf{A} \cap \mathbf{B}$$

$$\mathbb{B} =_{\text{def}} \mathcal{C}(\mathbf{B}) =_{\text{def}} \mathbf{A} \cup \mathbf{B}$$

$\mathcal{E}(\mathbf{A})$  will be called “effectiveness of  $\mathbf{A}$ ” and  $\mathcal{C}(\mathbf{B})$  will be called “completeness of  $\mathbf{B}$ ”, and the symbols  $\cap$  and  $\cup$ , respectively, denote the intersection and the union of the sets  $\mathbf{A}$  and  $\mathbf{B}$ .

In a descriptive language, the formula  $\mathcal{E}(\mathbf{A}) = \mathbf{A} \cap \mathbf{B}$  means that the effectiveness of  $\mathbf{A}$  is represented by the elements of  $\mathbf{A}$  that are somehow triggered by  $\mathbf{B}$ . Then, if there are no elements of  $\mathbf{A}$  triggered by  $\mathbf{B}$  (which is written as  $\mathbf{A} \cap \mathbf{B} = \emptyset$ ),  $\mathbf{A}$  remains something that can be spoken of, but will not have any effectiveness in the context in which the discourse one deals with is used.

$\mathcal{C}(\mathbf{B} = \mathbf{A} \cup \mathbf{B})$  means that, in the second level of the discourse,  $\mathbf{B}$ , now represented as  $\mathbb{B}$ , is complete if and only if the original item  $\mathbf{B}$  has the elements of  $\mathbf{A}$  incorporated into it. It is the conjunction of both conditions – the effectiveness of  $\mathbf{A}$  and the completeness of  $\mathbf{B}$  – that make true the statement that  $\mathbf{A}$  belongs to  $\mathbf{B}$ , i. e.,  $\mathbf{A}\mathfrak{B}\mathbf{B}$ .

This formalization allows us to treat the subject matter we are dealing with as an algebra of sets. It follows that although it may be apparent that  $\mathbb{B}$  deprived of  $\mathbf{A}$  (i. e., deprived of the item  $\mathbf{A}$ ) would be reduced to the item  $\mathbf{B}$  of the first level, this does not happen. Actually,

$$\mathbb{B} - \mathbf{A} \neq \mathbf{B}$$

which means that once  $\mathbf{B}$  is completed by  $\mathbf{A}$ , if the item  $\mathbb{B}$ , is deprived of  $\mathbf{A}$ , it is not the original  $\mathbf{B}$  anymore. This is because, when discussing effectiveness and completeness, one has moved to the second level of the discourse and, in it, the item  $\mathbf{B}$  converted to  $\mathbb{B}$ , needs  $\mathbf{A}$  to be itself.

If the relationship  $\mathfrak{B}$  must be understood as belonging, what the items  $\mathbf{A}$  and  $\mathbf{B}$  represent is:  $\mathbf{A}$  is what belongs to  $\mathbf{B}$ ; and  $\mathbf{B}$  is that one to which  $\mathbf{A}$  belongs. So, we will say that  $\mathbf{A}$ , the referred pole, is an ‘asset’, or an ‘instrument’; and  $\mathbf{B}$ , the referent pole, is the holder or bearer of that asset or instrument.

The relationships between  $\mathbf{A}$  and  $\mathbb{A}$ , as well as that between  $\mathbf{B}$  and  $\mathbb{B}$  need to be well understood. In a sense both symbols ( $\mathbf{A}$  and  $\mathbb{A}$ , and  $\mathbf{B}$  and  $\mathbb{B}$ ) represent the same thing, but in another sense they don’t. In the first level of discourse, they represent the same thing, namely the set of elements called asset or instrument, and the set of elements called holder or bearer. On the second level of discourse, however, the asset or instrument is only relevant to the extent that it becomes effective, and, therefore,  $\mathbf{A}$  only matters for its effectiveness. But this effectiveness



cannot be defined exclusively in terms of  $A$ ; it requires the intervention of  $B$ . In this perspective,  $B$  is converted into  $\mathbb{B}$ , i. e., it becomes the first level item  $B$  completed, now, by the elements of  $A$  which  $\mathbb{B}$  can make effective through its power of triggering  $A$ .

