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IS HUMANITARIAN ASSISTANCE LINKED TO A LEGAL STATUS? THE HUMAN RIGHTS OF IMMIGRANTS IN THE US¹

Byron Real²

Abstract

The negative of the US government to provide humanitarian help to informal immigrants (“illegals”) at the time of the Katrina disaster has implications that go beyond the enforcement of internal laws. It generates questions regarding the human rights conception, which is based in the assumption that certain rights “belong to individuals because they are human beings and not because they are subjects of a state's law”. By being barred from humanitarian help, informal immigrants were an exception in such universal human rights conception, and therefore they were confined in a juridical limbo.

Increasing demand of cheap labor in rich countries and therefore of informal international immigration flows, and increasing environmental events due to climate change, rises questions on how these countries will apply humanitarian measures toward people without formal immigration status.

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² PhD (c), University of Florida, Department of Anthropology. byronreal@gmail.com

Are the Human Rights always Universal?

At the time of the invasion of the American continent, European conquerors assumed that indigenous peoples did not have rights because they were not Christians. Although this ideological fault was corrected by the *Romanus Pontifex* Bull signed by Pope Nicholas V in 1455, however, this document still glorified the actions of conquerors and encouraged them to “restrain the savage excesses of the Saracens and of other infidels, enemies of the Christian name” (Davenport 1917). Since then the ideas of “rightness” and “otherness” have emerged to justify discrimination, abuse, and negligence against those who do not belong to any dominant group. This discriminatory prejudice has profoundly affected a prevalent notion in the western thought, human rights.

Human rights are defined as a set of positive regulations based in moral and philosophical considerations for the protection of human beings from any kind of abuse that could impose constraints on their life, dignity, well-being, or aspirations. The human rights doctrine basically rest on the twin concepts of natural law and natural rights. The concept of natural law, is based on the idea that universe is an order and then is governed by certain laws that are not human creations (Merryman, Clark, and Haley 1994). Thus natural law is universal and timeless (Hunt 1996: 35), and consequently binding for everybody. Natural rights, which emanate from natural law, are subjective and are the eternal rights that every person possesses for the protection of certain essential interests (Foriers and Perelman 2001). The right to life, the right to the respect of others, the freedom of expression, and others are examples of natural rights that must be respected at all time and by all countries and societies of the world. This idea that certain basic principles must be applied regardless of cultural and historical circumstances is called moral universalism.

Examples of natural law have been inserted in the English Bill of Rights (1689), the American Declaration of Independence (1776), the French Declaration of the Rights of Man and the Citizen (1789), and the Universal Declaration of Human Rights of the United Nations (1948). All of these documents assume that every one of their provisions is valid for everybody at every time. The notion of universal human rights is represented in a legal system composed by provisions inherent to the nature of all human beings that need to be applied uniformly across the world.

While the ideology of protecting the rights of everybody is officially respected, prejudices of “otherness” have emerged from time to time in human history affecting those who are not part of the “right” group or society. In other words, the metaphor of “other infidels” can emerge as a zombie lurking in the dark, especially in contexts of social disturbance like disasters.

In 2005, as every natural event, Hurricane Katrina unburied issues of social vulnerability and ideological weakness. By restraining the humanitarian assistance to “non qualifying” people, the US government retrieved the prejudice of “otherness”. Here the infidels were the informal immigrants (the “illegals”) who under the assumption that they are not citizens, basic humanitarian help were denied. With this decision the US government failed in its primary duty and responsibility to protect and assist victims of natural disasters within their jurisdiction without discrimination, and breached the universality of the human rights and humanitarian assistance, recreating the notion of “restraining the enemies”. Amid the debris left by the hurricane and the dramatic situation of the New Orleans’ battered population, informal immigrants were others without rights, without a state behind them, and then secluded in a juridical limbo.

Immigrants: the nowadays’ infidels

There is not a time where human societies have not moved in search of new life, and nowadays is not an exception. Now, however, immigration is basically considered as something wrong and increasingly linked with criminality. For example, in a meeting of European countries, Spanish president Zapatero requested from his colleagues “ambition” before immigration and terrorism (El Pais 2007). In the United States a Zogby poll showed that “immigration” is ranking right after terrorism and the war in Iraq as a concern among the U.S. voters (Pritchett, 2006). The linkage between immigration and criminality was presented unobtrusively at the 109th US Congress in 2005, when a piece of legislation known as the *Border Protection, Anti-terrorism, and Illegal Immigration Control Act* (H.R. 4437) was presented. This bill passed the United States House of Representatives on December 16, 2005, but did not pass the Senate. Section 2003 of this law proposal turns informal immigration from a civil infraction into criminal offense, allowing local authorities to detain informal immigrants (see H.R. 4437, Section 607). The same perception permeated the actions of the US

government at the time of Hurricane Katrina when thousands of informal immigrants were barred from humanitarian assistance and threatened with deportation.