There is, however, the third level of discourse – of the sociocultural applications of the items. At this level, the holder of the asset or instrument needs to be considered according to the use he or she makes of that asset. Such a use stems from two factors: (1) the completeness of  $B$ ,  $\mathcal{C}(B)$ , and (2) the effectiveness of  $A$ ,  $\mathcal{E}(A)$ . It's easy to see why it is so. For the holder of the asset to use it, it is necessary (1) that the holder disposes of the asset or instrument; and (2) that the asset or instrument is effective.

If we want to formalize coherently the effectiveness of the asset's holder  $\mathbb{B}$  in his or her social context, we will need to inquire about the value  $\mathcal{E}(\mathbb{B})$ . After the necessary transformations, the substitution of symbols in the formula indicates:

$$\mathcal{E}(\mathbb{B}) = \mathbb{A} \cap \mathbb{B} = \mathbb{A} = \mathcal{E}(A)$$

that is: the effectiveness of the holder of the asset or instrument is equal to the effectiveness of the asset or instrument. This is a wide and general result, and it applies to all cases in which there is a relationship suitable to be formally described as a relation of belonging defined as we have posited it.

On the other hand, this equation  $\mathcal{E}(\mathbb{B}) = \mathcal{E}(A)$  shows the ambiguity in the meaning of the relationship  $\mathfrak{B}$ . If  $A$  is one of several assets or instruments belonging to  $B$ , the relation  $A\mathfrak{B}B$  shall be one of order. However, if  $A$  represents the totality of the attributes of  $B$ , or at least of  $B$ 's essential attributes, then the relation  $A\mathfrak{B}B$  becomes a relation of equivalence. This equation means that if  $A$  stands for the assets or instruments pragmatically relevant to  $B$ , (i. e. the completeness of  $B$ )  $A$  will be pragmatically equivalent to  $\mathbb{A}$  (the effectiveness of  $A$ ).

It should be noted that the relation of belonging may represent the possession of concrete objects, the ownership of abstract conditions, or any relations between grammatical subjects and their subject complements. It can be shown that the equations developed above also represent Hegel's dialectic of the master and the slave. The dialectical relation is typically a relation of order which, through the passage of time or a logical progression, becomes a relation of equivalence. That's also the property of belonging, meaning that going from the second to the third level of the discourse equalizes pragmatically  $\mathbb{B}$  and  $\mathbb{A}$ .

In the belonging relation, there is no restriction to the poles nature. Any items that admit the equations showed above are poles of a belonging. The holder or bearer of the asset or instrument can be either an individual moral subject (a person) or a collective subject (an association, a political party, a nationality, and so on).

Similarly, the asset or instrument may be an object, but it may also be a person or a group of people.

At the third level of discourse, the relation of belonging can both describe something morally and emotionally meritorious, such as the condition of belonging to a family or a support group and can represent something morally unsatisfactory such as the instrumentalization of people by other people. Therefore, it should be emphasized that the relationship of belonging, does not involve by itself any moral evaluation. Only the social instances that it describes can be valued.

In cases where the referent pole is composed of collective subjects, in which subjectivity is induced by an artificial process of personalization, the moral nature of acting is somewhat blurred: the importance of the social actor as such can be claimed to relax moral requirements usually required from individual agents – the people who act on behalf of the collective actor.

In a descriptive language, what has stated here can be summarized as follows:

(1) an item characterized as the holder of an asset or instrument will be complete if and only if it truly disposes of that asset or instrument, that is, if that asset becomes effective by the action of its holder or bearer.

(2) The effectiveness of the holder or bearer is equal to that of his or her assets or instruments, that is: the holder or bearer becomes effective in their sociocultural context only by activating the asset or instrument they have

(3) The mere existence of the asset or instrument does not imply its effectiveness; that effectiveness stems from a specific relationship of the asset or instrument with its holder or bearer – it is the relationship of belonging.

(4) The total or partial suppression of the asset or instrument; the suppression or incapacitation of the holder or bearer; or the interruption of the relation of belonging imply the ineffectiveness of the asset or instrument and, ipso facto, the ineffectiveness of its nominal holder or beholder in its sociocultural context.

#### 4 RISK, DANGER, AND VULNERABILITY

From a strategic point of view, vulnerability is susceptibility to damage. This susceptibility is referred to by two words, risk, and danger. However, the Portuguese language usage of these terms are ambiguous.

As Márcia Regina Guerra (s. d. :l) says, “there are controversies between the concepts of the words “risk” and “danger” in Brazil. [...] it is important to clarify that the two words can have their meanings reversed, since the reverse meaning is used by regulatory norms [...]. The companies adopted the vocabulary from inaccurate translations”. Then she clarifies: “‘Danger’ is usually understood as a potential source of damage, with damage being a physical injury or damage to property or the environment. [...] The concept of risk in general, in private organi-

zations and in this work, is related to uncertainty and variability, depending on the probability of occurrence of a hazard and its severity” (GUERRA, s. d.: 21).

A further clarification is provided by Luciano Lourenço (2014): “our reflection starts from the existence of a threshold [...] that represents ‘danger’, so it should not be transposed, since it transposes the risk into the crisis”. So, from Lourenço’s perspective, the risk seems to be the furthest situation from the damage, and the danger represents a threshold for the transformation of the risk into a crisis, which means the imminence of the damage.

Rocha (2021: 237), discusses how the crisis is placed in the face of conflict. He describes crisis in the following words: “The crisis is exactly that: a separation, a separation between the symbolic universe which legitimizes the social practices in the world of pragmatic relations and that same practices that should be legitimized.” This conceptualization should be explained.

Pragmatic analysis (ROCHA, 2021a:517-522) is a tool for studying strategic situations by examining the actions of different social actors, instead to pay attention only to their legal or customary definitions. This is described by saying that strategic actors are characterized by their pragmatic relationships with other strategic actors being those relations defined through the actions practiced by them. The intentionality of actions stems from the awareness of this circumstance: one acts to obtain modifications of states of affairs in the objective world (that is the actions’ concrete content); but one acts above all to appear in the sociocultural context in which they live, through his or her actions, intending to be qualified by their actions’ nature (that is the actions’ symbolic content).

The actions thus intended are said to be purposeful, because they are planned and executed to serve a defined purpose. This purpose conditions the actions through the rationality of the actors and their agents: There are ways and means appropriate to the achievement of a certain end and recognizing this is a trait of the rationality of the subjects.

The exercise of rationality is not done, however, in the void. It presupposes the social sharing of meanings within a culture. The set of these meanings called the broader symbolic universe of the culture dealt with. In principle, it is assumed that the acquisition of these meanings by people inserted in such a culture is done by education, within the processes of socialization. So, in general, it should not be deemed that any misunderstanding in the management of these meanings stems from an absolute ignorance. For example: if a social actor wants to be respected and admired, he or she will act in the way in which his social group understands what is respectable or admirable. If the actor acts in a way that his or her group considers despicable or indecent, claiming that he or she hopes to win the respect and admiration of the group, it will be said that such people have lost their minds.

Thus understood, the exercise of rationality implies the capacity to manipulate the meanings inserted in the symbolic universe of one’s culture. If, however, the

failure in the application does not result from the deprivation of the subject's rationality but from the anomalous situation in which the symbolic universe known to him or her is no longer able to describe and prescribe social practices within the group considered, the potential for rationality still exists in the subject, but its effectiveness in reasoning and choosing purposeful actions is impaired, partially, or totally. In these circumstances, the amount of knowledge amassed by subject comes to no use; he or she will not be able to act in a manner consistent with the attainment of their purpose. That's the crisis.

This is exactly what happens in situations of danger: behaviors that would be appropriate outside of it can prove inadequate and even harmful when it manifests itself. In other words, the symbolic universe that the subject uses to manage his or her actions becomes, suddenly, useless, or even counterproductive in dangerous conditions. So, the crisis is the typical state of the dangerous situation. A third way of saying this is: in danger, the exercise of rationality must be different from what it should be under normal conditions.

If we understand that danger is the possibility of damage of every kind, and that risk describes the probability that danger and crisis will arise (and, ultimately, damage will occur), we will have to treat the danger as dichotomous – either it exists or it does not exist; it is the threshold that Lourenço speaks of. The risk, however, being a measure of probability, is a quantitative variable that can be translated into an index that varies from 0 (zero) to 1 (one), being zero the total impossibility of danger – absolute safety – and one the certainty of the danger. Then, one should not say “more dangerous” or “less dangerous”: one should say “more risky” or “less risky”.<sup>2</sup> If we examine, in fact, the colloquial uses of the terms, we realize that the adverbs more and less, when applied to danger, usually translate not a probability of occurrence, but the severity of its consequences: an activity that involves risk of life will be said, inaccurately, “more dangerous” than another that involves only the risk of a superficial bruise.