Immigration is not an isolated issue nor depends of the will of immigrants only. It is a complex motion that involves issues of human rights, economic failure, and natural events suffered by the most vulnerable people of any country. At the time of Hurricane Katrina, thousands of these vulnerable people, where caught in New Orleans and surrounding areas, and as many of them were labeled as “unqualified aliens”, without the right to receive humanitarian assistance.

Who are the Immigrants and why they Move from their home

The last decade has been one of the most active in terms of migration around the world. The United States is among the first migrant destinations in the World with more than one million migrants every year. About one in three immigrants in the US is an unauthorized alien, and most of them are from Latin American countries.

Migration is only the tip of a social iceberg where economic, social, and ecological drivers are propelling millions of people from their local environments to find safety somewhere else in the world. Because of the number and persistence, migration is a people’s globalization or, as Benton-Short et al (2005) regarded, a “globalization from below”. This process that has the same pervasiveness than economic globalization needs to be understood beyond the narrow view of it as an “illegal” act. Underlying this phenomenon there is a social drama where the involved people are defenseless elements under the pressure of overwhelming forces. Those who choose to migrate are generally people affected by extreme conditions of social vulnerability, propelled from their local milieus to foreign environments by a complex web of global, regional, and local economic and natural events.

Social research conducted in New Orleans reveals that most of the informal Hispanic immigrants, IHIs, have marched first from rural to urban areas in their native countries, and then to the US territory. It is known that the regional catastrophe galvanized by Hurricane Mitch is responsible for uprooting people from their homes. But it is less known that even non-catastrophic events like drought, earthquakes, plagues, freezes, flooding, among others, are also likely to be responsible of different scale migration. Ensuing economic problems,

neoliberal policies, and globalization effects have matched those natural events creating conditions for family and/or social fabric disruption and therefore for geographical mobility.

After Hurricane Mitch in 1998, the worst disaster in Central American history, other less known disasters has occurred in this region. Two earthquakes shook San Salvador in January and February of 2001; hurricane Iris brought damage in northern Guatemala to the departments of Peten and Izabal, and tropical storm Michelle caused extensive damage in Honduras and Nicaragua in 2001, resulting in the deaths of 1,259 people and the destruction of 149,563 houses, 1,566 schools and 144 health posts (IFRC 2001). Severe and prolonged drought in several regions of El Salvador, Guatemala, Honduras and Nicaragua caused more than 80% of farm losses in 2001 (Hernández Navarro2004). In 2005, Hurricane Stan caused heavy rains and massive flooding devastated communities in El Salvador, Guatemala, Honduras, Nicaragua and southern Mexico with hundreds of death, missing, and displaced people in the affected region. The anomalous intensity of the natural events in the last decade has been linked with climatic change. These problems were matched by economic crisis for peasants, like the plunge of coffee prices, and subsequent closure of plantations and unemployment.

A combination of severe drought that affected coffee farmers, gang violence, and nationwide social strikes in 2001 has caused widespread food shortages in Honduras (Mercy Crops 2001). Richter (2000) showed that, some catastrophic events in Chiapas triggered by heavy rainfall were intensified by the clear-cutting of rainforests and erosion due to inappropriate land use. As a result ravaging regional impacts of torrential rains caused overwhelming socioeconomic impact in local farmers. Hernando Navarro (2004) describes how small coffee farmers have succumbed to socioeconomic and environmental problems in the Central America region. Weather conditions, for example have infested with mosquitoes, malaria, and dengue in coffee regions in Nicaragua.

In addition, economic reforms brought by neoliberal policies are also responsible for dismantling local economies. Changes of socially efficient traditional agriculture into economically efficient agribusiness are also a cause of rural people migration. Most of the farmers have switched from family subsistence crops like beans, rice, corn and other products for subsistence, to export crops of high value foods like coffee, melons or strawberries destined for international markets. With this crop switch these farmers

becoming tied to international prices, which eventually fell down causing problems of food security.