In another perspective, risk and danger may be nouns – i.e., the dangerous element, – or adjectives. In the first case, they refer to elements or items whose existence carries risk or danger; in the second case it is the situation itself that is referred to as risky or dangerous. The existence of a substantive danger creates an adjective risk: an explosion is a hazard that puts at risk the people who are exposed to it. In turn, the substantive risk implies an adjective danger: the disaggregation of

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2 The possibility is binary: either it is not possible, or it is possible. The probability is measurable. If we understand that 0 of probability corresponds to the impossibility, a probability other than zero will correspond to the possibility with some probability and, in this case, the continuous variation from 0 to 1 (from impossibility to certainty) seems to measure a kind of 'intensity of possibility', which effectively does not apply to possibilities. What may be said is a greater or lesser probability of equally possible events". (ROCHA, 2021::61-62)

a slope's soil creates a risk that brings about the danger that the buildings on its surface collapse, or that those that are under the slope be buried.

Let us adopt, with Luciano Lourenço, the gradation: risk  $\square$  danger  $\square$  crisis. Then, the questions that arise are: what would be in risk or danger? What is or will be in crisis? The trivial response seems to be the items called A and B – the referent and referred poles of the belonging relation. However, the real answer is the relation of belonging.

As it turned out, the relation of belonging is binary and therefore has two poles. If one of these poles is missing (or both), the relationship cannot subsist. However, the two poles may be present and, even so, the relationship be invalidated. That's the most general notion of harm.

To make this clear, it is important to remember that the level of discourse in which the subjects acting in society are spoken of is the third. Therefore, the effectiveness of these subjects is, as shown, the effectiveness of their assets or instruments. Such effectiveness does not depend only on the existence (whatever the meaning of this term) of these assets or instruments as items; it is necessary that they are effective, i. e., that the set of elements they are composed of can be triggered by their bearer or holder. If the effectiveness of the instruments is null – if such set is empty – there will be instruments, there will be a bearer or holder, but he or she will not be able to activate his or her assets or instruments. Thus, from a pragmatic point of view, he or she will not be characterized as the actor he would be expected to be, which would be evidenced by his effective actions.

If a surgeon is deprived of his or her scalpel, or if the scalpel he or she has does not cut, he or she will not be able to practice surgery, despite having the knowledge and professional authorization needed. He or she will not be able to act as a surgeon. Pragmatically, he or she will become an impotent witness to the loss of a life, or to an insurmountable damage to the health of someone whom he or she could have helped if their relationship of belonging to the instrument had been effective. This example shows also that the belonging relation does not mean property (as it could be) but the relationship between someone and the asset or instrument that would make such a person effective in the social life. On the other hand, life and health are, in turn, items that may or may not belong to the patient in this example. 'Losing life' means extinguishing the relationship of belonging between the holder of life and his life; 'losing health' means something similar in relation to his health.

It is clear, then, that, regardless of to which they apply to, the notions of risk and danger always focus on some relation of belonging. The incidence of risk or danger on a relationship of belonging (affecting any of its poles, or both, and, by the way, the relation itself) is what will be understood as vulnerability.

## 5 VULNERABILITY AND VICTIMIZATION

Vulnerability is the strategic concept that describes the possibility of damage, understood as suppression, deactivation, or serious harm to a relationship of belonging. Victimization is the ethical-political condition of the holder or bearer of an asset or instrument when, because of a vulnerability, he or she is deprived of the effectiveness he or she should enjoy and show in their sociocultural context. So, victimization presupposes vulnerability, but vulnerability does not always imply victimization. This will be dealt with in this section of this article.

The relation of belonging describes the connection between an asset or instrument and its holder or bearer. This asset or instrument can be an object of possession – economic conditions, properties – or an object of enjoyment – education, health – or, even, they can be non-material circumstances – consideration, respect. In another sense, the relation of belonging can describe the belonging of an individual (now representing the pole referred to) to a social group: the member of a family; the member of an association; the member of a socioeconomic class. In this case, the priority human interest is in the referred pole, not in the referent pole.<sup>3</sup>

In the following, it will be shown that there are three orders of vulnerability, as well as three degrees of victimization. The ideas of attack, threat, offense and protection will be introduced as concepts necessary for our discussion, in addition to the concept of damage already defined.

Attack is the name given to any action or set of actions that creates or aggravates conditions of vulnerability. Attack is associated with a threat. Threat is an ambiguous term. It both describes the proactive origin of a vulnerability (a threatening actor) and refers to the situation in which the vulnerability occurs. Therefore, the threat reflects both the possibility of the attack and its immediate effects. Finally, the offense is any change in the relationship of belonging attacked, because of the attack.

Once the threat is verified, all types of mobilization of power whose intention is to avoid or minimize the offense are called in – that's protection. If the offense cannot be avoided, it will result in damage: suppression, deactivation, or serious harm to the relationship of belonging. Of course, the notion of serious harm is contextual; what may be serious in one context may not be so in another one. If the offense is avoided or if, even though it persists, its harmful effects are maintained below the danger threshold, the protection will have been sufficient. Otherwise, the relationship of belonging and its referent pole of will be said to be

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3 When it comes to issues such as the efficiency of a work team, the main interest may be that of the referent pole, but this is not the situation that interests the development of the theme of this article.

under-sufficient. Under-sufficient, therefore, is that which is not enough in normal conditions

The first-order vulnerability is a trivial vulnerability. Its nature is objective, that is: such vulnerability is part of the nature of things. For example: if life exists, it will be at risk, i. e., there will be a danger of its extinction. The possibility of an item's extinction is referred to by the term 'impermanence'; the possibility of the loss of completeness by the holder or bearer of an asset or instrument – that is, the possibility for him or her to have their effectiveness diminished – will be called 'insecurity'. Both the impermanence of things and the insecurity of relationships represent the first order of vulnerability.

The second-order vulnerability may be called the consolidated vulnerability. It is conventional in nature and is associated with the form of life<sup>4</sup> that is practiced. Consolidated vulnerability is, in part, induced by trivial vulnerability: as there are intrinsic vulnerability factors, this induces social groups to incorporate the idea of vulnerability to what they consider normal. If this kind of normalization were the pure realization of the intrinsic vulnerability to the nature of things, it would be correct. However, consolidated vulnerability extends beyond objective vulnerability, to include vulnerabilities arising from the current type of structure and social organization, which appear to the group as natural, due to their habituality and the strength of the consolidated interests that these structures protect.

Both impermanence and insecurity – first-order vulnerability – and the consolidation of asymmetric interests in social structures – second-order vulnerability – represent situations of potential threat, which constitute the rational meaningfulness of attacks. If there is an attack, whatever it may be, its mere existence represents a first-degree victimization.

The attack focuses on the relationship of belonging (whether concentrating in one of the poles of the relationship, in both, and in the relationship itself). Nevertheless, because of the personalization of one of these poles (the holder or bearer of the asset or instrument), he or she is who usually will be called a victim, that is, the object of victimization. However, it should be noted that what is attacked is always a relation of belonging; it is such a relation what makes meaningful the asset or instrument suitable to be lost. To lose one's life is to suppress the relationship of belonging between the life and the living. To lose one's wealth is to suppress the relationship of belonging between the wealth and the wealthy. To lose one's honor is to suppress the relationship of belonging between the honor and honorable. To lose one's friend is to suppress the relationship of belonging between a friend and another. And on and on.

4 The notion of form of life (Lebensform) is due to Ludwig Wittgenstein. The form of life plays fundamental role for the definition of the language meanings and structures. Cf. W|ITTGENSEN (2009:11): eine Sprache vorstellen heißt, sich eine Lebensform vorstellen (to imagine a language means to imagine a form of life).

Third-order vulnerability is situational vulnerability. This is the most apparent vulnerability and sometimes considered as the only vulnerability that needs to be prevented. It is usually called 'social vulnerability', which is not incorrect, but inaccurate: as a matter of fact, the second-order vulnerability is also social, even though it is naturalized by its habituality and due to its structural nature.