Switching from diverse traditional polycultures to monocultures for overseas markets through non traditional agricultural exports, was considered a way to promote local development, but these businesses have in fact created inequity and poverty for the peasantry, blocking them from a true development (Kwa 2001). Since peasants and poor people abandoned their traditional agricultural activities, they must depend on the increasingly expensive food produced by agribusiness, and besides transfer their own food security, traditional knowledge and technology, seeds selection, and lands to the free market.

The mentioned ecological, environmental, and socioeconomic interactions that have brought increased poverty and vulnerability in rural Central American and Mexican societies are the overwhelming forces that created conditions of social shock and are obligating the people to flee for survival. Most of the IHIs in New Orleans have left these dramatic conditions and hoped to rebuild their lives in this city.

But IHIs are not only propelled by environmental and economical crisis. They are also dragged by a powerful magnet: the lack of hand work in several industries in the US. It is known that the construction industry and other critical business in the U.S. cannot rely in the local work force and need to contract foreign labor. Several studies reveal a strong proportional relationship between the number of Hispanics in the U.S. and the labor shortage. In the past two decades some work intensive activities in the U.S., like agriculture and construction, have experienced a relative decline of wages, making these activities less attractive for the local population. Some other businesses like manufacturing factories, industrial plants, fast food restaurants, on the other hand, offer better wages when compared with those offered by construction companies (Marin 2003). According to the *Center for Construction, Research and Training* (CPWR 2002:23), although wages in the construction business have increased in monetary value from 1991 to 2001, when adjusted for inflation, as of 2000, wage levels were still lower than in 1973 with a decline of about 16%. In these conditions, US workers are less likely to get jobs in construction activities, facing this industry a challenge in hiring new workers. The same situation happens in the agriculture and other work intensive business. As a result it is estimated that 37% of the agriculture

employees, 17% of construction, and 13% of retail business, are from Latin American origin (CPWR 2002).

Under the portrayed situation of handwork shortage, the New Orleans' reconstruction after Hurricane Katrina would have been impossible if not immigrants was on sight. It was thanks to thousands of informal immigrants that this city was able to be recovered. However several reports showed that even at the time of reconstruction, immigrant workers human rights were again neglected as they were at the time of the disaster. Failure in providing protective gear, insufficient salaries, and other unsafe and unfair work conditions prevailed against informal immigrants during the reconstruction.

Involuntary migration

In a synoptic view, immigration can be described as the result of two sets of socioeconomic processes occurring in the migrant sending and receiving countries. In this interaction created by the economic globalization, the needs and interest of vulnerable people looking for better livelihoods match the needs and interest of the socioeconomic system in rich countries, looking for inexpensive hand work. In this way, collectively immigrants are solving a problem of the global system, which is the allocation of the “nontradables” (services that cannot be outsourced and that do not require a high skill work level), in places where they are needed (Pritchett, 2006). Even a proponent of toughening immigration policies like President Bush cannot avoid recognizing that the mutual need of low waged hand work and employment by US economy and immigrants is driving an inevitable encounter of “willing employers and willing employees” (Paral 2006:12). Regardless the sophisticated controls adopted, this compound of local and global factors are working together to promote a steady flow of immigration from Latin America, particularly from Central America, to the US territory. These are irresistible forces for vulnerable people who then are subject of an involuntary movement.

Where the Human Rights Are?

To conclude this presentation, it is worth to ask who is to blame for global or regional decisions that brought economic crisis, environmental problems, and social collapse in rural areas of most of the countries of the world. Are the peasants and other vulnerable people

responsible for the related immigration schema? Should the international community penalize immigrants if they fail to get a formal authorization to get in a foreign country? Current socioeconomic trends confirm that both, natural events and demand of cheap labor are increasing. These phenomena match for constraining vulnerable people to migrate.

From the normative point of view, the experience of informal immigrants in New Orleans at the time of Katrina shows that some universal principles of importance for human rights like equality before the law and nondiscrimination may momentarily lose their value as an imperative norm of international law or *jus cogens*, and then increase the risk for already vulnerable people. On the other hand Hurricane Katrina has also alerted the international community on a normative gap regarding the protection of informal immigrants as people who are not under the protection of any state due to their particular situation of having entered to a foreign country without official sanction. Without a legal status these people can be in extreme risk when natural or constructed threats create conditions of a disaster.

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