Third-order vulnerability is the domain of the second and third degrees of victimization. The second degree of victimization is that of the offense. Therefore, there is second-degree victimization when the protection available to the relationship of belonging (or the holder or bearer, or the asset or instrument) suffers the offense. If this offense is serious enough to be described as damage (suppression, deactivation, or serious harm of the relationship of belonging), then that victimization is a third-degree one. As with vulnerability, it is this third degree of victimization that becomes more apparent, and often it is it alone which is described as victimization.

The distinction between offense and damage formulated before was made in terms of the severity of the effects on the relationship of belonging. However, there is an additional criterion that, although not strictly objective, can assist in the distinction between offense and damage and, ipso facto, in the discernment between the two degrees of victimization, the second and the third. The damage to the relationship of belonging is not limited to specific events. It has a social repercussion, that is: because of the damage, the social identity of the holder or bearer of the damaged asset is affected. This means that the (third-degree) victimization becomes a marker of his or her identity, a marker that somehow points to him or her as an incapacitated or depreciated person. It is mainly this condition that converts the issues of vulnerability and victimization into a social problem that demands treatment.

## 6 HUMAN RIGHTS AS A SOCIAL PROGRAM

It is common knowledge in social theory that the maximum level of concreteness is represented by natural persons. Then, there is a level of greater abstraction, in which these people are contemplated through a series of reciprocal expectations, from them and their counterparts regarding the actions they should practice. That's the level of social roles. It is also well known that the social world admits items of a maximum degree of abstraction – the values – which are essential not only to direct individual lives in society, but also to configure the very structure of the form of life that is practiced. Niklas Luhmann, however, points out to the importance of an intermediate level of abstraction between the plan of roles and that of values: the level of social programs.

For Luhmann (2016:300) a program is a complex of behavior correction conditions. Like social roles, a program contains an implicit set of expectations in relation to the human action – that is its normative aspect. However, the program has,



as an essential element, the commitment to the achievement of certain objectives – that is its anchor in concreteness. In pragmatic terms, what enables or favors the achievement of these goals will appear as desirable; what prevents or hinders this achievement will be undesirable. Thus, offering a criterion of desirability and undesirability, the program – each and any program – contains the germ of values.

Nevertheless, the number of programs that a social group can contemplate is indefinite. So, it is possible that in the practical order, the ways for achieving the objectives deserve different, and even contradictory, valuations. It will therefore be necessary, in these circumstances, to define a hierarchy of priorities, so that the programs themselves are evaluated by a precedence criterion.

Thus, a hierarchy of programs is formed in their order of social relevance, and that creates a criterion of preference. This is the process by which, although, within a program, the value depends on the objective, the social group establishes pragmatically its values, that rule as supreme criteria of desirability. So, by paying attention to the socially accepted values, each program can be harmonized with other programs according to a supposedly consensual criterion inherent in the group. That is what the observance of values means.

The notion of program generalizes, to the collective, the subjective notion of purpose (the conjugation between individual objectives and the ways of achieving it) that guides human actions. Then, the cultivation of values hierarchizes programs. As an objective can be considered more valuable or less valuable within a program, so the program itself can be considered more valuable or less valuable within the society. Observance of values can make a program essential (if its achievement meets priority values) or prohibited (if the program violates non-negotiable values). That is the pragmatic function of values.

The linguistic expression 'social program' is commonly used referring to a set of concatenated and planned actions with the purpose of meeting – that is, minimizing or suppressing – conditions of victimization of any order, first, second or third. Such notion means hindering or preventing the attack on the interests of the would-be victimized; hindering or preventing the offense to their interests; and hindering and preventing damage or repairing that damage when it has already occurred.

Such a plurality of purposes requires that the so-called social programs multiply and become so diverse that their realization requires the related action of a plurality of agencies or involves an apparatus so broad that it engenders the waste of funds and energy in maintaining a bureaucracy disproportionate to the effective results. This situation is summed up by saying that these social programs have a palliative function. This does not mean that they are unnecessary; it just means that they try to remedy the consequences of a social circumstance without, however, facing its origin. Exactly this is what the Luhmannian notion of social program can obviate.

The level of abstraction of the Luhmannian notion of social program allows to understand programs not as ways to face victimization, but as an instrument to prevent vulnerabilities and, as previously mentioned, victimization presupposes vulnerability; if vulnerability is suppressed, the conditions of victimization cease.

As it has been seen, trivial vulnerability cannot be suppressed because it is objective. The consolidated, conventional, second-order vulnerability can indeed be minimized by a social program in the Luhmannian sense. This article's thesis is that human rights make for such a program. Then, the following dedicates to show how human rights are a social program and how they can reduce vulnerabilities and, through it, victimizations.

Thomas Michael Scanlon (2003:113) describes human rights as follows: "Human rights, it is held, are a particularly important class of moral considerations. Their gross and systematic violation represents not just the failure to meet some ideal but rather a case of falling below minimum standards required by political institutions. [Highlighted in the original] At the IV International Congress of Human Rights, in Palmas, TO, the author of this article said: "Human rights are [...] notions that concretize the ideal of human dignity. [It is] the right of men and women to be human in concrete, that is, to have respected the human personality that belongs to them without their action and enjoyment being hindered". (ROCHA, 2016:105). In the light of these comments, the relationship between human dignity and human rights will be revisited.

Scanlon's conceptualization clearly shows that the concreteness of human rights has not the abstraction degree proper to the values level. Nor does it reduce itself to the restricted programming of a non-Luhmannian social program. On the contrary, human rights can inspire – and effectively they do it – several specific programs that seek to minimize or remedy the victimization of human beings who, to use the words spoken by this paper's author at the IV International Congress of Human Rights, have not respected the human personality that belongs to them, i. e., the fullness of their humanity is not recognized in a concrete way.

In 2006, the Supreme Court of the United States heard in certiorari the process known as *Hamdan vs. Rumsfeld*, in which Salim Ahmed Hamdan, a prisoner at the American base in Guantanamo, was recognized as having the right to be tried by a regular court, not by a military commission. Hamdan had been Osama bin Laden's driver and was accused of arms trafficking and plotting terrorist attacks against the United States. The Court decided, by majority, that Hamdan should be recognized for the benefit of constitutional guarantees and the prerogatives of human dignity, as a reaffirmation of the absolute values proclaimed by the American Constitution. (ROCHA; FERNANDES; MENDONÇA, 2008)

These absolute values are embodied in the more abstract concept of human dignity, which would only find legal formulation in 1948, in the United Nations Charter. In his 2015 address to the Fourth International Congress on Human Ri-

ghts, this article's author explained how and why human dignity is the myth of our era. It is not a myth in the sense of legend or fiction; it is myth in the sense that Ernst Cassirer (2011:24) uses the term, when he affirms that the primary experience is impregnated, from end to end, with the configuration of myths as if saturated with their atmosphere, and man only lives with the things to the extent that he lives in these configurations.

What gives human dignity the nature of myth – the founding myth of modern Western culture – is its character of absolute value in that culture. As a value, however, it offers a civilizational guideline, which needs operationalization to materialize. The operationalization of a value such as human dignity is done through a social program (in the Luhmannian sense) that brings practical consequences to it. This program is the human rights one, of which Scanlon says that “their gross and systematic violation represents not just the failure to meet some ideal but rather a case of falling below minimum standards required by political institutions”. In other words, respect for human rights is the definitive criterion for being civilized.

If the human rights can be accepted as the operationalization of the human dignity (and, therefore, as a social program in the sense of Luhmann), it remains to show the relationship this program bears with the ideas of vulnerability and victimization.

## 7 HUMAN RIGHT AND JUSTICE

The concept of social justice is widely used and is applied to various situations. Let us therefore specify the sense in which this expression is used herein. A negative definition will be provided here: social justice is the permanent search for the extinction of social injustice, and social injustice is understood as the deprivation of access to material and non-material assets due to identity markers associated with socioeconomic conditions.

Thus understood, the concept of social justice exhibits a notorious connection with human rights, although these notions are not to be confused. Human rights, as has been said, represent the program of recognizing in concreto the fullness of the human condition. Therefore, it is necessary to ask how this condition manifests itself in the enjoyment of material and immaterial assets accessible to the ordinary human being.

Although individual human beings are different from each other, one can conceive a principle of social equivalence (generally referred to as equality) about the effective accessibility of all subjects to this set of material and non-material assets which are considered of normal access by human beings.

So, one of the ways to examine whether social justice applies to a group is to verify how the different orders of vulnerability induce each other. Particularly consolidated or second-order vulnerabilities need to be examined.

As already noted, consolidated vulnerabilities can result in the recognition of trivial vulnerabilities. Human mortality, for example, is a trivial vulnerability. In this way, all social constructions that conceive human beings as mortals – for example those that predict the natural extinction of life and regulate succession, as well as prescriptions about the circumstances of physical and mental decay that are sometimes associated with the end of existence – meet a consolidated vulnerability resulting from a trivial vulnerability. This is neither socially unfair nor offensive to human rights.

However, the issue is different when a situational vulnerability, due to the structure of interests that shapes a social group, becomes habitual, and this habituality is incorporated into the group's current conceptions of normally consolidated vulnerabilities. That is a case of social injustice, because the second- and third-degree victimizations resulting from third order vulnerabilities, instead of being worked on for their extirpation, become factors of inequality abusively deemed as "natural". The extreme aspect of this situation – the naturalization of social inequalities – is the confusion of situational vulnerabilities (third order) with trivial vulnerabilities (first order).

Because it is not treated as obvious, this situation of injustice naturalizes a break in the equalization of people's enjoyment of the rights intrinsically associated with the human condition – the human rights. Thus, it is needed a social program (in the sense of Luhmann) aimed at the proper distinction of these vulnerabilities and at the requirement of suppressing the situational vulnerabilities associated with identity markers. Such a program is exactly that of human rights: the equalization of human beings in rights and dignity.

This construction serves to clarify the theoretical structure of the issue. However, it also overflows from theory to social practice. To the extent that human rights are universally recognized, their observance represents, as Scanlon pointed out, the threshold below which the standards of political organization cease to be civilized.

The social program for human rights means refusing to accept the victimizations associated with situational vulnerabilities, now less from the point of view of the effects and more from the perspective of the causes. Once victimizations in the form of offenses and damages have taken place, it is doubtful whether any remedial procedures – although ethically necessary – will be fully effective. This happens because of the social repercussions of the damage.

When groups of situationally vulnerable people are trivialized, i. e. their situational vulnerabilities are converted into a consolidated structure in the society, the palliative effects of measures on victimizations, with their casuistic effects, do not prevent the occurrence of similar events and do not face the vulnerability as such.

If, however, the issue is considered from the perspective of the social program of the human rights, what is aimed at is the very naturalization of situational vulne-

rabilities, because the human rights program is not only – although it is also – an exhortation against the victimization of vulnerable subjects; it is the denunciation of the vulnerability itself, that is, the recognition that the existence of situational vulnerabilities, when resulting from interests enshrined in unfair social structures, offends the human condition they make vulnerable.

It should be noted that, although the difference is subtle, individual victimization – which can be episodic – and systemic social vulnerability – which is the case of trivialized situational vulnerabilities – are different things.

The discussion of the different systems of political organization and their socioeconomic structures can be controversial. However, the social program on human rights takes up their uncontroversial aspects, which Scanlon claims are the minimum standards required by political institutions.

That is why policies in line with the social program (in Luhmann's sense) of the human rights imply, *ipso facto*, a broad and generic reduction of the vulnerabilities that may be unavoidable and an elimination of those that can be avoided.

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## APPENDIX

Proof of  $\mathbb{B} - A \neq B$

$$\mathbb{B} - A = (A \cup B) - A = (A \cup B) \cap A^c$$

$$\mathbb{B} - A = (A^c \cap A) \cup A^c \cap B = \emptyset \cup A^c \cap B$$

$$\mathbb{B} - A = A^c \cap B \neq B$$

Proof of  $\mathcal{E}(\mathbb{B}) = A$

$$\mathcal{E}(\mathbb{B}) = A \cap \mathbb{B} = (A \cap B) \cap (A \cup B) = [(A \cap B) \cap A] \cup [(A \cap B) \cap B]$$

$$\mathcal{E}(\mathbb{B}) = (A \cap A \cap B) \cup (A \cap B \cap B) = (A \cap B) \cup (A \cap B) = A \cap B = \mathcal{E}(A) = A$$



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